The state constitution protects language access measures for California voters

Overview

Access to voting in languages other than English is essential in California — a historically multilingual and multicultural state, where 44% of households (the highest in the nation) speak a language other than English at home, and over 11% of the citizen voting age population (2.94 million Californians) speak English less than very well.[1] Fortunately, the California constitution protects language access for voters with an express right to vote that includes an implied right for voters to access the ballot in non-English languages. This right is founded on history and tradition, the intent and evolution of the state's article II, section 2 voting right, and precedent requiring supportive government actions to effectuate a fundamental right. Consequently, the California constitution protects language-access measures that have long relied on statutory and federal safeguards that now may be unreliable. As the Supreme Court consistently erodes federal voting rights and Congress threatens further changes, there is also a risk that federal laws will override protective state statutes, leaving the state constitution as a remedy of last resort. Given California's obligation to independently interpret its constitution, this is a prime opportunity to realize its power.

Analysis

California statutes require counties to provide translated ballots in precincts with populations of "language minorities" who have limited English proficiency, while the federal Voting Rights Act requires that certain counties provide bilingual poll workers and election materials. As a result, California currently provides votable ballots in six non-English languages and bilingual poll workers or supportive instructions in 29 languages.[2] To date, California's justifications for its language-access statute and protections have relied heavily upon federal law. Yet the

California constitution's express right to vote can serve as an independent state guarantee for language access and assistance. Under an implied right to language access within the voting right, policies that infringe on language access would trigger strict scrutiny not based on a suspect classification, but based on the fundamental right to vote.

This right to language access is deeply rooted in the history and traditions of California, given the bilingual history of the 1849 state constitution and the state's founding policy of publishing all laws and regulations in Spanish and English. The intent of the current voting guarantee in California constitution article II, section 2 is to provide affirmative voting rights to non-English speakers, because the voters who amended this section in 1972 sought to constitutionalize recent changes that guaranteed that right.[3] And both decisions on fundamental rights and the history of California's language-access statutes support a positive right to state assistance for such voting, not mere protection against infringement. Finally, the California constitution's provision declaring English the "official state language" is a paper tiger that would not threaten this fundamental right to voting access.

Language inclusion is deeply rooted in California's history

California's constitutional right to vote includes an affirmative right to voting access for language minorities, because a right to bilingual support for participation in public decision-making is deeply rooted in the state's history and traditions. The right to vote and access public business in non-English languages is rooted in the very foundations of California's statehood.[4] That ancient origin makes the voting access right fundamental.[5]

California's original 1849 state constitution was debated and published in English and Spanish, featured live translation in the drafting process, and recognized the right to vote regardless of language.[6] Indeed, that original constitution may well not have occurred without such translations. At the state's founding, most Mexican citizens remaining in the territory opted to become citizens of the new state, and the Treaty of Guadalupe Hidalgo guaranteed them the same rights and responsibilities as all citizens.[7] During the 1849 convention an official translator translated

proceedings for Spanish-speaking delegates throughout, and some delegates debated and made remarks in Spanish. The delegates decided to publish their debates, and the resulting proposed constitution, in both English and Spanish, reasoning that this was essential for all Californians to understand the proceedings. And the voting date for Californians to approve the proposed constitution was extended, to allow adequate time to disseminate translations.[8] The resulting 1849 California constitution guaranteed suffrage to citizens of the new state regardless of their primary spoken language.[9]

California codified this tradition in article XI, section 21 of the 1849 constitution, which required that all laws, decrees, and regulations be published in Spanish and English.[10] The delegates unanimously passed this provision. They specifically chose not to place a time limit on the provision, recognizing that California could remain a bilingual state (based on the contemporary example of Louisiana), rather than intending that translations be a temporary remedial measure.[11] The state provided these services for the following two decades and they were critical for many Californians, including judges, defendants, and witnesses who relied upon them to understand the state's laws.[12] Throughout California's founding and beyond, the state recognized that its citizenry included a large Spanish-speaking population and provided proactive translations and accommodations to ensure that all citizens could participate in public business.

This tradition was interrupted by constitutional changes that repealed the provision requiring that laws be published in Spanish (in 1879) and imposed an English-literacy requirement for voting (in 1894).[13] These stemmed from nativist and racist movements in state politics, exemplified by the 1878 convention where nativist delegates advanced a set of provisions targeting Chinese immigrants — many of which were "blatant grandstanding" and subsequently invalidated by federal courts.[14] Indeed, California voters soon repudiated those provisions, amending the state constitution to remove racial and gender restrictions on voting in 1894, 1911, 1926, and 1972.[15] Regarding language access specifically, the California Supreme Court invalidated the English-literacy requirement in 1970, and the voters repealed

it in 1972.[16] In so doing, the voters reaffirmed the intent of language protections in the article II, section 2 voting right, restoring the right and marking a through-line of history and tradition for language access.

The intent and effect of article II, section 2 is to provide affirmative voting rights regardless of language

California's express guarantee of the right to vote in article II, section 2 incorporates the intent of the voters who repealed the English-literacy voting restriction in 1972 and their desire to codify the California Supreme Court decision in *Castro v. State of California*, which found that voting rights include citizens who are literate in another language.[17] This shows that language access is baked into article II, section 2 itself.

The voters repealed the previous English-language literacy provision with Proposition 7 in 1972, resulting in the current article II, section 2 that expressly guarantees the right to vote in California for any "United States citizen 18 years of age and resident in this State."[18] The ballot arguments evince an intent to adjust the state constitution in accordance with contemporary developments in language-access protections. In interpreting California's fundamental voting right and construing constitutional provisions enacted by initiative, "the intent of the voters is the paramount consideration."[19] The arguments in favor here show that the voters meant to incorporate both *Castro* and the federal Voting Rights Act of 1970, under which voting rights applied regardless of language and accommodations are provided for language minorities.[20]

The arguments in favor stated that Proposition 7 would bring the state constitution "into conformity with recent changes in the laws governing voting" including "federal legislation [the Voting Rights Act Amendments of 1970] and court decisions." In particular, the measure abolished the "English literacy requirement" that has "recently been held invalid by our Supreme Court as discriminatory against Californians literate in Spanish and other languages."[21] The voters not only deleted the dead letter, but proactively protected language inclusion.[22]

The key element is that Proposition 7 adopted the 1970 *Castro* decision, which construed the voting right as fundamental for all California citizens, regardless of the language they speak.[23] *Castro* invalidated the 1894 English-literacy voting restriction because it "condition[ed] the right to vote upon an ability to read the English language" and therefore denied this fundamental right to otherwise-qualified and politically informed citizens.[24] *Castro* held that the voting right applies to citizens literate in a non-English language and the state cannot exclude them from an "effective expression of their political preference."[25] No state interest was sufficiently compelling to justify "denying the vote to a group of United States citizens."[26] The voters adopted this reasoning and its conclusion, ensuring that the state constitution would guarantee voting rights for citizens with limited English proficiency.

Existing authority supports a positive language access right

California's voting right both protects against government intrusion and confers a positive right to government support in the voting process.[27] By its nature, the voting right requires government action to effectuate, in contrast to more negative fundamental rights such as freedom of speech and religion. Yet this affirmative aspect of the right is less well-developed in California's caselaw regarding language access measures.[28] An affirmative right to language assistance is supported by *In re Marriage Cases*, which recognized a positive right to state action to effectuate the fundamental right of marriage. The legislature's actions to pass language access statutes interpreting the 1972 amendment, while not essential to the constitution's protective nature, evidence the contemporary understanding of voters' intent to protect language access measures through article II, section 2.[29]

By nature, a positive right requires government action to make it effective: citizens cannot vote unless the government provides the means. This principle is implicit across California cases, where parties contest the location of receiving ballots, method of ballot delivery, or the government's responsibility to place a certain candidate on the ballot — but no one questions the government's basic responsibility

to provide ballots and polling places.[30] Relatedly, courts recognize that ballot materials are part of the necessary "public expense" of a free election, effectuating the voting right.[31] It follows that voters have a positive right to some means of translation that effectuates their voting right.

The recognition in *In re Marriage Cases* of a positive right that required supportive state action also supports a positive right to translation assistance for voting access here.[32] The right to in-language voting assistance is integral to exercising the fundamental voting right, and compels affirmative actions to effectuate it. If anything, the voting right is even more fundamental than the marriage right, which the California Supreme Court held was integral to personal autonomy.[33] The right to government support for language-minority voting is similarly integral to the umbrella voting right. Just as access to marriage is inextricably tied to personal autonomy (making its benefits unachievable if the right is abridged) so is access to in-language voting materials integral to effectuating the right to vote. Without them a person cannot meaningfully exercise the right. Such positive rights require the state take at least some affirmative action to acknowledge and support them.[34] Here, that requires affirmative state action such as translation services and accessible ballots.

Statutory history also supports a constitutional right to affirmative language assistance. Article II, section 2 is self-executing, but the legislature's actions to pass language access statutes shortly after it was amended reaffirm that voters' intent was to protect effective language access. The legislature understood this to be the intent of article II, section 2; otherwise it would not have enacted these implementing laws. In 1975 and 1976, the legislature enacted Elections Code sections 1635 and 14203 (now sections 12303 and 14201), declaring that "non-English-speaking citizens, like all other citizens, should be encouraged to vote" and "efforts should be made to minimize [their] obstacles to voting."[35] These statutes require that counties provide translated sample ballots and instructions to voters in precincts where 3% or more of voting-age residents are members of a covered "language minority" and lack sufficient skills in English to vote without assistance. They also require that election officials in these precincts "make reasonable efforts"

to recruit poll workers who are fluent in the applicable languages.[36]

These statutes must be understood in the context of the voters' recent amendment to article II, section 2 and should be read as the legislature's attempt to implement that provision. The California Supreme Court has recognized that the legislature's construction of a constitutional provision is persuasive on the meaning of an ambiguous provision.[37] This legislative implementation presumption is not binding and the ultimate constitutional interpretation rests with the judiciary, but the legislature's contemporary understanding carries great weight.[38] The legislature's interpretation of article II, section 2 is at least relevant to its meaning, corroborating that voters intended the 1972 amendment to confer positive protections for language-minority voters.

The "official state language" provision is a paper tiger

Because voting is a fundamental right, the "official state language" provision in California constitution article III, section 6, which proclaims that "English is the official language of the State of California," is a dead letter and poses no threat to future language access.

The text of the "official state language" provision lacks force, particularly against a fundamental right, because it imposes vague requirements on the legislature regarding the role of English as the (declared) shared language of the state — but also directs that it does not supersede any rights guaranteed by the state constitution.[39] This amounts to at most a symbolic proclamation that "English is the common language" of California. More so: its vague prescription by its terms applies only to the legislature, and requires only that the legislature "insure that the *role* of English" as a common language "is preserved and enhanced," and shall "make no law which diminishes or ignores the role of English."[40] Such nebulous directives regarding the "role" of English are at best symbolic.

Indeed, just six months after this amendment passed, California Attorney General John Van de Kamp advised that it does not prohibit translated, non-English ballots and ballot materials.[41] This contemporary understanding shows that the provision is

ineffective in the voting context. The Attorney General reasoned that the provision's text did not support prohibiting non-English voting materials, absent more specific instructions, and found no violation of the "official state language" provision when officials in several cities provided ballots and materials in Spanish and Chinese.

Consistent with this reading, California courts have interpreted the "official state language" provision as ineffective against the government providing other non-English materials in the few cases where courts have considered the provision.[42] These cases demonstrate that the "official state language" provision is a paper tiger. The provision must be read in harmony with constitutional rights, statutes, and the government's interest in serving the public through language accommodations. In the context of a fundamental right such as voting, this provision must yield even further. The provision would certainly not *prohibit* the government from providing translated voting materials, as the Attorney General's 1987 interpretation concluded. And a court could find that the article II, section 2 voting right *requires* translations given the individual's fundamental interest in voting.

Conclusion

California's state constitution contains a right to language access measures for voters, as an integral part of the state's fundamental voting right. This right is founded on history and tradition, in the drafting of California's original 1849 state constitution, throughout its founding period, and resurging through the 1900s to today. The fundamental voting right in article II, section 2 embodies the voters' intent to codify *Castro* and provide affirmative voting rights regardless of language. The *In re Marriage Cases* decision and legislative acts implementing article II, section 2 support a positive right to government assistance for voting in non-English languages. The constitution's "official state language" provision would not curtail this right. In an environment where federal voting rights law is at risk, and poses risks to state statutes, this independent state constitutional protection is ripe for further development.

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1. U.S. Census Bureau, 2020 Current Population Survey Voting and Registration Supplements (2020). ↑
2. Common Cause California, *Breaking Barriers to the Ballot Box: Expanding Language Access for California Voters* (2023), pp. 10–12; Cal. Sect. of State Elections Div., County Clerk /Registrar of Voters Memorandum #25176 (2025), Attachment A, pp. 1–7. ↑
3. Ballot Pamp., Gen. Elec. (Nov. 7, 1972), Prop. 7, pp. 18–20. ↑
4. Cal. Const. of 1849, art. XI, § 21 (superseded 1879); Rosina A. Lozano, *Translating California: Official Spanish Usage in California's Constitutional Conventions and State Legislature, 1848–1894* (2011) 6 Cal. Legal Hist. 321. ↑
5. *See, e.g., Dawn D. v. Superior Court* (1998) 17 Cal.4th 932, 940. ↑
6. Rosina A. Lozano, *Translating California: Official Spanish Usage in California's Constitutional Conventions and State Legislature, 1848–1894* (2011) 6 Cal. Legal Hist. 321. ↑
7. *Id.* at 331, 349–51. ↑
8. *Id.* at 325–330. ↑
9. Cal. Const. of 1849, art. II, § 1. ↑
10. Cal. Const. of 1849, art. XI, § 21 (superseded 1879). ↑
11. Lozano, *Translating California*, 6 Cal. Legal Hist. at 331–33. ↑
12. *Id.* at 336, 340, 345–46. ↑
13. Cal. Const. of 1879; Cal. Const. art. II, § 1 (adopted 1894, superseded 1970). ↑

14. Harry N. Scheiber, *Race, Radicalism, and Reform: Historical Perspective on the 1879 California Constitution* (1990) 17 Hastings Const. L.Q. 35, 49. ↑

15. Carrillo & Chou, California Constitutional Law (2021) Fundamental Rights, pp. 704–705. ↑

16. *Castro v. State of Cal.* (1970) 2 Cal.3d 223; Cal. Const., art. II, § 2(a). ↑

17. *Castro*, 2 Cal.3d at 225. ↑

18. Cal. Const., art. II, § 2(a). ↑

19. *League of Women Voters of California v. McPherson* (2006) 145 Cal.App.4th 1469, 1481. ↑

20. Ballot Pamp., Gen. Elec. (Nov. 7, 1972), Prop. 7, pp. 18–20. ↑

21. Ballot Pamp., Gen. Elec. (Nov. 7, 1972), pp. 19-20. ↑

22. Ballot Pamp., Gen. Elec. (Nov. 7, 1972), p. 20. ↑

23. *Castro v. State of Cal.* (1970) 2 Cal.3d 223. ↑

24. *Id.* at 225–26, 243. ↑

25. *Id.* at 225, 239. ↑

26. *Id.* at 240–41. ↑

27. *See, e.g., Spier v. Baker* (1898) 120 Cal. 370, 375; Cal. Const., art. II, § 3. ↑

28. *See, e.g., Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850. ↑

29. *In re Marriage Cases* (2008) 43 Cal.4th 757. ↑

30. *See, e.g., Bourland v. Hildreth* (1864) 26 Cal. 161, 167; *Peterson v. City of San Diego* (1983) 34 Cal.3d 225, 231; *Hedlund v. Davis* (1956) 47 Cal.2d 75; *Communist Party of U.S. of Am. v. Peek* (1942) 20 Cal.2d 536. ↑

31. *See, e.g.*, *East Bay Municipal Utility Dist. v. Appellate Department* (1979) 23 Cal.3d 839, 844–45; *Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 126–28. ↑

32. *In re Marriage Cases* (2008) 43 Cal.4th 757. ↑

33. *Marriage Cases*, 43 Cal.4th at 814–16. ↑

34. *Id.* at 819. ↑

35. Cal. Elec. Code § 12303. ↑

36. Cal. Elec. Code §§ 12303, 14201. ↑

37. *Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151, 192; *Mt. San Jacinto Community College Dist. v. Superior Court* (2007) 40 Cal.4th 648, 656, citing *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 692; *Gomez v. Superior Court* (2012) 54 Cal.4th 293, 305; *People v. S. Pac. Co.* (1930) 209 Cal. 578, 595; *San Francisco v. Industrial Acc. Com.* (1920) 183 Cal. 273, 279. ↑

38. *Property Reserve*, 1 Cal.5th at 192–93. ↑

39. Cal. Const., art. III, § 6. ↑

40. Cal. Const., art. III, § 6(c). ↑

41. *See* Carson, *Other-Language Ballots OK, Van de Kamp Says*, San Diego Union-Tribune (May 22, 1987); *Ballot Translations Legal, Attorney General Says*, San Jose Mercury News (May 23, 1987). ↑

42. *V Lions Farming, LLC v. County of Kern* (2024) 100 Cal.App.5th 412, 437–38; *Gutierrez v. PCH Roulette, Inc.* (2003) Cal.App.6th unpub.; *Levy v. Gray Davis* (2003) Cal.App.1st unpub.; *Ramirez v. Plough, Inc.* (1992) 15 Cal.App.4th 1110 (judgment reversed by *Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539, but not as to art. III, § 6). ↑