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Language Legislation in the U.S.

Rosana Hernández-Nieto

Topic: Analysis of the language laws in a state level in the U.S.

Abstract: This paper presents a general overview of the states law regarding language issues in the 20 states with the highest percentage of Hispanic residents, with special attention to the Spanish language status.

Keywords: language laws, language policy, language rights, language accessibility

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Introduction

This paper presents a general panorama of language legislation in the United States by analyzing the constitutions and statutes of the 20 states with the highest percentage of Hispanic residents, with special attention to the status on Spanish. This involved searching for and compiling all the sections of each text that contained the terms "language," "English," and "Spanish." The decision to use sections as the unit of analysis was made because, while there is not an abundance of laws on linguistic topics, many laws do contain sections on language. These texts were drawn from the websites of each of the 20 states and complemented by the LexisNexis legislative database, which provided updated information that is not always available on official state websites.

Legislation on questions of language falls mainly into two categories. The first refers to how a particular language (in this case, English) can or must be used. This category would include all of the provisions on language that is respectful to people with disabilities and gender-neutral language. This category would also include provisions on so-called "plain language," the product of the movement that advocates for a "language and design that presents information to its intended readers in a way that allows them, with as little effort as the complexity of the subject permits, to understand the writer's meaning and to use the document," (Adler 2012: 68). This legislation is especially common in insurance law.

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The second category relates to the languages that must be used, or may be used, in certain situations, such as communication between civil servants and citizens or the publication of mortgage contracts. Around 2,500 sections fall into this category. If the first category were added to this figure, it would at least double.

As analyzing all sources of legislation–executive and judicial branch also make laws–would be a huge task requiring longer time, this paper focus on constitutions and statutary codes, the latter being a thematic compilation of laws passed by a legislature (United States s.f.). The aim is to observe the presence of language policy in legislation passed by the legislative branch as an indicator of these issues' relevance to legislators' agendas. Legislation on state education systems was excluded from this analysis due to its volume and complexity, and because it falls within a separate field of study (bilingual education).

This report is divided into six parts. The legal sections used for this study were organized by subject. This organization was later revised in order to standardize criteria, since a single legislative subject (legal interpreters, for example) could appear in chapters on the criminal justice system in some states and in chapters on the workplace in others. Part one, "Government Communication," analyzes legislative policies on communication with citizens who are not proficient in English. Part two, "Political Participation," examines how multilingualism is handled in different citizen participation mechanisims. Part three, "Commerce and Consumption," focuses on protections for consumers with limited English

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proficiency (LEP). Part four, “Labor,” unpacks the question of language in the workplace, such as linguistic requirements for certain professions and the information that employers are required to provide to their employees.

Part five, “The Criminal Justice System,” scrutinizes provisions on the languages used in court, including the requirement to hire translators or interpreters and the right to be part of a jury. Part six, “Healthcare and Social Services,” discusses legislation on medical translators and interpreters and the requirement to provide information on medical issues and social assistance in a language that the recipient can understand.

1. Hispanics in the U.S.

The population of the United States is marked by strong racial and ethnic diversity, the fruit of the particulars and conditions of its formation as a nation, and, later on, of immigration. The groups that make up the country do not stand on equal demographic, economic, social, or cultural footing. The white population has always been dominant, though in recent decades its majority has declined, down from 84% of the population in 1965 to 62% in 2015. Projections suggest that whites will cease to hold a majority sometime between 2045 and 2055 (Stepler and Brown 2016). These changes are due mainly to the behavior of the Hispanic demographic, and, to a lesser extent (for now), of the Asian demographic. The black population, 11% in 1965, is expected to remain more or

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less consistent with general population growth over a century, reaching a projected 13% in 2065.

In 2016, 57.5 million Hispanics lived in the United States—17.8% of the nation's 321 million residents (U.S. Census Bureau). This figure is expected to double in the coming decades, with 106 million Hispanics making up 26.6% of the total population of 398 million in 2050 (Martínez and Moreno-Fernández 2016). This growth will be largely due to the high birth rate among Hispanics in the United States, and to a lesser extent due to immigration, a trend that began in the first decade of the 21st century (Stepler and Brown 2016).

The Hispanic population has traditionally been concentrated in certain cities and states, but in the last few years it has spread throughout the country, most notably in the Southeast (Martínez and Moreno-Fernández 2016), although the dissemination has slowed down since 2007 (Stepler and Lopez 2016). Table 1 lists the 20 states analyzed in this report, those with the highest percentage of Hispanic residents.

Table 1. Hispanics as a percentage of the total state population Source: Pew Research 2016.

	State	Percent Hispanic
1	New Mexico	47.7%
2	California	38.6%
3	Texas	38.6%
4	Arizona	30.5%
5	Nevada	27.8%
6	Florida	24.1%

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	State	Percent Hispanic
7	Colorado	21.2%
8	New Jersey	19.4%
9	New York	18.6%
10	Illinois	16.7%
11	Connecticut	15.0%
12	Rhode Island	14.0%
13	Utah	13.5%
14	Oregon	12.5%
15	Washington	12.2%
16	Idaho	12.1%
17	Kansas	11.3%
18	Massachusetts	10.8%
19	D.C.	10.4%
20	Nebraska	10.1%

The number of languages spoken is another indicator of diversity in the U.S. According to the U.S. Census Bureau, 350 different languages are spoken in the country. At least 192 are spoken in New York, and 138 in Boston. Of all these languages, Spanish is the most spoken after English, with around 48.6 million speakers, according to Escobar and Potowski (2015, cited in Moreno-Fernández 2016), including undocumented immigrants and non-Hispanics who speak Spanish at home.

Not everyone who speaks another language at home is unable to speak English, but some do have difficulty. In 2013, a total of 25.1 million U.S. residents (around 8.5% of 296 million) belonged to the LEP population—that is, people older than five who reported speaking English less than "very well" on the Census (Zong and Batalova 2013). Spanish speakers made up 64% of that group (16.2 million), making Hispanics the group with the highest LEP rate in the country (Cabrera

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2017). Table 2 shows the progression of the LEP population from 1990 to 2013 in the 20 states with the highest percentage of Hispanic residents.

Table 2. Percent of the state population with LEP (1990-2013) Source: Zong and Batalova (2015).

State	1990	2000	2010	2013
California	16.2	20	19.8	18.9
Texas	11.3	13.9	14.4	14.0
New York	10.5	13	13.5	13.5
New Jersey	8.5	11.1	12.5	12.0
Nevada	5.6	11.2	12.3	11.6
Florida	7.9	10.3	11.9	11.5
New Mexico	11.5	11.9	9.2	9.8
Illinois	6.2	9.1	9.6	9.2
Arizona	8.2	11.4	9.9	9.1
Massachusetts	6.2	7.7	8.8	8.9
Connecticut	6	7.4	8.7	8.2
Rhode Island	7	8.5	9.2	7.7
Washington	3.7	6.4	8.1	7.5
Colorado	3.6	6.7	7	6.2
Oregon	3	5.9	6.1	5.9
D.C.	5.1	7.1	4.2	5.5
Utah	2.6	5.2	5.4	4.8
Nebraska	1.5	3.6	4.5	4.7
Kansas	2.1	3.9	4.6	4.3
Idaho	2.4	3.9	3.7	4.1
U.S. Average	**6.1**	**8.1**	**8.7**	**8.5**

The United States is facing a collective problem: over 8% of its population, 18.9% in California and above 4% in all of the states analyzed, cannot understand, or can only establish very basic communication, in English, the country's majority language and the language of its public administration. Decisions on language policy lie mainly with government officials; it is they who determine the languages

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of administration and education,[1] with declarations of official languages and language accessibility measures. As Kymlicka and Patten point out, "these decisions can have dramatic effects on a person's access to public services and social rights" (2003: 18).

For the state to act on a reality through public policy, that reality must first be perceived as a problem. According to Subirats, Knoepfel, Larrue and Varonne (2008: 33), "All policies aim to resolve a public problem that is identified as such on the government agenda. Thus, they represent the response of the political-administrative system to a social reality that is deemed politically unacceptable."

Then, the state may decide to act or not to act. As Meny and Thoening point out (1992: 92), citing Dye, "Public policy is 'anything a government chooses to do or not to do.'" That is, states that deliberately choose not to act on a problem are also making public policy on the that problem, though it is more difficult to detect and evaluate. Furthermore, it is possible for government officials to *create* a problem on which to act, even if there is no social demand or need to do so. Robert A. Hall applied this logic to language in his 1950 book *Leave Your Language Alone!*, in which he discussed society and the parties that have a vested interest in setting and defending a "prestigious" linguistic standard.

[1] For analysis of the state's role in managing multilingualism from the point of view of language rights and political theory, see Rubio-Marín (2003) or Patten (2015).

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In a federal system such as the United States, these decisions can be made at different levels of government. Although they are subject to the Constitution, the individual states nevertheless have significant leeway to take action in the lives of their citizens: they have their own constitutions and laws, which are set out in statutes[2]. Those laws are subsequently developed through regulations whith the force of law, designed by various agencies, which are compiled into an administrative code. Furthermore, the executive power can sign executive orders with the force of law. Finally, on matters of common law, judicial decisions set precedents, though in the late 20th century legislation carried greater weight than judicial decisions (Britannica Academic, n.d.). As indicated, this paper is focused in legislation passed by the legislative branch.

2. Government Communication

Effective communication between a government and citizens is necessary to ensure the functioning of society. As Rubio-Marín points out, “as a project of collective political deliberation and collective pursuit of socioeconomic well-being, the state simply rests on the possibility of communicative exchanges” (2003: 52). The texts analyzed here demonstrate that sometimes legislators are aware that individuals who speak a language other than English have difficulty accessing public information, and health and social services; in short, they have difficulty

[2] This collection could be called a statute, a code, or simply laws, depending on the state. On the federal level, it is known as the U.S. Code.

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fully participating in a democratic society on equal footing. As we will see, not all states have the same response to this reality. This section of this paper analyzes different ways of approaching the population's linguistic diversity, first, measures on English as an official language and their implications, and, second, current laws on language accessibility.

Official English

The United States has never declared an official language, though Congress has made repeated attempts to do so in recent history. Before the 1980s, only one such bill had been introduced—a 1923 attempt to install "American" as the official language.[3] Efforts to make English the official language of the federal government have evolved from hopes of a constitutional amendment to the simpler strategy of trying to pass a bill (Dale and Gurevitz 1997: 1).

Table 3. Initiative to Declare English the Official Language of the United States Source: Aka and Deason (2009).

Year	Initiative	Sponsor	Party
1981	*English Language Amendment (ELA)*	Senator Samuel I. Hayakawa (California)	Republican
1995	*Language of Government Act*	Senator Richard C. Shelby (Alabama)	Republican
1997	*Bill Emerson English Language Empowerment Act*	Representative Randall Cunningham (California)	Republican
2007	*S. I. Hayakawa Official English Language Act*	Senator James Inhofe (Oklahoma)	Republican
2007	*English Unity Act*	Representative Steve King (Iowa)[4]	Republican
2007	*National Language Act*	Representative Peter King (New York)	Republican

[3] More information at http://www.languagepolicy.net/archives/langleg.htm
[4] Steven King has reintroduced the English Unity Act in every session of the House of Representatives since 2007, most recently on February 9, 2017. It has never become law.

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The appearance of these proposals coincided with the establishment and consolidation of several lobby groups, the most important of which is U.S. English, which Senator Hayakawa, the sponsor of the first proposal, founded in 1983. Pressure from this group has not yielded results on the federal level, though it has had successes on the state level (Schmidt 2000: 28). Since the early eighties, 30 states have declared English their official language,[5] and U.S. English "has supported Official English campaigns in more than 40 states" and financed ballot initiatives in Arizona, Colorado, and Florida (Crawford 1992: 171).

Nine of the 20 states analyzed in this report recognize English as their official language in two distinct moments: the first took place in the 1920s (Nebraska and Illinois[6]). The second (and more important) wave began in the 1980s, when the English-Only movement[7] gained traction; California (1986), Florida, Colorado, and Arizona[8] (1988) introduced legislation to make the declaration. The three remaining states—Utah (2000), Idaho (2007), and Kansas (2007)—made the change in the 21st century, when the movement seemed to rally.

[5] Only Nebraska and Illinois (1923) had done so prior.
[6] The date of Illinois' declaration is often cited as 1969; however, that was merely the year that it swapped the term "American" for "English." It declared an official language in 1923.
[7] This report will use "English only" chiefly to refer to the actions associated with the lobby group U.S. English. The term "official English" is used when referring to laws, since, as will become clear, making English the official language does not always entail exclusive use of English in public administration.
[8] The year that Arizona declared an official language is typically cited as 2006, but that was merely the year that a watered-down version of the 1988 provision—which the Arizona Supreme Court struck down in 1998—was passed. More information at http://nyti.ms/2uINCLK

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The declaration forms part of five states' constitutions; in the remaining four, it has been incorporated into statutes or codes. In Arizona, California, Florida, Colorado, and Utah, it was passed by referendum, with yes votes generally winning by a wide margin (see Table 4).

Table 4. Results of referenda to declare English the official language. Prepared by the author with data from ballotpedia.org.

State	Year	% Yes	% No
Arizona	1988	50.50%	49.50%
	2006	74%	26%
California	1986	73.2%	26.8%
Colorado	1988	61.15%	38.85%
Florida	1988	83.87%	16.13%
Utah	2000	67.18%	32.82%

Although the declarations do not explicitly mention other languages—except for Arizona and Kansas, which state that the laws will not limit use of Native American languages—some documents and public statements by the main English-only advocates associated with the U.S. English lobby group demonstrated a clear anti-Hispanic component. Senator Hayakawa (cf. Crawford 1992: 96-99), stated that "the only people who have any quarrel with the English language are the Hispanics–at least the Hispanic politicians and 'bilingual' teachers and lobbying organizations," who he said were unwilling to integrate. According to Joshua Fishman (cf. Crawford 1992: 168), the data does not support this statement, and Hispanics are not immune to the "iron law" of English language learning—that is, that the mother tongue is almost completely lost in the second or third generation; the only difference is that retention is slightly higher

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among Hispanics, whose knowledge of Spanish lasts one additional generation, Fishman claims. On the other hand, Kymlicka and Patten (2003: 8) point out that transnationalism (migrants' ongoing connections with their countries of origin thanks to transportation and new technologies) and multiculturalism, which argues that emigrants have no reason to assimilate with the culture of the country to which they arrive, mean that loss of the native language is not as inevitable as in the past, a fact that fueled the English Only movement.

This anti-Hispanic sentiment could also be found in the attacks made by a 1986 memorandum on the consequences of immigration written by John Tanton, the co-founder of U.S. English. When the memorandum was leaked, Linda Chávez, the organization's president, resigned after calling Tanton's comments "repugnant and anti-Hispanic" (Crawford 1992: 172). Leibowicz (cf. Crawford 1992: 109) has no doubt of English-only's anti-Hispanic focus, arguing that "Where the Americanizers were afraid of Slavic or Mediterranean hordes, supporters of the E.L.A. [English Language Amendment] are afraid of Spanish and the people who speak it." Despite this, there is no direct relationship between the percentage of the population that is Hispanic and the passage or failure of laws recognizing English as the official language. Of the 20 states with the highest percentage of Hispanic residents, only nine have introduced such provisions. The remaining 23 are among the 30 states with a smaller per-capita Hispanic population.

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After conducting a detailed study, it is certain that Official English laws cannot be considered monolithic. Kymlicka and Patten (2003: 25) and Schmidt (2000: 29) claim that some such declarations are purely symbolic. Others, such as Aka and Deason (2009: 68) believe that there is no such thing as a symbolic official English law, and that all of these statutes can be harmful within their respective "degrees of restriction." Table 5 sums up the main characteristics of Official English declarations. This information is strictly limited to the regulations of these declarations. As this report will demonstrate, some states that have not declared an official language nevertheless have similar provisions (such as a requirement that all documents submitted to public bodies be in English). For instance, official documents or registers must be in English in all states. Texas refers explicitly to registration of documents in Spanish, provided that they are accompanied by a translation.

Table 5. Characteristics of official English declarations by state.

State	Year	Level[9]	Adoption mechanism	Documents and registrations	Language used by civil servants	Return of funds	Possibility of filing complaint against state for noncompliance	Regulation of exceptions
Arizona	2006	C	Referendum	√	√	x	√	√
California	1986	C	Referendum	x	x	x	√	x
Florida	1988	C	Referendum	x	x	x	x	x
Colorado	1988	C	Referendum	x	x	x	x	x
Illinois	1923	S	Legislative branch	x	x	x	x	x
Idaho	2007	S	Legislative branch	√	x	√	x	√
Kansas	2007	S	Legislative branch	√	√	x	x	√
Utah	2000	S	Referendum	√	x	√	x	√
Nebraska	1920	C	Constitutional convention	√	x	x	x	x

[9] C: Constitutional. S: Statutory.

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Illinois's merely indicates that English is the official language of the state, with no further development. The same is true in Colorado and Florida, although in these states the legislature is prompted to further develop the statute. The details of what official English means in California are also left to the legislative branch, though the tone and scope of the declaration are very different, as they include the possibility of taking the state to court for noncompliance. None of these four declarations explicitly states that official documents or registers must be in English (though that requirement can be found in other legislation). Nebraska does have such a requirement, but it goes no further.

The declarations made by Arizona, Idaho, Kansas, and Utah, on the other hand, are more detailed and restrictive. They all stipulate that official documents and registrations be in English; Kansas and Arizona also require that communications by civil servants and officials be in English, though they do not prohibit unofficial use of other languages. All four of these states offer detailed lists of exceptions to official English: other languages may be used in emergencies, public health, and healthcare; to promote tourism and trade, and for foreign language education. Arizona, like California, provides for the possibility that citizens may take the state to court for not complying with the declaration. Idaho and Utah require agencies to return funds earmarked for translating or printing official materials in other languages, or for the provision of services in other languages, to the state's general fund.

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But even these four states' declarations, which are more restrictive than those of the other five, indicate that other languages may be used when required by the Constitution of the United States, the state constitution, the law, or federal regulations.[10] This highlights how, despite these declarations, the states must continue complying with federal legislation and regulations. Provisions such as section 203 of the 1975 Voting Rights Act (VRA) and Executive Order No. 13166 (Improving Access to Services for Persons with Limited English Proficiency), and their subsequent regulatory development curb a more radical advance of laws aimed at restricting the use of other languages. Section 203 of the VRA, which the second section of this report will examine in greater depth, guarantees that bilingual election-related materials be made available in constituencies that meet certain requirements. Executive Order No. 13166 (2000) requires agencies that receive federal funds to meet certain language accessibility standards. This includes agencies dedicated to health and social services, employment, justice administration, and the environment (Cabrera 2017: 47-50).

This is a clear example of the checks and balances that characterize the U.S. political and legal system: power is not concentrated in any single actor (legislative, executive, or judicial) or level of government (local, state, or federal), but is instead exerted through a network of mutual connections and influences.

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[10] The Supremacy Clause (Article VI of the U.S. Constitution) stipulates that federal law prevails in conflicts with state law. For a detailed description of the U.S. legal and institutional system, see Lowi *et al.* (2011).

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Furthermore, by linking compliance with language accessibility provisions to funding, the federal government has created a coercion mechanism similar to the one used in education, as described by Friedman and Hayden (2017: 136-137), who illustrate how the federal government has gradually taken *de facto* control over domains for which other levels of government are theoretically responsible and developed tools to force the states to comply with its directives. Thus, even states with stricter official English declarations find themselves forced to comply with federal regulations.

Language Accessibility Laws

Regardless of the existence of official English laws, the situation in every state studied here is the one described by Kymlicka and Patten (2003: 19): there is a language that is generally designated or used in public administration, and, in some cases, measures are taken to accommodate individuals with limited proficiency in that language. English is the language used by the public administration in every state analyzed. New Mexico is someway an exception: Spanish has a recognized space that makes Romero (2011: 619) goes so far as to argue that "New Mexico has adopted Spanish as a quasi-official language." In the other states, accommodation of non-English speakers' needs can be greater (California and D.C.) or lesser (Arizona). California offers a clear example of the

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general situation: all of its codes[11] include a provision that all notices, warnings, reports, declarations, and registrations must be in English unless otherwise indicated; the codes then go on to list exceptions and documents that must be translated.

In every state, the newspapers officially sanctioned for the publication of notices (warnings, summons, etc.) are all in English, with the exceptions of New Mexico and Florida. New Mexico designates official newspapers in English and Spanish,[12] yet another example of Spanish's status in the state. Florida does not specify a language, but its definition of a newspaper of general circulation, for the purposes of publishing official notices ("a newspaper [...] printed in the language most commonly spoken in the area within which it circulates"[13]) leaves open the possibility of publication in other languages.

The text of these public notices—which include everything from announcements of public hearings to state contracts——varies greatly. Whenever legislation requires publication in another specific language, that language is Spanish. In all other cases, it refers to "other language(s)." In six states (Arizona, Colorado,

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[11] Formally, California does not have a single code, but different codes organized by topic. The same is true in Texas and New York.

[12] "For the purpose of publishing legal notices in Spanish as required by law for any agencies of the state, the *Santa Rosa News* published at Santa Rosa, the *Santa Fe New Mexican* and the *Santa Fe News*, both published at Santa Fe, *El Hispano* and *El Semanario de Nuevo Mexico*, both published at Albuquerque, the *Alpha News* published at Las Vegas, the *Rio Grande Sun* published at Espanola, the *Taos News* published at Taos and *Mas New Mexico* published at Santa Fe and Albuquerque are recognized as official Spanish language newspapers of this state." (New Mexico Statutes, Section 14-11-13).

[13] Florida Statutes, Section 163.3164.

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Illinois, Massachusetts, Nevada, and Nebraska), public notices are published only in English. In California, New Mexico, Texas, and Oregon, they must also be published in Spanish. In the other states, the language depends on the specific notice being published, with no discernible pattern.

Only California[14] and D.C. have incorporated comprehensive and detailed laws on language and communication between the government and citizens into their statutes. Texas, too, has a general provision, though it only applies to online content. In all other cases, there is a more or less extensive array of sections, all of which are limited in scope. These will be discussed in the next section of this report.

The Dymally-Alatorre Bilingual Services Act, passed by the California State Legislature in 1973, includes in its statement of purpose that "...the effective maintenance and development of a free and democratic society depends on the right and ability of its citizens and residents to communicate with their government"[15] and vice-versa. It further notes that non-English speakers often cannot be served, and are denied rights and benefits that they ought to be able to access. Therefore, the act seeks to establish suitable mechanisms to facilitate

[14] Note that California is a state with official English. This combination of restrictive and permissive provisions on the use of other languages in public administration is nothing new. Kloss (1998: 232) has reflected on how the first constitution of California (1849) required publication all laws, decrees, regulations, and provisions in English and Spanish, and how the second constitution of 1879 declared English as the state's official language.
[15] California Government Code, Section 7291.

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effective communication. As already mentioned, 18.9% of California's population had limited English proficiency in 2013, the highest rate in the country.

This law set what we might call the "linguistic threshold"—the percent of non-English-speaking individuals necessary for the government to guarantee language assistance—at 5% or more of the population served by the state, local office, or other state agency. The linguistic threshold is even lower in D.C.'s Language Access Act, which places it at 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity. This law was passed in 2004, repealing the Bilingual Services Translation Act (1977); this marked a shift from offering bilingual Spanish-English support services to offering those services in a multilingual modality. The District of Columbia ranks 21st in LEP population by percent, at 5.5%.

The Dymally-Alatorre Act provides for the employment of bilingual employees and interpreters, along with telephonic interpreting services, according to available funds; it further mentions translation of public services' explanatory materials, and of the websites of agencies affected by the law. All of these agencies must design and periodically update a plan for implementing the law and conduct a biannual survey evaluating its success. The law leaves open the possibility that if the agency in question deems it appropriate, it may offer language assistance even if the linguistic threshold is not met. Finally, the law explicitly states that it does not apply to school districts or school boards.

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In Texas, the information that state agencies publish online must be translated into Spanish, in accordance with a provision passed in 2005 (Texas Government Code, section 2054.116), which, although it defines “person of limited English proficiency,” subsequently only ensures the Spanish-speaking population’s effective access to information. The provision encompasses all state agencies, but is limited to information published online, unlike the laws in D.C. and California, which require translation of all sorts of materials and the hiring of bilingual employees.

D.C.’s Language Access Act, like California’s law, includes hiring interpreters and bilingual employees, as well as document translation. All affected entities must design a language accessibility plan and conduct an annual data gathering process. It also establishes the position of Language Access Director.

Subsequent assessments of the laws in California and D.C. demonstrate that the results have not always been satisfactory. The 2010 California State Auditor’s report concluded that the State Personnel Board had neither implemented the recommendations made in the 1999 report nor fulfilled its responsibilities in relation to the law. The audit further revealed that state agencies were not fully meeting legal requirements. In D.C., the Urban Institute think tank prepared a report 10 years after the law's passage (Berstein, Gelatt, Hanson, and Monson 2014). It notes the need to improve data gathering systems and to hire more bilingual personnel to complement telephone interpreting services. It also notes

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that, for many agencies, language accessibility is not a priority. All the same, it is clear that in these states, the percentage of the population with limited English proficiency is a problem on which the state chose to act.

3. Political Participation

Citizens' ability to understand government information is essential to assure their full participation in the political process. If it is taken for granted that a society's democratic nature cannot be limited to the act of voting, but must also grant citizens the right to participate in other, more deliberative processes (Kymlicka and Patten 2003), then that society must provide mechanisms to make such participation possible.

Some states have begun taking this reality into consideration. For example, Connecticut's plans for public involvement in environmental projects include measures to facilitate participation in regulatory processes, such as providing information at meetings in all languages spoken by at least 20% of the population in the area involved. In California, to facilitate participation by individuals affected by the slow release of toxic substances, fact sheets on the government's plans must be published in other languages. Another interesting example can be found in Rhode Island, where interpreters are provided at public hearings for the renewal of water treatment plant permits if a request is made 48 hours in advance. Nevertheless, these participation initiatives are very sporadic.

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Sometimes they are nothing more than declarations. In 1992, Rhode Island passed a declaration (Rhode Island General Law 42-5.1-1), which recognized the value of the state's multiculturalism and multilingualism, and urged various groups to learn English so that they could participate fully in society, even as it supported the preservation and use of those groups' native languages. Further development following this declaration can't be observed in Rhode Island General Law. The same occurred in Washington, where a very similar provision, passed in 1989, makes it clear that it creates no rights and establishes no particular program. That said, the mere inclusion of such a declaration in a state's statutes reflects an attitude toward non-English languages that is very different from that found in other states. In Arizona, for example, there is an awareness that a percentage of the population needs assistance understanding public information, but the state has nevertheless chosen not to act in certain circumstances. Its statutes state that, except where required by federal law, it is not illegal to decline to provide language assistance or translated forms or documents to an individual applying for services in a public recreational or entertainment area.

Electoral Legislation

Electoral systems, understood in a broad sense, from voting rights to electoral campaigns and how to convert votes in seats or government officials, involve serveral aspects of language accessibility.

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Most legislation on the use of different languages in the electoral process can be found in the 1965 Voting Rights Act (VRA), which recognizes citizens' right to vote without discrimination based on race or color, though it does not mention language. In 1975, the U.S. Congress introduced section 203, according to which no state or other political subdivision may deny citizens the right to vote because they speak a minority language; it further establishes that jurisdictions that meet a series of criteria must provide electoral materials and documents, including ballots, in certain minority languages.

Although bilingual materials—notes, forms, instructions, assistance, and information on the voter registration and voting processes—have existed for over 40 years, the country has yet to reach consensus on their desirability. Its advocates note that it has improved voter turnout and increased the political influence of minority-language speakers, who had previously been excluded from the electoral process; its detractors argue that it diminishes immigrants' interest in and efforts to learn English, and that, at most, these materials should only be offered to voters born abroad (Trasviña 1992 cf. Crawford 1992: 257-263). Senator Hayakawa, who first sponsored the English Language Amendment in the Senate in 1981, went so far as to argue that bilingual ballots were an expression of "profound racism," as certain groups, such as Mexicans, Puerto Ricans, Japanese, and Chinese, were "assumed not to be smart enough to learn English" (Hayakawa 1985 cf. Crawford 1992: 96). Other arguments against providing

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assistance and bilingual materials include that these materials are not actually used, that they must be offered even when they are not necessary, that they do not increase turnout, that they are not necessary because the voter can seek private assistance, and that they are a financial burden on citizens (Tucker 2009).

The following criteria are used to determine whether a political subdivision must provide materials in other languages:

- The percentage of minority-language speakers in the state, county, or subdivision of the county, depending on the election.
- From among the members of those language minorities, the number of citizens of legal voting age with limited English proficiency must be greater than 10,000 or 5% of the population.
- The percent of the population with limited English proficiency and less than a fifth-grade education must be greater than the national average.

In areas with Native Americans or Alaska natives, over 5% of citizens of legal voting age must belong to a determined native group and have limited English proficiency.

Thus, not all individuals' right to access electoral materials in their own language is recognized. A series of conditions must be met before the authorities are obligated to provide materials in other languages. Furthermore, the VRA does not

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protect all non-English speakers; it applies only to Spanish, Asian languages, Native American languages, and languages of Alaska natives.

Table 6 shows the number of jurisdictions in which the VRA compels provision of materials and assistance.[16] California, Florida, and Texas are also required to provide Spanish translations of all state-issued materials (Cohn 2016).

Table 6. Jurisdictions covered by minority according to section 203 of the VRA (December 2016). Source: U.S. Census Bureau.

State	Hispanic	Asian	AIAN (American Native and Alaska Native)	Total[17]
Arizona	4		6	10
California	26	21	2	27
Colorado	4		2	6
Connecticut	9		1	10
Florida	13			13
Idaho	1			1
Illinois	3	1		3
Kansas	5			5
Massachusetts	10	3		12
Nebraska	3			3
Nevada	1	1		1
New Jersey	8	2		8
New Mexico	12		12	20
New York	7	5		7
Rhode Island	3			3
Texas	88	3	2	88
Utah			1	1
Washington	3	2		4
Total	200	38	27	263

With the context of this common national framework, this report will now analyze state regulations. Idaho is the only state whose statutes contain no provision

[16] More information on this topic is available at http://bit.ly/2evgWQc

[17] Note that a single jurisdiction may be required to provide materials in more than one non-English language. Every minority group includes a group of protected languages, of which there are a total of 68. In the Hispanic minority, the sole language is Spanish; the Asian minority includes Chinese, Hmong, Japanese, Korean, and Vietnamese, among others. The Native American languages are the most numerous.

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whatsoever on languages in the electoral processes (it has only been required to provide bilingual materials since 2016).

Electoral Campaigns

Provisions on electoral campaigns are few and far between, and refer to very specific matters, such as the requirement that parties and candidates be named in English in New York, and the possibility that candidates could send statements to voters in other languages—at their own expense—in Illinois. Colorado and California run public information campaigns on voting and voter registration systems, which are conducted in English and whatever other languages are necessary to provide electoral materials and assistance, in accordance with the VRA as discussed below.

California is the only state that has created public agencies to manage language accessibility in the electoral process by statutory law. The first one, a working group with individuals with proven experience providing access to the languages covered by the VRA. The second one, an advisory committee made up of experts on VRA language accessibility, presentation of materials in plain language, and other matters related to voter access, or county electoral officers or county representatives with experience in language accessibility. This committee will meet at least four times a year and present its recommendations to the California Secretary of State.

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Five states have also introduced some provision concerning the publication of notices or announcements that contain information on the electoral process, voter registration locations, the announcement of candidates, and so on. In New Mexico, all electoral notices, candidate announcements, and results must be published in English and Spanish. In counties covered by the VRA, special measures are taken for unwritten Native American languages.

In Texas and Nebraska, voting requirements must appear in the same languages as those in which voting materials are available. In New York State, the announcement of the election, voter registration centers, and the telephone number for assistance must all be publicized in English and other languages selected by the board of elections. New Jersey distributes electoral bilingual notices in counties where 10% of registered voters speak Spanish as their native language.

Voting Rights

To participate in the electoral process, citizens must first have the right to vote. This is recognized in the VRA, which forbids discrimination on the basis of race, color, or language. Still, New Mexico and Illinois both reiterate in their respective constitutions that the right to register to vote, as well as the right to vote itself, cannot be denied to anyone because of race, ethnicity, language, or religion.

This situation is different when it comes to passive suffrage, that is, the right to be elected to public office. New Mexico's constitution (Art. VII, Sec. 3) states that citizens may not be deprived of their right to vote, hold office, or sit on a jury "on

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account of religion, race, language or color, or inability to speak, read or write the English or Spanish languages." Arizona's constitution, on the other hand, provides that "the ability to read, write, speak, and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter, shall be a necessary qualification for all state officers and members of the state legislature" (Art. XX, Sec. 8). The state's statutes reiterate that no individual is eligible to be elected or appointed to public office without proficiency in English. Thus, Arizona places a limit on passive suffrage according to its citizens' linguistic competency. The judicial branch has reaffirmed this provision: Alejandrina Cabrera was disqualified as a candidate for the City Council of San Luis, Arizona, first by the Arizona Superior Court in Yuma County and then by the Arizona Supreme Court, as she was deemed to have insufficient proficiency in English (Escamilla vs. Cuello).[18]

Voter Registration

Once a citizen is determined to have the right to vote, that citizen must register. This process, too, can entail difficulties for individuals with limited English proficiency. New Mexico's statutes provide that the county secretaries must take measures to facilitate registration for certain groups of voters, including minority-language speakers. Colorado makes the same declaration, though in the latter case it is not developed any further, at least in the state statutes. In New Mexico,

[18] Full ruling available at http://bit.ly/2uGgO6I

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both the registration document and the proof of registration must be in English and Spanish.

New Jersey provides registration forms in English and Spanish, and the latter must be distributed in all counties in which at least one district is required to provide bilingual ballots (those districts where 10% of registered voters' primary language is Spanish). The same applies to waiver and complaint forms. There is also regulation on the agencies and public facilities where these forms must be provided.

Texas's voter registration form must either be available in Spanish or include a Spanish translation on the English form. Furthermore, any county subject to Section 272.002 of Title 16 of the Election Code (those in which 5% or more of inhabitants are of Hispanic origin or descent) must post a notice indicating that this form is available. In Illinois, the form is available online in at least two languages, English and Spanish. Massachusetts, too, guarantees translation of the affidavit of registration into at least Spanish, and leaves open the possibility of translation into other languages. Washington indicates that it will provide voter registration information in the languages required by state agencies to encourage voter turnout. Finally, in California and Rhode Island, voter registration materials in every language required by the VRA must be available in print and online.

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After registering to vote, the next step is to cast a ballot on election day. On that day, there are two essentials: 1) voters must understand the ballot, and 2) if they do not understand the ballot, they must be able to receive assistance from someone who understand their language and to communicate with election officials.

Of the 20 states analyzed for this report, 15 had some form of regulation on the language of ballots and other related materials (New Mexico, California, Texas, Florida, Colorado, Arizona, Utah, New Jersey, New York, Illinois, D.C., Connecticut, Kansas, Nebraska, and Rhode Island). Wherever the law referred to one specific language, that language was Spanish, except for a New York provision that materials in cities with a population of over one million must be translated into Russian.

Nebraska, Connecticut, and Rhode Island only go so far as to say that they will provide ballots in the languages required by the VRA or state law. Florida, too, alludes to the minority languages specified by the VRA. In New York, voting instruction must be in English and in the languages determined by the board of elections. In Nebraska, Arizona, and Utah, those instructions must only be in English. In Kansas, the secretary of state indicates the locations in which the sample ballot and other materials must be in one or another language, in addition to English.

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Strikingly, Colorado states that ballot issue initiatives and their corresponding informational documentation are not covered by the VRA, meaning that the state is not otherwise required to provide them in non-English languages.

In New Jersey, ballots and voting instructions must be printed in English and Spanish in districts in which the primary language of at least 10% of registered voters is Spanish. D.C. provides that materials in other languages must be provided when at least 5% of eligible voters in a given district are native speakers of a language other than English; it also envisages assistance for minority language speakers in districts that do not meet that criterion. In New Mexico, sample ballots and votes on constitutional amendments must be issued in English and Spanish.

The VRA and California Elections Code, Section 14201 are the starting point for all of California's regulation. According to this section, voting instructions must be printed in Spanish. If electoral officers believe there is a significant and substantial need, issuance in other languages is also considered.

In Texas, the baseline laws are the VRA (ballots are translated as required) and section 272.002 of the Election Code, which establishes that bilingual materials in Spanish and English must be used in districts that form all or part of a county in which 5% or more of inhabitants are of Hispanic origin or descent, though if a Spanish translation is posted at the polling place and that ballot contains a note

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that a Spanish translation is available, bilingual materials are not necessary. Although Section 272.002 is intended to regulate materials in Spanish, it provides for the same regulation for other languages if necessary.

New Mexico, California, Nevada, Colorado, New York, Illinois, Washington, and Kansas have also introduced linguistic standards for voting equipment by stipulating that it must be capable of providing ballots and ballot receipts in a variety of non-English languages if required by the VRA and, in California, if required by Section 14201.

Along with voting materials, the individuals who work at polling places are also affected by language provisions. Ten states have passed such legislation: California, Colorado, Florida, Illinois, Massachusetts, Nebraska, New Jersey, New York, Texas, and Rhode Island. The qualifications required to be an elections inspector, election clerk, or a member of a board of elections in California, Florida, Illinois, New Jersey, New York, Massachusetts, Nebraska, and Rhode Island, as appropriate, include the ability to read and write English. New York's Election Law 17-130 goes so far as to make it a crime for any person who cannot read and write English to act as an elections inspector or election clerk.

In four states, it is also possible that there could be election officials present who are proficient in non-English languages. In California and Colorado, no languages are explicitly enumerated, but the option is established for districts where at least

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3% of eligible voters (Colorado) or at least 3% of the population (California) have limited English proficiency. California also provides for the hiring of multilingual officials if citizens or organizations report and demonstrate to the secretary of state that they are necessary (Section 12303, *Elections Code*). The provisions in Texas and New Jersey are explicitly aimed at the Spanish-speaking population: Spanish-speaking election officials must be present in Texas districts where at least 5% of inhabitants are of Hispanic origin or descent, and in New Jersey districts where at least 10% or registered voters are Spanish speakers.

Eleven states have legislation on what happens if a voter is unable to understand the ballot and needs assistance: California, New Mexico, Texas, Colorado, New York, Illinois, Connecticut, Utah, Kansas, Massachusetts, and Rhode Island.

In Massachusetts and Utah, the voter designates someone to provide assistance. California also explicitly recognizes voters' right to receive assistance. As for officials' communications with voters who speak other languages, it states only that it is to be conducted in compliance with the indicated norms. In Kansas, any member of the board of elections may provide his or her signature at the request of voters who cannot do it for themselves because they cannot read English, among other reasons. It further provides that intentionally swearing, stating, declaring, or endorsing false answers to questions posed by an individual requesting voting assistance is considered electoral perjury.

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In New York, assistance is to be provided by a family member, and if the voter received help during the registration process, the individual who helped must provide identifying information. In Colorado, assistance is provided by elections inspectors or a person of the voter's choosing. In Illinois, after declaring under oath that they need assistance voting, voters are assisted by two election officials of different political parties. In Texas, helpers must be registered voters in the county in which their help is needed. In the event that an election official and a voter communicate in a language other than English, another official may request a translation of that communication. If an official cannot communicate with a voter, the voter may choose an interpreter; except in this circumstance, officials may not use any language other than English in their official functions.

In New Mexico, the voter may choose the person who assists them, but they may not select their employer, their employer's representative, an official or representatives from their union, or an electoral candidate. The county clerk must ensure that interpreters and assistance are available in locations covered by the VRA, and in mobile alternate voting locations and alternate early voting locations (New Mexico Statutes, Sections 1-6-5.6 and 1-6-5.8); the statutes particularly mention Native American territories. Finally, in Rhode Island, both the helper and the person receiving help must sign an affidavit. Wherever bilingual ballots are required, someone proficient in the non-English language must be available to assist voters.

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It is interesting to observe how in the electoral sphere, and a similar approach can be discerned in the judicial one, there are provisions in order to provide with assistance people who do not have sufficient proficiency in English, people with some sort of disability, or people who cannot read or write. However, they do not have the opportunity to participate more actively: except for in a handful of situations, they cannot act as election officials, and in some states, such as Arizona, they cannot even run for public office.

District Drawing

Strictly speaking, an electoral system is made up of several different elements (electoral formula, electoral threshold, candidacy type, voting modality, the shaping of constituencies or districts etc.), and legislators try to exert influence on these elements in order to maximize their electoral payoff. Electoral systems are "basically manipulative and redistributive institutions. They are, in the words of Giovanni Sartori (1986: 273), 'the most specifically manipulable instrument' of the political system" (Lago and Montero 2005: 281).

In the United States, the most manipulable element of all is the electoral district, which can be reshaped to favor one or another political party, and to cancel or reduce the influence of all sorts of minorities. This process, known as gerrymandering,[19] has been standard practice in the United States since 1812 or

[19] Gerrymandering is a portmanteau of "Gerry," the last name of the governor responsible for a law that redrew state senatorial district boundaries to favor the Jeffersonian Republicans, and "Salamander," as this was the shape of one of the new districts. On March 26, 1812, after the

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earlier. Three states have provisions related to the drawing of electoral districts. Florida and New York include provisions indicating that district boundaries cannot be altered with the aim of nullifying the power of "racial or language" minorities. There is a similar section in Oregon's statutes.

For example, on the municipal level, on January 6, 2017, a federal judge declared a reform in Pasadena, Texas to violate the VRA, as it constituted a deliberate attempt to discriminate against Latinos.[20] The Fourth District of Illinois, whose irregular shape has led many to dub it the "Latino Earmuffs," is another example of gerrymandering, in this case to group the Hispanic population into one single district.

Following its analysis of 20 states' legislation, this report concludes that there has been little innovation in electoral regulation, and that, in general, these states have limited themselves to complying with federal legislation, even though the percentage of Hispanic residents in these states varies widely.

Six states have passed provisions to combat language-related difficulties that may affect their citizens' ability to participate in elections with standards different from those in the VRA: California (Section 14201 of the Election Code, the origin

law was passed, the *Boston Gazette* published a caricature accompanied by the text "The Gerry-mander: A new species of Monster, which appeared in Essex Sought District in January 1st." http://bit.ly/2ui7rHB
[20] See http://nyti.ms/2jlY4Um

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of which dates back to 1971), Texas (Section 272.002), D.C. (Section 1-1031.02, of 1976), New Jersey (several provisions on language accessibility include the condition that 10% of registered voters must be Spanish-speaking), New York (Election Law Section 3-506) and New Mexico (with several sections on the languages of voting materials and voting assistance). Some of these states (California, New Jersey, and New Mexico, along with Hawaii and Massachusetts) had already passed constitutional or statutory provisions on bilingualism in electoral processes before the 1975 amendment to the VRA (Tucker 2009: 47).

All of these states have passed laws that, in one sense or another, go further than the VRA. New York has a provision that attempts to cover speakers of languages that are not explicitly protected. The others establish conditions for the provision of materials and assistance by means that differ from those laid out in the VRA. Thus, in D.C., the number of speakers of the same non-English language must make up 5% of the population; furthermore, the board of elections must establish even lower thresholds in certain districts. In New Jersey, 10% of registered voters must be Spanish-speaking; in Texas, 5% of inhabitants must be of Hispanic origin or descent; in California, 3% of citizens of legal voting age must speak a minority language, with special reference to Spanish. In New Mexico, there are no conditions to be met; all materials must be in English and Spanish.

In New Mexico, New Jersey, Texas, and California, these regulations that exist alongside the VRA are aimed specifically at the Spanish-speaking population

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(remember that New Mexico, California, and New Jersey are among the states with highest percentage of Hispanic populations in the country). The provisions in D.C. are not specific to any language. New York mentions Russian, and California includes several other languages in addition to Spanish.

4. Commerce and Consumption

The Selig Center for Economic Growth estimates that Hispanics had buying power of $1.3 trillion in 2015, and that that figure will reach $1.7 trillion in 2020 (Martínez and Moreno-Fernández 2016). Despite this, the market does not seem to offer any particular protection to consumers who do not speak English or to Spanish speakers in particular. Bender (1996) illuminates how this population has become the target of some businesses and marketers who try to exploit their lack of proficiency in English.

These consumers do not have access to the same information as English speakers, so they are unable to compare the options available on the market or understand the contracts that they sign. The absence, or unequal distribution, of information is a so-called market failure, that is, a situation in which the market is not efficient. This situation arises when consumers do not possess sufficient information on their loans' interest rates, the clauses of their mortgages, the ingredients in their food or the characteristics of their vehicles. This lack of information prevents them from making appropriate decisions (Stiglitz 2002: 99-

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100). According to neoclassical economic theory, which has been dominant in the past few decades (Rutherford 2013: 413; Dequech 2012: 354-355), this is a circumstance in which the state could legitimately intervene to restore efficiency.

If this failure exists in markets in which all participants share a language, it is logical to suppose that the inefficiency would be exacerbated where many languages are spoken. According to a 2013 report by the Federal Trade Commission (Anderson 2013), the percentage of Hispanics who were victims of fraud reached 13.4% in 2011, compared with 9% among non-Hispanics; that rate marked a decrease of more than four points since 2007, the year of the previous report, when the rate was 18%; that figure, in turn, represented a major increase from the 2003 rate of 14.3%. The greatest problems arise among Hispanics who believe that they can conduct business in English, rather than among those who are aware of their own limitations understanding that language.

Once again, this is a situation in which government officials may choose to intervene or to refrain from intervening. When they choose to act, the implementation of consumer-protection measures constitutes one of the few occasions in which the government crosses into the private sphere. Bender (1996: 172 et seq.) explains that the justification for this interference always lies in the restoration of market efficiency, either through the design of a "perfect market" to correct for the lack of information, or with "market control," by which consumers can protect themselves after being provided with suitable information.

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On the federal level, according to the Electronic Funds Transfer Act (15 U.S. Code, section 16030-1), the consumer must receive all information concerning the electronic transfer of funds in both English and the language previously used to communicate with the customer, or by the agents to market or sell their services. Furthermore, the regulations developed in the Equal Credit Opportunity Act allow consumers to receive information in other languages, provided that the information is also provided in English and there is no discrepancy in content (Sachs, Kaplan, and Anderson 2015). However, Bender (1996) and Raleigh (2008) point out that consumer protection on the federal level is insufficient, and assistance is largely determined by individual state.

Records and Labeling

The records of financial activity and accounting books held by banks, insurance providers, and other businesses (thrift stores, moneylenders, metal vendors, etc.) must be in English. The only exception is in Florida, where this rule does not apply to businesses involved in check collection, though businesses must provide a certified translation upon request. This situation offers a glimpse into the evolution of language tolerance: nearly a century ago, *Yu Cong Eng v Trinidad* (1926) invalidated a law passed by the U.S. Colonial government in the Philippines that prohibited Chinese merchants from keeping their records in their own language, as this was deemed a denial of their right to due process and equal protection as guaranteed by the Constitution (Dale and Gurevitz 1997: 7).

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Of the 81 provisions concerning product labeling on the books, only five require that the label be printed in another language, which includes Spanish in all five cases: pesticides (New Mexico and New York, the latter of which includes other languages), child warning labels on certain packaging and on gas cans (California), and dangerous substances (Texas). Arizona also requires pesticide labels be printed in other languages, provided that the translations are registered and their fidelity to the English is certified. California has the same requirement for dangerous substances in general. Thus, one can see that there is no general policy on product labeling; merely a few provisions that require Spanish translations. On the federal level, Food and Drug Administration guidelines recommend, but do not require, labels in non-English languages (Kibbee 2016: 178).

Misleading Commercial Practices

Thirteen states' regulations include definitions of what they consider misleading commercial or marketing practices in their statutes: someone taking advantage of another person's inability to protect their own interests in a commercial transaction, be it due to a physical or mental impairment, illiteracy, or the inability to understand the language or wording of an agreement. Where there is no explicit definition, there are issues that a court must consider in order to determine whether or not a commercial practice is misleading or illicit, or if a contract or clause should be considered inadmissible. In some cases, this provision is of a general nature, and in others, it is limited to a certain kind of transaction, such as health insurance or door-to-door sales.

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In no state are there limitations on the languages in which advertisements may be published; in some states, if ads for a service are in a given language, certain other information must also be in that same language (such as the characteristics of a contract or a bank account).

There is extensive legislation intended to prevent misunderstandings, for example, with the terms that can appear in business names in English and in other languages (such as "bank," "banking," "trust," "corporation," etc.). One special case relates to notaries public, officials "appointed by state government to witness the signing of important documents and administer oaths."[21] Several states prohibit the use of terms in other languages that may imply that a notary is an attorney and therefore authorized to practice law. California, Illinois, and Kansas explicitly ban translating the term as "notario público" in Spanish, as in Latin America *notarios públicos* are high-level civil servants—typically judges or attorneys—who can offer legal counsel and prepare official documents, responsibilities not entrusted to notaries in the U.S. In order to prevent fraud and possible confusion about services offered, most states establish that notaries must provide their clients with a notice, in the language in which they advertise themselves, stating that they cannot prepare official documents or give advice on matters such as immigration. Only D.C. has passed no legislation on this issue. Utah and Illinois also prohibit use of the terms *notary public* and *attorney* by

[21] Definition provided by the National Notary Association's informational brochure, at http://bit.ly/2qhcw4e.

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immigration assistants, who generally must notify their clients that they are not authorized to practice law.

On the one hand, all of this detailed legislation illuminates the difficulty of managing multilingual and multicultural societies. On the other hand, it underscores how unfamiliarity with a language can leave a person vulnerable to exploitation—in this specific case, by being charged for legal services that the notary public is not actually authorized to provide.

Contracts

Protection for LEP consumers in legislation on contracts varies widely from state to state. First, protections exist for different sorts of contracts: in California, information and documents in other languages must be provided for many different contracts, including mortgages, loans and credits, telemarketing and door-to-door sales, and vehicle purchases; in Kansas, a notice or warning must only be provided in two specific cases: loans and insurance policies. California has more legislation on this subject than any other state. It is important to point out, however, that these statutes are not identical: despite the high degree of similarity, one state can have much more detailed legislation than another.

The second source of difference between states lies in the criterion used to determine whether consumers will receive help (information, contracts, etc.) in their own language. In general terms, legislation states that contracts, their basic

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characteristics, or their cancellation notices must be in a certain non-English language. As for which language that will be, Bender (1996: 1063-1064) has identified six different approaches to minority-language consumers' rights:

a) Protection of consumers whom the vendor knows or can intuit do not understand English (the Language of the Consumer Standard).
b) Protection of consumers with whom the vendor bargains in a non-English language (the Language of the Bargain Standard).
c) Protection of the speakers of any minority language that the vendor has targeted through advertisements in non-English languages (the Language of the Solicitation Standard).
d) Protection of speakers of any minority language that represents more than a certain percent of the population or of the vendor's clientele (the Variable Language Threshold Standard).
e) Protection of speakers of a single minority language, typically Spanish speakers (the Fixed Language Standard).
f) A combination of the approaches listed above.

No state enacts a single approach, illustrating once again the apparent lack of a stable and coherent language accessibility policy. Table 7 summarizes the approaches used in each of the 20 states discussed in this report, taking into consideration all of the provisions and contract types that require provision of information in non-English languages. As this table makes clear, when a single language minority is protected, that language is virtually always Spanish.

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Table 7. Languages used to provide information to the consumer.

State	Consumer	Bargaining	Solicitation	Threshold	Fix Language
Arizona		X	X		X (Spanish)
California	X	X	X	X (Spanish, Chinese, Tagalog, Vietnamese, Korean)	X (Spanish)
Colorado	X	X			X (Spanish)
Connecticut		X			X (Spanish)
D. C.					X (Spanish)
Florida		X	X		
Idaho					X (Spanish)
Illinois		X[22]			X (Spanish)
Kansas					X (Spanish)
Massachusetts		X			X (Spanish)
Nebraska	X		X		
Nevada		X	X[23]		X (Spanish)
New Jersey		x	X		X (Spanish)
New York		X		X (The six most spoken languages; languages spoken by over 20% of the area's inhabitants)	X (Spanish)
New Mexico		X	X		X (Spanish; Spanish and other languages)
Oregon		X	X		
Rhode Island		X			X (Spanish; Spanish and Portuguese)
Texas		X	X		X (Spanish; Spanish and other languages)
Utah		X			
Washington	X	X			X (Spanish)

Many of California's provisions refer to Section 1632 of its Civil Code, the starting point for most of the state's legislation on languages and commercial

[22] Allusions to the language in which a presentation is made are included in "Bargaining," as such interactions involve a verbal interaction between the vendor and the potential buyer.
[23] The option of providing certain information in Spanish is only considered if the advertisement is in Spanish.

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transactions. In 1974, the state approved a provision stating that if an individual negotiated certain contracts in Spanish, verbally or in writing, that individual had the right to receive a translation of the contract in Spanish. The only exception was made for situations in which the client provides a (not necessarily professional) interpreter to assist in the negotiation. The client may withdraw from the contract if no Spanish copy is provided. That section came into force in 1976 and was modified several times in subsequent years. In 2003, the list of protected languages was modified to include Chinese, Tagalog, Vietnamese and Korean, in addition to Spanish, thus covering the five most commonly spoken non-English languages in California, according to figures from 2000 and 2014. The 2014 amendment further stipulated that foreclosure consultations and reverse mortgages must be included in the list of contracts requiring translation.

Special attention must be paid to insurance contracts. Wherever there is legislation on the matter, policies and other materials may be issued in non-English languages, provided that the customer also receives the English version, which must take precedence in the event of a conflict (California, Colorado, and Kansas). Texas and California's respective provisions on health and car insurance state that insurers may not discriminate against possible clients on the basis of their language. Florida and Oregon allow advertising in other languages, though the English version of the policy must always take precedence. Plain language legislation is especially present where insurance policies are concerned: in all cases, translations of policies into other languages are considered to be in

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compliance with clear-language requirements if the insurer certifies that they are faithful translations of an English policy that meets those requirements.

Four states have provisions regarding interpreters' presence during contract negotiations. In Utah, these provisions apply only to insurance providers: the interpreter may be an employee of the provider or provided by the client. In Illinois, in retail sales contracts that involve interpreters other than the vendor and the client, interpreters must sign a document indicating that they have explained the client's obligations to the client, and that they have been understood. Insurance sales and any other financial transaction carried out at a bank or other financial institution must be conducted through an interpreter, either an employee of the institution or provided by the client. Finally, if a lease is managed through an interpreter provided by the lessee, Oregon state law lifts the requirement to translate contract information. The same is true in California, in relation to financial institutions, with explicit mention of Spanish, Chinese, Tagalog, Vietnamese, and Korean.

Finally, apart from establishing conditions that private companies must comply with, California, Illinois, Texas, and Utah provide for educational and informational programs on certain investment and savings products in various languages, or the provision of information about insurance in other languages.

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Based on Rachel F. Moran's distinction between positive and negative rights, Bender (1996) argues that it is the legislative branch that must pass laws protecting LEP consumers. A positive right requires government action in order to be effective, such as the right to education or healthcare. A negative right requires only that the government not intervene in a personal decision: for freedom of expression to exist, it is necessary only that the government not attempt to limit it. To ensure that LEP consumers receive certain information and assistance, legislative intervention is necessary, since, as Raleigh (2008) and Bender (1996: 1056) explain through the examination of the provisions currently in place, the courts have not proven themselves be particularly sympathetic to the rights of Spanish-speaking consumers; courts even interpreted that the California State Legislature had deliberately chosen not to protect language minorities.

5. Labor

The analysis on legislation regarding languages in the working sphere is presented in two categories. The first encompasses language requirements for holding a professional license or a particular job. The second involves the factors and situations that emerge after employees have begun working, including the language they use to communicate with their employer and coworkers.

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In every state, all non-native English speakers, or individuals who were educated in non-English languages, must somehow or another demonstrate that they have sufficient English proficiency to receive their professional license. Although the states differ in the professions they regulate, they generally apply to jobs that require a high degree of specialization (such as architecture or healthcare), though there are also licenses and permissions for insurance brokers and funeral homes. The only exception applies to nursing assistance (and other home and kitchen assistants) in Illinois and Nebraska, who must be proficient in English or in another language spoken by a substantial number of patients.

Professional licensing exams are generally in English, too. There does not seem to be a common pattern across the states, though it is clear that whenever these exams are offered in a non-English language, that language is Spanish: this is true of the exams required to work as an insurance agent in California, New Jersey, New Mexico, Texas, and Florida. Florida is the state that comes closest to having a general policy on the matter. It provides for the possibility that exams for professional licenses and healthcare or business positions, along with surveyors and funeral service providers, may be in another language if 15 or more aspirants request it be conducted in their native language. The request must be made six months in advance, unless the language requested is Spanish, and the aspirants must bear the translation costs. Furthermore, each professional council must

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consider the percentage of speakers of any given language other than English and Spanish in order to determine the interest in translating that language.[24]

A certain level of English is also required to hold various positions within several states' public administration. New Jersey requires this of prison, fire, and police officers, and New York requires it of police. In Oregon, only U.S. citizens who can read and write English may sit for the civil service exams; Nebraska and Washington, too, establish that applicants to civil service positions must be able to read and write English. All states except for Nevada and Nebraska require notaries public to write and understand English well.[25]

There are also provisions that refer to extremely specific matters, such as Washington's requirement that train operators speak English, or Illinois's that a certain number of miners speak English. There are also provisions on other languages: Illinois' employment services agencies recommend hiring staff that can speak Spanish, Polish, and other languages.[26]

[24] Six states have language-related legislation on driver's licenses, though only New Jersey and Utah mention the exam itself. New Jersey offers the exam in English and Spanish, and Utah offers it in test-takers' native languages, though only if they are refugees or asylees. Other states offer the exam and preparation materials in other languages, but this is not outlined in the statutes analyzed. Candidates are required to have a certain level of English to drive commercial vehicles in Nevada, Utah, and Texas, and to drive public vehicles in California.

[25] This condition is not present in all states' statutes. In some states, it appears in later regulations.

[26] Illinois provides for the presence of a Spanish-speaking member on the Community Self-Revitalization-Act's Committee on Economic Affairs. Florida provides for a member of Hispanic origin who speaks English and Spanish on a commission related to lobster fishing. As can be clearly seen, provisions of this sort are anecdotal.

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Apart from this, few states' linguistic diversity has driven them to pass legislation on questions related to bilingual individuals. California, Illinois, and D.C. recognize the need for bilingual public employees who can communicate with the non-English-speaking populations that they serve. In Illinois, there is a bilingual supplement for public employees who speak other languages. Texas has a similar supplement for bilingual firefighters and police. This is one of the few occasions in which one of these 20 states' constitutions or statutes mentions another language as something that may be beneficial.

Legislation on bilingual personnel form part of California and D.C.'s language accessibility laws, the Dymally-Alatorre Bilingual Services Act (1973) and the Language Access Act (2004). D.C. goes a step further and provides for affirmative action and positive-discrimination in its policies for hiring public employees. The goal of the Affirmative Action in District Government Employment Act (1976) is to guarantee representation of all of the groups that make up D.C.'s labor force, including, among others, Spanish-speaking Americans. This law requires all agencies to prepare an affirmative action plan outlining steps that ensure equal employment opportunities. California includes affirmative action in its constitution, though it does not refer to language; the state does, however, provide for the posting of announcements of jobs in the media in languages other than English, in an attempt to hire more public employees who belong to minority groups.

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It is also appropriate, in this portion of the report, to discuss English as a second language (ESL) classes, including training programs for unemployed people in several states (California, Connecticut, D.C., Illinois, Kansas, Nebraska, New Jersey, New York, New Mexico, Utah, and Washington). This legislation reflects the settled belief that there is a relationship between English proficiency and access to the job market. Thus, California, Connecticut, Massachusetts, and Utah consider speaking English as a second language a barrier to employment, along with having minimal education and coming from an unfamiliar culture. However, Piller (2016) argues that although English proficiency is an advantage, it is not so clear that difficulty finding employment can be attributed exclusively to linguistic factors; other factors, such as cultural differences and a lack of other skills also play a role. In New Jersey, the Hispanic Women's Demonstration Resource Centers Act (1990) states that despite the fact that some government agencies hire bilingual staff, that staff lacks understanding of the socioeconomic obstacles that affect Hispanic women's ability to participate in the programs they offer.[27] Among other forms of training, those centers offer classes in basic English, as well as bilingual and bicultural resources.

[27] Kansas's statutes call for the creation of a Hispanic and Latino American Affairs Commission (Kansas Statutes, Sections 74-6501 to 74-6509). Its attributions are not limited to the workplace; it also addresses culture, education, employment, healthcare, housing, wellbeing, and recreation. The allusion to training bilingual staff is only made in the context of education.

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There is no federal law that establishes the languages that can be spoken in the workplace, or that protects employees from discrimination on those grounds. When issues relating to use of different languages reach the courts, they are typically assessed under Title VII of the Civil Rights Act, Sections 703.a.1 and 2, which prohibit employment discrimination based on race, color, religion, sex, or national origin. Apart from this, in 1980, the Equal Employment Opportunities Commission (EEOC), which was created to enforce Title VII, adopted the Guidelines on Discrimination Because of National Origin, which addresses the issue of English-only policies in the workplace. The EEOC only justifies such actions if they are due to the "needs of the business," that is, if they must be taken for the business to reach its goals. However, these are guidelines, not laws, and the courts are therefore not required to take them into consideration (Del Valle 2003: 121). California and Illinois have added this guideline to their statutes. Other states, such as New York in the case of public employees, include provisions against discrimination in the workplace based on race, creed, color, or national origin, but do not explicitly mention language discrimination.

As with protections for LEP consumers, both between the states and within individual states, there is no common pattern or coherent, articulate policy that outlines what information workers must be provided in their native language. Some states, such as Utah, have no laws whatsoever on the matter; others, such as Arizona, Connecticut, Florida, Idaho, Kansas, Nevada, and Rhode Island, have

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sporadically established provisions on various related matters. The same is true in California, D.C., Illinois, Massachusetts, Nebraska, New Jersey, New York, Oregon, Texas, and Washington, where the information guaranteed to workers varies from state to state. The most attention is paid to accidents in the workplace and sick leave, the main features of contracts, and working conditions, especially where agricultural labor and minimum wage are concerned.

Table 8 shows the criteria that states apply to determine the languages in which workers will be provided with certain information. The categories for classification are based on Bender's approach (1996) for outlining protections for LEP consumers. There are some variations in this table: it considers the language of the worker, the language in which the employer communicates with the employee, different languages based on a certain threshold, and fixed languages.

Table 8. Criteria for determining the languages used to provide information to workers.

State	Language of the Worker	Employee Communication	Threshold	Fixed Languages
Arizona				X (Spanish; Spanish and other languages).
California	X	X	X (the seven languages most spoken by participants in the unemployment program; the five most spoken languages in the state).	X (Spanish; Spanish, Vietnamese, and Korean).
Connecticut	X	X		
D.C.	X		X (Languages spoken by 3% of the population or over 500 people, per the *Language Access Act*).	X (Spanish).
Florida			X (the language spoken by the majority of non-English-speaking Employees; the language of 5% of family units	

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State	Language of the Worker	Employee Communication	Threshold	Fixed Languages
			in a given county).	
Idaho				X (Spanish and another common language).
Illinois	X			X (Spanish and Polish; a generally understood language).
Kansas				X (Spanish).
Massachusetts	X			X (Spanish; other languages).
Nevada	X			X (various languages).
New Jersey	X		X (language based on the number of speakers of that language in the state).	X (Spanish; other languages).
New York	X			X (Spanish; Spanish, Chinese, and Korean; another language).
Oregon	X	X	X (the language of the majority of the employees).	X (Spanish; other languages).
Rhode Island	X			X (other languages).
Texas	X		X (the two most spoken languages in the state).	X (Spanish).
Washington	X		X (the workplace's five most-used languages).	X (Spanish).

As is clear from the table, whenever there are fixed languages, one is virtually always Spanish. However, here there is greater variety in the approaches to establishing thresholds than in Table 7. Note also must be made of the sometimes-imprecise allusions to the language of the worker. For example, California stipulates that one contractor replacing another must provide workers with the conditions of their new contract in their first language, or in another language in which they have received instruction. In Connecticut, the same information is provided in workers' first language or another language in which they are proficient. In other cases, Illinois refers to "the language in which they

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are fluent"; Massachusetts refers to "languages they can understand"; Nevada, New Jersey, and Washington refer to "the language understood by the worker."

Finally, three states' legislation provides for use of interpreters in labor issues. In California, reference is made to the hearings and proceedings necessary to determine if a worker should receive compensation for a work-related accident. In Texas, interpreters are used in every program run by the Workforce Commission, and in New Jersey, Spanish interpreters are always present at the Bureau of Migrant Labor.

As with LEP consumer protections, no state has a clear policy regarding what information must be provided to workers in a language they understand, nor regarding the determination of which languages should be used for this information and which should not. Executive Order No. 13116 requires employment agencies be mindful of LEP populations, but few provisions address the (private) employer-employee relationship. As indicated in section 3 of this report, Commerce and Consumption, public involvement in any aspect of the private sector is minimal. This results in substantial leeway for employers. Del Valle (2003: 118) points out, it is much easier for various workplaces to establish English-only policies than it is to pass a state or federal law requiring English, which leads one to think that individual employers are choosing to implement their own norms, rather than pressure their legislatures to pass a more general law, which could attract the courts' attention and end up being overturned.

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6. The Justice System

The U.S. Justice System is based on the principles of equity and impartiality, enshrined on a federal level in the Bill of Rights. Specifically, the Fifth Amendment safeguards the right to due process, which includes a series of minimum guarantees to the accused. According to the Sixth Amendment, these include the right to a fair and speedy trial by an impartial jury, to be informed of the charges made against them, to be represented by a lawyer, and to confront the witnesses testifying against them. The Fourteenth Amendment extends due process to federal and state courts. The previously cited Executive Order No. 13166 (2000), which seeks to improve LEP individuals' access to public services, also applies to the legal sphere.

Complying with legal guarantees entails unique challenges if the actors involved lack sufficient English proficiency (Kibbee 2016: 53). These challenges are not limited to what happens in the courtroom; as Del Valle explains (2003: 160), "from the moment the police begin to question a suspect through their arrest and trial to post-sentencing procedures, non-English speakers are at a frightening disadvantage when entangled within the US's criminal justice machinery." Below, this report discusses the aspects of this process on which language-related legislation has been passed. This information is presented in chronological order, from the moment that law enforcement begins interrogating a suspect through sentencing.

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Before proceeding with this analysis, it is important to note that every state has legislation—either general or related to a specific type of court proceeding, such as domestic relations or juvenile matters)— indicating that any document presented in court must be submitted in English, or accompanied by an English translation. Most of these provisions are part of the uniform interstate laws.[28] California, Nevada, and Utah go a step further by requiring that all proceedings be in English. Only California's legislation stipulates that this should not prevent admission of unofficial translations of court orders or orders of protection against domestic violence. All four states have Official English legislation.

In addition, California and Oregon allow the presence of experts to interpret documents and evidence that are difficult to understand or are written in languages that the jury does not understand; Florida and Colorado are especially attentive to the provision of language support in cases involving minors.

Before Court Proceedings

Even before law enforcement agents begin an interrogation, they must decide who to question, based on who they suspect may have committed a crime or infraction. Colorado, Oregon, and New Mexico have passed legislation intended to prevent law enforcement from exclusively considering factors such as language

[28] Uniform laws seek to create uniformity among various states' legislation. The National Conference of Commissioners on Uniform State Laws, created in 1892, proposes laws that the states may then choose to adopt.

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when determining subjects to investigate—that its, they prohibit what is commonly referred to as *profiling*.

Later on, when a person becomes part of a legal proceeding, law enforcement agents are required to read them their rights. In the case of a suspect or defendant, these are known as the Miranda warnings,[29] and, if they are not read, subsequent legal proceedings may be deemed inadmissible. Kibbee (2016) and Del Valle (2013) have noted that, in addition to language, education level and social factors can influence whether these warnings are understood. In 2016, the American Bar Association urged federal, state, and local authorities to provide an accurate and standardized translation of the Miranda warnings. Fifty years after their creation, the warnings still had not been translated (Language Connections s.f.).

Not every state explicitly refers to the Miranda warnings, but all have legislation regarding suspects having their rights read or communicated to them. In California, signs stating that detainees have the right to an attorney and a phone call must be posted in English and another language spoken by a substantial portion of the population (5% or more, in accordance with Section 7296.2 of the Government Code). In D.C., LEP individuals who are arrested have their rights

[29] The text of the Miranda warnings (*Miranda vs. Arizona* 1966) reads: “You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to have an attorney present. If you cannot afford an attorney, one will be appointed to you. Do you understand?”

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read to them in Spanish and in other languages. In Illinois, on the other hand, the law states that signs in courthouses and police stations must list the rights of the accused in English. In Texas, it is the judge who explains the process of securing a lawyer to the detainee, with the assistance of an interpreter, if necessary. Furthermore, if it is determined that the detainee cannot communicate in English, it is the judge's responsibility to attempt to find a lawyer who speaks the same language.

Nine states have legislation regarding the languages in which victims of crimes and individuals otherwise involved in a case should be informed of their rights. In Florida, New Jersey, New York, and Texas, victims of domestic violence must be informed of their rights in Spanish, and in Massachusetts this information must be provided in the person's native language, whatever it may be. Individuals who must have their rights explained to them in Spanish include: victims of human trafficking in New Jersey, parents of abandoned children in New York, and those whose vehicles have been confiscated in Oregon. Once again, there is no general legislation that applies to all victims of crimes or everyone involved in legal proceedings.

In the remaining cases, people must be informed of their rights in their mother language, native language, or a language they can understand: California (children in state custody), Massachusetts (victims of harassment, victims or witnesses to crimes and their families), New York (people whose incapacity is

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being determined), Texas (legal guardians of individuals with disabilities), Utah (parents of children in state custody), and Washington (parents of children in state custody, other legal dependents, and child witnesses or victims of a crime). Courts may take in consideration that these rights are duly communicated and fully understood. Idaho, for example, stipulates that to determine if individuals have surrendered their right to an attorney with full knowledge of what they were doing, the court should consider their familiarity with the English language, among other factors. New Jersey also specifies that minors can only give up their rights in the language they usually speak. In Washington, courts must certify that the parent or guardian of a Native American child understands the explanation given about guardianship of the minor.

In addition to informing all parties of their rights before beginning court proceedings, there are other warnings, notifications, and information that must be conveyed. Arizona, California, Connecticut, D.C., Florida, Idaho, Illinois, Massachusetts, New Jersey, New York, New Mexico, Oregon, Rhode Island, Texas, and Washington all have legislation regarding these aspects of the legal process, although, once again, different states provide different information and translate into different languages, and, in general, each state's legislation refers to very specific aspects of pre-trial communication.

Yet again, whenever legislation establishes the language in which information is to be provided, that language is Spanish, with a few exceptions: in California,

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consent to an ICE interview and notification of the initiation of procedures related to firearm or drug activity is to be provided in Spanish, Chinese, Tagalog, Vietnamese, and Korean; in Rhode Island, information for domestic violence cases is provided in English, Portuguese, Spanish, Khmer, Hmong, Lao, Vietnamese, and French; and in D.C., eviction notices are provided in the languages indicated in Section 2-1933 (3% or 500 people).

To name just a few examples of information or documents provided before the start of a legal proceeding itself, Texas provides Spanish translations of forms needed by individuals representing themselves in proceedings related to leases or wills. In Arizona, individuals must be informed in English and Spanish that a lawsuit has been filed against them and that they should read the information provided closely to protect their rights in the injunctive relief that will be taken. Notifications and information about legal actions and rights must also be provided in English and Spanish.

Several states have legislation on the need to provide all necessary information about rights, resources, and procedures to someone who may have been the victim of domestic or sexual violence, or to a plaintiff for the same crimes: Illinois and Massachusetts (in a language the person understands), New Jersey and Texas (in English and Spanish), Rhode Island (in English, Portuguese, Spanish, Khmer, Hmong, Lao, Vietnamese, and French), and Washington (languages determined by the Administrative Office of the Courts). In California and

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Washington, special attention is paid to ensuring that the parent or guardian of a Native American child understands the explanation of the terms of custody. Furthermore, in the past five years, eight states have introduced legislation regarding signs and notices with information about human trafficking in a variety of languages, usually including Spanish.

As usual, California has the most language accessibility measures in place. Its legislation provides for bilingual Spanish-English leaflets with information about annulment, divorce, and legal separation and about the custody of minors, as well as for translation of the California Community Crime Resistance program and the sex offender registry website into other languages. In jurisdictions where more than 5% of the population speaks the same non-English language, information about procedures and rights related to the Vehicle Code must be translated into that language. Washington has passed legislation on the translation of informational leaflets and forms into languages determined by the Administrative Office of the Courts.

In recent years, five states have introduced legislation related to evictions. Notification of eviction must appear in English and Spanish in Illinois and Texas, while in Massachusetts and D.C., notifications and information are to be provided in the language generally used in communications with the tenant or owner, or, in D.C.'s case, in the languages determined by Section 2-1933 (3% or 500 people).

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Citizens may participate in court proceedings as part of a jury, as a defendant, as a plaintiff, or as a witness. Translation services are not offered to juries. In fact, having a certain level of English is a requirement for serving on a jury in nearly every state studied in this report.[30] Florida, Rhode Island, and Oregon have no legislation on this subject. The only other exception is New Mexico, whose constitution prohibits restricting the right of any citizen to be part of a jury due to an inability to speak, read, or write English or Spanish (Art. VII. Sec. 3). If the members of the LEP population improved their proficiency in English, it would not actually give them access to this right: minority-language speakers are often excluded from juries due to a concern that their proficiency in a non-English language might result in them directly considering the testimony of a victim, defendant, or witness, rather than the official record of that testimony, which must necessarily be in English (Kibbee 2016: 68). Although Texas does require that jurors know how to read, write, and communicate in English, the Government Code (§23.202) also requires annual publication of a Spanish translation of the *Texas Uniform Jury Handbook*, which provides basic information about jurors' characteristics and duties, and about the legal process.

Here, once again, the situation described in "Political Participation" repeats itself: assistance is provided to people with limited English proficiency (LEP), but their

[30] There are grand juries, which determine whether to bring criminal charges, and trial juries, which decide the facts of a case. The English proficiency requirement applies to both.

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active participation as members of a jury in legal proceedings is not encouraged (and even prohibited).

Interpreting services do exist for defendants, plaintiffs, and witnesses. On the federal level, the Court Interpreters Act of 1978 guarantees an interpreter for any person involved in a legal proceeding. The Federal Court Interpreter Certification Examination program establishes the criteria for certifying court interpreters, and the National Center for State Courts certifies interpreters for nine languages, including Spanish (Cabrera 2017).

Every state offers interpreting services, although they do not all have the same design or scope. Only the constitutions of California (Art. I. Sec. 14) and New Mexico (Art. II. Sec. 14) recognize defendants' right to an interpreter during the legal process. Arizona, Colorado, Connecticut, and New Jersey have no legislation concerning court interpreters for the LEP population; this does not mean that they do not offer these services, merely that the corresponding agency has established regulations based on other legislation.

Court interpreting is the focus of most laws on language accessibility. In some states, a single law regulates all court orders (civil, criminal, administrative, etc.,). This is the case in D.C., Kansas, Oregon, Rhode Island, and others; in other states, different legislation governs each type of court, as in California and New York. Some states have standard legislation for interpreting both for non-English

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speakers and for those who are deaf and hard of hearing, as in Florida or Nebraska, while others differentiate between these needs.[31] The fact that there are interpreting laws for people with disabilities and not for people who speak other languages (or that laws for those with disabilities were passed before those who use non-English oral languages) may be related to the fact that this type of interpreting developed earlier, as Cabrera (2017: 56) points out, noting that sign language certification has "reached maturity," unlike certification for spoken languages, which remains "in the earlier stages."

The statements of purpose of laws on court interpreting in California, Nebraska, Oregon, Rhode Island, and Washington emphasize that the non-English-speaking population is not completely protected in legal proceedings and that interpreters must be available to provide assistance.

In contrast to other areas analyzed in this report, these laws do not determine which languages are protected by the right to an interpreter. From this fact, one could conclude that the right to due process is considered a right of all U.S. residents, unlike other areas, such as consumer protection and access to official information. The most common wording states that defendants and witnesses have the right to an interpreter, or to have certain information explained to them in a language they understand. It is in the subsequent development of the

[31] The National Center for State Courts has systematized information on the state of court interpreting in each of its member states, with information including legislation and regulations applicable to interpreters' median salaries.

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legislation, the regulations on interpreter certification, and plans for ensuring language accessibility that differences between languages can arise. For example, on the federal level, "the Federal Court Interpreter Certification Examination is only offered for Spanish/English, since that is the primary interpreting need in the federal judiciary."[32] In California, interpreter certification for administrative proceedings is offered, at a minimum, for Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese. There is a special reference to Spanish in interpretation service legislation, which indicates that the Judicial Council should designate entities for certifying interpreters for this language and others.

The District of Columbia, Florida, Illinois, Massachusetts, Nebraska, Nevada, New Mexico, Oregon, Rhode Island, and Washington join California in creating or providing for the creation of interpreting certification programs in their laws. Some laws are more detailed and protect all people taking part in the proceedings, while others (Florida and Utah) refer only to witnesses.

Other aspects of the legal process are also affected by language. For example, ten states have introduced legislation that recognizes a person's right to request a translation of a power of attorney if it is written partially or entirely in another language. This, too, is a uniform act.

[32] NCSC http://bit.ly/2jdjvn1

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Language also plays a key role in the adoption of certain court decisions. In California, one of the causes for nullification of a prenuptial agreement is that one of the parties was not proficient in the language in which the terms of the agreement were explained and in which the agreement was written. In addition, parents' consent in naming guardians for their children is not valid if a judge cannot certify that they understood the terms and consequences of such an authorization. The same is true in Nebraska, though there it is limited to children of Native American tribes. In the process of determining which tribe a child belongs to, one of the questions considered by California is the child's native language. This provision, and those on the books in Washington regarding custody of these children, derive from the Indian Child Welfare Act, a federal law.

In Connecticut, language barriers must be considered when assigning a guardian to a minor. In New York, individuals who have their driver's licenses suspended have the right to a hearing in which it must be determined, among other things, that they were clearly and unequivocally informed—that is, that they understand—that refusing a drug test or breathalyzer would result in the suspension of their license. In the same state, the court can declare anyone who does not speak and read English ineligible as a fiduciary. Finally, in Texas, if a statement made by a defendant is going to be used against him or her, it must be signed, and be written in a language that he or she can read or understand.

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Once the courts have made a decision, that decision must be communicated and carried out. Again, in almost every case in which a specific language is mentioned, that language is Spanish. In California, the Judicial Council must provide translations of all forms necessary for the court sentences in the civil order to be carried out (Code of Civil Procedure 681.030). In the case of a request for assistance for victims of crimes, these materials must be available in English, Spanish, Chinese, Vietnamese, Korean, East Armenian, Tagalog, Russian, Arabic, Farsi, Hmong, Khmer, Punjabi, and Lao. The conditions for probation and parole of a minor must also be explained in a language the minor understands. Finally, minors in state custody must have their rights explained to them in Spanish and other languages; this provision is also on the books in Texas.

In New Jersey, any court order involving custody of a child and visitation must include a warning about the consequences of violating this schedule in English and Spanish. Arizona also provides information on matters relating to minors—namely, child support—in Spanish.

In Florida and Texas, whenever possible, the measures that must be taken to avoid putting a minor in state custody are translated into the language of that minor's parents, as is the plan that will be implemented if the child is ultimately left in the parents' custody. Following the decision to take a child into state custody, Nebraska also communicates certain information to the parents in their

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native language. In Idaho, the different options and characteristics of the evaluation for minors who receive primary intervention services are also communicated to families in their mother language. In Texas, neighbors are notified in English and Spanish of the presence of a sex offender in the area. Both New York and Washington include ESL classes as part of the support provided to victims of human trafficking and other crimes. In Texas, if the judge in a child custody case has ruled that the parents must attend a family stabilization course, this must be available in English and Spanish. The District of Columbia prints all information on victim compensation in English and Spanish. Finally, in Washington, programs for perpetrators of domestic violence are designed with special consideration for the state's particular cultural and linguistic needs.

New York and D.C. both have provisions that mandate including the native language of the populations served by programs for victims in their annual reports in order to evaluate the translation and interpreting services provided and determine how those services should be offered in the future. These provisions also appear in laws on other subjects (work and healthcare); collecting data is fundamental for evaluating the linguistic diversity that each aid office, district, and court must serve and for providing the necessary language accessibility services.

In New York and New Jersey, prison rules are communicated in English and Spanish. In New York and Colorado, pregnant prisoners must be informed of

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certain procedures on checks and searches in a language they can understand; in California, the same regulation applies to the process of attaining an incarcerated person's consent to participate in a medical or behavioral study. Finally, in Colorado, visitors are told in English and Spanish that they must submit to being searched, and in New Jersey prisoners must be informed that communicating in other languages is permitted.

7. Healthcare and Social Services

Executive Order No. 13166 (2000), which seeks to improve the LEP population's access to public services, applies to all agencies that receive federal funds, including healthcare and social services agencies. Therefore, every state must at minimum comply with these fixed, federal standards. The measures necessary to ensure equal access to social services and healthcare are also laid out in Title VI of the Civil Rights Act of 1964.

In the world of healthcare, the language barrier results in unequal access to medical care and unequal rates of certain diseases (Kibbee 2016: 149-150). Martínez (2015) uses the concept of a "linguistic gradient" to explain that differences in health outcomes among Latinos can be organized along a linguistic continuum: those who speak only English have better indicators than those who

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are bilingual in English and Spanish, who in turn have better indicators than those who speak only Spanish.

This reality is reflected in ten states' legislation: certain healthcare programs (e.g. child mental health, pregnant women, primary care, dentistry) and social services programs (assistance to low income families and services for senior citizens) in California, Connecticut, D.C. Nebraska, New Jersey, New York, Oregon, Rhode Island, Texas, and Washington refer to the need to take action to reach consistently underrepresented populations, including those who speak a language other than English. In no case do these references name a specific language. Legislation in Connecticut, Rhode Island, and Texas provides for the creation of offices or centers whose primary function is to reduce disparities in healthcare: the Office of Health Equity, the Commission for Health Advocacy and Equity, and the Texas State Office of Minority Health, respectively. In addition, language barriers are one of the components used to determine if a person has a greatest social need (California, Colorado, and Nebraska).

As noted before, gathering data is crucial for determining when and how to act. Nine states have passed legislation on the need to include the primary or preferred language of the patient or user of medical or social services on various forms, or on the need to organize the data collected by language in annual reports. Illinois specifies that reports on public assistance, social programs that

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support children, and Medicaid[33] must state the number of individuals served who speak English Spanish, and the next four most spoken languages.

Culturally and linguistically appropriate services—"health care services that are respectful of and responsive to cultural and linguistic needs" (*U.S. Department of Health and Human Services* 2001: 5)—are key in the provision of healthcare to LEP populations. The standards for offering these types of services were set in 2000 by the Office of Minority Health. Of these 14 standards, four correspond to language accessibility services and are mandatory for all agencies receiving federal funds: offering language accessibility services, including bilingual personnel or interpreting services for LEP patients; providing patients with written and verbal information about their right to receive these services; ensuring that these services are offered by interpreters and bilingual personnel, rather than family or friends; and having easy-to-understand materials and signs in the area's most widely spoken languages (U.S. Department of Health and Human Services 2001). California and D.C. include similar definitions of cultural competency laws on the books.

Related to this concept is the role of the community health worker (Massachusetts, New Mexico, Oregon, Rhode Island, and Texas), mediators between healthcare professionals and patients who use their knowledge of the

[33] *Medicaid* is a joint (federal-state) program that provides medical assistance to people with low incomes. It was created in 1965 under the Lyndon B. Johnson administration.

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patient's language and culture to facilitate communication between the two parties. In seven states, when patients are being discharged to caretakers, healthcare professionals must explain those caretakers' responsibilities and tasks to them in a culturally competent way, and with language assistance.

The states approach language accessibility in healthcare and social services in unequal ways. In some cases, general references are made to language accessibility and to the presence of interpreters without specifying components or standards, but referring to specific programs. This is the case with Arizona (evaluation of mental health patients), D.C. (care for the homeless population), Massachusetts (intensive care and mental health), Nebraska (HIV), New York (mental health and people with disabilities), Oregon (youth services), and Rhode Island (tuberculosis, hospitals, and healthcare facilities). Other states combine this sort of legislation with other, much more detailed measures. Once again, the criteria for determining which languages must be covered by accessibility services vary between states and sometimes within a single state.

Once again, California has the most extensive legislation on linguistic matters. In addition to general references to culturally and linguistically appropriate services and to interpretation,[34] its legislation contains more specific standards for other

[34] A few examples would include the California Health Benefit Exchange, programs to combat alcohol and drug abuse, Medi-Cal plans for children and teenagers, rehabilitation services for people with disabilities, and interpreting for the use of blood clotting products in the home, disability centers, and affordable housing plans.

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services. In general, healthcare facilities consider a language barrier to exist when at least 5% of the population they serve speaks the same non-English language. In these cases, bilingual personnel or interpreters are hired and their availability is made known. Providers are also required to keep records on patients' native languages.

Language thresholds for receiving assistance vary based on the law. For healthcare service plans, assistance depends on the total number of people enrolled in a plan and the percentage of patients who indicate a preference for a language. Plans with more than a million enrollees must translate materials into the two most spoken languages after English, and into any other languages that are preferred by 0.75% or 15,000 of those enrolled. Plans with between 300,000 and one million enrollees must translate materials into an additional language, and into even more languages when preferred by 1% or 6,000 of those enrolled. Finally, for plans with fewer than 300,000 enrollees, materials must be translated into any language preferred by 5% or 3,000 of those enrolled.

However, in the case of Medi-Cal,[35] a new concept has been introduced for determining which languages should be covered by translation and interpreting services: "Medi-Cal threshold languages," defined as "primary languages spoken by limited-English-proficient population groups meeting a numeric threshold of 3,000 eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal

[35] Medi-Cal is the name of a federal Medicaid program in California.

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eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes."

The Illinois Language Assistance Services Act sets a language threshold of 5% of the population served, and requires that healthcare facilities create a language accessibility plan, in addition to hiring interpreters, notifying and informing patients of necessary procedures for accessing an interpreter, training personnel on language accessibility issues, keeping records on patients' languages, keeping a list of available interpreters, translating certain documents, and considering the use of cards and pictures to communicate with patients. This law provides for the possibility of a friend or family member assisting the patient, so long as the patient is informed that interpreting services are available. The law provides for the same measures at facilities that care for children.

Illinois has also passed the Mental Health Hispanic Interpreter Act, a law that requires mental health centers and facilities for people with disabilities to provide an interpreter if at least 1% of those annually admitted are of Hispanic descent. The state also references culturally and linguistically appropriate services in child welfare, mental health, and disability services.

In Connecticut, the law refers only to acute care hospitals, where language accessibility services (interpreting, translation, and the use of cards to communicate with the patient) are offered for languages spoken by 5% or more

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of the resident population in the area that the center serves. In New Jersey, the law applies to all hospitals, but the language threshold is more restrictive: 10% or more of the area population. The laws in Texas focus on ensuring that healthcare and language accessibility contractors meet certain effectiveness standards.

Washington requires that interpreters be present in processes related to organ donation and in residential care homes. The law is more specific when it comes to public assistance, both in general and for children. If more than half of applicants and recipients speak a language other than English, bilingual personnel must be hired. The availability of these services, including interpreting and translation of materials, is to be ensured through partnership with language accessibility companies or local agencies. Washington and Illinois are the only states that reference specific languages—Spanish, Vietnamese, Khmer, Lao, and Chinese—but they do not limit services to these languages.

Only two states have laws regarding the certification of interpreters for the medical field: Oregon (Health Care Interpreters, 413.552 to 413.558) and Utah (58-80a-101 to 58-80a-601); there is, therefore, a much greater disparity in legislation on medical interpreting than there is in legislation on court interpreting. Oregon legislates oral and sign language interpretation together. Utah indicates that certification is voluntary and does not prohibit an uncertified individual from acting as an interpreter. As with court interpreters, the fact that a certification program is not designated by law does not mean that such a

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program does not exist. Washington, for example, has a healthcare interpreting certification program (Cabrera 2017: 56). The certification of healthcare interpreters at a federal level is done through The National Board of Certification for Medical Interpreters for Spanish, Russian, Mandarin, Cantonese, Korean, and Vietnamese. California, Connecticut, New York, Washington, and Texas require the publication of directories of healthcare providers that list the languages spoken by healthcare personnel, although the states refer to different services in their respective requirements.

Regardless of whether a state has language accessibility laws in the context of healthcare or social services, each state has provisions that require some information be provided to the patient or client in certain languages. The patient's rights are included in this information. In most cases, these requirements refer to mental health centers, centers for people with disabilities, or residential care homes, although it varies by case. In general, the laws refer to the patient's mother language, native language, or a language that the patient can understand. Illinois provides for a sign listing the rights of patients in mental health facilities in all languages spoken by 5% or more of the county population; in Arizona, patient rights in the same context must be translated into Spanish. In California, the rights of people in centers for disability must be translated into Spanish and other languages, and the rights of patients in long-term care facilities must be translated into Spanish, Chinese, and other languages, "as needed for ethnic groups representing 1% or more" of the center (Health and

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Safety Code 1599.61 and 1599.74). In Texas, legislation establishes that in residences and facilities that provide care to people with mental disabilities, residents and employees cannot be prevented from communicating in their native language with another resident or employee to provide care or treatment.

There is also legislation on the languages in which other information is to be provided, although different states require different information in different languages. California is the state that provides for the widest diversity of situations. Otherwise, general references ("first language," "native language," "language the patient understands") abound, and in rare cases the required language is English (such as California's prohibition of smoking in vehicles).
The specific languages for which translations of some materials are required are Spanish, Chinese, Vietnamese, Korean, Cantonese, Russian, and Tagalog. As usual, Spanish is the most frequently referenced: California, Connecticut, Florida, Illinois, Nevada, New Jersey, New Mexico, Rhode Island, and (most of all) Texas have passed legislation explicitly requiring the translation of materials into Spanish.

The other languages are only mentioned by name in California's provisions, except for Chinese, Vietnamese, and Korean, which also appear in D.C. law through a provision that falls within the scope of the Office of Asian and Pacific Islander Affairs. That provision requires that all D.C. government forms and pamphlets relating to health, safety, or welfare services be made available in

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these languages. California also uses the Medi-Cal threshold language criteria to decide into which languages to translate information on available programs and consent forms. It also introduces a new concept, “in-home supportive services threshold languages,” for in-home support services for seniors and individuals with visual impairments or disabilities. In addition, daycare centers are included in the Dymally-Alatorre Act (see “Government”), which includes groups that speak the same non-English language and make up at least 5% of the population. For its part, New York sets the number of languages without indicating which they should be: for example, “the top six languages spoken in the state, other than English” for information on maternity-related issues (Public Health 2803-j).

The kind of information translated ranges from procedural issues, such as notices about the end of supportive services, payment plans, or program eligibility, to cancer and HIV awareness programs, and consent forms for abortions and autopsies. In its public health law, Illinois provides for the initiation of an information campaign about breast cancer for Hispanic women.

The translation of warnings about the negative or toxic effects of certain products is also the object of legislation. California, Rhode Island, and Texas translate signs and notices related to the use of pesticides, polluting substances, and the presence of mercury in some food products into Spanish.

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In addition, three states have passed laws that provide phone services for assistance in other languages. In Colorado, there is a phone line for children who are victims of abuse, and in New Jersey, the line provides assistance to healthcare service customers. In Texas, any call center related to healthcare or social assistance must comply with standards defined by federal law. Texas has a Spanish-language phone line to support Medicaid recipients, and New Jersey has a 24-hour Spanish-language social services help line.

Finally, there is also legislation on ESL programs. In Texas, these are included in childhood education. In New York, they are included in programs to help immigrants settle in, and on New Jersey, documented immigrants are asked to pass an English test to extend social benefits for longer than six months.

8. Conclusions

This report has shed light on the abundance of language-related legislation in 20 states. That said, much of that “abundance” refers to extraordinarily specific matters, while very few provisions are broadly applicable. As indicated, an analysis of states administrative codes and executive orders would complete the overview here presented, as well as the 30 states remaining. With this research, we can already make some remarks.

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Du jure or *de facto,* English is the official language of the country, all analyzed states, and D.C. The situation described by Kloss in 1977, in which laws and legal announcements were published in other languages, and many different tongues were heard in courtrooms and even in legislatures, has disappeared. The only state that troubles this generalization is New Mexico, which recognizes legal newspapers in Spanish and prohibits blocking citizens from running for public office or sitting on juries based their proficiency in English or Spanish. That said, it still does not seem appropriate to describe Spanish as a quasi-official language (Romero 2011), given that not even the websites of the government or state legislature are available in Spanish.

English functions as the official language, and, in varying degrees, the states accommodate the needs of LEP populations. That said, there are important differences between the 20 states discussed in this report. California is, without a doubt, the state that has passed the most language-related legislation, not only in volume and scope, but also in the sense that it has developed its own criteria in the electoral, commercial, and healthcare spheres. Furthermore, its constitution prohibits discrimination against employees who speak a non-English language in the workplace and enshrines the right to a court interpreter. At the same time, California is one of the states that has declared English its official language, highlighting how not all such declarations have the same scope, and how, in

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some cases, they are merely symbolic.[36] Illinois has also declared English its official language, yet it also prohibits discrimination based on the language spoken at work, and provides a supplement for bilingual public employees. It has its own language access law in the context of healthcare, and has even passed a law requiring interpreters be present in mental health facilities where at least 1% of patients are of Hispanic descent. The District of Columbia has passed one broad language access law, and another for affirmative action that explicitly mentions language as a factor in the hiring of public employees. Additionally, it has established its own criteria for the provision of electoral material in other languages.

Unlike these states, which typically offer multilingual solutions to problems posed by a society that speaks many languages and has a sizable LEP population, Texas, New Jersey, and New Mexico have passed provisions that are more inclined toward accommodating Spanish. Connecticut, Rhode Island, and New York, too have addressed questions of language in their legislation, but in these states, specific issues take precedence over broader laws: they have passed innovative provisions and made declarations that are tolerant of other languages, but these do not have nearly the same legislative scope as the provisions passed in D.C. and California.

[36] This by no means is meant to overlook the fact that symbolism can be negative.

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One final group of states is notable for having passed less legislation on language accessibility issues, and, in particular, for having passed provisions that limit the use of other languages. Arizona, Idaho, Kansas, and Utah have all passed restrictive official English laws, and Arizona and Colorado have gone so far as to introduce legislation on what texts are *not* required to be translated in the governmental and electoral spheres. Despite being a clearly language-restrictive state, Utah is one of only two states (along with Oregon) that have passed a law on medical interpreter certification.

The fact that the states that are least tolerant of other languages have some degree of language accessibility can be explained by the legal and institutional design of the United States. The Supremacy Clause of the Constitution gives federal legislation and regulations precedence over state legislation and regulations, and the federal government has further means of coercing the states, such as restricting funding. This mechanism has made it possible for the federal government to implement Section 203 of the Voting Rights Act, the language accessibility provisions of the Electronic Funds Transfer Act and the Equal Credit Opportunity Act, the Court Interpreters Act, and, above all, Executive Order No. 13666. All of these apply in all 50 states. It is worth considering what would happen if the federal government were to become more restrictive of the use of other languages.

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In the U.S., there is no general criterion between the states or even within individual states for determining the language in which assistance must be provided. On the one hand, all languages could be protected, theoretically, as is the case with court interpreters. On the other hand, the state could set a specific language—typically Spanish—or establish linguistic thresholds based on the percentage of the population that has limited English proficiency, or on the number of speakers of a given language. There are also situations in which language assistance is provided based on the percent of the population that is of Hispanic descent, highlighting the difficulty of divorcing language, ethnicity, and national origin, not only in literature, but also in legislation.[37]

As has been demonstrated throughout this report, Spanish is much more present in legislation than any other language. Numerous provisions specifically refer to the translation of information into Spanish. Furthermore, in the vast majority of cases in which linguistic thresholds are established for the provision of language accessibility, it is expected that native Spanish speakers will be the largest population, though this depends on their distribution throughout an area. This becomes especially clear after considering the jurisdictions that are required to provide electoral material in Spanish.

[37] Cases in which individuals were discriminated against for using a non-English language in the workplace are considered under Title VII of the Civil Rights Act, which prohibits discrimination against an employee on the grounds of race, color, religion, sex, or national origin. The Equal Employment Opportunity Commission's has defined "national origin discrimination" in such a way that it encompasses language discrimination (Del Valle 2003).

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In one form or another, Spanish is present in the legislation of every state studied in this report. In eight of those states, it is the only language mentioned explicitly (Arizona, Colorado, Idaho, Nebraska, Nevada, New Jersey, Texas, and Washington). However, it is important to remember that two broader laws—D.C.'s Language Access Act and Section 1632 of California's Civil Code—have evolved from protection for Spanish speakers into a concern for multilingualism. Analyzing other provisions to see if they have had a similar trajectory would be an interesting research topic. It is also important not to overlook that most of the more general laws are, once again, multilingual; they do not pay special attention to Spanish, though it is the country's most spoken language after English.

Ignoring the issue of distances, an easy comparison could be made with Alonso's description of foreign language departments in the U.S. (2007), in which Spanish has a "disproportionate size with respect to the other foreign languages." Under these circumstances, Alonso argues that academic institutions treat Spanish as a second national language, not a foreign tongue. He asserts that (2007: 222) "Spanish is indeed no longer a foreign language in the United States; the evidence of it is everywhere."

This report has already demonstrated that Spanish has a much greater presence in legislation governing use of language. However, on a legislative level, Spanish is a foreign language; there is no indication that it might be granted co-official status anytime soon. Furthermore, there are examples of protections for Spanish

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speakers developing into an interest in multilingualism, thus diluting Spanish's relevance, due to both historic and demographic factors.

Based on a 1977 study, Kloss (1998: 373) suggests that "in the United States, the language laws are primarily a function of the degree to which an ethnic group has become established in its area of settlement." He believes that other factors, such as linguistic distance and populations' absolute and relative size, are secondary. Since then, language legislation has undergone notable changes, and other factors are essential to explaining the current situation and the difference between states.

A state's roots are certainly relevant (see California, New Mexico, Texas, Colorado, Arizona, and Florida), but so is the percent of the population that speaks a given language in the present day, as is clear from the number of provisions designed to provide language assistance based on thresholds. To name just a few examples, a government might provide assistance if 5% (California) or 3% (D.C.) of the population has limited English proficiency; it might offer translated electoral materials or assistance if 5% of the population is Hispanic or of Hispanic descent (Texas), or if 10% of registered voters are Spanish speakers (New Jersey); a law for the provision of language assistance in the context of healthcare might come into effect if 5% of patients speak a non-English language (Illinois). In many instances, laws refer to the two, three, four, etc. most spoken languages. Today, a language's relevance is based not only on

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its historic rootedness in a place, but also on the number and spatial distribution of its speakers.

The factors of historic rootedness and number of speakers pose an interesting question that has been discussed in the literature on language rights, and this question has major implications for language policy decisions. Pogge (2003) believes that speakers of a historically established language should not enjoy more rights than speakers of a different language that have recently arrived in the country as immigrants. In taking this position, he opposes Will Kymlicka, who makes a moral distinction between such groups. Regardless of such debates, it is clear that the states do not have the resources to provide assistance in all languages, and they must establish prioritization criteria.

Finally, we consider that there is another factor—not included in Kloss's analysis—that, to a greater or lesser extent, may influence one's tolerance of other languages: political ideology. Of the four states analyzed in this report that had larger-than-average conservative populations, three have some of the country's most restrictive legislation on the use of other languages in public administration. Attempts to declare English the country's official language have always come from the Republican Party. We are not suggesting the presence a necessary correlation between ideology and language legislation, but we do believe that the combination of three factors (language groups traditionally established in a state, the relative size of a population within a state, and the political ideology of a

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state) is useful for a better understanding the situation of each state's public language policy.

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