

August 24, 2023

Michael Abbott
Wyandotte County Election Commissioner
850 State Avenue
Kansas City, KS 66101

Dear Mr. Abbott:

Thank you for responding to our request to meet with you about early voting and language access in Wyandotte County elections. We appreciate your response of August 10, although we were disappointed that you respectfully declined to meet with our community organizations about these topics. In your response to our meeting request, you indicated that your office follows all state and federal laws pertaining to language access and that the issue is outside of your purview. Your response was helpful, because it leads us to believe there is a misunderstanding about what we hope to discuss with you. We write now to provide some clarity about our purpose – and to repeat our request for a meeting to discuss the issue.

We do **not** seek to visit with you about language access requirements imposed by federal or state law.

We are aware that Section 203 of the Voting Rights Act requires certain jurisdictions to make all election-related information available in languages other than English, if—and only if—their demographics meet certain formula-based requirements. We are aware that, despite having one of the most diverse populations in America, Wyandotte County does not currently meet the formula-based requirements to be a covered jurisdiction under Section 203. The law mandates that language access be provided in a jurisdiction when:

- 1) more than 5% (or, alternatively, more than 10,000 people) of a single language minority group's members are voting age citizens who are also limited-English proficient; *and*
- (2) when the rate of the language minority group's voting age citizens who are limited-English proficient and have less than a 5th grade education is higher than the national rate.¹

We are aware that Wyandotte County does not meet this standard. The most recent Section 203 data, extracted from the U.S. Census Bureau's American Community Survey and released in September 2021, showed that Wyandotte County had a total citizen voting age population (CVAP) of 99,530. Hispanics were the county's largest language minority group, with a total population of 47,630 and a CVAP of 13,520 people. The data estimated that 2,601 of those individuals were limited-English proficient; although that total made up 19% of the total Hispanic CVAP, it did not comprise at least 5% of the total CVAP for the county.²

¹ Voting Rights Act of 1965, now codified at title 52, USC, §10301.

² U.S. Census Bureau, *2021 Section 203 Public Use Dataset and Technical Documentation*. December 8, 2021.

While the county's Hispanic population did meet the second requirement of the formula, pertaining to education levels, this is not sufficient for Wyandotte County to be covered by the formula. Although the formula does not allow language minority groups to be combined for purposes of designating a jurisdiction as covered by Section 203, it is worth noting that the total limited-English proficient CVAP in Wyandotte County is over 3,800 people – with Burmese, Hmong, and Laotian language minority groups each making up significant portions of the population.³

We are aware that your office is not responsible for any element of the Section 203 designation. We are aware that the formula is applied directly to data extracted from the Census Bureau's American Community Survey on a five-year schedule. Since the most recent update and determinations came in 2021, no changes—including whether Wyandotte County becomes a covered jurisdiction—will take place until 2026. We note that, given demographic trends in Wyandotte County, it is entirely possible that the county *could* become a Section 203-covered jurisdiction in 2026. The limited-English proficient CVAP grew by nearly 20% between 2016 and 2021, while the total CVAP grew by just 2%.⁴ In addition to considering making language access available now, we would urge the Election Office to consider what steps it would need to take to come into compliance with Section 203 if the county were to become a covered jurisdiction in 2026.

Finally, we are aware that Section 208 of the Voting Rights Act mandates that *all* jurisdictions permit voters who require assistance—including because of limited-English proficiency—to be given assistance by a person of the voter's choice.⁵ We have no reason to believe that the provisions of Section 208 are being violated in Wyandotte County.

It is because we are aware of what federal law says about language access that we are asking to visit with you. We are requesting a dialogue with your office about language access in Wyandotte County elections not because we believe that Section 203 applies, but precisely because we know that it does not.

The fact that Section 203 does not currently obligate the county to make election materials available in languages other than English, does not mean that the Wyandotte County Election Office cannot *choose* to take such action of its own accord.

There is nothing in local, state, or federal law that precludes the Election Office from making some or all of its materials available in any language it chooses. In fact, while only six Kansas counties are covered jurisdictions under Section 203,⁶ *ten* counties have indicated that they make at least some election information/material available in languages other than English.⁷ The additional counties are pursuing language access not because they are obligated to, but because they recognize that doing so serves a real need, builds community trust, increases voter turnout,

³ Ibid.

⁴ Analysis of data from the U.S. Census Bureau's 2021 Section 203 Public Use Dataset and Technical Documentation and 2016 Section 203 Public Use Dataset and Technical Documentation.

⁵ Voting Rights Act of 1965, now codified at title 52, USC, §10508.

⁶ Voting Rights Act Amendments of 2006, Determinations Under Section 203, 86 FR 69611 (December 8, 2021).

⁷ ACLU of Kansas. *All Democracy Is (Still) Local*. July 2023.

and strengthens democracy. These Kansas counties are not unique; across the country, dozens of jurisdictions that are not covered by Section 203, or that are covered for some language minority groups but not others, have proactively chosen to serve voters by making election information/materials available in multiple languages. Indeed, several advocacy organizations—including Asian Americans Advancing Justice and the National Association of Latino Elected and Appointed Officials—even have created toolkits to encourage local governments who are not Section 203-obligated to nonetheless provide language access in elections.

Local jurisdictions are unquestionably given the authority to make election materials available in multiple languages. There is no law or policy prohibiting such action, and there is no case law to indicate that this is not a power retained by local election offices like Wyandotte County's. We would be happy to visit with you if you have concerns about this – but would strongly encourage you to consult the General Counsel in the Secretary of State's Office for additional clarity.

Since the Election Office does, indeed, have the power to choose to provide materials in languages other than English, we would appreciate the opportunity to visit with you about this issue. We are eager to have a dialogue with you about how language access would better serve Wyandotte County voters, build community trust, encourage higher rates of voter turnout, and send a signal that Wyandotte County is a welcoming, equitable, and inclusive community. We believe that several simple, low-cost steps could make a significant difference for the county. For example, we note that not a single page of the Election Office's website is available in any language other than English. Providing even basic information about the election calendar, registration process, and registration materials in languages other than English would be a positive step. Similarly, while we have no reason to believe that Section 208 is being violated in Wyandotte County, additional action to ensure that voters know about their option to be assisted for language-related reasons would be appropriate and not burdensome.

In addition, we hope to discuss early voting with you. We applaud you for having significantly expanded the availability of early voting in recent elections. We firmly believe that expanded early voting is critical to increasing participation and improving civic health in Wyandotte County; we appreciate the strides forward you have made on this issue. Still, we believe that even more early voting opportunities are warranted and would bring us into greater alignment with best practices in large counties, including our cohort in Kansas.

We thank you for your response to our recent request for a meeting to discuss these important issues. We hope that we have provided additional clarity about our intent, which is not to discuss Section 203, but rather to explore steps that the Election Office can proactively take to provide language access to Wyandotte County voters that are neither required by nor run afoul of state and federal law.

With this additional clarity, we again respectfully request a meeting with you to discuss language access and early voting in Wyandotte County. Please let us know whether you would be willing to engage in this dialogue with us.

We are passionate about these issues – because we believe that a strong, healthy democracy is one where every eligible voter who wants to participate is able to do so. We believe that

language access—not just for voters who are limited-English proficient, but for anyone who feels more comfortable in another language—and early voting are essential to creating such a democracy in Wyandotte County. We will persist in raising these issues because we believe they are so necessary, and hope that you will join us in advocating for voters in these ways.

Sincerely,

ACLU of Kansas

AIRR KC

Cross-Border Network

El Centro

Equality KS

Latino Community Network

Loud Light

Mainstream Coalition

MORE2

The Voter Network

CC: Tyrone Garner, Mayor/CEO of the Unified Government of Wyandotte County and
Kansas City, Kansas