



**ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND**

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**Via Email**

April 20, 2020

August Gitschlag, City Clerk, City of Hamtramck  
3401 Evaline Street  
Hamtramck, MI 48212

The Honorable Jocelyn Benson, Secretary of State, State of Michigan  
430 West Allegan Street, Richard H. Austin Building – 4th Floor  
Lansing, MI 48918

The Honorable Gretchen Whitmer, Governor, State of Michigan  
P.O. Box 30013  
Lansing, MI 48909

**RE: Compliance with Section 203 of the Federal Voting Rights Act**

Dear Sir/Madams:

We hope you are staying safe and healthy during the COVID-19 crisis. In light of this public health crisis and the increased need for access to online and absentee voting materials for Hamtramck voters in upcoming elections, the Asian American Legal Defense and Education Fund (AALDEF) writes to inform you of your obligation under Section 203 of the federal Voting Rights Act to translate all voting information into Bengali for Hamtramck's Bangladeshi language minority group. **To comply with federal law, we ask that you 1) translate all voting information and materials into Bengali and 2) call on the Legislature to extend the April 21 filing deadline for the special election for state House District 4 until after such time that candidate qualifying information is translated and disseminated.**

AALDEF is a nonpartisan organization that protects and promotes the voting rights of Asian Americans. As you know, for years, we have conducted exit polls and poll monitoring in Hamtramck and other cities in Michigan to document Asian American voters' views on issues and problems encountered in voting, particularly due to the lack or shortage of language assistance. We followed up by sending observation letters of our findings regarding Section 203 compliance to your office. We write now to highlight the significant adverse impact on limited English proficient Bangladeshi-American voters if Hamtramck's online voting information and materials are not translated, particularly since more voters will be relying on these online materials rather than voting in person due to COVID-19 concerns.

Section 203 of the Voting Rights Act requires covered jurisdictions to translate certain information related to voting in order to ensure language access for those jurisdictions' language

minority groups. As you know, in 2011, the City of Hamtramck became a covered jurisdiction for the purposes of translating voting materials into Bengali and continues to remain a covered jurisdiction.<sup>1</sup> This requires the City of Hamtramck to translate *all* voting information that is provided in English into Bengali. According to the Department of Justice: “This covers not only the ballot, but all election information - voter registration, candidate qualifying, polling place notices, sample ballots, instructional forms, voter information pamphlets, and absentee and regular ballots - from details about voter registration through the actual casting of the ballot, and the questions that regularly come up in the polling place.”<sup>2</sup> All materials must be translated accurately and language “[a]ssistance also must be provided orally.”<sup>3</sup>

Based upon our observations, the City of Hamtramck is not currently in compliance with Section 203. In particular, the following voting information provided by the City of Hamtramck on its website is not translated from English to Bengali:

- [Voter registration information](#)
- [Information about Michigan’s no-excuse absentee ballot law](#)
- [Information about being placed on the permanent absentee ballot list](#)
- [Information about contacting the City Clerk’s office for more information](#)
- [Information about forthcoming sample ballots](#)
- [Information about the special election to fill the unfortunate and untimely vacancy in the office of State Representative, 4th District](#)

In addition, the City of Hamtramck’s website provides hyperlinks to the Secretary of State’s website that allow individuals to:

- [Access information on absentee voting and download an absent voter application<sup>4</sup>](#)
- [Access a voter registration form<sup>5</sup>](#)

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<sup>1</sup> 52 U.S.C. § 10503; *Federal Register Notice Vol. 81, No. 233* (Dec. 5, 2016), available at <https://www.justice.gov/crt/file/927231/download> (most recent list of covered jurisdictions under Section 203).

<sup>2</sup> DEPARTMENT OF JUSTICE, *Language Minority Citizens: Section 203 of the Voting Rights Act*, <https://www.justice.gov/crt/language-minority-citizens> (last updated Mar. 11, 2020). See also 28 C.F.R. § 55.15 (“The requirements of ...Section 203[] apply with regard to the provision of ‘any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots.’ The basic purpose of these requirements is to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities. Accordingly, the quoted language should be broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process.”).

<sup>3</sup> DEPARTMENT OF JUSTICE, *Language Minority Citizens: Section 203 of the Voting Rights Act*, <https://www.justice.gov/crt/language-minority-citizens> (last updated Mar. 11, 2020). See also 28 C.F.R. § 55.19(b), 28 C.F.R. § 55.13(b).

<sup>4</sup> CITY OF HAMTRAMCK, *City Clerk*, <https://hamtramck.us/departments/city-clerk/> (last visited Apr. 20, 2020).

<sup>5</sup> CITY OF HAMTRAMCK, *Elections*, <https://hamtramck.us/departments/city-clerk/elections/> (last visited Apr. 20, 2020).

None of the information on the Secretary of State's website is translated into Bengali. We are pleased to see that the absentee ballot application is translated into Spanish, but this application should also be translated into Bengali.

**In short, under federal law, all of the information and materials listed above must be translated into Bengali in order for the City of Hamtramck to comply with Section 203.**

For the information currently posted on the Secretary of State's website, the City of Hamtramck could undertake to translate that information itself, or could ask the Secretary of State's office to post translated information on the Secretary of State's website. In addition, sample ballots (when posted to the City of Hamtramck's website) should be translated into Bengali.

Section 203 applies to all elections, including primary elections. In light of the tragic passing of Representative Isaac Robinson of Michigan's 4th House District (including Hamtramck), the Governor has set a special primary election for August 4, 2020. The filing deadline for Republican and Democratic Party candidates in that election is April 21, 2020, but no candidate qualifying information has yet been translated into Bengali.<sup>6</sup> **The April 21 filing deadline for Republican and Democratic candidates should be extended to provide sufficient time for candidate qualifying information to be translated into Bengali and disseminated to the relevant population.**

We are concerned that the lack of translated materials, combined with the history of racial discrimination in voting in Hamtramck, will chill the political participation of Bangladeshi-Americans in Hamtramck, particularly those who are limited English proficient.

- First, the City of Hamtramck was the subject of a consent decree arising out of the November 1999 election, in which Bangladeshi-American and Arab-American voters were targeted by election inspectors because of their race.<sup>7</sup>
- Second, the City of Hamtramck was required to provide translated absentee ballots, and all other voting materials, to its limited English proficient Bangladeshi-American residents since 2011. The requirements of Section 203 take effect upon publication in the Federal Register of the requisite determinations of the Director of the Census.<sup>8</sup> Such determinations are not reviewable in any court.<sup>9</sup>
- Third, this lack of information has had very tangible adverse consequences for Michiganders. Several limited English proficient Bangladeshi-American citizens of Hamtramck were prosecuted for attempting to exercise their right to vote in a prior election due to their confusion about absentee ballot rules—confusion stemming from Hamtramck's failure to translate the absentee voting requirements as required under Section 203. Due to a lack of translated voting information and this history of

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<sup>6</sup> See THE OFFICE OF SECRETARY OF STATE JOCELYN BENSON, *Filing for Office*, [https://www.michigan.gov/sos/0,4670,7-127-1633\\_8721\\_11839---,00.html](https://www.michigan.gov/sos/0,4670,7-127-1633_8721_11839---,00.html) (last visited Apr. 20, 2020).

<sup>7</sup> *Consent Order and Decree, United States v. City of Hamtramck* (Aug. 7, 2000), available at <https://www.justice.gov/crt/case-document/file/1184276/download>.

<sup>8</sup> 52 U.S.C. § 10503(b)(4); 28 C.F.R. § 55.4(a)(2).

<sup>9</sup> *Id.*

prosecutions, Bangladeshi-Americans in Hamtramck may now be concerned about incurring criminal liability when attempting to exercise their constitutional right to vote.

- Fourth, in light of COVID-19 and Michigan’s recently passed no-excuse absentee voting law, we expect that more people than ever will be voting by absentee ballot in elections this year. Voters will use the City’s website in order to access information related to voting that they might normally access at their physical polling location. Unlike with in-person voting, absentee voters do not have access to experienced poll workers who can explain the voting process and ensure that their votes are counted. Relatedly, there are few if any opportunities to correct absentee ballots if one makes a mistake. Misunderstanding and mistakes in absentee voting are more likely to occur when voting information is not properly translated, as required by federal law.

For these reasons, it is particularly imperative to translate all voting information listed above as soon as possible in order to ensure that Michiganders’ constitutional right to vote is not infringed. Moreover, we urge you to extend the April 21 filing deadline for the special election until Hamtramck is Section 203 compliant, in order to ensure that Bangladeshi-Americans who would like to run for office or support candidates in qualifying to run for office may participate in the petitioning and electoral process. As noted above, the Department of Justice specifies that “candidate qualifying” information must be translated in covered jurisdictions under Section 203.

The Asian American Legal Defense and Education Fund stands ready to assist the City of Hamtramck in complying with Section 203 of the Voting Rights Act. As you may know, 28 C.F.R. § 55.16 states: “A jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group.” If you have any questions about your obligations or our capacity to assist you, please contact me at (516) 640-8336 or [jvattamala@aaldef.org](mailto:jvattamala@aaldef.org).

Sincerely,



Jerry Vattamala  
Director, Democracy Program  
Asian American Legal Defense and Education Fund

CC: Cathy Garrett, Wayne County, Clerk  
Gregory Mahar, Wayne County, Director of Elections  
Patricia Yan, AALDEF, Staff Attorney, Democracy Program  
Aaron Mukerjee, AALDEF, Legal Extern