

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	Claire Gonzales to Steve Warnath re: Backgrounder on '92 Bilingual Voting Rights Legislation (4 pages)	10/30/1995	P5

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Stephen Warnath (Civil Rights)
OA/Box Number: 9588

FOLDER TITLE:

[English Only] [1]

ds64

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

SPECIALEXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO: Steve Warnath

Jack Smalligan

Take necessary action Approval signature Comment Prepare reply Discuss with me For your information See remarks below

FROM: Jill Gibbons

DATE: 5/15/96

SUBJECT: S.356 - Language of Government Act (English Only)

Attached is a SSA letter on S.356 to Senator McCain. SSA would like clearance today in time for a Senate Governmental Affairs Committee markup tomorrow. Please provide any comments or sign off by 5:30. Thank you

DRAFT LETTER TO SENATOR MCCAIN FROM SSA COMMISSIONER CHATER

Dear Senator McCain:

We understand that you expressed interest in receiving information concerning the services that the Social Security Administration (SSA) provides to members of the public who cannot communicate with us in English.

We believe that the interests of not only the non-English-speaking public, but the interests of SSA as well, are best served by allowing, to the extent feasible, Social Security business to be conducted in languages other than English. The customer's needs are more likely to be met, and the requested service is more likely to be provided in an efficient manner, with minimal expenditure of scarce personnel resources. As is true of the public in general, the better informed that the non-English-speaking public is about Social Security, the more effectively and efficiently the program can be administered. *limited*

Because the vast majority of the non-English-speaking public speak Spanish, we have concentrated on providing general Social Security information pamphlets and individual foreign language notices in that language. To serve our Spanish-speaking customers, we produce more than 4.4 million individual notices each year that either are written in Spanish or are accompanied by a cover letter written in Spanish that alerts the customer to the importance of the notice and offers translation assistance by the field office if it is needed. Spanish-language notices include all automated Supplemental Security Income notices, such as cost-of-living adjustment notices, many automated Social Security notices, and Personal Earnings and Benefit Estimate Statements.

In addition, we offer Spanish language versions of about 250 high-volume forms and notices, including Social Security number applications and annual Social Security benefit statements. Furthermore, 50 pamphlets and fact sheets containing important information about various aspects of the Social Security program are produced in Spanish and are available in paper form and on the Internet.

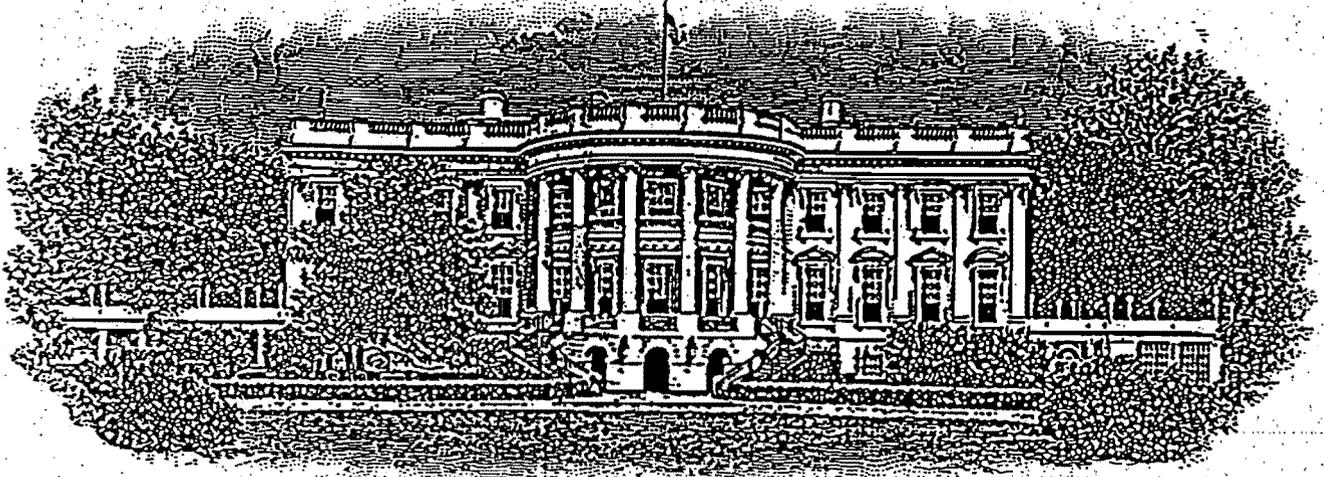
With limited exceptions, we have not found it to be cost effective to provide notices or public information material in

other foreign languages, although this policy is subject to continual reassessment. Field offices may provide locally produced notices and letters in other foreign languages, depending on circumstances.

Of course, we frequently communicate with the public in person and by telephone as well as in writing. To meet the needs of the non-English-speaking public under these circumstances, we have made a special effort to ensure that bilingual employees are available in our field offices and teleservice centers to translate when necessary. For example, in fiscal year 1995, 434 of the 1,546 employees we hired in positions directly serving the public have bilingual skills. We now have about 5,700 bilingual employees in field offices and teleservice centers, and we can provide bilingual services in more than 20 languages. Generally, the extent to which our field offices offer bilingual services is based on the particular needs of the communities which they serve.

As you can see, we have tried to ensure that the non-English-speaking public's right to Social Security benefits and services is not undermined by communication barriers. Given the wide variety of languages and dialects in use in various parts of the country, we cannot guarantee that the communication needs of this group are fully met in every situation. However, we believe that our policies and procedures strike a reasonable balance between accommodating the non-English-speaking population and operating the program within current resource constraints.

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: DENNIS HAYASHI

FAX NUMBER: _____

TELEPHONE NUMBER: _____

FROM: STEPHEN WARBATH

TELEPHONE NUMBER: _____

PAGES (INCLUDING COVER): 4

COMMENTS: DRAFT ENGLISH - ONLY TALKING POINTS

ATTACHING FAX ME YOUR ~~FOR~~ COMMENTS.

THANKS
S

*based on Census figures
planning in language*

H 868

CONGRESSIONAL RECORD—HOUSE

January 25, 1996

what makes these costs and their cost to the local taxpayers all the more shocking.

Election officials in Alameda County, CA, told me recently that they spent almost \$100,000 to produce ballots in Spanish and Chinese for the entire country, yet only 900 were ultimately requested. You can do the math. The taxpayers of Alameda County spent over \$100 for every multilingual ballot that was actually used in that June 1994 election. This appears to be a trend.

The last election in Los Angeles saw ballots printed in six languages other than English. Among them were Spanish, Chinese, Japanese, Vietnamese, Tagalog, and Korean. It cost the city government over \$125,000 to prepare the materials. Yet, and listen to this, only 927 ballots were used. Los Angeles spent over \$135 for each voter the city helped.

Even small communities are not immune. Long Beach spent a relatively modest \$1,026 preparing multilingual materials for its eligible voters when only 22 requests came in. The township spent over \$280 per multilingual voter. As a frustrated election official told me recently, "This is a lot of money to help a few people." That official could not be more right.

These ballots have other, more serious costs associated with them, too. Providing these special services creates the fiction that newcomers to this country can enjoy the full benefits of citizenship without the language of the land, which is English. How can a citizen cast an informed ballot in a foreign language when most candidates' platforms, stump speeches, and media coverage are in English? Exercising one's rights of citizenship involves more than just casting a vote. It means making a thoughtful decision regarding an issue or a candidate.

Multilingual voting ballots give individuals the right to vote without granting the power to cast an informed vote. The logical extent of the argument behind the multilingual ballots is to provide these services in all the languages spoken in the country. After all, why should we privilege one linguistic minority over another? Should we not provide news reports and election coverage in all these languages, so these citizens have access to all the information they need to cast an informed vote? The simple and obvious answer is that we cannot. There are 327 languages spoken in the United States today. We cannot provide these services in all of these languages. What is more, we should not.

CALLING FOR A MUTUAL UNDERSTANDING BETWEEN TAIWAN AND THE PEOPLES REPUBLIC OF CHINA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. TORRICELLI] is recognized for 5 minutes.

Mr. TORRICELLI Mr. Speaker, it is said that in history, great conflicts begin more often from miscalculation than by purposeful design. Even in our own time, it is said that the Korean war may have begun by the unfortunate statement of Mr. Avenues that the defense perimeter of the United States began in the Sea of Japan, and not the 38th parallel.

A few years ago the United States Ambassador to Iraq suggested to Saddam Hussein that in a dispute between Kuwait and Iraq, the United States would regard the matter as an internal problem in the Arab world. Today in the straits of Taiwan a foundation may be being laid for a similar misunderstanding.

I take the floor today, Mr. Speaker, as one Member of this institution, in the hope that the leaders of our country, our great allies in the People's Republic of China, come to some mutual understanding of events that are taking shape even as we speak between Taiwan and the People's Republic of China.

Only weeks ago the Peoples Republic fired missiles into the airspace and the shipping lanes around Taiwan. It is now openly being discussed what further actions, including military measures, might be taken. The leaders in Beijing are displeased with comments or activities of President Li after the Taiwanese elections.

It is the policy of the United States Government to have formal diplomatic relations with the People's Republic and to recognize it as the sole legitimate Government of China, but the Taiwan Relations Act is infinitely more complex. It also permits, and indeed, in my judgment, provides a responsibility for the United States Government to continually reassess our role and obligations if the security situation of Taiwan were to deteriorate.

I recognize that the relationship between Beijing and Washington is one of the cornerstones of world peace. It is one of this Nation's most important economic, cultural, and security relationships. I want it to be strong and I want it to be sound. But I also recognize, and history bears witness, the United States keeps its obligations, recognizes its relationships, and meets the needs of its friends.

I trust and I hope that Beijing in the coming months will act responsibly, retain the commitment that any dispute it might have with the people on Taiwan and the question of the larger China is resolved peacefully, responsibly, and diplomatically. But simply because Members of this institution and the larger U.S. Government are committed to good relations with Beijing, simply because we want good political relationships, increased investment and trade, simply because of the progress of all these years, they should not put aside that this is still a nation that keeps its obligations, defends the weak against the strong, and holds democratic governments with

pluralistic governments in a singular and special category.

This is, after all, not the Taiwan of 20 years ago. There is a free press, a pluralist democracy, and now, a popularly elected President. That does not negate aspects of, or in its totality, the Taiwan Relations Act. It is simply an attempt to make an effort on my own part to communicate with the leaders in Beijing to let them know that the firing of the missiles was not only wrong, but threatening military action is irresponsible.

However they may calculate it, whatever their advisers may say, at the end of the day, in spite of all the investment and all the hopes for good relations with China, the world will not watch a military incursion, a renewal of hostilities, or even irresponsible acts that threaten the peace.

So I hope each in our private ways, parties to this potential dispute, will again renew their commitment to peace and ensure that our actions remain responsible, but that all parties at the end of the day recognize that the United States will not witness the forceful end of the Government of Taiwan.

TRAVEL HABITS OF THE SECRETARY OF THE DEPARTMENT OF COMMERCE

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from Michigan [Mr. CHRYSLER] is recognized for 40 minutes as the designee of the majority leader.

Mr. CHRYSLER Mr. Speaker, once again, the Commerce Department has made news. But it's not news about any new trade deals it won for American business. It's for the travel habits of the Secretary of Commerce. It seems that the Secretary has a penchant for travel, one that has cost the taxpayers of this country millions of dollars.

In fact, the current Secretary's travel costs have increased by over 145 percent from that of his predecessor. One can only assume he is using the same travel agency as the Secretary of Energy.

This weekend, the Los Angeles Times reported that the Department of Commerce's own inspector general was sharply critical of Secretary Ron Brown's travel expenses, noting that "His spending levels are particularly striking since he took over the job from a Republican administration that was often under fire for incurring excessive travel costs."

The Los Angeles Times goes on to add, "Brown, a former chairman of the Democratic Party, was accused by his critics of using his travel budget to gain favor with political allies and party contributors, many of whom have been invited to accompany the secretary on his extensive foreign trips."

Mr. Speaker, I include for the RECORD the Los Angeles Times article.

street

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January 25, 1996

CONGRESSIONAL RECORD—HOUSE

H867

which is the national version of your local credit bureau, considering downgrading the United States debt to the tune of about \$387 billion to in fact create much higher costs for all of us in this country in paying that debt, rolling it over on a periodic basis. It also includes an article about the Mexican economy and the fact that in their credit crunch, loans are today almost impossible to get; and, if you can get them, they are ranging at the 50-percent level.

The reason I bring that up is this is a country that is in deep trouble today just for contemplating default. This country stepped in and helped prevent that and still, just because they flirted with default, today it is almost impossible to get a loan in that country.

We would be, by this action here that is being brought about by the freshman Republicans and others who are irresponsible, in my view, about how they want to conduct our public policy debate, are courting this kind of disaster.

We are about to move to a point where our U.S. bonds, which are the best bonds you can get anywhere in the world, which pay the lowest interest rates because of their security and lack of risk, will fall into the category of almost junk bonds. Here we are, a country that theoretically has learned about the perils of junk bonds, having come through our S&L crisis, we understand that these kinds of high yield bonds we call junk bonds, pay a premium, because of the risk involved, because of the potential for default.

It is a lesson we have got to remember as we continue to do our business in this Congress. Hopefully, the effort that Mr. KENNEDY is leading and Mr. BENTSEN and others to get this Congress to adopt a clean debt limit extension, what we mean by that is to deal with the credit rating of this country without encumbering it with any other extraneous activities, any other legislation that ought to be dealt with in separate vehicles.

We think, and I think Members of the Republican Party honestly agree with us, that if we know what is good for our country, we will act precipitously today, tomorrow, next week, whenever we can possibly get the attention of the leadership of this institution to guarantee that we do not allow ourselves to slip into default and to provide long-term detriment, additional cost to us as individuals and as taxpayers and as a Nation.

We need to sign this discharge petition. We need to bring our Republican colleagues of good will, who are willing to be independent and stand up for what is right for this country, to join us so that we can have sanity reign here and so that we are not going to find extortion and blackmail on something as fundamental to this country as the extension of that debt limit occurring.

Remember, we have written the checks. It is a question of whether we are going to cover those drafts when

they come to the bank. I want to thank the gentlewoman from Connecticut for taking the time to give the American people and our colleagues a better understanding of something that I think we never really entertained, never thought was possible, until just recently when we began to see just how far irresponsibility was leading the minority, the majority party in the direction of bringing about a real financial disaster for this country.

Ms. DELAURO. I want to thank my colleague from California for just outlining what it is all about. I want to thank my other colleagues who joined with us this afternoon, and I just want to say that the issue is credit rating, the credit rating of the United States.

□ 1400

When you hear the words "debt limit, debt extension," put that aside. Credit rating, that is what this is about, and whether or not we are going to say that the United States will continue to have the best credit rating in the world, which it currently has.

I would just say to you that we do have people, we have a group of people in this House that are willing to do harm to the credit rating of the United States by defaulting on our debt. This would be for the first time in this Nation's history. They are prepared to do this, and even have talked about this in terms of a strategy for holding the President hostage, for blackmailing the President to try to get something from him on the issue of the budget.

We have put to rest the issue of the balanced budget. The President has laid one on the table. It is now my Republican colleagues who are walking away from the balanced budget that the President has put down, which they asked for.

What I am begging the leadership, the Republican Gingrich leadership of this House to do, listen to Wall Street when they say what difficulty we will be in in the world if this happens to the United States; listen to Main Street; listen to the working men and women of this country, who will see their adjustable rate mortgages on their homes go up \$1,200 as my colleague, the gentleman from Massachusetts, has said. Credit card payments, because the interest rates will go up, will be higher. Towns and cities and States will find, and school districts and water districts, that their bonds will be in difficulty. That is all the result of tampering with the credit rating of the United States. It will have a disastrous effect on the United States and on the people of this country.

We cannot let this happen. What we need to do is to send the President of the United States a clean debt limit credit rating bill, so that in fact we can continue on as the great Nation that we have been, and that our Founding Fathers sought for us.

Ms. BROWN of Florida. Mr. Speaker, if we don't pass a debt limit extension and the country defaults on the national debt, the result will be devastating.

The Republicans don't believe Treasury Secretary Rubin when he warned of default. Instead, they have resorted to a dangerous game of chicken with our Nation's economy.

If we do default on the national debt, it will have an adverse effect on so many people. Social Security and veteran benefit recipients may not receive checks. Interest rates would rise dramatically, affecting home, car, and student loans. Bond prices would fall dramatically, causing people to sell in fear of this.

First, the Republicans held Government employees hostage in their attempt to get the President to cave in to their extreme balanced budget plan. And now, they are fooling around with the possibility of defaulting on the debt.

They just never learn that their extreme bullying tactics just aren't going to work.

We can't afford to default on the national debt. We need a clean debt limit extension.

VOTING BALLOTS PRINTED IN FOREIGN LANGUAGES, ANOTHER EXAMPLE OF GOVERNMENT EXCESS

The Speaker pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. ROTH] is recognized for 5 minutes.

Mr. ROTH. Mr. Speaker, I rise today to call attention to another example of Government excess. In the spirit of so-called multiculturalism, the Federal Government has mandated since 1985 that voting ballots and materials be printed in dozens of languages other than English. Today there are some 375 voting districts across this country that are required to print ballots in foreign languages.

In a classic example of an unfunded mandate gone amok, politicians in Washington are forcing States and localities to provide multilingual ballots without providing the funds to implement the ballots. This Don Quixote mandate, the legislation that has caused this mandate is the voting Rights Act of 1985. Under the law, countries must provide multilingual voting information and ballots in the language of any minority groups with more than 10,000 eligible voters in that county.

In the real world, these services should not be needed at all. Voting rights are extended to citizens of this country, and one needs to demonstrate some fluency in English to become a U.S. citizen, so why all of these ballots. In other languages other than English? In practice, this requirement for citizenship has been unenforced, but that does not change the facts. By law, English is the requirement for citizenship in this country. We should not be providing Government services, in direct contradiction with the spirit, if not the letter, of the law's requirement.

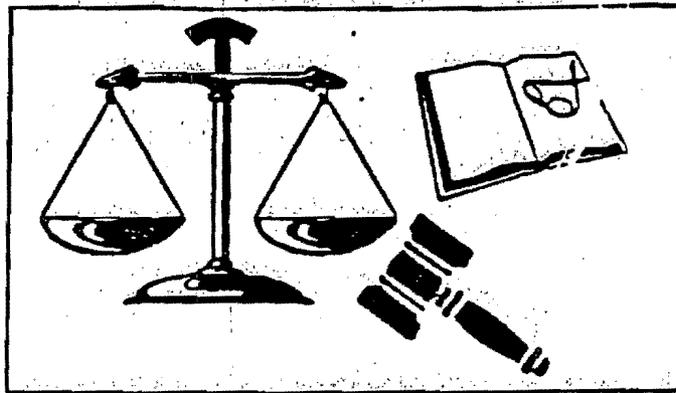
Moreover, these services are expensive, as well as unnecessary. It might surprise supporters of multilingual ballots to know that very few people actually request such special treatment. By and large multilingual ballots are rarely requested, and even less often used, even when they are provided. That is

Handwritten notes:
These are expensive
wow don't know

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET



TO: Stephen Warnath 456-7028

Lin Liu 307-1269

FAX NO.: Pam Barry / Joyce Chiang 4-1117

LUCY KOH

FROM:

PHONE: 202/514-4021

DATE: 11/20/95

NO. OF PAGES: 1 (EXCLUDING COVER)

COMMENTS: English Only Naturalization Talking
Points - revised to incorporate Bob Bach's
comments

ENGLISH ONLY NATURALIZATION ISSUES

- ◆ Promoting citizenship, or making real the "N" in INS, is a top priority of the Immigration and Naturalization Service (INS). The million people currently seeking citizenship indicates a strong desire to become full fledged Americans.
- ◆ In August, the INS announced a new initiative, Citizenship USA, to employ new examination methods and to streamline the processing of naturalization applications. Los Angeles is the first site of this major nationwide initiative.
- ◆ By law applicants for naturalization must pass English proficiency and civics tests in order to become citizens. INS wants to ensure that these new Americans, like all Americans, have the basic English language skills to be productive members of our society.
- ◆ Since 1950, Congress has made naturalization more accessible to potential applicants by waiving the English language requirement for naturalization for elderly persons who have been legal permanent residents in the United States for at least 20 years. We strongly support this waiver for those members of our society who require special consideration--the elderly.
- ◆ There are now legislative proposals barring the use of languages other than English in naturalization ceremonies. INS has traditionally conducted these ceremonies and administered the oath of allegiance in English and will continue to do so. However, we are concerned about a blanket prohibition against the use of any language other than English during the entire naturalization ceremony. Currently, the presiding official, in many cases a federal judge, has the discretion to translate some of the ceremony's concepts into other languages, if he or she thinks it is appropriate, so that the naturalization process is more understandable for family members and others in the audience who may not know English well. Having this information could also be an inspirational experience for those who may aspire to naturalize themselves. While this practice is not the norm for naturalization ceremonies, it should not be permanently excluded. In addition, we are concerned that prohibiting a federal judge or a speaker at a ceremony from giving a salutation or congratulation in a language other than English may conflict with constitutional principles of freedom of speech.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO: Tracey Thornton
Steve Warnath
John Angell

CC: Jim Jukes

Take necessary action

Approval signature

Comment

Prepare reply

Discuss with me

For your information

See remarks below

FROM: Jill Gibbons (395-7593) DATE: 4/17/96

SUBJECT: DOJ Summary on English Only

Attached is the two-page summary of the Justice letter on S. 356 - the Language of Government Act. Please provide any comments or signoff by 2:00 today. Thanks

Summary of Views on S. 356, the Language of Government Act of 1995

S. 356 would declare English the official language of the Government and require the Government to conduct its official business in English. S. 356 defines "official business" generally as "governmental actions, documents, or policies which are enforceable with the full weight and authority of the Government." It would eliminate all governmental actions that are conducted in languages other than English, except: (1) teaching foreign languages; (2) actions, documents, or policies not enforceable in the United States; (3) actions, documents, or policies necessary for international relations, trade, or commerce; (4) actions or documents that protect the public health; (5) actions that protect the rights of victims of crimes or criminal defendants; and (6) documents that use terms of art or phrases from languages other than English.

The Administration strongly opposes S. 356. S. 356 would fix a problem that does not exist. As the President has stated, there has never been a dispute that English is the common and primary language of the United States. According to the 1990 Census, 94% of all residents speak English very well and of the 13.8% of residents who speak languages other than English at home, 79% above the age of four speak English "well" or "very well". In fact, there is overwhelming demand for adult English language classes in communities with large, language minority populations. For example, in Los Angeles, the demand for these classes is so great that some schools operate 24 hours per day and 50,000 students are on the waiting lists city-wide. In New York City, an individual can wait up to 18 months for classes.

The overwhelming majority of Federal official business is conducted in English. According to a recent GAO study, only 0.06% of Federal documents are in a language other than English -- and these are translations of English documents. These non-English documents, such as income tax forms, voting assistance information, decennial census forms, and medical care information, assist taxpaying citizens and residents who have limited English proficiency (LEP) and are subject to the laws of this country. In those very few instances where the Government uses languages other than English, the usage may promote vital interests, such as national security; law enforcement; border enforcement; civil rights; communicating with witnesses, aliens, prisoners or parolees; and informing people of their legal rights and responsibilities.

S. 356 would invite frivolous litigation against the Government. It would create a vague, private cause of action -- and allow attorney fees -- for anyone who believed that he or she had been injured by the Government's communication in a language other than English. Actual injury due to a failure to conduct all activities in English is highly conjectural since virtually all of the Government's business is conducted in English. S. 356 would chill Federal agencies performing vital tasks and delivering important information.

Although it is difficult to predict how the Supreme Court ultimately would resolve arguments that S. 356 violates constitutional protections, Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995), cert. granted, 64 U.S.L.W. 3635, 3639 (U.S. Mar. 25, 1996) (No. 95-974), a case raising constitutional challenges to a similar State statute, is now pending before the Court. In that case, a divided Ninth Circuit Federal Court of Appeals ruled that the English-only requirements in the Arizona constitution were facially overbroad in violation of the free speech rights of State government employees. Although the dissent's

argument in Yniguez is not without force, the existence of the Ninth Circuit's en banc decision raises a concern that the bill is vulnerable to First Amendment challenge.

If S. 356 applied to the legislative franchise of Members of Congress, it would violate the Speech or Debate Clause of the Constitution. If it prevented a Federal legislator, the President or other Executive branch officials from communicating effectively with the persons he or she represented, a court might conclude that it interfered with a core element of representative government established by the Constitution. Since several ethnic and national origin minority groups in this country include large numbers of LEP people, S. 356 could be challenged under the Equal Protection Clause of the Constitution, which prohibits discrimination on the basis of ethnicity or national origin. S. 356 also would be subject to attack on the ground that it violated the due process rights of non-English speakers who were parties to civil and administrative proceedings, such as deportation proceedings.

The broad language of S. 356 is at odds with the longstanding principle of government-to-government relations between the Federal government and Indian tribes. If broadly construed, S. 356 could repeal the specific mandates found in the Native American Languages Act, 25 U.S.C. §§2901-2905, and related statutes. Recognizing that Indian languages are an essential aspect of tribal culture, the Native American Languages Act authorizes tribes to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages."

S. 356 would effectively repeal the minority language provisions of the Voting Rights Act (VRA), which requires the use of languages other than English in enforcement efforts. The VRA also requires States and their political subdivisions to provide the same information and assistance provided to English speaking citizens to minority language citizens in a language they can better understand, to enable them to participate in the electoral process as effectively as English-speaking voters. The VRA helps many Native Americans and some other language minority citizens, especially older individuals, who continue to speak their traditional languages and to be affected by the lack of meaningful educational opportunities during their school years. In addition, over 3.5 million Puerto Ricans born and educated on the island are citizens by birth but often lack full English proficiency.

S. 356's mandate for "English only" would prevent the Government from making particularized judgments about the need to use languages in addition to English. It is in the best interest of the Government -- as well as its customers -- for the public to understand clearly Government services and processes, and their rights. S. 356 would hinder law enforcement and other governmental programs, such as tax collection; natural resource conservation; census data collection; and promoting compliance with the law.

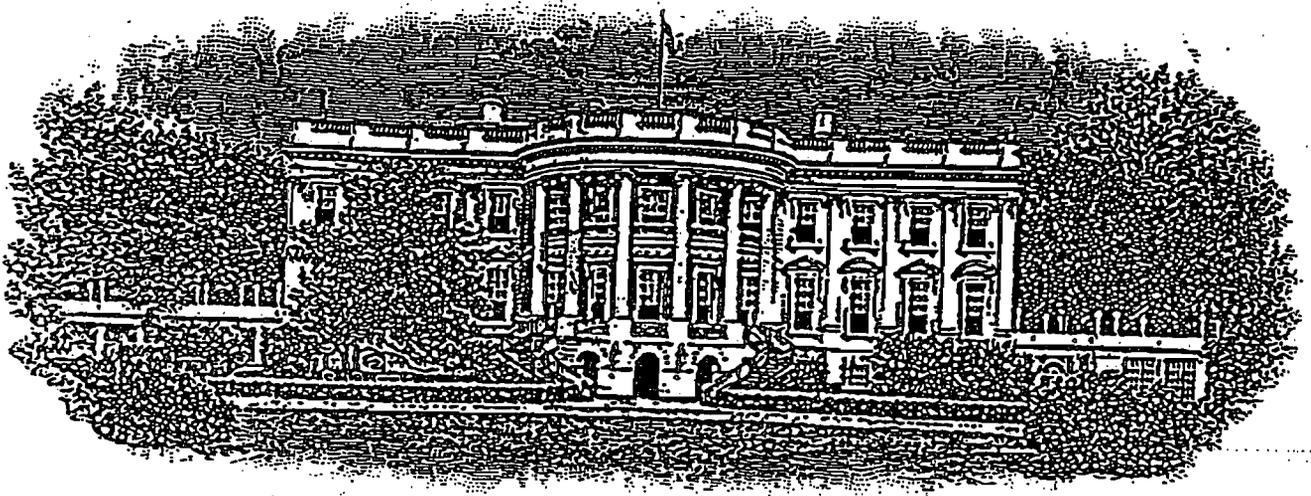
S. 356 would promote division and discrimination rather than foster unity in America. It would exacerbate national origin discrimination and intolerance against ethnic minorities who look or sound "foreign" and may not be English proficient. It would keep many Americans from the political and social mainstreams. It would undermine efforts like those of the Justice Department's Community Relations Service to ease community and racial conflicts through conciliation and community outreach. Thus, the Administration strongly opposes S. 356.

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The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: DENNIS HAYASHI

FAX NUMBER: _____

TELEPHONE NUMBER: _____

FROM: STEPHEN WARNATH



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 14 1996

The Honorable Ted Stevens
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the Administration's views on S. 356, "The Language of Government Act of 1995." This bill would halt Federal government activities conducted in languages other than English. It also would impose various restrictions on the use of other languages for official Federal government activities. For the reasons set out in the attached memorandum, the Administration strongly opposes S. 356.

We also have received a copy of your draft amendment which would address some, but not all, of the concerns raised in this letter. The amendment would exempt indigenous Native American languages in educational settings, activities conducted pursuant to Federal voting law, communications between Members of Congress and their constituencies, and acts protecting public health and safety. However, the amendment does not address provisions of S. 356 that would create a private right of action for anyone suffering a perceived injury due to the Government's communication in another language. The amendment does not clearly protect the rights of all United States residents. Most importantly, your amendment, while an improvement, is not able to correct the underlying problem of official language legislation: that it is unnecessary, divisive, and inefficient. Therefore, the Justice Department opposes the amendment.

The attached memorandum sets forth our concerns about S. 356 in detail and I would like to address a few of them here. English is universally acknowledged as the common language of the United States. But our language alone has not made us a nation. We are united as Americans by the principles enumerated in the Constitution and the Bill of Rights: freedom of speech, representative democracy, respect for due process, and equality of protection under the law.

Language barriers are among the greatest obstacles to effective law enforcement in immigrant communities. S. 356 would increase these obstacles, particularly in matters involving the

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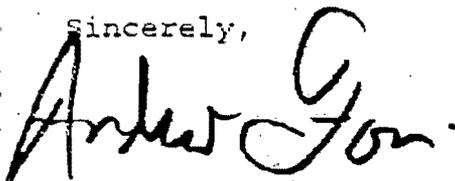
Drug Enforcement Administration and the Immigration and Naturalization Service, including the Border Patrol.

S. 356 would decrease administrative efficiency and exclude Americans who are not fully proficient in English from education, employment, voting and equal participation in our society. It effectively would repeal the minority language provisions of the Voting Rights Act and is inconsistent with the longstanding principle of government-to-government relations with Indian tribes. Furthermore, S. 356 would create an unnecessary private right of action, inviting frivolous litigation against the Government.

I should also note that the bill is subject to various constitutional attacks. For example, in contrast to your amendment, which exempts communications between Members of Congress and their constituents, S. 356, if it applies to the legislative franchise of Members of Congress, violates the Speech or Debate Clause, U.S. Const., Art. I, section 6. If S. 356 were enacted, Members of Congress and their staffs would be hampered in communicating effectively with constituents and members of the public who are not fully proficient in English in press releases, newsletters, responses to complaints or requests for information, or speeches delivered outside the Congress. The bill is subject to attack upon the ground that its stated purposes are pretexts for invidious ethnic or national-origin discrimination. Under the Equal Protection Clause, "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one [group] than another." Washington v. Davis, 426 U.S. 229, 242 (1976). The bill also is subject to attack on the ground that it violates the due process rights of non-English speakers who are parties to civil and administrative proceedings involving the Government.

Thank you for requesting the Administration's views on S. 356, the Language of Government Act. The Office of Management and Budget has advised that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,



Andrew Fois
Assistant Attorney General

3

cc: Honorable John Glenn
Ranking Minority Member
Committee on Governmental Affairs

Honorable William V. Roth
Committee on Governmental Affairs

Honorable William S. Cohen
Committee on Governmental Affairs

Honorable Fred Thompson
Committee on Governmental Affairs

Honorable Thad Cochran
Committee on Governmental Affairs

Honorable John McCain
Committee on Governmental Affairs

Honorable Robert C. Smith
Committee on Governmental Affairs

Honorable Hank Brown
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Honorable Sam Nunn
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Honorable Carl Levin
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Honorable David Pryor
Committee on Governmental Affairs

Honorable Joseph I. Lieberman
Committee on Governmental Affairs

Honorable Daniel K. Akaka
Committee on Governmental Affairs

Honorable Byron L. Dorgan
Committee on Governmental Affairs

Justice Department Views on S. 356,
the Language of Government Act

1. Effect of the Bill

S. 356 would eliminate all governmental actions that are conducted in languages other than English, except those actions falling within enumerated exceptions. S. 356 declares English the official language of the Government. See S. 356, §3(a).¹ It also provides that "[t]he Government shall conduct its official business in English." Id. S. 356 defines "official business" generally as "those governmental actions, documents, or policies which are enforceable with the full weight and authority of the Government," but makes clear that certain governmental actions which otherwise qualify as "official business" are not subject to the general ban on the use of languages other than English. Id. Governmental actions which do not constitute "official business" for purposes of S. 356, and which therefore could be taken or conducted in languages other than English, include:

(A) teaching of foreign languages;

(B) actions, documents, or policies that are not enforceable in the United States;

(C) actions, documents, or policies necessary for international relations, trade, or commerce;

(D) actions or documents that protect the public health;

(E) actions that protect the rights of victims of crimes or criminal defendants; and

(F) documents that utilize terms of art or phrases from languages other than English.

Id.

S. 356 would repeal all existing Federal laws that "directly" contravene its provisions banning Government communication in languages other than English, "such as [laws that require] the use of a language other than English for

¹ S. 356 defines "Government" as "all branches of the Government of the United States and all employees and officials of the Government of the United States while performing official business." Id. at §3(a).

official business of the Government." *Id.* at §2(b).² In sum, S. 356 would eliminate all governmental actions conducted in a language other than English, except those actions expressly exempted from the bill's definition of "official business."

S. 356 states that it would not directly discriminate against or restrict the rights under existing laws of any individual already in the United States. But it is difficult to see how this bill would "promote efficiency and fairness to all people" and not "discriminate against or restrict the rights of" individuals in the United States who speak a language other than English and have limited English proficiency (LEP).

The bill would have a direct, adverse impact on Federal efforts to ensure equal access to education, access to federally funded Government services, participation in the electoral process, and participation in the decennial census. It would segregate LEP communities from the political and social mainstreams by cutting off Government dialogue with persons having limited English proficiency, by prohibiting language assistance by Federal government employees, and by limiting the delivery of Government services to many taxpaying Americans not proficient in English who otherwise might not be aware of available services. Clearly, efforts to integrate these political communities would be better served through full governmental support of English language instruction rather than limiting access based upon language abilities.

2. There Exists No Problem Requiring the Designation of English as the Official Language.

S. 356 proposes to declare English the official language of the United States for all Federal government business. This declaration is unnecessary. The overwhelming majority of the Federal Government's official business is conducted in English and over 99.9 percent of Federal government documents are in English.³ According to a recent GAO study, only 0.06 percent of Federal government documents or forms are in a language other than English, and these are mere translations of English documents. These non-English documents, such as income tax forms, voting assistance information, some decennial census forms, and information relating to access to medical care and to

² S. 356 appears to eliminate only Federal laws which mandate Government communication in languages other than English. The bill provides that "[the] Act (and the amendments made by [the] Act) shall not preempt any law of any State." *Id.* at §4.

³ "Federal Foreign Language Documents," GAO Rep. No. D-95-253R (Prepared at the request of Sen. Richard C. Shelby, sponsor of S. 356).

Government services and information, were formulated to assist taxpaying citizens and residents who are LEP and are subject to the laws of this country.

As the President has stated, there has never been a dispute that English is the common and primary language of the United States. According to the 1990 Census, 97 percent of all residents speak English at least well. The 1990 Census also reports that although 13.8 percent of residents speak languages other than English at home, 79 percent of these residents above the age of four speak English "well" or "very well". These figures demonstrate that there is no resistance to English among language minorities. In fact, there is an overwhelming demand for adult English language classes in communities with large language minority populations. For example, in Los Angeles, the demand for these classes is so great that some schools operate 24 hours per day and 50,000 students are on the waiting lists city-wide. In New York City, an individual can wait up to 18 months for adult English language classes.

In very few instances, languages other than English are used in official Government business. In these instances, the usage may promote vital interests, such as national security; law enforcement; border enforcement; civil rights; communicating with witnesses, aliens, prisoners or parolees; and educational outreach to inform people of their legal rights and responsibilities or to assure access to Government services, such as police protection, public safety, health care and voting. In all of these areas, S. 356 would limit the effectiveness of Government operations by preventing adequate and appropriate communications between Government officials or employees and the public.

Language barriers are among the greatest obstacles to effective law enforcement in immigrant communities. The use of a language other than English is indispensable in some of these efforts. Investigations, reporting, and undercover operations may require the use of a language other than English, particularly in matters involving the Drug Enforcement Administration (DEA), and the Immigration and Naturalization Service (INS), including the Border Patrol.

Furthermore, S. 356 would prohibit the use of interpreters and the use of another language by Government lawyers and employees while interviewing complainants or witnesses or reviewing witness statements or foreign documents. Also, the prohibition of interpreters in judicial and administrative proceedings, especially in civil, immigration, and some criminal matters, would raise serious due process concerns, as discussed below. A requirement that Federal government employees use only English would dramatically hamper attorneys' abilities to perform their duties effectively.

3. S. 356 Would Generate Frivolous Litigation and Chill Legitimate Government Action

S. 356 would create a private cause of action for anyone who believed that he or she had been injured by the Federal government's communication in a language other than English. The bill would permit a complaining individual to sue the Government in Federal court for damages, equitable relief and attorney fees.

It is unclear what harm S. 356 is intended to prevent or what rights the cause of action would protect. Virtually all of the Federal government's official business is conducted in English. Therefore, actual injury to an individual due to a failure to conduct all activities in English is highly conjectural. This provision is clearly unnecessary.

Moreover, the language in S. 356 creating this cause of action is vague and would encourage lawsuits against the Government by "any person alleging injury arising from a violation" of these proposed laws. The potential for recovering attorney fees would invite frivolous litigation against the Government and further clog our Federal court system. More importantly, it would have a chilling effect upon Federal agencies and employees and deter them from performing vital tasks and delivering important informational services in languages other than English.

4. S. 356 is Subject to Serious Constitutional Challenge.

A. Although it is difficult to predict how the Supreme Court ultimately would resolve arguments that S. 356 violates constitutional protections,³ a case raising constitutional challenges to a similar State statute is now pending before the Court.

Late last year, the United States Court of Appeals for the Ninth Circuit relied upon the First Amendment to invalidate an English-only provision. In an en banc decision, Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995),

³Several Federal courts have held that the constitutional guarantees of due process and equal protection do not impose an affirmative duty upon the government to provide routine government services in languages other than English. See e.g., Guadalupe Org., Inc. v. Temple Elementary School Dist., 587 F.2d 1022 (9th Cir. 1987); Carmona v. Sheffield, 475 F.2d 738 (9th Cir. 1973); Toure v. United States, 24 F.3d 444 (2d Cir. 1994); Soberal-Perez v. Heckler, 717 F.2d 36 (2d Cir. 1983), cert. denied, 466 U.S. 929 (1984); Frontera v. Sindell, 522 F.2d 1215 (6th Cir. 1975).

cert. granted, 84 U.S.L.W. 3635, 3639 (U.S. Mar. 25, 1996) (No. 95-974), a divided court declared that English-only requirements in the Arizona constitution were facially overbroad in violation of the free speech rights of State government employees. The pertinent provision of the Arizona constitution provides that English is the official language of the State of Arizona. It also requires that, with certain exceptions, the State and its political subdivisions, including all government officials and employees performing government business, communicate only in English. See id. at 928. The Ninth Circuit majority determined that the Arizona provision constituted a prohibited means of promoting the English language, stating that "[t]he speech rights of all of Arizona's state and local employees, officials, and officers are . . . adversely affected in a potentially unconstitutional manner by the breadth of [the provision's] ban on non-English governmental speech." Id. at 932.

The Ninth Circuit majority also suggested that the First Amendment rights of Arizona residents to receive information are implicated by the ban, stating that:

[b]ecause [the Arizona constitutional provision] bars or significantly restricts communications by and with government officials and employees, it significantly interferes with the ability of the non-English-speaking populace of Arizona "to receive information and ideas."

Id. at 941 (citation omitted.)

The difference of opinion among the Ninth Circuit judges in Yunquez centered mainly on the breadth of the government's authority to regulate the speech of its employees when they are performing official governmental duties. The dissent argued that the Government had broader discretion because the speech at issue resembled private concern speech more than public concern speech. Although the dissent's argument is not without force, the existence of the Ninth Circuit's majority en banc decision supports our concern about the bill's vulnerability to First Amendment challenge.¹

On March 24, 1996, the United States Supreme Court granted certiorari to review the decision of the Ninth Circuit in that case. The case will be argued by counsel and decided by the Court during the 1996 term, which begins in October.

¹Although the majority and dissent were sharply divided on the First Amendment issue, at least two dissenting judges left open the possibility that the Arizona provision was unconstitutional on other grounds. See id. at 963 (Kozinski, J., dissenting).

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Second, if the bill applies to the legislative franchise of Members of Congress, it violates the Speech or Debate Clause, U.S. Const., Art. I, section 6. Moreover, if S. 356 were enacted, Members of Congress and their staffs would be hampered in communicating effectively with constituents and members of the public who are not fully proficient in English, for example, in press releases, newsletters, responses to complaints or requests for information, or speeches delivered outside the Congress. A court well could conclude that an application of S. 356 that prevented a Federal legislator from communicating effectively with the persons he or she represented interfered with a core element of the process of representative government established by the Constitution. Similar concerns would be raised by any effort to apply S. 356 to communications by the President and other Executive branch officials in their dealings with constituents.

B. S. 356 also might be subject to challenge on various equal protection grounds. The Constitution prohibits discrimination on the basis of ethnicity or national origin. See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). Several ethnic and national origin minority groups in this country include large numbers of persons who do not speak English proficiently. Where a statutory classification expressly utilizes a suspect criterion, or does so in effect by a transparent surrogate, the Supreme Court has subjected the classification to strict scrutiny without requiring a demonstration that the legislature's purpose was invidious. See Shaw v. Reno, ___ U.S. ___, 113 S.Ct. 2816, 2824 (1993).

In his opinion for the Court in Hernandez v. New York, 500 U.S. 352 (1991), Justice Kennedy discussed the link between race, ethnicity, and language. In that case, the Court rejected the petitioner's claim that a prosecutor had unlawfully discriminated, where the prosecutor exercised a peremptory challenge to exclude a juror on the ground that the juror might have difficulty accepting a translator's rendition of Spanish-language testimony. Justice Kennedy wrote, "It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis." Id. at 371 (plurality opinion). Additionally, in its equal protection analysis, the Court has acknowledged that an individual's primary language skill often flows from his or her national origin. See Yu Cong Eng v. Trinidad, 271 U.S. 500, 513 (1926); see also Meyer v. Nebraska, 262 U.S. 390, 401 (1923) (recognizing the differential effect of English-only legislation).

S. 356 also is subject to attack upon the ground that its stated purposes are pretexts for invidious ethnic or national-origin discrimination. If enacted, the language restrictions contained in S. 356 presumptively would have a disproportionate,

negative impact on individuals who were not born in the United States or other English-speaking countries, and indeed, on many native-born citizens whose "cradle tongue" is not English. Under the Equal Protection Clause, disproportionate racial, ethnic or national origin impact alone is insufficient to prove purposeful discrimination. Washington v. Davis, 426 U.S. 229, 239 (1976). However, "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one [group] than another." Id. at 242.

Practically all of the persons whom the language restrictions would deny effective access to the governmental services would be members of ethnic or national origin minority groups. In some immigrant and national origin minority communities throughout the country, high percentages of community members would be negatively affected by the proposed ban on communications in languages other than English. A court could find that the disproportionate, negative impact on these communities, coupled with negative sentiment toward recent immigrants or non-English speakers, demonstrated invidious purpose.

C. The bill also would be subject to attack on the ground that it violates the due process rights of non-English speakers who are parties to civil and administrative proceedings involving the Government. A number of Federal courts have held that due process requires the use of a translator in a deportation proceeding where the alien involved does not understand English. See Ganarillas-Zambrana v. Bd. of Immigration Appeals, 44 F.3d 1251, 1257 (4th Cir. 1995); Drobny v. INS, 947 F.2d 241, 244 (7th Cir. 1991); Tajeda-Mata v. INS, 626 F.2d 721, 726 (9th Cir. 1980), cert. denied, 456 U.S. 994 (1982). The courts have recognized an alien's constitutional right to have proceedings communicated in a language the alien can understand, despite the fact that deportation proceedings are civil in character and therefore, less deserving of the full panoply of due process protections required in criminal proceedings. See Abel v. United States, 362 U.S. 217, 237 (1960).

The immigration setting is only one example of how a due process challenge could be posed in an administrative or civil, judicial proceeding. The prohibition of interpreters in any such proceedings has serious implications for the due process rights of private parties with limited English proficiency.⁵

⁵Our comments in this letter do not address the question of how the language requirements of S. 356, if enacted, should be implemented in light of the serious constitutional concerns that we have identified.

5. S. 356 Would Impair Relations with Native Americans.

The broad language of S. 356 is at odds with the longstanding principle of government-to-government relations between the Federal government and Indian tribes. From its earliest days, the United States has recognized that Indian tribes possess attributes of sovereignty. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831). In addition, in early Indian treaties, the United States pledged to "protect" Indian tribes, thereby establishing one of the bases for the Federal responsibility in our government-to-government relations with Indian tribes. See Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942). These principles -- the sovereign powers of Indian tribes to engage in self-government and the Federal trust responsibility to Indian tribes -- continue to guide our national policy toward Indian tribes.

Pursuant to this national policy, Congress has enacted numerous statutes that affirm the authority of Indian tribes to engage in self-governance, see e.g., Indian Self-Determination Act, 25 U.S.C. §450; Indian Tribal Justice Support Act, 25 U.S.C. §3601, and which seek to preserve Indian culture, see e.g., Native American Graves Protection and Repatriation Act, 25 U.S.C. §3001. In the Native American Languages Act, 25 U.S.C. §§2901-2909, Congress combined the policies of self-governance and cultural preservation in a single piece of legislation. See also 25 U.S.C. §2502(d). Recognizing that Indian languages are an essential aspect of tribal culture, this Act authorizes tribes to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages." 25 U.S.C. §2903. To this end, the Act affirms the right of Indian tribes to conduct instruction in Native American languages in federally funded schools in Indian country and allows exceptions for teacher certifications for certain Federal programs where these certifications would hinder the employment of qualified teachers of Native American languages. Id.

If broadly construed, S. 356 could conflict with the specific mandates found in the Native American Languages Act and related statutes. These laws would be repealed if S. 356 were enacted. This would impede severely Federal government relations with Native Americans.

6. S. 356 Could Be Read to Limit Bilingual Education, Causing LEP Students to Fall Behind in School.

S. 356 would repeal all laws which conflict with its purpose of limiting all official Government business to the English language. The impact could be devastating to LEP children in this country.

For example, S. 356 might be read to conflict with and therefore repeal Title VII of the Bilingual Education Act, which assists school districts in meeting their obligations under the Civil Rights Act of 1964, and with the Supreme Court ruling in Lau v. Nichols, 414 U.S. 563 (1974). Both established that school districts have a responsibility to provide equal educational opportunity to LEP students. Hence, Title VII provides direct Federal funds to implement programs targeted toward assisting linguistically diverse students. These programs assist LEP students master English and achieve in all academic areas.

The Bilingual Education Act already stresses the need to promote a child's rapid learning of English. As President Clinton recently commented on bilingual education, "[t]he issue is whether children who come here, [or whose "cradle tongue" is not English] while they are learning English, should also be able to learn other things... The issue is whether or not we're going to value the culture, the traditions of everybody and also recognize that we have a solemn obligation every day in every way to let these children live up to the fullest of their God-given capacities." Bilingual education helps ensure that LEP children learn English while remaining current in other subjects. Otherwise, language minority children who are unable to keep up with their English-speaking classmates fall behind in coursework and are more likely than other children to drop out of school.

7. S. 356 Would Repeal Minority Language Provisions of the Voting Rights Act, Limiting Meaningful Electoral Participation by Language Minority Populations.

In addition, S. 356 would effectively repeal the minority language provisions of the Voting Rights Act (VRA) because they are in conflict. Where S. 356 requires the use of only English, the VRA requires the use of a language other than English in enforcement efforts. The VRA has two provisions, Section 203 and Section 4(f), that protect United States citizens who are not fully proficient in English. These provisions require covered jurisdictions to provide the same information, materials, and assistance provided to English speaking citizens to minority language citizens in a language they can better understand, to enable them to participate in the electoral process as effectively as English-speaking voters.

Section 203 was added to the VRA in 1975, after congressional findings that large numbers of American citizens who spoke languages other than English had been effectively

¹President William J. Clinton's address to the Hispanic Caucus Institute Board and Members, Washington, D.C., September 27, 1995.

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excluded from participation in our electoral process. The rationale for Section 203 was identical to and "enhance(d) the policy of Section 201 of removing obstructions at the polls for illiterate citizens." S. Rep. No. 295, 94th Cong., 1st Sess. (1975) at 37. Congress recognized, as had the Federal courts, that "meaningful assistance to allow the voter to cast an effective ballot is implicit in the granting of the franchise." S. Rep. No. 295, 94th Cong., 1st Sess. (1975) at 32. Congress found that the denial of the right to vote among such citizens was "directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation." 42 U.S.C. §1973aa-1a(a). The judgment Congress rendered in 1975 on this regime showed that it understood that historically, minority language individuals have not had the same educational opportunities as the majority of citizens.

The VRA helps many Native Americans and some other language minority citizens, especially older individuals, who continue to speak their traditional languages and continue to be affected by the lack of meaningful educational opportunities during their school years. In addition, over 3.5 million Puerto Ricans born and educated on the island are citizens by birth but often lack full English proficiency. Many Puerto Ricans have Spanish as their native tongue, and they may require some language assistance in casting an informed ballot. Also, many Hispanic citizens who attended school in the Southwest and in many other parts of this country as late as the 1950's were educated in segregated schools. Some of these citizens still need language assistance.

As Senator Orrin Hatch noted in sponsoring the 1992 extension of Section 203 of the Voting Rights Act, "[t]he right to vote is one of the most fundamental of human rights. Unless the Government assures access to the ballot box, citizenship is just an empty promise. Section 203 of the Voting Rights Act, containing bilingual election requirements, is an integral part of our government's assurance that Americans do have such access...." S. Rep. No. 315, 102d Cong, 2nd Sess., 1992 at 134.

In fact, Congress has recognized and understood the need for minority language voting assistance. It has extended Section 203 twice and the provision is now in effect until 2007. Each enactment and amendment of Section 203 enjoyed strong bipartisan support and the support of the Ford, Reagan and Bush Administrations. This Administration recently testified in favor of the minority language provisions.

Section 203 is carefully targeted toward those communities with high numbers of language minority, United States citizens of voting age, who, according to the Census, are not fully proficient in English. Thus, as English-language proficiency

increases among the language minority population, minority language coverage should diminish.

Rates of both voter registration and actual participation in elections by minority language individuals have increased since Section 203 was enacted. We are convinced that providing bilingual materials, instruction, and assistance makes a real difference at the polls for minority language citizens with limited English language abilities. The effect of enacting S. 356 and thereby rescinding Section 203 and the other minority language protections of the VRA would be to disenfranchise an American minority community that only recently has had the opportunity to engage meaningfully in participatory democracy. Those who still would vote, without the benefit of the same information English-speaking citizens receive but in a language they better understand, would be less informed and more dependent upon others to cast their votes.

8. S. 356 Would Make Government Programs Less Efficient.

The language of S. 356 claims that the "use of a single common language in the conduct of the Federal government's official business will promote efficiency and fairness to all people". Again, it is unclear how this would occur. To the contrary, S. 356 would promote administrative inefficiency and the exclusion of LEP persons from access to the Government and its services. S. 356's mandate for "English only" in Government would emasculate Government agencies and other governmental bodies. It would prevent them from making particularized judgments about the need to utilize languages in addition to English in appropriate circumstances. It is in the best interest of the Government -- as well as its customers -- for the public to understand clearly Government services, processes and their rights.

The Government should not be barred from choosing in specific circumstances to communicate with its LEP citizenry in languages comprehensible to these persons. S. 356 would hinder the implementation of law enforcement and other governmental programs, such as tax collection; water and resource conservation; decennial census data collection; and promoting compliance with the law, e.g., by providing bilingual investigators and providing translations of compliance, public, or informational bulletins issued by Federal agencies.

9. S. 356 Is Inconsistent With Our Pluralistic Society.

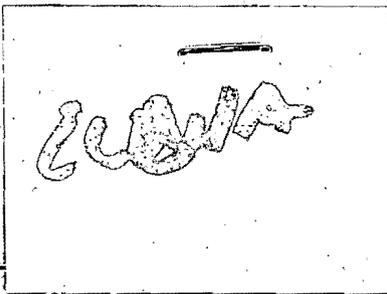
Finally, S. 356 would promote division and discrimination rather than foster unity in America. We fear that passage of S. 356 would exacerbate national origin discrimination and intolerance against ethnic minorities who look or sound "foreign" and may not be English proficient. It would erect barriers to

full access to and participation in the democratic government established by the Constitution for all of the Nation's people.

In fact, the Justice Department's Community Relations Service has used languages other than English strategically and successfully to help ease occasional community and racial conflicts through mediation, negotiation and conciliation, and community outreach. Prohibiting the use of languages other than English would undermine Government efforts to avoid conflict through peaceful mediation and improvement of community relations and may escalate racial and ethnic tensions in some areas in this country.

Conclusion

English is universally acknowledged as the common language of the United States. The passage of S. 356 would decrease administrative efficiency and exclude Americans who are not fully proficient in English from education, employment, voting and equal participation in our society. In these fiscally difficult times, Government efficiency and economy would better promoted by allowing Government agencies to continue their limited use of other languages to execute their duties effectively.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

TELEFACSIMILE COVER SHEET

DATE:

5/23/96

TIME:

TO:

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Juanita C. Hernandez
OFFICE OF THE ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
FAX NUMBER: 202-307-2839
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COMMENTS:

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U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 23, 1996

The Honorable Charles T. Canady
Chairman
Subcommittee on the Constitution
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter represents the views of the Justice Department on H.R. 351, a bill which would repeal the minority language provisions of the Voting Rights Act of 1965. For the reasons set forth below, we strongly oppose the repeal of these important provisions of the Voting Rights Act, which for over two decades have guaranteed the right to vote of United States citizens who are not yet fully proficient in English.

In 1975, Congress added minority language provisions to the Voting Rights Act, recognizing that large numbers of United States citizens who primarily spoke languages other than English had been effectively excluded from participation in our electoral process. Congress made specific findings that these citizens were denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. Therefore, the rationale for the minority language provisions was in part identical to that for removing obstructions at the polls for illiterate citizens: Congress had recognized that illiteracy should not be a bar to the constitutionally guaranteed exercise of the franchise, regardless of whether the discrimination that had contributed to that illiteracy was based on race, national origin, or language proficiency.

The minority language provisions of the Voting Rights Act are carefully targeted to specific jurisdictions with a very low turnout and registration among language minority citizens and a sufficiently large United States citizen population of voting age that does not speak English well or very well, according to Census Bureau determinations. The Voting Rights Act provides that whatever registration and voting information, forms, and assistance a jurisdiction provides to citizens in English must be provided in appropriate other languages to service non-English proficient citizens. Jurisdictions covered under the Act are familiar with its requirements and are able to implement them on a cost effective basis.

The need for minority language voting provisions clearly has not diminished since 1992, when Congress, on a bipartisan basis with strong support from the Bush Administration, extended the provisions for fifteen years. We find no basis to repeal this effective law a little over three years later. Indeed, with larger populations of Hispanics, Asian Americans, Native Americans and other language minority United States citizens, the need is just as great, if not greater. Increased participation by language minority United States citizens is also testament to the law's continued effectiveness.

Concerns were expressed in the subcommittee's hearing that the Voting Rights Act contradicts the literacy requirement for naturalization. This criticism has been raised and fully addressed each time Congress has extended the law. In short, many native-born United States citizens, particularly Native Americans and Alaskan Natives, are more proficient in a language other than English. Similarly, Puerto Ricans' first language on the island is usually Spanish, although they now live on the mainland. This is especially true of the elderly, who most often use bilingual ballots. Congress has specifically exempted from the literacy requirement for naturalization certain senior citizens who have lived in the United States for many years.

The repeal of the minority language protections of the Voting Rights Act would disenfranchise American citizens who only recently have had the opportunity to engage meaningfully in participatory democracy. The minority language provisions not only increase the number of registered voters, but permit voters to participate on an informed basis. The minority language provisions not only allow voters who need language assistance to be able to read ballots to know who is running for office, but also to understand complex voting issues, such as constitutional amendments or bond issues, that may have just as profound an effect on their lives as the individuals elected to office.

Although most applicants for naturalization today must satisfy an English proficiency requirement, it is likely that many new citizens still need some language assistance to participate meaningfully in the political process. Their citizenship alone gives them the right to vote, and there is no reason why their limited English ability should frustrate that right.

There are those who say that bilingual ballots discourage people from learning English. However, banning literacy tests for voting by English speakers did not discourage English literacy. Similarly, receiving a bilingual ballot on Election Day does not diminish the desire and need to learn English every other day of the year.

H.R. 351 would resurrect barriers to equal access to and participation in the democratic process for American citizens who have limited English proficiency. It would do so when the continuing need for the minority language provisions is apparent and the reasons for repeal are unavailing. More than our language unites us. We are united as Americans by the principles of tolerance, free speech, representative democracy, and equality under the law. Because H.R. 351 contravenes each of these principles, we strongly oppose this bill.

Thank you for this opportunity to provide the Department's views on H.R. 351. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



Andrew Fois *af*
Assistant Attorney General

cc: Honorable Barney Frank
Ranking Minority Member
Subcommittee on the Constitution
Committee on the Judiciary

Bill would make English unopposed on the ballot

GOP seeks repeal of 'minority language provisions'

By Sean Piccoli
THE WASHINGTON TIMES

Election ballots printed in multiple languages would become English-only under a bill now before a House subcommittee.

House Republicans, stepping into the culturally charged debate over bilingualism, want to repeal the 4-year-old "minority language provisions" of the Voting Rights Act.

GOP lawmakers sparred with the Clinton administration's top civil rights lawyer in a hearing Thursday, arguing that federally mandated bilingual ballots impose needless costs on states and, more important, discourage immigrants from learning English and assimilating.

"It's a massive, federal-government intrusion into local elections," said Rep. Robert W. Goodlatte, Virginia Republican and member of the House Judiciary subcommittee on the Constitution.

Assistant Attorney General Deval Patrick disagreed, saying bilingual ballots open up the political process to citizens who have not mastered English but want to exercise their right to vote.

"There's no reason why their limited-English ability should frustrate that right," Mr. Patrick said.

GOP lawmakers argued that federally mandated bilingual ballots impose needless costs on states and discourage immigrants from learning English.

President Bush signed bilingual ballots into law four years ago.

Repeal was endorsed Thursday by witnesses including Boston University President John Silber, who said bilingual ballots, "by helping us to surrender our linguistic unity, move us towards a multilingual society" at a time when countries worldwide are being torn apart by linguistic nationalism.

"The one thing that binds us together is the English language," said Rep. Peter T. King, New York Republican and an opponent of bilingual ballots.

The repeal bill also has the support of Rep. Robert L. Livingston, Louisiana Republican and chairman of the House Appropriations Committee, who said bilingual ballots are another unfunded mandate on top of the \$8 billion that federal, state and local governments spent teaching English as a second language in 1995 alone.

Moreover, Mr. Livingston argued, people cannot adjust to life in America "if they're protected from the English language."

Supporters of the ballots said it is the opponents of bilingual balloting who are making life difficult for immigrants.

Rep. Nydia M. Velazquez, New York Democrat, called the repeal bill "exclusionary and undemocratic."

Rep. Barney Frank, Massachusetts Democrat, went further, criticizing the subcommittee for what he called "a pattern of critiquing existing discrimination laws" while holding "no hearings whatsoever about discrimination itself."

Mr. Silber argued that bilingual ballots are themselves "highly discriminatory," available only in certain foreign languages — primarily Latino and Asian — even though non-English-speaking citizens come from many backgrounds.

NEW YORK TIMES
SUNDAY

4-21-96

Infertility Is a New Focus of Workplace Lawsuits

By BARBARA WHITAKER

WHAT are the most contentious workplace issues of the 1990's? Drug testing and race discrimination would be among the correct answers, but another issue has also become a surprising battleground: infertility.

Consider the case of Charline Pacourek. After years of undergoing treatment for infertility, Ms. Pacourek was dismissed from her job with Inland Steel Industries in 1993. The company cited poor performance and frequent absences. She said the dismissal was because of her treatments and she sued, contending that her civil rights had been violated.

Among the laws she cited was the Americans With Disabilities Act of 1990, which is increasingly finding its way into court cases involving employees who have undergone fertility treatments. In February, Federal District Judge James H. Alesia in Chicago upheld Ms. Pacourek's right to cite the law. Reproduction, he ruled, is a "major life function" as defined — and covered — by the law. The case was settled out of court about two weeks ago.

While Ms. Pacourek's suit was over dis-

missal, other cases have arisen over insurance. The issue is being watched closely by employers and insurers because the disabilities law could come into play in deciding whether fertility treatments must be included in insurance plans, said Gary Phelan, a New Haven lawyer who was co-author of "Disability Discrimination in the Workplace" (Clark Boardman Callaghan).

"One of the reasons that this is so controversial," he said, "is because of the cost involved and because plans typically have an exclusion of infertility treatment."

In a 1995 insurance-coverage dispute, Mr. Phelan said, the plaintiff lost when a Federal judge ruled that a company's failure to include treatment for infertility problems was not unlawful under the disabilities law.

"The courts," said Patrick J. Perotti, a Cleveland lawyer specializing in employment law, "are feeling their way."

The crux of the issue lies where it always does with a new law — in its language. The law defines a disability as "a physical or mental impairment that substantially limits one or more of the major life activities."

The Federal Equal Employment Opportunity Commission, which administers the law, cites abilities like seeing, hearing, caring for oneself, walking and speaking as

major life activities.

But applying the idea to infertility is not easy. Consider Judge Alesia's analysis in Ms. Pacourek's case. "Many, if not most, people would consider having a child to be one of life's most significant moments and greatest achievements," he wrote, "and the inability to do so, one of life's greatest disappointments."

In contrast, when Lynn Gansar Zatarain, a television news anchorwoman in New Orleans, sought to use the law in a 1995 action against her station, WDSU, Federal District Judge Sarah S. Vance held that the disabilities act did not cover infertility, despite an E.E.O.C. finding that there was "reasonable cause" for Ms. Zatarain's claim. Her suit contended that the station broke off contract talks after she requested a reduced work schedule because of her fertility treatments.

"Reproduction is not an activity engaged in with the same degree of frequency" as the activities listed by the commission, Judge Vance wrote. "A person is required to walk, see, learn, speak, breathe and work throughout the day, day in and day out. However, a person is not called upon to reproduce throughout the day, every day."

The infertility issues go beyond the dis-

abilities law. Harry Rosenberg, the lawyer who represented WDSU, said that despite the judge's ruling — which was upheld earlier this year by the Fifth Circuit Court of Appeals — he tells his corporate clients to follow carefully the guidelines not only of the disabilities act, but also of the Federal Family and Medical Leave Act.

That law, which took effect in 1993, generally provides time off to employees for family medical emergencies, childbirth or adoption. It provides up to 12 weeks of unpaid leave to employees in companies with 50 or more workers.

"The majority of people have no idea this law exists and that's on both sides of the fence," Mr. Perotti said. He contended that the family-leave law could be used to address infertility issues.

Mr. Phelan said courts would keep struggling with applications of the disabilities law. Clarification, he said, would come slowly, as cases get more appellate review.

Mr. Perotti asked: "Would you expect there to be any disagreement on whether AIDS is a disability? Would you expect any disagreement on whether cancer is a disability? The fact is that the cases are coming down unbelievably on both sides of these issues." □

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	Claire Gonzales to Steve Warnath re: Backgrounder on '92 Bilingual Voting Rights Legislation (4 pages)	10/30/1995	P5

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Stephen Warnath (Civil Rights)
OA/Box Number: 9588

FOLDER TITLE:

[English Only] [1]

ds64

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

EXECUTIVE OFFICE OF THE PRESIDENT

16-May-1996 04:24pm

TO: Jeremy D. Benami
FROM: Leanne Johnson
Presidential Correspondence
SUBJECT: Bilingual Education

Hi Jeremy,
Normally I would contact Gaynor about this, but since she is leaving, I am not sure who deals with education in DPC. The following is a draft in response to a teacher asking the President "Please do not eliminate funding for bilingual education". Please let me know if there are necessary changes, or who I need to speak with about this. Thanks so much.

I got some of the language from a POTUS speech to the Nat'l Assoc. of Hispanic Publications (1/26/96) and the budget info I got from OMB.

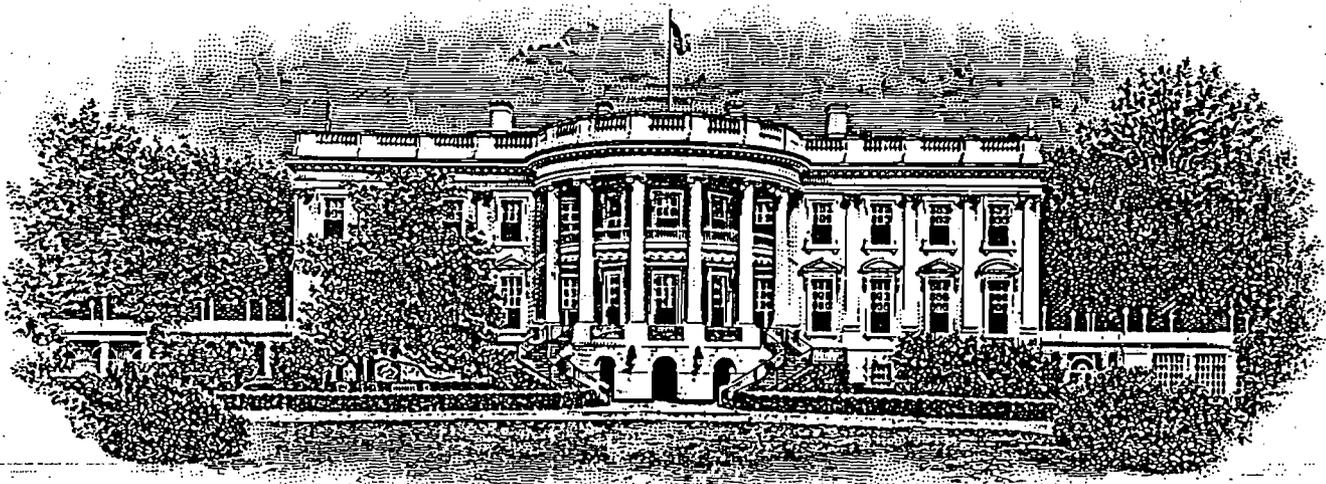
Thank you for writing me about bilingual education and sharing the letters of your students with me.
~~I believe that when children come to this country,~~ ^{language is the key} ~~whenever their native language, their education is a priority.~~ ^{whose home language is other than English} Bilingual education enables these children to become fluent in English and their own native language. Being bilingual is a skill that can only be a plus in our global society and I believe ~~it has a place~~ in our educational system. That is why I have proposed funding for this initiative in my 1997 budget ^{and support local school districts that choose to offer bilingual education.}

We support school districts that choose local choice

Thanks, again, for taking the time to write me, and I wish you and your students every future success.

not native born

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Leann Johnson

FAX NUMBER: _____

TELEPHONE NUMBER: _____

FROM: Stephen Warnath

TELEPHONE NUMBER: _____

PAGES (INCLUDING COVER): _____

COMMENTS: _____

Leann - Here is the draft
bilingual education letter. I have
made several suggested revisions.

Stephen

Thank you for writing me about bilingual education and sharing the letters of your students with me.

I believe that education is very important for all children. That is why I have made education a priority of this Administration. Bilingual education for children whose home language is other than English has an important role to play in helping children learn and reach their potential. Bilingual education enables these children to become fluent in English as well as their own native language. It helps them keep pace in their classes while they are learning English. Being bilingual is a skill that can only be a plus in our global society. That is why I have proposed funding for this initiative in my 1997 budget and support local school districts that choose to offer bilingual education.

Thanks, again, for taking time to write me, and I wish you and your students every future success.

NCLR

NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

National Office

1111 19th Street, N.W., Suite 1000

Washington, DC 20036

Phone: (202) 785-1670

Fax: (202) 785-0851

FAX COVER MEMO

DATE 4/23/96

TIME _____

COST CENTER _____

TO: NAME Steve Warnath

COMPANY _____

CITY _____ STATE _____

PHONE# _____ FAX # _____

FROM: NAME Karen Hanson

FAX # (202) 371-6662

PHONE # (202) 785-1670

of pages in transmission including cover 14

Messages: FYI! I'm starting an office pool
as to when immigration will get to the
floor ... any takers??



O:\CRA\CRA98.149

S.F.C.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend title 4, United States Code, to declare English as the official language of the Government of the United States.

IN THE SENATE OF THE UNITED STATES—104th Cong., 2d Sess.

S. 1664

To amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigative personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SHULBY (for himself, Mr. COCHRAN, Mr. COVERDELL, Mr. FAIRCLOTE, Mr. HELMS, Mr. INHOFE, Mr. THOMAS, Mr. WARNER, and Mr. PRESSLER)

Mr. Byrd, Mr. Coats
Mr. Grassley, Mr. Lott
Mr. Thurmond

Via:

- 1 At the appropriate place in the bill, insert the follow-
- 2 ing:

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S.L.O.

2

1 **SEC. ____ LANGUAGE OF GOVERNMENT ACT OF 1996.**

2 (a) **SHORT TITLE.**—This section may be cited as the
3 "Language of Government Act of 1996".

4 (b) **FINDINGS AND CONSTRUCTION.**—

5 (1) **FINDINGS.**—The Congress finds and de-
6 clares that—

7 (A) the United States is comprised of indi-
8 viduals and groups from diverse ethnic, cul-
9 tural, and linguistic backgrounds;

10 (B) the United States has benefited and
11 continues to benefit from this rich diversity;

12 (C) throughout the history of the Nation,
13 the common thread binding those of differing
14 backgrounds has been a common language;

15 (D) in order to preserve unity in diversity,
16 and to prevent division along linguistic lines,
17 the United States should maintain a language
18 common to all people;

19 (E) English has historically been the com-
20 mon language and the language of opportunity
21 in the United States;

22 (F) Native American languages have a
23 unique status because they exist nowhere else in
24 the world, and in creating a language policy for
25 the United States Government, due consider-
26 ation must be given to Native American lan-

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S.I.C.

3

1 guages and the policies and laws assisting their
2 survival, revitalization, study, and use;

3 (G) a purpose of this Act is to help immi-
4 grants better assimilate and take full advantage
5 of economic and occupational opportunities in
6 the United States;

7 (H) by learning the English language, im-
8 migrants will be empowered with the language
9 skills and literacy necessary to become respon-
10 sible citizens and productive workers in the
11 United States;

12 (I) the use of a single common language in
13 the conduct of the Federal Government's offi-
14 cial business will promote efficiency and fair-
15 ness to all people;

16 (J) English should be recognized in law as
17 the language of official business of the Federal
18 Government; and

19 (K) any monetary savings derived by the
20 Federal Government from the enactment of this
21 Act should be used for the teaching of non-Eng-
22 lish speaking immigrants the English language.

23 (2) CONSTRUCTION.—The amendments made
24 by subsection (c)—

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S.I.O.

1 (A) are not intended in any way to dis-
2 criminate against or restrict the rights of any
3 individual in the United States;

4 (B) are not intended to discourage or pre-
5 vent the use of languages other than English in
6 any nonofficial capacity; and

7 (C) except where an existing law of the
8 United States directly contravenes the amend-
9 ments made by subsection (c) (such as by re-
10 quiring the use of a language other than Eng-
11 lish for official business of the Government of
12 the United States), are not intended to repeal
13 existing laws of the United States.

14 (c) ENGLISH AS THE OFFICIAL LANGUAGE OF GOV-
15 ERNMENT.—

16 (1) IN GENERAL.—Title 4, United States Code,
17 is amended by adding at the end the following new
18 chapter:

19 "CHAPTER 6—LANGUAGE OF THE
20 GOVERNMENT

- "Sec.
- "181. Declaration of official language of Government.
- "182. Preserving and enhancing the role of the official language.
- "188. Official Government activities in English.
- "184. Standing.
- "186. Definitions.

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S.L.C.

5

1 **"§ 161. Declaration of official language of Govern-**
2 **ment**

3 "The official language of the Government of the
4 United States is English.

5 **"§ 162. Preserving and enhancing the role of the offi-**
6 **cial language**

7 "The Government shall have an affirmative obligation
8 to preserve and enhance the role of English as the official
9 language of the United States Government. Such obliga-
10 tion shall include encouraging greater opportunities for in-
11 dividuals to learn the English language.

12 **"§ 163. Official Government activities in English**

13 **"(a) CONDUCT OF BUSINESS.—**The Government
14 shall conduct its official business in English.

15 **"(b) DENIAL OF SERVICES.—**No person shall be de-
16 nied services, assistance, or facilities, directly or indirectly
17 provided by the Government solely because the person
18 communicates in English.

19 **"(c) ENTITLEMENT.—**Every person in the United
20 States is entitled to—

21 **"(1) communicate with the Government in Eng-**
22 **lish;**

23 **"(2) receive information from or contribute in-**
24 **formation to the Government in English; and**

25 **"(3) be informed of or be subject to official or-**
26 **ders in English.**

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S.L.O.

1 **"§ 164. Standing**

2 "Any person alleging injury arising from a violation
3 of this chapter shall have standing to sue in the courts
4 of the United States under sections 2201 and 2202 of title
5 28, United States Code, and for such other relief as may
6 be considered appropriate by the courts.

7 **"§ 185. Definitions**

8 "For purposes of this chapter:

9 "(1) **GOVERNMENT.**—The term 'Government'
10 means all branches of the Government of the United
11 States and all employees and officials of the Govern-
12 ment of the United States while performing official
13 business.

14 "(2) **OFFICIAL BUSINESS.**—The term 'official
15 business' means those governmental actions, docu-
16 ments, or policies which are enforceable with the full
17 weight and authority of the Government, but does
18 not include—

19 "(A) use of indigenous languages or Native
20 American languages, or the teaching of foreign
21 languages in educational settings;

22 "(B) actions, documents, or policies that
23 are not enforceable in the United States;

24 "(C) actions, documents, or policies nec-
25 essary for international relations, trade, or com-
26 merce;

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S.L.C.

1 "(D) actions or documents that protect the
2 public health or the environment;

3 "(E) actions that protect the rights of vic-
4 tims of crimes or criminal defendants;

5 "(F) documents that utilize terms of art or
6 phrases from languages other than English;

7 "(G) bilingual education, bilingual ballots,
8 or activities pursuant to the Native American
9 Languages Act (~~Public Law 101-477, 104~~
10 ~~Stat. 1163-1168~~); and

25 U.S.C.
2901
et seq

11 "(H) elected officials, who possess a pro-
12 ficiency in a language other than English, using
13 that language to provide information orally to
14 their constituents."

15 (2) CONFORMING AMENDMENT.—The table of
16 chapters for title 4, United States Code, is amended
17 by adding at the end the following new item:

"8. Language of the Government 161".

18 (d) PREEMPTION.—This section (and the amend-
19 ments made by this section) shall not preempt any law
20 of any State.

21 (e) EFFECTIVE DATE.—The amendments made by
22 subsection (e) shall take effect upon the date of enactment
23 of this Act, except that no suit may be commenced to en-
24 force or determine rights under the amendments until
25 January 1, 1997.

QUESTIONS REGARDING STEVENS' AMENDMENT TO S. 356

Philosophical:

- Within the findings section, section 161 (a)(3) seems to imply that language has been the only common thread binding the country together. This is still an exclusionary message. In reality, the common thread binding the country together has been the tie to democracy, freedom, and individual liberties.
- Section 161 (a)(6) states "by learning and using the English language in interactions with the United States Government, immigrants to the U.S. will be **empowered** with the literacy which enables United States government employees **who speak only English** to render services most effectively to those immigrants." How are immigrants empowered without being given the opportunity to learn English? This implies that immigrants will learn English by osmosis. Demonstrates that this bill does nothing **positive** to facilitate the acquisition of English. If the U.S. government is going to make it mandatory for these individuals to speak English in order to receive information from the government, then is it going to alleviate the tremendous demand for English as a Second Language (ESL) classes?
- In reference to the Section 161 (a)(6), what about U.S. government employees who speak other languages? Would they be permitted to speak other languages in the conduct of their official business to non-English-speaking immigrants, or would they be forced to struggle to communicate with those individuals in English? If they were to speak a language other than English in the conduct of their **official** business, would they be violating this law? Doesn't it seem reasonable that they would be promoting efficiency by using the tools available to them, including proficiency in a second language?
- Section 161 (a)(8) does not follow from the previous findings. Nowhere in the findings has the case been made that there is an urgent need now, in 1996, to reverse 200-plus years of policy. Why is it necessary now to designate English as the official language?
- Ask the sponsor to give an example of a situation where anyone has been denied a service, communication, or information, by the government because they speak English (Section 164 (b) as amended). [Could this lead to a prohibition against Spanish language advertising by HUD for low-income housing or an advertisement placed in a Spanish-language magazine for recruiting bilingual FBI agents?]
- Given all of the exemptions, what would be different from status quo? What is the intent? Name any federal act of government that would be affected? Where is the beef? Where is the public policy rationale for this action?

Standing Issue:

- The Stevens amendment still includes "standing" to sue in federal court if the amendment is violated (section 165). Won't this lead to frivolous litigation? Won't this increase the burden and cost to the federal government contrary to the spirit of other pending legislation to ease the burden of litigation on our judicial system? What will it cost the government to defend itself against these types of suits and to pay out whatever remedies may be awarded?

Adding a layer of bureaucracy/Decreasing efficiency of government:

- Which federal agency will be entrusted to determine whether certain activities fall under the exemptions given? Would each federal agency have to draft regulations and issue guidelines in order to regulate its conduct? Would those regulations have to be approved by the Attorney General? Who will be responsible in each agency for ensuring compliance? Who will be responsible for reviewing all acts, statements, documents, etc. for compliance? Won't this increase the burden on regulatory processes and in preparing agencies to defend themselves against litigation? This will clearly not increase the efficiency of government.

Discrimination:

- Under Construction section (section 161 (b)(1)) it states "This chapter shall not be construed in any way to discriminate against or restrict the rights of any citizen of the United States." Does that mean that it is OK to discriminate or restrict the rights of legal permanent residents or other immigrant groups? The 1923 *Meyer v. Nebraska* Supreme Court decision stated that "the protection of the Constitution extends to all; to those who speak other languages as well as to those born with English on the tongue." Does this section prohibit discrimination against language minorities? Are there any remedies?

Puerto Rico:

- How could any government business be conducted with the residents of Puerto Rico, which is inhabited by 3.6 million U.S. citizens, the majority of whom speak only Spanish? Any monolingual Spanish speaker on the island of Puerto Rico would be effectively cut off from the U.S. government -- they could not get information in Spanish from the Social Security Administration (SSA) or the Internal Revenue Service (IRS).

Definition of "official business"/problems with "exemptions" section:

- What does the new definition mean (section 166 (2))? Does the word "public" modify only the noun "documents" or does it also modify "acts, statements, votes, hearings and proceedings..."? What is the intent? Would it bar public notices by the Environmental Protection Agency (EPA) in other languages? Would census forms or bulletins be permitted in any language other than English? The Census Bureau could be prohibited from hiring bilingual census-takers or producing bilingual materials, thereby producing an inaccurate count and costing taxpayers money by having to conduct costly re counts or other special sampling surveys.
- Law enforcement activities outside of criminal acts are still not covered by the exemption. What if you are doing an investigation for drug enforcement activities, or to seek intelligence on international crime? There may not be an identifiable victim or a perpetrator of a criminal act, but would still need to use other languages in the investigation.
- Example: an investigator from the Department of Labor could not interview employees of sweatshops to identify unlawful employment practices if the individuals didn't speak English.

"Exemptions" (continued):

- These exemptions do not cover uses of language in civil or administrative proceedings. In addition, by using the word "public," does that imply that private communication conducted by the government is permitted -- for example, one-on one counseling with language-minority individuals regarding their social security benefits?
- Immigration control and enforcement activities don't fit under the exemption for international trade, commerce, or relations (section 166(2)(D)). How will the Border Patrol make inquiries of immigrants if they cannot use other languages? The Immigration and Naturalization Service (INS) could be prohibited from interviewing asylum seekers in any language other than English.
- There exists a tension between the nature of the exemptions and the definition of "official business." The list of exemptions seems to be much broader than the definition of official business would imply. By giving this laundry list of exemptions, it raises the likelihood that there will be serious loopholes created or omitted. The very fact that there are so many exemptions required seems to indicate problems with the nature of the proposal. At a minimum, will open up floodgates of litigation, and leads to an unwieldy piece of legislation.

Miscellaneous section:

- Section 166 (b) states "This chapter shall not prohibit the United States Government from carrying out its responsibilities under law to provide or permit equal education opportunities to citizens, and language translation or other opportunities necessary to preserve **individual rights guaranteed under the Constitution.**" Individual rights guaranteed under the Constitution are not the only ones recognized by our legal system. For example, labor codes, safety codes, anti-discrimination titles, etc. would appear to not be protected under this section. In addition, the federal government, as an employer abroad, is obliged to inform its employees of their rights relevant to their employment. For example, employees of a naval base in Turkey, or of a consulate office in Greece, would need information communicated to them in their native language. This act would imply that communication were no longer permissible.

**TALKING POINTS IN OPPOSITION TO THE SHELBY AMENDMENT TO S. 1664 --
(BASED ON S. 356: "THE LANGUAGE OF GOVERNMENT ACT")**

● **ALLOW THE SUPREME COURT TO CONTINUE CONSIDERING THE ISSUE:**

- ◆ The Supreme Court has granted *certiorari* in the case of *Arizonans for Official English v. State of Arizona*. In that case, the Court of Appeals for the Ninth Circuit affirmed the district court's ruling that the Arizona "Official English" amendment violated the First Amendment. The Arizona law is strikingly similar to Senator Shelby's bill, S. 356, which will likely be the basis for the Senator's amendment to S. 1664. Given that the Supreme Court has agreed to weigh the constitutionality of "official language" laws, it would behoove the Senate to allow that process to be completed before considering this clearly non-germane amendment in an immigration reform bill.

● **ALLOW THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE TO COMPLETE CONSIDERATION OF S. 356:**

- ◆ The Senate Committee on Governmental Affairs has yet to mark up S. 356, the "Language of Government Act," sponsored by Senator Shelby. Several hearings have been held in that committee, and the Chairman of that committee, Senator Ted Stevens (R-AK), has indicated that the bill would be marked up in June of this year. Again, the Senate should refrain from considering this amendment until it completes the committee process.

● **S. 356 WILL NOT UNIFY THE COUNTRY:**

- ◆ Legislating English as the official language will not accomplish the stated goal of bringing people together. Instead, based on experiences in states such as Arizona, California, and Florida, where such laws were passed, they have often resulted in discrimination against those who look or sound "foreign."
- ◆ Recently, three Hispanic men were kicked out of a bar in Washington state for speaking Spanish. The owner told the men that English was the language of the nation, and if they wouldn't speak English, they were not welcome in her establishment. In August, a judge in Texas, Samuel Kiser, told a Hispanic-American mother that she was "abusing her child and relegating her to the position of a housemaid" by speaking Spanish to her, and that she risked losing custody for that so called offense.
- ◆ By prohibiting "official" communication in any language other than English by any government employee, members of Congress could be in violation of this law if they or their staff communicated with constituents in Spanish, Navajo, German, Farsi, or any other language.

- **THIS PROPOSAL IS UNNECESSARY:**

- ◆ English is already our common language. According to the U.S. Census, 97% of all U.S. residents speak English; of the 32 million residents who speak a language other than English at home, the majority also speak English "well" or "very well." Supporters of English-only laws claim that by making English the "official" language of the country, immigrants will suddenly decide to learn English. This assumption is based on the false premise that immigrants need the additional coercive power of government to learn English. The fact is that immigrants, Hispanic or otherwise, want to learn English. There are simply not enough opportunities for them to do so. In addition, contrary to the claims of English-only advocates, these bills would do nothing to actually facilitate the acquisition of English by a single person.

- **S. 356 COULD LEAD TO A MOUNTAIN OF LAWSUITS:**

- ◆ Senator Shelby's bill would lead to frivolous litigation, as the bill establishes a private right of action to sue in federal court if any section of the bill is violated. In addition, by preventing government officials from communicating with its residents in languages other than English, the island of Puerto Rico, which is populated by 3.6 million Spanish-speaking U.S. citizens, would be effectively cut off from the U.S. government.

- **ENGLISH-ONLY IS UNAMERICAN:**

- ◆ The governmental intrusion and citizen vigilantism which these bills would create run counter to the best interests of our nation and of the traditional tenets of our democracy. The government has neither a substantial interest nor a constitutional right to regulate the speech of its people. Our founding fathers declined to name an official language for this country; there is no reason to do so now.

WHAT IF THE SHELBY "OFFICIAL ENGLISH" BILL (S. 356) PASSES?

- A Doctor in a Veterans Hospital treating a Puerto Rican veteran of combat could be prohibited from communicating with the Spanish-speaking family of the veteran unless it were determined that the communication had an impact on "public health."
- A federal law enforcement officer could not solicit information from witnesses or victims who didn't speak English if the matter were not a criminal case.
- An investigator of the Department of Labor could not interview employees of sweatshops to identify unlawful employment practices if the individuals didn't speak English.
- A teacher's aide in a Head Start program could not speak to the family of a participant in any language other than English. What if the child were sick, and needed to be picked up? How would that aide let the family know?
- A Senator or Congressperson or their staff could not respond to a constituent's inquiries in any language other than English. No newsletter, no "town hall" meeting, no speech, could be conducted in any language other than English.
- The Census Bureau could be prohibited from hiring bilingual census-takers or producing bilingual materials, thereby producing an inaccurate count and costing taxpayers money by having to conduct costly re-counts or other special sampling surveys.
- Any monolingual Spanish speaker of the island of Puerto Rico (which is populated by 3.6 million U.S. citizens) would be effectively cut off from the U.S. government -- they could not get information in Spanish from the Social Security Administration (SSA), the Internal Revenue Service (IRS), or the Selective Service Administration (SSA).
- An inspector for the Occupational Safety and Health Administration (OSHA) could be prevented from communicating with migrant farmworkers in any language other than English.
- A notice from the Environmental Protection Agency (EPA) could not be translated into any language other than English, which could undermine efforts to conserve water or the environment in areas where there are non-English speaking tourists or residents.
- The Immigration and Naturalization Service (INS) could be prohibited from interviewing asylum seekers in any language other than English.
- The Border Patrol could be prevented from communicating with immigrants to determine if they were in possession of valid visas or not.
- The U.S. would be violating international treaties to which it is a signatory -- including the Universal Declaration of Human Rights, which interprets the United Nations Charter.
- The government would have to create a new layer of bureaucracy to determine whether desired uses of languages other than English were exempt under the law.

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET



TO: STEVE WARNATH

DPC

FAX NO.: 456-7028

FROM: ADRIEN SILAS

PHONE: 202/514-7276 Fax 202/514-5499

DATE: APRIL 22, 1996

NO. OF PAGES: 13 (EXCLUDING COVER)

COMMENTS: DRAFT LETTER ON S. 356,
OFFICIAL ENGLISH



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Ted Stevens
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the Administration's views on S. 356, "The Language of Government Act of 1995." This bill would halt Federal government activities conducted in languages other than English. It also would impose various restrictions on the use of other languages for official Federal government activities. We received your amendment which would some, but not all, of the concerns raised in our letter. We will comment on the amendment in the near future, but on initial review, the amendment retains the private right of action, lacks clear protections for all United States residents, and does not correct the underlying problem of official language legislation: that it is unnecessary, divisive, and inefficient. For the reasons set out below, the Administration strongly opposes the bill.

1. Effect of the Bill

S. 356 would eliminate all governmental actions that are conducted in languages other than English, except those actions falling within enumerated exceptions. S. 356 declares English the official language of the Government. See S. 356, §3(a).¹ It also provides that "[t]he Government shall conduct its official business in English." *Id.* S. 356 defines "official business" generally as "those governmental actions, documents, or policies which are enforceable with the full weight and authority

S. 356 defines "Government" as "all branches of the Government of the United States and all employees and officials of the Government of the United States while performing official business." *Id.* at §3(a).

of the Government," but makes clear that certain governmental actions which otherwise qualify as "official business" are not subject to the general ban on the use of languages other than English. Id. Governmental actions which do not constitute "official business" for purposes of S. 356, and which therefore could be taken or conducted in languages other than English, include:

- (A) teaching of foreign languages;
- (B) actions, documents, or policies that are not enforceable in the United States;
- (C) actions, documents, or policies necessary for international relations, trade, or commerce;
- (D) actions or documents that protect the public health;
- (E) actions that protect the rights of victims of crimes or criminal defendants; and
- (F) documents that utilize terms of art or phrases from languages other than English.

Id.

S. 356 would repeal all existing Federal laws that "directly" contravene its provisions banning Government communication in languages other than English, "such as [laws that require] the use of a language other than English for official business of the Government." Id. at §2(b).² In sum, S. 356 would eliminate all governmental actions conducted in a language other than English, except those actions expressly exempted from the bill's definition of "official business."

S. 356 states that it would not directly discriminate against or restrict the rights under existing laws of any individual already in the United States. But it is difficult to see how this bill would "promote efficiency and fairness to all people" and not "discriminate against or restrict the rights of" individuals in the United States who speak a language other than English and have limited English proficiency (LEP).

The bill would have a direct, adverse impact on Federal efforts to ensure equal access to education, access to federally funded Government services, participation in the electoral

² S. 356 appears to eliminate only Federal laws which mandate Government communication in languages other than English. The bill provides that "[the] Act (and the amendments made by [the] Act) shall not preempt any law of any State." Id. at §4.

process, and participation in the dicennial census. It would segregate LEP communities from the political and social mainstreams by cutting off Government dialogue with persons having limited English proficiency, by prohibiting language assistance by Federal government employees, and by limiting the delivery of Government services to many taxpaying Americans not proficient in English who otherwise might not be aware of available services. Clearly, efforts to integrate these political communities would be better served through full governmental support of English language instruction rather than limiting access based upon language abilities.

2. There Exists No Problem Requiring the Designation of English as the Official Language.

S. 356 proposes to declare English the official language of the United States for all Federal government business. This declaration is unnecessary. The overwhelming majority of the Federal Government's official business is conducted in English and over 99.9 percent of Federal government documents are in English.³ According to a recent GAO study, only 0.06 percent of Federal government documents or forms are in a language other than English, and these are mere translations of English documents. These non-English documents, such as income tax forms, voting assistance information, some dicennial census forms, and information relating to access to medical care and to Government services and information, were formulated to assist taxpaying citizens and residents who are LEP and are subject to the laws of this country.

As the President has stated, there has never been a dispute that English is the common and primary language of the United States. According to the 1990 Census, 94 percent of all residents speak English very well. The 1990 Census also reports that although 13.8 percent of residents speak languages other than English at home, 79 percent of these residents above the age of four speak English "well" or "very well". These figures demonstrate that there is no resistance to English among language minorities. In fact, there is an overwhelming demand for adult English language classes in communities with large language minority populations. For example, in Los Angeles, the demand for these classes is so great that some schools operate 24 hours per day and 50,000 students are on the waiting lists city-wide. In New York City, an individual can wait up to 18 months for adult English language classes.

In very few instances, languages other than English are used

³"Federal Foreign Language Documents," GAO Rep. No. D-95-253R (Prepared at the request of Sen. Richard C. Shelby, sponsor of S. 356).

in official Government business. In these instances, the usage may promote vital interests, such as national security; law enforcement; border enforcement; civil rights; communicating with witnesses, aliens, prisoners or parolees; and educational outreach to inform people of their legal rights and responsibilities or to assure access to Government services, such as police protection, public safety, health care and voting. In all of these areas, S. 356 would limit the effectiveness of Government operations by preventing adequate and appropriate communications between Government officials or employees and the public.

Language barriers are among the greatest obstacles to effective law enforcement in immigrant communities. The use of a language other than English is indispensable in some of these efforts. Investigations, reporting, and undercover operations may require the use of a language other than English, particularly in matters involving the Drug Enforcement Administration (DEA), and the Immigration and Naturalization Service (INS), including the Border Patrol.

Furthermore, S. 356 would prohibit the use of interpreters and the use of another language by Government lawyers and employees while interviewing complainants or witnesses or reviewing witness statements or foreign documents. Also, the prohibition of interpreters in judicial and administrative proceedings, especially in civil, immigration, and some criminal matters, would raise serious due process concerns, as discussed below. A requirement that Federal government employees use only English would dramatically hamper attorneys' abilities to perform their duties effectively.

3. S. 356 Would Generate Frivolous Litigation and Chill Legitimate Government Action

S. 356 would create a private cause of action for anyone who believed that he or she had been injured by the Federal government's communication in a language other than English. Since some non-English services provided by the Government do not fall within one of the bill's exceptions, the provision of these services would violate the law. A complaining individual would be able to sue the Government in Federal court for damages and for equitable relief.

It is unclear what harm S. 356 is intended to prevent or what rights the cause of action would protect. Virtually all of the Federal government's official business is conducted in English. Therefore, actual injury to an individual due to a failure to conduct all activities in English is highly conjectural. This provision is clearly unnecessary.

The language in S. 356 creating this cause of action is vague and would encourage lawsuits against the Government by "any person alleging injury arising from a violation" of these proposed laws. This language not only would waive the sovereign immunity of the Federal government, but also would allow attorney fees for prevailing plaintiffs. This measure would invite frivolous litigation against the Government and further clog our Federal court system. More importantly, it would have a chilling effect upon Federal agencies and employees and deter them from performing vital tasks and delivering important informational services in languages other than English.

4. S. 356 is Subject to Serious Constitutional Challenge.

A. Although it is difficult to predict how the Supreme Court ultimately would resolve arguments that S. 356 violates constitutional protections,³ a case raising constitutional challenges to a similar State statute is now pending before the Court.

Late last year, the United States Court of Appeals for the Ninth Circuit relied upon the First Amendment to invalidate an English-only provision. In an en banc decision, Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995), cert. granted, 64 U.S.L.W. 3635, 3639 (U.S. Mar. 25, 1996) (No. 95-974), a divided court declared that English-only requirements in the Arizona constitution were facially overbroad in violation of the free speech rights of State government employees. The pertinent provision of the Arizona constitution provides that English is the official language of the State of Arizona. It also requires that, with certain exceptions, the State and its political subdivisions, including all government officials and employees performing government business, communicate only in English. See id. at 928. The Ninth Circuit majority determined that the Arizona provision constituted a prohibited means of promoting the English language, stating that "[t]he speech rights of all of Arizona's state and local employees, officials, and officers are . . . adversely affected in a potentially unconstitutional manner by the breadth of [the provision's] ban on non-English governmental speech." Id. at 932.

³Several Federal courts have held that the constitutional guarantees of due process and equal protection do not impose an affirmative duty upon the government to provide routine government services in languages other than English. See e.g., Guadalupe Org., Inc. v. Temple Elementary School Dist., 587 F.2d 1022 (9th Cir. 1977); Carmona v. Sheffield, 475 F.2d 738 (9th Cir. 1973); Toure v. United States, 24 F.3d 444 (2d Cir. 1994); Soberal-Perez v. Heckler, 717 F.2d 36 (2d Cir. 1983), cert. denied, 456 U.S. 929 (1984); Frontera v. Sindell, 522 F.2d 1215 (6th Cir. 1975).

The Ninth Circuit majority also suggested that the First Amendment rights of Arizona residents to receive information are implicated by the ban, stating that:

[b]ecause [the Arizona constitutional provision] bars or significantly restricts communications by and with government officials and employees, it significantly interferes with the ability of the non-English-speaking populace of Arizona "to receive information and ideas."

Id. at 941 (citation omitted.)

The difference of opinion among the Ninth Circuit judges in Yniguez centered mainly on the breadth of the government's authority to regulate the speech of its employees when they are performing official governmental duties. The dissent argued that the Government had broader discretion because the speech at issue resembled private concern speech more than public concern speech. Although the dissent's argument is not without force, the existence of the Ninth Circuit's majority en banc decision supports our concern about the bill's vulnerability to First Amendment challenge.⁴

On March 24, 1996, the United States Supreme Court granted certiorari to review the decision of the Ninth Circuit in that case. The case will be argued by counsel and decided by the Court during the 1996 term, which begins in October.

Second, if the bill applies to the legislative franchise of Members of Congress, it violates the Speech or Debate Clause, U.S. Const., Art. I, §6. Moreover, if S. 356 were enacted, Members of Congress and their staffs would be hampered in communicating effectively with constituents and members of the public who are LEP, for example, in press releases, newsletters, responses to complaints or requests for information, or speeches delivered outside the Congress. A court well could conclude that an application of S. 356 that prevented a Federal legislator from communicating effectively with the persons he or she represented interfered with a core element of the process of representative government established by the Constitution. Similar concerns would be raised by any effort to apply S. 356 to communications by the President and other Executive branch officials in their dealings with constituents.

⁴Although the majority and dissent were sharply divided on the First Amendment issue, at least two dissenting judges left open the possibility that the Arizona provision was unconstitutional on other grounds. See id. at 963 (Kozinski, J., dissenting).

B. S. 356 also might be subject to challenge on various equal protection grounds. The Constitution prohibits discrimination on the basis of ethnicity or national origin. See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). Several ethnic and national origin minority groups in this country include large numbers of persons who do not speak English proficiently. Where a statutory classification expressly utilizes a suspect criterion, or does so in effect by a transparent surrogate, the Supreme Court has subjected the classification to strict scrutiny without requiring a demonstration that the legislature's purpose was invidious. See Shaw v. Reno, ___ U.S. ___, 113 S.Ct. 2816, 2824 (1993).

In his opinion for the Court in Hernandez v. New York, 500 U.S. 352 (1991), Justice Kennedy discussed the link between race, ethnicity, and language. In that case, the Court rejected the petitioner's claim that a prosecutor had unlawfully discriminated, where the prosecutor exercised a peremptory challenge to exclude a juror on the ground that the juror might have difficulty accepting a translator's rendition of Spanish-language testimony. Justice Kennedy wrote, "It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis." Id. at 371 (plurality opinion). Additionally, in its equal protection analysis, the Court has acknowledged that an individual's primary language skill often flows from his or her national origin. See Yu Cong Eng v. Trinidad, 271 U.S. 500, 513 (1926); see also Meyer v. Nebraska, 262 U.S. 390, 401 (1923) (recognizing the differential effect of English-only legislation).

S. 356 also is subject to attack upon the ground that its stated purposes are pretexts for invidious ethnic or national-origin discrimination. If enacted, the language restrictions contained in S. 356 presumptively would have a disproportionate, negative impact on individuals who were not born in the United States or other English-speaking countries, and indeed, on many native-born citizens whose "cradle tongue" is not English. Under the Equal Protection Clause, disproportionate racial, ethnic or national origin impact alone is insufficient to prove purposeful discrimination. Washington v. Davis, 426 U.S. 229, 239 (1976). However, "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one [group] than another." Id. at 242.

Practically all of the persons whom the language restrictions would deny effective access to the governmental services would be members of ethnic or national origin minority groups. In some immigrant and national origin minority communities throughout the country, high percentages of community members would be negatively affected by the proposed ban on

communications in languages other than English. A court could find that the disproportionate, negative impact on these communities, coupled with negative sentiment toward recent immigrants or non-English speakers, demonstrated invidious purpose.

C. The bill also would be subject to attack on the ground that it violates the due process rights of non-English speakers who are parties to civil and administrative proceedings involving the Government. A number of Federal courts have held that due process requires the use of a translator in a deportation proceeding where the alien involved does not understand English. See Ganarillas-Zambrana v. Bd. of Immigration Appeals, 44 F.3d 1251, 1257 (4th Cir. 1995); Drobny v. INS, 947 F.2d 241, 244 (7th Cir. 1991); Tejeda-Mata v. INS, 626 F.2d 721, 726 (9th Cir. 1980), cert. denied, 456 U.S. 994 (1982). The courts have recognized an alien's constitutional right to have proceedings communicated in a language the alien can understand, despite the fact that deportation proceedings are civil in character and therefore, less deserving of the full panoply of due process protections required in criminal proceedings. See Abel v. United States, 362 U.S. 217, 237 (1960).

The immigration setting is only one example of how a due process challenge could be posed in an administrative or civil, judicial proceeding. The prohibition of interpreters in any such proceedings has serious implications for the due process rights of private parties with limited English proficiency.⁵

5. S. 356 Would Impair Relations with Native Americans.

The broad language of S. 356 is at odds with the longstanding principle of government-to-government relations between the Federal government and Indian tribes. From its earliest days, the United States has recognized that Indian tribes possess attributes of sovereignty. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831). In addition, in early Indian treaties, the United States pledged to "protect" Indian tribes, thereby establishing one of the bases for the Federal responsibility in our government-to-government relations with Indian tribes. See Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942). These principles -- the sovereign powers of Indian tribes to engage in self-government and the Federal trust responsibility to Indian tribes -- continue to guide our national policy toward Indian tribes.

⁵Our comments in this letter do not address the question of how the language requirements of S. 356, if enacted, should be implemented in light of the serious constitutional concerns that we have identified.

Pursuant to this national policy, Congress has enacted numerous statutes that affirm the authority of Indian tribes to engage in self-governance, see e.g., Indian Self-Determination Act, 25 U.S.C. §450; Indian Tribal Justice Support Act, 25 U.S.C. §3601, and which seek to preserve Indian culture, see e.g., Native American Graves Protection and Repatriation Act, 25 U.S.C. §3001. In the Native American Languages Act, 25 U.S.C. §§2901-2905, Congress combined the policies of self-governance and cultural preservation in a single piece of legislation. See also 25 U.S.C. §2502(d). Recognizing that Indian languages are an essential aspect of tribal culture, this Act authorizes tribes to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages." 25 U.S.C. §2903. To this end, the Act affirms the right of Indian tribes to conduct instruction in Native American languages in federally funded schools in Indian country and allows exceptions for teacher certifications for certain Federal programs where these certifications would hinder the employment of qualified teachers of Native American languages. Id.

If broadly construed, S. 356 could conflict with the specific mandates found in the Native American Languages Act and related statutes. These laws would be repealed if S. 356 were enacted. This would impede severely Federal government relations with Native Americans.

6. **S. 356 Could Be Read to Limit Bilingual Education, Causing LEP Students to Fall Behind in School.**

S. 356 would repeal all laws which conflict with its purpose of limiting all official Government business to the English language. The impact could be devastating to LEP children in this country.

For example, S. 356 might be read to conflict with and therefore repeal Title VII of the Bilingual Education Act, which assists school districts in meeting their obligations under the Civil Rights Act of 1964, and with the Supreme Court ruling in Lau v. Nichols, 414 U.S. 563 (1974). Both established that school districts have a responsibility to provide equal educational opportunity to LEP students. Hence, Title VII provides direct Federal funds to implement programs targeted toward assisting linguistically diverse students. These programs assist LEP students master English and achieve in all academic areas.

The Bilingual Education Act already stresses the need to promote a child's rapid learning of English. As President Clinton recently commented on bilingual education, "[t]he issue is whether children who come here, [or whose "cradle tongue" is not English] while they are learning English, should also be able

to learn other things... The issue is whether or not we're going to value the culture, the traditions of everybody and also recognize that we have a solemn obligation every day in every way to let these children live up to the fullest of their God-given capacities."⁴ Bilingual education helps ensure that LEP children learn English while remaining current in other subjects. Otherwise, language minority children who are unable to keep up with their English-speaking classmates fall behind in coursework and are more likely than other children to drop out of school.

7. **S. 356 Would Repeal Minority Language Provisions of the Voting Rights Act, Limiting Meaningful Electoral Participation by Language Minority Populations.**

In addition, S. 356 would effectively repeal the minority language provisions of the Voting Rights Act (VRA) because they are in conflict. Where S. 356 requires the use of only English, the VRA requires the use of a language other than English in enforcement efforts. The VRA has two provisions, Section 203 and Section 4(f)(4), that protect United States citizens who are not fully proficient in English. These provisions require covered jurisdictions to provide the same information, materials, and assistance provided to English speaking citizens to minority language citizens in a language they can better understand, to enable them to participate in the electoral process as effectively as English-speaking voters.

Section 203 was added to the VRA in 1975, after congressional findings that large numbers of American citizens who spoke languages other than English had been effectively excluded from participation in our electoral process. The rationale for Section 203 was identical to and "enhance(d) the policy of Section 201 of removing obstructions at the polls for illiterate citizens." S. Rep. No. 295, 94th Cong., 1st Sess. (1975) at 37. Congress recognized, as had the Federal courts, that "meaningful assistance to allow the voter to cast an effective ballot is implicit in the granting of the franchise." S. Rep. No. 295, 94th Cong., 1st Sess. (1975) at 32. Congress found that the denial of the right to vote among such citizens was "directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation." 42 U.S.C. §1973aa-1a(a). The judgment Congress rendered in 1975 on this regime showed that it understood that historically, minority language individuals have not had the same educational opportunities as the majority of citizens.

The VRA helps many Native Americans and some other language

⁴President William J. Clinton's address to the Hispanic Caucus Institute Board and Members, Washington, D.C., September 27, 1995.

minority citizens, especially older individuals, who continue to speak their traditional languages and continue to be affected by the lack of meaningful educational opportunities during their school years. In addition, over 3.5 million Puerto Ricans born and educated on the island are citizens by birth but often lack full English proficiency. Many Puerto Ricans have Spanish as their native tongue, and they may require some language assistance in casting an informed ballot. Also, many Hispanic citizens who attended school in the Southwest and in many other parts of this country as late as the 1950's were educated in segregated schools. Some of these citizens still need language assistance.

As Senator Orrin Hatch noted in sponsoring the 1992 extension of Section 203 of the Voting Rights Act, "[t]he right to vote is one of the most fundamental of human rights. Unless the Government assures access to the ballot box, citizenship is just an empty promise. Section 203 of the Voting Rights Act, containing bilingual election requirements, is an integral part of our government's assurance that Americans do have such access...." S. Rep. No. 315, 102d Cong, 2nd Sess., 1992 at 134.

In fact, Congress has recognized and understood the need for minority language voting assistance. It has extended Section 203 twice and the provision is now in effect until 2007. Each enactment and amendment of Section 203 enjoyed strong bipartisan support and the support of the Ford, Reagan and Bush Administrations.

Section 203 is carefully targeted toward those communities with high numbers of language minority, United States citizens of voting age, who, according to the Census, are not fully proficient in English. Thus, as English-language proficiency increases among the language minority population, minority language coverage should diminish.

Rates of both voter registration and actual participation in elections by minority language individuals have increased since Section 203 was enacted. We are convinced that providing bilingual materials, instruction, and assistance makes a real difference at the polls for minority language citizens with limited English language abilities. The effect of enacting S. 356 and thereby rescinding Section 203 and the other minority language protections of the VRA would be to disenfranchise an American minority community that only recently has had the opportunity to engage meaningfully in participatory democracy. Those who still would vote, without the benefit of the same information English-speaking citizens receive but in a language they better understand, would be less informed and more dependent upon others to cast their vote.

8. S. 356 Would Make Government Programs Less Efficient.

The language of S. 356 claims that the "use of a single common language in the conduct of the Federal government's official business will promote efficiency and fairness to all people". Again, it is unclear how this would occur. To the contrary, S. 356 would promote administrative inefficiency and the exclusion of LEP persons from access to the Government and its services. S. 356's mandate for "English only" in Government would emasculate Government agencies and other governmental bodies. It would prevent them from making particularized judgments about the need to utilize languages in addition to English in appropriate circumstances. It is in the best interest of the Government -- as well as its customers -- for the public to understand clearly Government services, processes and their rights.

The Government should not be barred from choosing in specific circumstances to communicate with its LEP citizenry in languages comprehensible to these persons. S. 356 would hinder the implementation of law enforcement and other governmental programs, such as tax collection; water and resource conservation; dicennial census data collection; and promoting compliance with the law, e.g., by providing bilingual investigators and providing translations of compliance, public, or informational bulletins issued by Federal agencies.

9. S. 356 Is Inconsistent With Our Pluralistic Society.

Finally, S. 356 would promote division and discrimination rather than foster unity in America. We fear that passage of S. 356 would exacerbate national origin discrimination and intolerance against ethnic minorities who look or sound "foreign" and may not be English proficient. It would erect barriers to full access to and participation in the democratic government established by the Constitution for all of the Nation's people.

In fact, the Justice Department's Community Relations Service has used languages other than English strategically and successfully to help ease occasional community and racial conflicts through mediation, negotiation and conciliation, and community outreach. Prohibiting the use of languages other than English would undermine Government efforts to avoid conflict through peaceful mediation and improving community relations and may escalate racial and ethnic tensions in some areas in this country.

English is universally acknowledged as the common language of the United States. But the passage of S. 356 would decrease administrative efficiency and exclude Americans who are not fully proficient in English from education, employment, voting and equal participation in our society. In these fiscally difficult

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times, Government efficiency and economy would be better promoted by allowing Government agencies to continue their limited use of other languages to execute their duties effectively. Moreover, for the reasons stated earlier, S. 356 would be subject to serious constitutional challenge.

Our language alone has not made us a nation. We are united as Americans by the principles enumerated in the Constitution and the Bill of Rights: freedom of speech, representative democracy, respect for due process, and equality of protection under the law.

Thank you for requesting the Administration's views on S. 356, the Language of Government Act. The Office of Management and Budget has advised that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

Andrew Fois
Assistant Attorney General

cc: John Glenn
Ranking Minority Member
Committee on Governmental Affairs