As we enter election season, it's critical for voters to know the key issues of the day and where their representatives stand on them. That civic duty can be inhibited when the language of a legislative text becomes lengthy, ambiguous or just plain bad.

The complexity of the legal jargon found on voter ballots isn't a new issue. Just last year, both Ballotpedia and political scientists from Georgia State University (GSU) conducted assessments to analyze just how complicated the average ballot reads. Both parties used the Flesch-Kincaid readability test, which measures how many words are in a sentence and how many syllables are in those words. Both studies found that the average ballot question requires at least some college-level education. Ballotpedia found that the average question required a graduate-level education.

When the wording on ballot measures is confusing or overly complicated, it puts a direct barrier between a voter and a voter's understanding of the issues they are expected to decide. As a result, some states are under fire from state officials and concerned citizens about misleading or confusing language or omitted information in a ballot title or summary.

In Washington state, a concerned citizen named Glen Morgan runs a website called “We the Governed” where he shares his opinion on local and federal issues, hosts a list of watchdog resources, and takes donations for his efforts. In March, he filed a petition to challenge not only the ballot title for Washington Initiative I-1631, but also the statement of subject, description and summary. Morgan is accusing the Washington State Attorney General’s office of using misleading and inaccurate language in the title, using the words “concerns pollution” and “pollution fees” in lieu of “carbon tax.”

However, under state law, the measure is not a tax. The revenue the measure generates will not be spent on government programs. Instead, it is pledged to go toward investments in environmental projects. The difference is small, and lack of explanation or a misunderstanding of legislative terminology is likely a contributing factor to citizens’ concerns.

In North Carolina, a three-judge Superior Court panel ruled in favor of Gov. Roy Cooper’s lawsuit against two state constitutional amendments that would have altered the distribution of power between the executive and judiciary branches. Judges Forrest D. Bridges and Thomas H. Lock noted the measure’s inability to sufficiently inform voters about its intent, therefore undermining its ability to reasonably allow a voter to make an informed decision in their opinion.

In August, Circuit Judge John Cooper ruled that the language of Florida’s Amendment 8 was misleading for several reasons. One reason is its title did not include everything contained within the bill, such as the words “charter schools,” when the amendment itself would have removed the school board’s power to approve them. The lawsuit was filed by the League of Women Voters.

In the same month, Circuit Judge Karen Gievers ruled against Amendment 6’s proposed title and summary, believing both were incomplete and misrepresentative to voters. In a joint decision, Gievers
ruled that the title and summary did not meet the requirements of Florida law regarding full, fair and accurate language in ballot measures. The League of Women Voters was also a plaintiff in the lawsuit.

It seems that the solution to most of these instances is often to ask the judiciary, a fair and neutral body of government, to judge the intent and clarity of a ballot’s descriptors such as its title and summary. But the judiciary is a reactive solution. What can states do to protect themselves beforehand from poor language practices and the potential lawsuits that follow? Rhode Island may have an answer.

In 2016, Rhode Island Secretary of State Nellie M. Gorbea revised the state’s voter information handbook, adding illustrations and summaries in simple English.

“I’m a believer that the best solutions have a mix of different perspectives, opinions and backgrounds,” said Gorbea as she described the two-step process her office used when designing the handbook. The first step is to have the ballot measures summarized in simple English. The draft is then circulated to those with a stake in the measure – opponents and advocates alike.

Gorbea said that a focus on the issue of ballot language is a hugely important step for the public sector. She thinks that if someone with a graduate degree can’t understand a voter handbook, it’s as if the government is telling those with less education not to even bother. “For one, it disenfranchises people, and two, it treats them like it doesn’t matter if they vote,” said Gorbea. “It’s a lack of respect for the voters.”

Modernization is another concern for Gorbea, who notes the importance of graphic design. As a deputy secretary of state in 2002, one of her duties was to hire a graphic designer. “The design of the information matters,” she said. “The private sector uses great designs to attract customers - why can’t government do the same?” While Gorbea notes that a better voter handbook isn’t the only thing that needs to be done to improve turnout, it’s the least government can do to prepare citizens for the ballot box.

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