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HEADLINE: TAKING AIM AT BI-LINGUAL POLICIES

BYLINE: By WILLIAM GOLDSCHLAG

BODY:

WASHINGTON It was conceived as a way to reach out to millions outside the American mainstream. It is now condemned by the conservative revolution as "linguistic welfare."

Republicans in Congress and on the presidential trail are embracing a movement to reverse a quarter-century of government policies that accommodate foreign-language speakers.

Brushing aside liberal critics who contend the English-only movement is a form of "immigrant-bashing," a House subcommittee has scheduled hearings in mid-October on a range of proposals including two that take direct aim at bi-lingual education.

"It's a cultural trend in this country which I think is dangerous," said the bill's sponsor, Long Island Republican Rep. Pete King. "To many people, it's become a metaphor for liberal policies that have failed."

King's bill would end mandates and \$ 240 million in federal aid for bi-lingual education, though it would let states and localities pay for it on their own.

New York City's public schools have some 150,000 children in bi-lingual classes a statistic that has not escaped notice by the method's foes.

"New York City, like most states and cities, employs an entire staff of bi-lingual bureaucrats whose job it is to convince reluctant parents of the virtues of bi-lingual education," said Rep. Toby Roth (R-Wis.), whose bill would ban it outright.

The drive has the support of House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader Bob Dole (R-Kan.), front-runner for the GOP presidential nomination.

In a Labor Day speech to the American Legion, Dole said: "With all the divisive forces tearing at our country, we need the glue of language to help hold us together. If we want to insure that all our children have the same opportunities in life, alternative language education should stop and English should be acknowledged once and for all as the official language of the United States."

Daily News (New York) September 17, 1995, Sunday

According to a new poll by U.S. News & World Report, 73% of Americans think English should be the official language of government.

To Rep. Jose Serrano (D-Bronx), the English crusade is a "meanspirited" attack on a nonproblem a baseless fear that multi-lingual policies dampen the desire of new arrivals to learn English.

The campaign against multi-lingualism, Serrano charged, "is not being done to save us from harm. It's not being done to save our children. It's being done for cheap political trickery to get your so-called angry white male even angrier now."

Both sides agree that English is, and should remain, the dominant American language.

King says he's no immigrant-basher he opposed California's Proposition 187, which limits benefits to illegal immigrants, and his party's move to deny all immigrants welfare benefits. But multi-lingual policies, he said, make it easy for people "to stay in their own language ghetto . . . we're not encouraging people to learn English."

Serrano said the appeal, and necessity, of being able to function in mainstream, English-speaking American society is incentive enough.

The official English movement has been winning battles on the state and local level for more then a decade.

The largest group, U.S. English, claims 640,000 members, and is strongest in California, where one in four residents is foreign-born. Its chairman, Mauro Mujica, a Chilean-born architect, adopted the term "linguistic welfare" to attack policies that create "dependence" on multi-lingual services instead of sending a clear message to immigrants that "you must know English to fully participate in the process of government."

A law declaring English official was signed in Arkansas in 1987 by then-Gov. Clinton. That has been unsettling to the movement's opponents, who worry Clinton might allow a new bill passed by Congress to stand.

But Serrano said White House adviser George Stephanopoulos recently told him, "I guarantee you that he [President Clinton] will veto a bill if it comes to his desk."

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LOAD-DATE: September 18, 1995

**BILLS RELATING TO ENGLISH AS OFFICIAL LANGUAGE
OR REQUIRING ENGLISH PROFICIENCY**

H.R. 123 By EMERSON (R-MO) -- Language of Government Act of 1995

(from Congressional Research Service, Library of Congress)

Language of Government Act of 1995 - Declares English to be the official language of the U.S. Government. States that the Government has an affirmative obligation to preserve and enhance the role of English as the official language. Requires the Government to conduct its official business in English. Prohibits anyone from being denied Government services because he or she communicates in English.

H.R. 345 By PICKETT (D-VA) -- Language of Government Act of 1995

(from Congressional Research Service, Library of Congress)

Language of Government Act of 1995 - Amends Federal law to declare English as the official language of the Government. Amends the Immigration and Nationality Act to require all public ceremonies in which the citizenship oath is administered to be conducted solely in English.

H.R. 739 By ROTH, TOBY (R-WI) -- Declaration of Official Language Act of 1995

(from Congressional Research Service, Library of Congress)

Declaration of Official Language Act of 1995 - Declares English to be the official language of the U.S. Government. States that English is the preferred language of communication among U.S. citizens. Requires the U.S. Government to promote and support the use of English for communications among U.S. citizens. Requires communications by officers and employees of the U.S. Government with U.S. citizens to be in English. Directs the Immigration and Naturalization Service to : (1) enforce the established English language proficiency standard for all applicants for U.S. citizenship; and (2) conduct all naturalization ceremonies entirely in English.

Allows anyone injured by a violation of such provisions to obtain appropriate relief in a civil action. Authorizes the court in any such action to allow a prevailing party, other than the U.S. Government, a reasonable attorney's fee as part of costs.

Repeals the Bilingual Education Act (title VII of the Elementary and Secondary Education Act of 1965).

Amends the Voting Rights Act of 1965 to repeal bilingual election ballot requirements.

H.R. 1005 By KING (R-NY) -- National Language Act of 1995

(from Congressional Research Service, Library of Congress)

National Language Act of 1995 - Makes English the official language of the U.S. Government. Requires the Government to conduct its official business in English, including publications, income tax forms, and informational materials.

Provides that this Act shall not apply to the use of a language other than English for religious purposes, for training in foreign languages for international communication, to programs in schools designed to encourage students to learn foreign languages, or by persons over age 62. Permits the Government to provide interpreters for persons over age 62.

Repeals the Bilingual Education Act. Terminates the Office of Bilingual Education and Minority Languages Affairs in the Department of Education. Sets forth provisions regarding the recapture of unexpended funds and transitional provisions.

Repeals provisions of the Voting Rights Act of 1965 regarding bilingual election requirements and regarding congressional findings of voting discrimination against language minorities, prohibition of English-only elections, and other remedial measures.

Amends the Immigration and Nationality Act to require that all public ceremonies in which the oath of allegiance is administered pursuant to such Act be conducted solely in English.

Specifies that this Act shall not preempt the law of any State.

H.R. 1490 By VENTO (D-MN) -- Hmong Veterans' Naturalization Act of 1995

(from Congressional Research Service, Library of Congress)

Hmong Veterans' Naturalization Act of 1995 - Waives the English language naturalization requirement for certain aliens (or their spouses or widows) who served with special guerilla units in Laos.

Provides for naturalization under the Immigration and Nationality Act through such service.

H.R. 2099 By LEWIS, JERRY (R-CA) -- Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996

H.R. 2099 As returned to the House, after passage in the Senate, September 28, 1995

Title II: Department of Housing and Urban Development
Makes appropriations for FY 1996 for the
Department of Housing and Urban Development.

Item 59: (270) ADMINISTRATIVE PROVISIONS

[...Intervening text...]

<<(e) None of the funds made available in this Act may be used by the Secretary to take, impose, or enforce, or to investigate taking, imposing, or enforcing any action, sanction, or penalty against any State or unit of general local government (or any entity or agency thereof) because of the enactment, enforcement, or effectiveness of any State or local law or regulation requiring the spoken or written use of the English language or declaring English as the official language.>>

H.R. 2202 By SMITH, LAMAR (R-TX) -- Immigration in the National Interest Act of 1995¹

Amends the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and for other purposes.

H.C.R. 6 By EMERSON (R-MO) -- Resolution Concerning that Maintaining English as the Common Language of the United States

(from Congressional Research Service, Library of Congress)

Recognizes the benefits of cultural diversity and the contributions that many languages have made to American society.

¹ To be determined; bill text as approved by Judiciary Committee on 10/24/95 not yet available.

Encourage citizens whose native language is other than English to maintain fluency in their language and heritage, to pass it down from generation to generation, and to learn English as well.

Commends efforts to maintain one language common to all people in addition to preserving and maintaining the many languages and cultures existing in the United States.

H.C.R. 83 By SERRANO (D-NY) -- English Plus Resolution

(from Congressional Research Service, Library of Congress)

Expresses the sense of the Congress that the U.S. Government should pursue policies that: (1) encourage all residents of this country to become fully proficient in English by expanding educational opportunities; (2) conserve and develop the Nation's linguistic resources by encouraging all residents to learn or maintain skills in a language other than English; (3) assist Native Americans, Native Alaskans, Native Hawaiians, and other peoples indigenous to the United States in their efforts to prevent the extinction of their languages and cultures; (4) continue to provide services in languages other than English as needed to facilitate access to essential functions of government, promote public health and safety, ensure due process, promote equal educational opportunity, and protect fundamental rights; and (5) recognize the importance of multilingualism to vital national interests and individual rights, and oppose "English-only" measures and similar language restrictionist measures.

H.J.R. 87 By STOCKMAN (R-TX) -- Constitution of the United States, Amendment - Citizenship

(from Congressional Research Service, Library of Congress)

Constitutional Amendment - Grants U.S. citizenship to only those persons: (1) born to a parent who is a U.S. citizen; (2) born within the United States to a parent lawfully in and subject to the jurisdiction of the United States at the time of that parents' entry into the United States; and (3) naturalized according to U.S. law. Sets forth provisions relating to:

- (1) restrictions on services or payments to non-U.S. citizens;
- (2) English language requirement for naturalization; and
- (3) apportionment of Representatives based on number of citizens of each State.

H.J.R.109 By DOOLITTLE (R-CA) -- Constitution of the United States, Amendment - Official Language

(from Congressional Research Service, Library of Congress)

Constitutional Amendment - Establishes English as the official language of the United States.

S. 175 By SHELBY (R-AL) -- Language of Government Act of 1995

(from Congressional Research Service, Library of Congress)

Language of Government Act of 1995 - Declares English to be the official language of the U.S. Government. States that the Government has an affirmative obligation to preserve and enhance the role of English as the official language. Requires the Government to conduct its official business in English. Prohibits anyone from being denied Government services solely because they communicate in English.

S. 356 By SHELBY (R-AL) -- Language of Government Act of 1995

(from Congressional Research Service, Library of Congress)

Language of Government Act of 1995 - Declares English to be the official language of the U.S. Government. States that the Government has an affirmative obligation to preserve and enhance the role of English as the official language. Requires the Government to conduct its official business in English. Prohibits anyone from being denied Government services because he or she communicates in English.

104TH CONGRESS
1ST SESSION

H. R. 351

To amend the Voting Rights Act of 1965 to eliminate certain provisions relating to bilingual voting requirements.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. PORTER introduced the following bill, which was referred to the Committee on the Judiciary

A BILL

To amend the Voting Rights Act of 1965 to eliminate certain provisions relating to bilingual voting requirements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Bilingual Voting Re-
5 quirements Repeal Act of 1995".

6 **SEC. 2. REPEAL OF BILINGUAL VOTING REQUIREMENTS.**

7 (a) **BILINGUAL ELECTION REQUIREMENTS.**—Section
8 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-
9 1a) is repealed.

1 (b) VOTING RIGHTS.—Section 4 of the Voting Rights
2 Act of 1965 (42 U.S.C. 1973b) is amended by striking
3 subsection (f).

4 **SEC. 3. CONFORMING AMENDMENTS.**

5 (a) REFERENCES TO SECTION 203.—The Voting
6 Rights Act of 1965 (42 U.S.C. 1973 et seq.) is amended—

7 (1) in section 204, by striking “or 203,”; and

8 (2) in the first sentence of section 205, by
9 striking “, 202, or 203” and inserting “or 202”.

10 (b) REFERENCES TO SECTION 4.— The Voting
11 Rights Act of 1965 (42 U.S.C. 1973 et seq.) is amended—

12 (1) in sections 2(a), 3(a), 3(b), 3(c), 4(d), 5, 6,
13 and 13, by striking “, or in contravention of the
14 guarantees set forth in section 4(f)(2)”;

15 (2) in paragraphs (1)(A) and (3) of section
16 4(a), by striking “or (in the case of a State or sub-
17 division seeking a declaratory judgment under the
18 second sentence of this subsection) in contravention
19 of the guarantees of subsection (f)(2)”;

20 (3) in paragraphs (1)(B) and (5) of section
21 4(a), by striking “or (in the case of a State or sub-
22 division which sought a declaratory judgment under
23 the second sentence of this subsection) that denials
24 or abridgments of the right to vote in contravention
25 of the guarantees of subsection (f)(2) have occurred

3

- 1 anywhere in the territory of such State or subdivi-
- 2 sion".

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Remarks of
Richard W. Riley
U.S. Secretary of Education

Hispanic Heritage Month
September 20, 1995

Thank you Norma for your introduction and leadership. I also want to acknowledge Susanna Valdez, the Asst. Director of the White House Office of Public Liaison who is with us today. I also want to acknowledge several other senior members of my staff.

Margarita Colmenares is my important connection to the business community. She has done so much to actively bring the business community into our Family Involvement Partnership.

Mario Moreno is our energetic Assistant Secretary for Interagency and Intergovernmental Affairs. During our recent "America Goes Back to School" week I went to five states to do events and visit schools including the my grandchild's school in South Carolina.

I thought I was doing pretty good getting the word out. Then I looked at Mario's schedule and realized that he was visiting just about every school in Texas. So I want to thank him for his contribution to this very successful initiative.

Alfred Ramirez is our very busy Director of the White House Initiative for Hispanic Education. Alfred was with me when I recently spoke at La Raza's annual Convention and we could report on the steady progress of this initiative.

Finally, I would be remiss if I did not acknowledge the recent departure and singular contribution of Gene Garcia. Gene was a wise and senior advisor to me -- a thoughtful and caring educator who contributed so much to the progress we have made these last two and half-years.

I will miss Gene here in Washington but he will be fulfilling an important role back in his home state of California as the Dean of Graduate Studies in Education at U.C. Berkeley. We all wish him well.

Now, this is an important time for us to acknowledge the progress we are starting to see in American education. We are starting to turn the corner. We aren't there yet by a long shot. There are a lot of peaks and valleys that we are going to have to cross -- and too many young people are still struggling.

But we are making progress and that needs to be acknowledged. And, so many of you have contributed to that progress by your dedication, pride and hard work here at the Department.

Student achievement is up and the drop out rate is down nationally. More students are taking the tougher courses. And we have more young people in college -- up 13 percent since 1980 -- or thinking about college -- or getting ready for high skill jobs.

A few weeks ago, we released our annual Condition of Education report. This report tells us high school students are taking the tougher core courses like algebra, geometry, chemistry and physics and getting results. As a result, the national scores in math and science have gone up the equivalent of one full grade.

So this is good news. We need to keep at it -- because there can be no equality in this Nation without a commitment to excellence. Educating every child to use his or her God-given talent is the pre-condition for full equality. They go together.

But, we do have many challenges. The drop out rate for Hispanic students is much too high. We need to get it down and there are several good initiatives underway that can make a contribution to this important effort.

Unfortunately, when it comes to getting all of our children ready for the future, some members of the new Congress are not listening and that saddens me. Because we shouldn't be fighting about education. We should be moving forward together in a bipartisan way to find common ground for our children. But that's not happening.

So we have our hands full. This new crowd in Congress wants to balance the budget but they seem to have adopted a "green eye shade" mentality -- they just want to crunch the numbers without thinking about who or what they are crunching.

Earlier this year, the Congress wanted to end the school-lunch program. Then they decided that they wanted to eliminate this Department -- what I call trophy hunting. Then came the direct assault on the very important student loan program and direct lending.

And now we are fighting hard to stave off some very big cuts in our budget. And these are severe cuts for important programs like Title I and bi-lingual education.

Now, bi-lingual education is a good, solid program. I am doing all I can to make sure it gets the budget mark it deserves. I won't let it be sacrificed for politics.

Bi-lingual education has two key purposes. To make sure every child learns English. And to make sure that every child maintains their academic learning in other subjects as they learn English.

For those in Washington who are now calling for the end of bi-lingual education -- I say -- let local people decide what is best for their children. What works in Arlington, Virginia -- a community with children from dozens of nations -- may not work as well in Indiana or Iowa. But let the local people decide what's best for their children.

Now, we need to balance the budget and we need to be open to change. We've made a lot of changes in this department with your help and support. But you make changes by thinking it through and putting people first.

The children of America didn't create the deficit yet they are being asked to pay for it with their education. Here we are in the middle of the Education Era and we have a tidal wave of young people entering our nation's school system in the coming years -- 7 million additional children. Demographers call it the "baby-boom echo."

So this is absolutely the wrong time to go backwards and retreat from our national commitment to education. This is why President Clinton is so strong for education - - why he is putting his heart and soul into this fight.

Two weeks ago he spoke in California -- out in the Central Valley -- to an audience of 15,000 people. Last week, the President spoke to thousands of college students out in Illinois about the importance of direct lending and our other higher education programs. He has a vision of America that includes everybody and he knows that education is the fault line.

We are all Americans here in 1995 ... all of us ... and if we are not quite the melting pot that we want to be, we are ... at the very least ... a rich American stew full of many exciting flavors. Our task -- in this time of great change -- is not to retreat to our own separate racial, ethnic, cultural or political interest groups -- but rather to do just the opposite -- to find common ground.

E Pluribus Unum -- in many one -- doesn't come easy for America at times. But only America has done it well in the entire history of the world.

It shouldn't matter where you come from or when you got here --- whether your family came over on a boat from Ireland like my family --- or if your ancestors came over with Columbus on the Santa Maria -- all of us have made a contribution and continue to make a contribution to this great nation of our's.

I believe, more than ever, that finding common ground is the urgent work of America here in 1995 and there is no better place to start than to start with education.

We are all in this together -- going forward -- staying positive -- and having the high purpose of making sure that every young person gets an education of excellence that will allow them to be contributing and productive citizens.

In closing I want to tell you about a visit I had to San Antonio a few months ago and how impressed I was by the good thinking of the people of that fine community. For these educators and parents and teachers had come together to help their children and they had a slogan for their effort that caught my eye -- common vision, common ground, common action. What a great slogan for a community.

I think that slogan is a good one for this department and for America as well. And, I assure you -- you are doing your patriotic duty for all the children of America by your work here at this Department. Thank you.



FOR RELEASE
October 18, 1995

Contact: Ivette Rodriguez
(202) 401-0262

**STATEMENT BY U.S. SECRETARY OF EDUCATION RICHARD W. RILEY
regarding Oct. 18 congressional hearing on H.R. 739, the
"Declaration of Official Language Act" and
H.R. 123/S. 356, the "Language of Government Act"**

It would be sheer folly to deny millions of schoolchildren the opportunity to learn English -- at a time when the need is greatest. Unfortunately, these efforts to make English the "official" language and to eliminate programs that teach English are more about politics than improving education.

Repealing programs that teach English as a Second Language and bilingual education is wrong-headed. These programs have two key purposes: To make sure every child learns English; and to make sure that every child masters academic subjects, such as math and science, while continuing to learn English.

Obviously, English is our national language. New immigrants are clamoring to learn it as fast as they can. All over America, people are standing in lines and placing their names on waiting lists to take English and literacy classes.

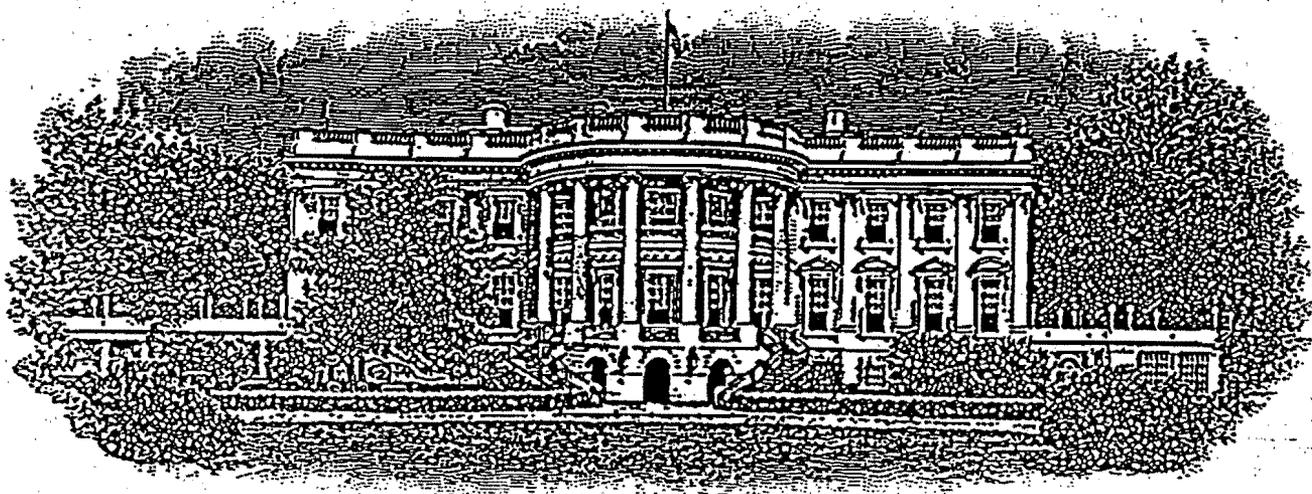
Passing these bills is saying to children, and those who are struggling to learn English, that we don't care if they fall behind and fail.

The future costs to these children and adults -- and to our nation -- in terms of dropout rates and unemployment or underemployment -- is enormous.

Passing these bills is failing the future and our students.

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The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Georgina Verdugo

FAX NUMBER: 393-4206

TELEPHONE NUMBER: _____

FROM: STEPHEN WIKWANI

TELEPHONE NUMBER: 456-5576

PAGES (INCLUDING COVER): _____

COMMENTS: Attached is an testimony that
Seval gave today. Thanks,



Department of Justice

STATEMENT

OF

DEVAL PATRICK

ASSISTANT ATTORNEY GENERAL

CIVIL RIGHTS DIVISION

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

COMMITTEE ON THE JUDICIARY

U. S. HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 351, A BILL TO AMEND THE VOTING

RIGHTS ACT OF 1965

PRESENTED ON

APRIL 18, 1996

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before the Subcommittee to present the views of the Department of Justice on H.R. 351, a bill that would repeal the minority language provisions of the Voting Rights Act. The Department of Justice strongly opposes the repeal of this important and beneficial legislation.

Let me begin by quoting from the opening statement of Senator Orrin Hatch at a hearing held just four years ago on these same minority language provisions:

"The right to vote is one of the most fundamental of human rights. Unless 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. Hrg. 102-1066, 102nd Cong., 2nd Sess., 1992 p.134.]

Before this Subcommittee, the Department of Justice, in related testimony by my predecessor, John Dunne, supported a 15-year extension of the minority language provisions "in the strongest terms." By strong majorities, both Houses of Congress concurred and passed legislation extending the minority language provisions until the year 2007.

I come before you today to reiterate the Department's longstanding support for the minority language provisions of the Voting Rights Act, and to oppose H.R. 351 in the strongest terms. The initial enactment of the minority language provisions with the support of the Ford Administration and the subsequent extensions of those provisions with the support of the Reagan and Bush Administrations enjoyed strong bipartisan support in Congress. The Clinton Administration proudly joins this bipartisan tradition. The interest in a vital democracy--through access to the ballot box-- knows no party.

Background

When the Voting Rights Act was first adopted in 1965, the Act contained no minority language voting provisions. Originally, the Act responded only to Southern resistance to voter registration and participation by African-Americans after laws enacted by Congress in 1957, 1960 and 1964 failed.

Thus, it was left to the Courts to address the pernicious disenfranchisement resulting from a lack of English proficiency. The Supreme Court in Katzenbach v. Morgan, in approving the section of the Voting Rights Act which allowed Puerto Ricans to vote even though many were unable to read and write in English, expressly rejected the notion that the "denial of a right deemed so precious and fundamental in our society [is] a necessary or appropriate means of encouraging persons to learn English." 384 U.S. 641, 655 (1966). Similarly, the California Supreme Court struck down English-only elections as a violation of the equal protection clause of the 14th Amendment. Castro v. California, 466 P. 2d 244, 258 (1970). The State subsequently enacted legislation which was more inclusive than the Federal legislation by requiring the recruitment of bilingual deputy registrars and poll workers in precincts with 3% or more non-English-speaking voting age population.

In 1975, Congress undertook a second extension of the provisions of the Voting Rights Act that gave the Attorney General authority to send Federal examiners and observers to particular jurisdictions and Section 5, which requires jurisdictions with a history of discrimination in voting to obtain preclearance of voting changes. At the same time, Congress examined discrimination against American citizens whose mother tongue was not English, and found that they, too, had been the victims of systematic discrimination and exclusion in voting.

Congress recognized that large numbers of American citizens whose primary language was not English had been effectively excluded from participation in our electoral process. Congress also recognized that large numbers of Spanish heritage citizens had been isolated in inferior, segregated schools in the Southwest and elsewhere. As a result, they had not only been denied the opportunity to gain proficiency in English, but had emerged with higher rates of illiteracy than other citizens. The rationale for the minority language provisions was therefore in part 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, p.37.] Congress 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.

Congress was also aware of the special situation of Puerto Ricans, which was addressed in part by the Voting Rights Act of 1965, and of Native Americans, who spoke numerous languages before a word of English ever echoed across this land.

In response to this evidence, Congress added minority language provisions to the Voting Rights Act in 1975, recognizing that large numbers of American citizens who primarily spoke languages other than English had been effectively excluded from participation in our electoral process.

The 1975 amendments to the Voting Rights Act added two minority language provisions requiring bilingual elections. Jurisdictions that had used English-only elections, were over 5% minority in citizen voting-age population, and had a turnout rate lower than 50% were covered under Section 4(f)(4). Those jurisdictions also were brought under the

provisions of the Act that required covered jurisdictions to seek Federal preclearance of voting changes under Section 5 and authorized the use of Federal examiners and Federal observers to register voters or to monitor the conduct of elections. Section 203 required bilingual elections in jurisdictions with citizen voting age population over 5% minority language, and an illiteracy rate higher than the national average. Jurisdictions covered under Section 203 were required to conduct bilingual elections, but were not subjected to Section 5 or Federal examiners and observers.

Congress enacted Section 4(f) of the Act recognizing 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, p.32.] Pursuant to Section 4(f), the newly added jurisdictions became subject to the Act's special preclearance provisions and were required to provide information and materials regarding voter registration, voting procedures, and elections in the language of language minority citizens as well as in English.

Congress also determined that the language minority requirements were needed to remedy language-based discrimination in areas not covered by the Act's special provisions. The 1975 Amendments, therefore, also added Section 203, which defined language minorities as "persons who are American Indian, Asian-American, Alaskan Natives or of Spanish heritage," and extended minority language requirements to additional counties. Section 203 provides that whenever a covered county "provides any registration or voting notices, forms, instructions, assistance, or other material or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language."

Section 203 is narrowly focused. Congress found that the denial of the right to vote among language minority 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). Generally, counties in which more than 5% of the voting age citizens are members of a language minority also have a higher rate of illiteracy than the national average.

The minority language provisions came up for extension in 1982, at which time Congress heard substantial testimony demonstrating continued discrimination against language minority group members and found that the need for these provisions continued. At the same time, however, Congress took a further step to ensure that the provisions focused as precisely as possible on individuals who needed language assistance and would not unnecessarily burden covered jurisdictions.

Prior to 1982, the Director of the Census had counted all individuals of designated groups when determining whether 5% of the voting age citizens of a county were members of a language minority. The 1982 amendments instructed the Director to count as minority language individuals only those persons who were actually unable to understand the electoral process in English. Thus, as English-language proficiency increases among the language minority population, minority language coverage should diminish.

The minority language provisions were considered and extended again in 1992, again with one significant change. Congress determined that under the existing coverage formula, which reached only jurisdictions in which language minorities constituted 5% of the population, large concentrations of minority language citizens were not reached because --

even though their absolute numbers were large -- they were submerged in very large jurisdictions with substantial majority language populations, such as Los Angeles and Cook Counties. Congress, therefore, extended coverage to jurisdictions containing 10,000 or more minority language voting age citizens.

The minority language requirements apply to all of three States and to selected counties in 25 other States. Thus, for example, election officials in Texas, Arizona, and counties in California, Florida, New Mexico, and New York conduct bilingual elections in English and Spanish; officials in Alaska conduct elections in Native Alaskan languages; officials in counties in Arizona and New Mexico conduct elections in Native American languages; and officials in counties in California and Hawaii conduct elections in Asian languages. The minority language provisions address real problems in the lives of real citizens. Literally, millions of American citizens benefit directly from these provisions.

Enforcement

The Department of Justice has interpreted the minority language provisions to encompass voting related activities, from registration to the actual casting of the ballot, necessary to permit persons to understand the electoral process and ensure their access to that process. While these minority language requirements apply to all covered jurisdictions, each jurisdiction must determine, working together with its affected minority language citizens, what are the particularized needs of that community and what are the most reasonable and effective measures to provide these citizens with an equal opportunity to register and cast an informed and effective ballot. The minority language provisions also provide that when the minority language is an unwritten language, as in the case of many Native American and

Alaskan Native languages, the county need not provide written materials but should provide oral assistance in the minority language to those citizens who need it.

The Justice Department has undertaken a common-sense approach to these provisions. The Department's guidelines, which emphasize that covered jurisdictions need to provide minority language information and materials to those who need them, but do not need to provide them to those who do not. The measure of compliance is effectiveness. Our experience shows that jurisdictions will be more likely to achieve this common sense result if they work hand-in-hand with language minority group members.

The Department's enforcement record demonstrates our emphasis on voluntary compliance and our belief that the most effective remedies are those that are developed in common-sense consultation between jurisdictions and their minority language communities. Following the 1992 amendments, Department attorneys travelled to newly-covered jurisdictions to explain in practical terms the Act's requirements including the principles of targeting only those individuals who need information and materials, and emphasizing the primary importance of trained bilingual personnel at the polls. Letters were dispatched to each newly-covered jurisdiction. In February, 1995, the Department established a minority language task force within the Civil Rights Division's Voting Section to identify problem areas, encourage compliance and coordinate enforcement.

Although many jurisdictions responded well to the minority language provisions, others have needed a push. The Department has sent out large numbers of federal observers to determine whether the minority language provisions were being followed. We have filed ten lawsuits to force compliance with the minority language provisions, including four since

the 1992 amendments, all have been resolved successfully by agreement with the jurisdictions.¹ Over time, implementation costs have dropped and minority language citizen participation has increased. Once recalcitrant jurisdictions work cooperatively to enforce and benefit from the law.

The consent decrees we negotiated under Section 203 for the first time provide an effective mechanism to enable the minority language citizens in these counties to enter the electoral mainstream. The consent decrees are based on the extensive experience of the Department and the particularized needs and resources of the local communities. What works best for citizens of Chinese-American heritage in highly urban Alameda County may not work best in the remote reaches of New Mexico, and we have avoided requiring costly efforts that have little practical effect. The decrees specifically avoid wasteful or expensive procedures in favor of practical steps and the utilization of the minority communities' own

¹ U.S. v. City and County of San Francisco C.A. No. C-78 2521 CFP (N.D. Cal., consent decree May 19, 1980) (Spanish and Chinese); U.S. v. San Juan County, New Mexico, C.A. No. 79-508-JB (D. N.M., consent decree Apr. 8, 1980) (Navajo); U.S. v. San Juan County, Utah, C.A. No. C-83-1287 (D. Utah, consent decree Oct. 11, 1990) (Navajo); U.S. v. McKinley County, New Mexico, C.A. No. 86-0029-M (D.N.M., consent decree Oct. 9, 1990) (Navajo); U.S. v. Arizona, C.A. No. 99-1989 PHX EHC (D. Ariz., consent agreement originally filed Dec. 5, 1988, amended Sept 27, 1993) (Navajo); U.S. v. Sandoval County, New Mexico, C.A. No. 88-1457-SC (D. N.M., consent decree Sept. 30, 1994) (Navajo and Pueblo) filed prior to the 1992 amendments.

Cases subsequent to the 1992 amendments include: U.S. v. Metropolitan Dade County, Florida, C.A. No 93-0485 (S.D. Fla., consent decree March 11, 1993) (Spanish); U.S. v. Socorro County, New Mexico, C.A. No. 93-1244-JP (D. N.M., consent decree Oct. 22, 1993) (Navajo); U.S. v. Cibola County, New Mexico, C.A. No. 93-1134 (D. N.M., consent decree Apr. 21, 1994) (Navajo and Keres); U.S. v. Alameda County, CA C.A. No. C-95-1266 SAW (N.D. Cal., consent decree Jan. 22, 1996) (Chinese).

communication systems in order to effectively provide bilingual election information to those who need it. The decrees call for constant communication between the affected citizens and their local government, and provide for flexibility to meet changing circumstances.

The bilingual provisions also have been enforced through the review of voting changes under Section 5 of the Act. Unlike the jurisdictions covered for Asian American and Native American voters, most of the jurisdictions covered for Spanish heritage voters, e.g. Texas, Arizona, and certain counties in California, Florida and New York, have been covered under Section 5 of the Act since 1975. The Section 5 process has been a valuable alternative to litigation and has led to further compliance with the law. The review under Section 5 has still been most effective and has brought about further compliance in minority language covered jurisdictions, such as Texas with its large population of Spanish-speaking citizens. In many States, the provision of election information in Spanish has become sufficiently routine that enforcement action rarely has been necessary. Technology has made this information easier and less expensive to obtain and to provide. The first lawsuit brought by the Department following the 1992 amendment of the Act, was in Dade County, Florida, a jurisdiction that is not covered under Section 5. A settlement agreement was reached with Dade County early in 1993 to ensure the adequate provision of election information in Spanish.

Enforcement actions by the Department of Justice have been based on detailed incontrovertible evidence of the denial of the right to vote of United States citizens. Since 1975, federal observers, where other provisions of the Voting Rights Act allow, have monitored elections to determine the extent to which language minority citizens were able to

receive materials, instructions and assistance in minority languages. A total of 2,218 federal observers have served in this effort so far. They have been sent to 12 different counties in six States -- Arizona, California, New Mexico, New York, Texas, and Utah -- and have monitored the treatment of Native American voters, Hispanic voters and Asian-American voters.

These federal observers have witnessed first hand the extent to which the lack of English proficiency of many citizens seriously compromises their ability to participate in the electoral process on an equal basis with other voters. The minority language provisions of the Voting Rights Act have made a real difference for minority language voters with limited English language abilities. Both rates of voter registration and actual participation in elections by minority language individuals have increased since the minority language provisions were enacted. Our democracy derives strength from the participation of as many of its citizens as possible.

The Continuing Need

The need for minority language voting provisions clearly has not diminished since 1992. The Hispanic, Native American, Asian and Alaskan Native populations in our country have all grown in the past decade. Although most applicants for citizenship today must satisfy an English proficiency test, 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. Elderly and disabled American citizens who are limited English proficient were able to naturalize and become citizens by taking a citizenship test in their

native language and did not need to show English proficiency based on their advanced age and lengthy permanent residency in this country. (8 U.S.C. §1423). Although fundamental English skills are required to pass the American citizenship test, it does not necessarily mean that the same level of proficiency would be sufficient to participate effectively in the increasingly sophisticated electoral process. Keep in mind that in today's electoral process the ballot initiatives now involve complicated propositions, referenda, and constitutional issues, which are far more intricate than the simple sentence format and questions on the citizenship exam for naturalization.

Significant numbers of voting age citizens still need language assistance. Puerto Ricans, who make up a significant percentage of the Hispanic population, are U.S. citizens whose native tongue is Spanish. Also, many Hispanic citizens who attended school in the Southwest and Midwest as late as the 1950's were educated in segregated schools. Many United States citizens continue to live in segregated communities in which languages other than English predominate.

According to the 1990 census, for example, in Cook County, Illinois, 87,977 voting age Hispanic citizens lack sufficient English fluency to participate in English only elections; in Queens County, New York, 19,162 Chinese American voting age citizens also lack such fluency. In Los Angeles County, 39,886 Chinese American voting age citizens, and 265,350 Hispanic voting age citizens are limited-English proficient. Voter turnout among Hispanics still lags behind that of our majority citizens; whatever the various reasons for this gap, the persistence of this gap cautions strongly against repealing minority language assistance that may help in overcoming these obstacles.

A study by the Mexican American Legal Defense and Educational Fund , for example, found that 70% of monolingual Spanish-speaking American citizens would be less likely to register to vote if minority language assistance were not available and 72% of these limited English proficient citizens would be less likely to vote if bilingual ballots were unavailable.²

Native Americans present a unique situation because of their history, and offer further compelling reasons for the protection of the minority language provisions. Native Americans did not immigrate to this country, but rather this country came to them. They are our nation's first Americans who already lived in this land and spoke many languages before English speaking settlers arrived. It is the declared policy of the U.S. Government, as enacted by Congress, under the Native American Languages Act, to encourage the use and preservation of Native American languages, and the Act recognizes that the use of Native American languages should not be restricted in any public proceeding. 25 U.S.C. §§ 2901, 2904.

Many Native Americans and some other minority language citizens, especially older persons, continue to speak their traditional languages and live in isolation from English-speaking society. For example, in both Apache and Navajo Counties, Arizona, more than one-half of the voting age Navajos lacked sufficient English fluency to participate in English-only elections as of the 1980 census. As of the 1990 census, 49 percent of the voting age Native American citizens in Apache County, and over 50 percent of the voting age Native

² R. Brischetto, "Bilingual Elections at Work in the Southwest," MALDEF pp. 68, 100 (1982).

American citizens of Navajo County continue to be limited English proficient. According to the 1990 census, in Pima County, Arizona, 2,173 Navajo citizens of voting age were limited English proficient and became covered by the Act's requirements for the first time in 1992. For these citizens, the minority language assistance is essential if they are to participate in elections. It is a matter of fundamental fairness; it is the responsibility of this country to ensure that those it has embraced as citizens can participate meaningfully in elections -- the activity of citizens in a democracy that is preservative of all other rights of citizenship.

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. Minority language provisions were passed to help American citizens, who work and pay taxes but have not mastered English well and need some assistance in being able to cast an informed vote.

Many of these citizens have some English *speaking* proficiency, but their English *reading* ability is insufficient to comprehend complicated ballots and written voting information. Some are older limited English proficient Americans, who are least likely to learn English as a second language, and many are poor and poorly educated. Repeal of the minority language provisions would impose an extreme burden on these American citizens in particular.

The Cost/Burdensomeness

Far from being burdensome, bilingual election provisions have been adopted voluntarily by a number of jurisdictions which are not even covered under the minority language provisions. The State of New Mexico, for example, long has conducted elections

bilingually. The City of Los Angeles voluntarily provides information in Korean in addition to the languages which are mandated under Section 203. Santa Clara County, California voluntarily provides election information for its citizens of Asian heritage in their native languages. As noted, California also had a state Supreme Court decision, which led to the enactment of state legislation calling for bilingual elections, that helps encourage jurisdictions to provide multilingual assistance where needed but not required.

As to the cost of enforcing the minority language provisions, Congress examined the cost of bilingual compliance when it extended Section 203 in 1982 and 1992 and concluded that it was not burdensome. The 1992 Congress was assisted by the report of the General Accounting Office published in 1986, which concluded that compliance costs were not burdensome. The GAO reported that for jurisdictions that reported knowing their costs, the total costs for written language assistance as a percentage of total election costs was 7.6%.³ Moreover, the report noted many costs are one-time or occasional (such as those explaining voting rules and procedures) rather than recurring routinely.

The minority language voting provisions require the use of minority languages in order to enable minority language citizens to be effective voters; they do not require jurisdictions to spend money that would not further this goal. Covered jurisdictions are encouraged to target their bilingual assistance and materials to those who need them and to tailor cost-effective programs. They are encouraged to work with local minority language communities to determine actual local needs, on a precinct-by-precinct basis.

³ United States General Accounting Office, Bilingual Voting Assistance: Cost of and Use During the November 1984 General Election, GGD-86-134BR, p. 16.

As an example, the program adopted by Alameda County, California under the settlement agreement, provides for bilingual poll officials and bilingual election information for the 11,394 Chinese-speaking citizens of Alameda County. There is no extra cost for hiring bilingual poll workers because poll workers must be hired in any event, and in a bilingual community, poll workers could easily be drawn from that community. Indeed, state law requires that bilingual poll officials serve these communities. The program is marked by efficiency and effective targeting of information and materials to those who need them. It is also flexible and adapts to changing circumstances.

The minority language requirements are finally becoming an accepted and beneficial part of the usual electoral process in jurisdictions in which many voters need this assistance. 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.

Conclusion

English is universally acknowledged as the common language of the United States. Like the President and most Americans, I believe that you must be able to speak and read English in order to fully partake in the bounty of American life.⁴ At the same time, we

⁴ Bilingual ballots will not discourage the learning of English by limited English proficient citizens any more than a ban on literacy requirements for voting discourages
(continued...)

should recognize, respect and celebrate the linguistic and cultural variety of our society. H.R. 351 would resurrect barriers to equal access to and participation in the democratic process for American citizens who do not speak English very well at a time when the continuing need is apparent and the reasons for repeal are unavailing. Because more than our language unites us, because we are united as Americans by the principles of tolerance, speech, representative democracy and equality under the law and because H.R. 351 flies in the face of each of these principles, the Administration strongly opposes this bill.

⁴(...continued)

literacy. In fact, there is an overwhelming demand for English as a Second Language (ESL) classes in communities with large language minority populations. For example, in Los Angeles, the demand for ESL 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 ESL classes. Studies show that today's immigrants are learning English just as fast as immigrants of previous generations. See e.g. Kevin F. McCarthy and R. Burciaga Valdez, Current and Future Effects of Mexican Immigration in California, (The Rand Corp. 1985) p. 61

DRAFT GENERAL TALKING POINTS

English is already accepted as the common language of the United States; that is not the issue being debated. The issue is whether children who themselves or whose parents speak another language should be able to learn other things, while they are learning English. The issue is whether American citizens who work hard and pay taxes and haven't mastered English yet should be able to vote and have a meaningful participation in our democracy. [From President Clinton's address at the Congressional Hispanic Caucus Dinner, September 27, 1995.]

97 percent of the U.S. population speak English. Everyone recognizes that we all must have English language skills to advance economically and socially in our society. As a result, non-English speaking Americans and immigrants are demonstrating that they want to learn English and are rushing to do so at faster rates than ever before. Students in schools are absorbing English faster than earlier generations as they prepare to be fully participating and contributing adults in our society. Across America, adults are lining up, and there are waiting lists, to enroll in English-as-a-Second Language classes.

The government has a proper role, indeed a responsibility, to encourage English language proficiency. The government should fulfill that responsibility by providing instruction, including bilingual education as appropriate, to assist children and adults in attaining English proficiency.

In addition, the government has an obligation to protect the safety, health, and rights of its citizens. There are instances, for example, in which it is appropriate for the government to provide information in a language other than English, such as OSHA warnings, court interpreters, and public health and voter information.

Bilingual education is important, as well. It permits students to learn English and to keep pace with their classmates in other subjects while they are learning it. It should be emphasized that the decision to offer bilingual education is a local choice.

Assisting citizens exercise their right to vote, even if they are not fully proficient in English, is fundamental. Section 203 of the Voting Rights Act has enjoyed strong and enduring bipartisan support. The Act and subsequent amendments, which protect this right, were signed by Presidents Ford, Reagan and Bush.

There are a variety of English-Only proposals now before Congress. We have not yet taken a formal position on them. However, we are concerned about proposals which may hinder

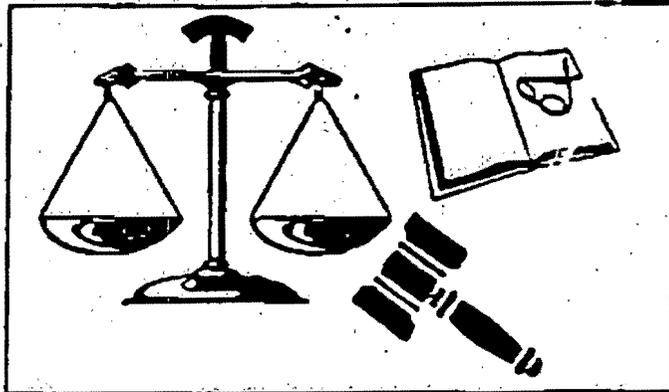
the government's essential ability to fulfill its responsibilities to its citizens.

Amending the Constitution or limiting people's rights under the Constitution is very serious business. Thus, it is important to explore the serious practical implications of English Only legislation or constitutional amendments on the everyday lives of Americans in the 50 states, Puerto Rico, Guam and American Samoa.

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET



TO:

STEVE WARNATH

WH DPC

FAX NO.:

456-7028

FROM:

ADRIEN SILAS

PHONE:

202/514-7276

DATE:

MARCH 4, 1996

NO. OF PAGES:

13

(EXCLUDING COVER)

COMMENTS:

VERY PRELIMINARY DRAFT
 OF ENGLISH LANGUAGE LETTER (S'356).
 THIS HAS NOT YET CLEARED THE JUSTICE
 DEPARTMENT AND HAS NOT GONE TO OMB.

D
J

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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

Dear Mr. Chairman:

This letter is in response to your recent 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 below, the Administration cannot support 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 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:

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).

2

- (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 any existing Federal law that "directly contravenes" the 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 for those few actions expressly exempted from the bill's definition of "official business."

The language of S. 356 asserts that it would not discriminate directly or restrict the rights of those under existing laws. 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, and participation in the electoral process for all residents in the nation. It would cut off Government dialogue with persons having limited English proficiency, prohibit language assistance by Federal government employees, and limit the delivery of Government services to many taxpaying Americans not proficient in English (who otherwise might not be aware of available services. In effect, the bill would segregate LEP communities from the political and social mainstreams even further. Clearly, efforts to integrate these political communities would be more effective through full governmental support of English language instruction.

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.

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

S. 356 would declare English the official language of the United States for all Federal government business. This declaration is unnecessary. The overwhelming majority of official business of the Federal government is currently conducted in English, and over 99.9 per cent of Federal government documents are in English. According to a recent GAO study [REDACTED], only 0.06 per cent 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, access to medical care, and access to Government services and information were formulated to assist taxpaying individuals 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, 95% of all residents speak English. The 1990 Census also reports that although 13.8% of residents speak languages other than English at home, 97% of these residents above the age of four speak English "well" to "very well". These figures clearly demonstrate that there is no resistance to English among language minorities. In fact, there is overwhelming demand for English as a Second Language (ESL) classes in communities with large language minority populations. For instance, in Los Angeles, the demand for ESL classes is so great that some schools operate 24 hours per day and city-wide, students are on the waiting lists. In New York City, the wait-listing for ESL classes is 18 months.

There are limited circumstances where a language other than English is used in official Government business. The usage may promote vital interests, such as national security; law enforcement; border enforcement; communicating with witnesses, aliens, prisoners or parolees about their rights; and educational outreach to inform people of their rights or to assure access to Government services, such as police protection, public safety, health care and voting. In each 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 larger 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 DEA, the INS and the Border Patrol.

Furthermore, S. 356 would prohibit the use of interpreters and the use of another language by Government lawyers and employees for interviewing complainants or witnesses or reviewing witness statements or other 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 the attorneys' abilities to perform their duties effectively.

3. ~~The Private Right of Action~~ S. 356 ~~Creates~~ Would Generate Frivolous Litigation and Chill Legitimate Agency 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 exceptions under S.356, the provision of these services would violate the law. A complaining individual could sue the Government in Federal court for damages and for equitable relief.

It is unclear what harm S. 356 is supposed to prevent or what rights the cause of action would protect. There would not be any harm to anyone if all Government services were available in English. Since almost all official business of the Federal government is conducted in English, this provision is clearly unnecessary.

The provisions in S. 356 at §3(a), creating a cause of action are worded vaguely and would encourage lawsuits against the Government by "any person alleging injury arising from a violation" of these proposed laws. This law would not only drop 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. More importantly, it would have a chilling effect upon Federal agencies and employees from performing vital tasks and delivering informational services in languages other than English.

4. S. 356 is of Dubious Constitutionality.

A. Free Speech

We believe S. 356 could ~~["COULD" OR "WOULD"???~~ be invalid because it abridges the free speech protections contained in the Constitution in at least two ways: 1) the bill's language restrictions violate the free speech doctrines of Meyer v. Nebraska, 262 U.S. 390 (1923); and 2) the bill's language restrictions are facially overbroad in violation of Federal employees' free speech rights.

In a series of decisions rendered by the Supreme Court, the Court invalidated somewhat similar State and local statutes requiring the use of English in various public and other settings. See Meyer, supra (statute forbidding instruction in any school except in English). The Court opined that by enacting English-only restrictions, the legislature had "attempted materially to interfere . . . with the opportunities of pupils to acquire knowledge." Id. The Meyer Court concluded that the English-only requirements before it violated the Constitution: "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." Id.

Meyer and its progeny raise questions about the compatibility of English-only legislation with the First Amendment rights of persons dealing with Government. These decisions apply directly to S. 356 because it might require teachers and day care workers in Federal establishments to use English in dealing with the children under their care, a result arguably indistinguishable from the effect of the statutes at issue in Meyer and its progeny. More generally, to the extent that Meyer indicates that the attempt to express oneself and to deal with the Government in one's own language is a matter of First Amendment concern, S. 356 would be vulnerable to challenge under the "fundamental rights" strand of Equal Protection analysis. See, e.g., Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 906 n.6 (1986) ("It is well established that . . . where a law classifies in such a way as to infringe constitutionally protected fundamental rights, heightened scrutiny under the Equal Protection Clause is required.").

Late last year, the United States Court of Appeals for the Ninth Circuit also 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), petition for cert. filed, 64 U.S.L.W. 3439 (U.S. Dec. 20, 1995) (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 provided that English shall be the official language of the State of Arizona. It also required 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 concluded that the Arizona provision constituted a prohibited means of promoting the English language, concluding 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.

Similarly, the rights of congressional persons and other Government officials would be harmed since they would be prohibited from communicating with their constituents and the public in a language other than English. The bill might be attacked as violative of the free speech rights of Members of Congress under the Speech or Debate Clause, U.S. Const., Art. I, §6. Elected congressional persons, their staffs, and Government employees would be hampered in fulfilling their duties of effectively communicating with their 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 would prevent a Member of Congress' from communicating effectively with those persons he or she represents is an unconstitutional intrusion into the system of representation established by the Constitution. The bill also impairs the First Amendment rights of LEP residents to receive vital information and petition the Government for redress of grievances in a language which they can comprehend.

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.)

Likewise, S. 356 could be held invalid for infringing upon the free speech of persons dealing with the Federal government and on Government officials and employees carrying out their governmental duties.

B. Equal Protection

S. 356 also is subject to challenge on various equal protection grounds. Many immigrant and national origin minority groups in the United States include large numbers of persons who do not speak English proficiently. Membership in these groups may coincide with membership in constitutionally protected classes under the Equal Protection Clause of the Fourteenth Amendment. 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). A court could conclude that S. 356 discriminates on the basis of national or ethnic origin, and as such is subject to strict scrutiny.

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, 262 U.S. at 401 (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, S. 356's language restrictions would have a disproportionately 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.

Under S. 356, practically all the persons who would be denied effective access to the Government due to the proposed language restrictions would be ethnic or national origin minorities. In addition, at least in some ethnic 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. [??? DIFFERENCE BETWEEN THIS SENTENCE AND THE PRECEDING SENTENCE?? ?]

C. Due Process

The bill is subject to attack on the ground that it violates the due process rights of parties to civil and administrative proceedings involving the Government who do not understand English. 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 any private parties or witnesses with limited English proficiency.

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 trust 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 pursuant to the Federal trust responsibility, 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.

S. 356 conflicts with the specific manifestations 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 Would Limit Bilingual Education, Causing LEP Students to Fall Behind in School.

While the language of S. 356 states that it would not repeal existing laws, it would constitute a de facto repeal of all laws which conflict with its purpose of limiting all official Government business to the English language. The impact would be devastating to LEP children in this country.

For example, S. 356 would 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 of 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."³ 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. Denying LEP children a meaningful education in a language comprehensible to them during the period in which they are learning English -- the basic purpose of bilingual education -- denies them an equal educational opportunity. Lau v. Nichols, 414 U.S. 563 (1974).

S. 356's undeniable repeal of Title VII of the Bilingual Education Act would cut funding to States and their school districts for bilingual education programs. However, nothing in S. 356 would limit the power of courts to effect the appropriate remedy for LEP children under the Equal Educational Opportunities Act or Title IV of the Civil Rights Act of 1964. ~~[[? WHY WOULDN'T S356 REPEAL THESE AS WELL??]]~~ In other words, if the Department of Education found that a school district was in non-compliance with constitutionally-based Lau regulations, then the school could be found to be out of compliance with Title IV. In effect, the repeal of Title VII by S. 356 would amount to an unfunded constitutional mandate by shifting the financial burden from the Federal government to the states and the local school districts.

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

In addition, S. 356 would effectively repeal the minority language provisions in the Voting Rights Act (VRA) because they are in conflict. Where S. 356 requires the use of English-only, 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 minority language voters. These provisions apply to States and counties and require that they provide minority language information, materials, and assistance to enable minority language citizens to participate in the electoral process as effectively as English-speaking voters.

Section 203 was added to the Voting Rights Act in 1975, in recognition of the fact that large numbers of American citizens who spoke languages other than English had been effectively excluded from participation in our electoral process. Under Section 203, the relevant language minorities are defined as "persons who are American Indian, Asian-American, Alaskan Natives

³President William J. Clinton's address to the Hispanic Caucus Institute Board and Members, Washington, D.C., September 27, 1995.

or of Spanish heritage." 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.

For instance, the VRA helps many Native Americans and some other language minority citizens, especially older individuals, who continue to speak their traditional languages and live in isolation from English-speaking society. In addition, Puerto Ricans, who makeup a significant percentage of the Hispanic population in the United States, are citizens by birth. 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 connection with the 1992 extension of Section 203, "[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 a American minority community that only recently has had the opportunity to meaningfully engage in participatory democracy.

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

The language of S. 356 states 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; 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.

The Ninth Circuit Court of Appeals recently agreed with this reasoning in striking down the State of Arizona's official English law. Yniguez, supra. The court found that the government's use of languages other than English in communicating with LEP persons, increased efficiency rather than harmed it, and the court held that an English-only law prohibiting the use of different languages by government served no significant governmental interest. Id. at 942-43.

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

Finally, S. 356 would promote division and discrimination rather than foster unity in America. First, we fear that passage of S. 356 also would exacerbate national origin discrimination

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and intolerance against ethnic minorities who look or sound foreign and may not be English proficient.

Second, the Government'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. Stopping this use of languages other than English will 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.

We must publicly and privately recognize, respect and celebrate the linguistic diversity of our society as part of its cultural diversity. S. 356 would erect barriers to full access to and participation in the democratic government established by the Constitution for all of the Nation's people. The Constitution clearly protects language minorities from discriminatory treatment, and the proposed Act is in all likelihood unconstitutional.

English is unanimously recognized as the common language of the United States, but the passage of S. 356 would increase administration inefficiency, and exclude LEP Americans from education, employment, voting and equal participation in our society as well as equal protection under the law. In these fiscally difficult times, Government efficiency and economy would be promoted better by allowing Government agencies to continue their limited use of other languages to execute their duties effectively.

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, respect for due process, representative democracy and equality of protection under the law.

Thank you for requesting the Administration's views on S. 356, the Language of Government Act.

Very truly yours,

Andrew Fois
Assistant Attorney General



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

To: Suzanna Valdez
White House Office of Public Liaison

From: Juanita C. Hernandez 
Counsel to the AAG

Date: September 15, 1995

Subject: Protection of Language Minority Rights by the Civil Rights Division

The Civil Rights Division of the Department of Justice is responsible for enforcing several federal statutes prohibiting discrimination. Some include protections for minority language rights. Below are background information on English only and descriptions of certain cases and work done by the CRD Sections which protect minority language rights during the tenure of this Administration. In addition, there are also some ongoing investigations in this area which are confidential and cannot be made public at this time.

I. Background

The "English-only movement" has grown as the presence of immigrants from Spanish and Asian-language speaking countries has increased.¹ Proponents of the English-only movement claim that recent immigrants have become slow to fully "assimilate" to American culture, causing some Americans to question whether American unity and the English language are being threatened. This perceived threat has prompted a growing number of states and localities to declare English as their official language, despite the fact that a vast majority (one report estimated 98%) of homes

¹ As we enter the next century, the workplace will become increasingly heterogeneous in ethnicity, race, and language. In California, for instance, the "non-Latino white population of 57.2% is yielding its majority position." Rey M. Rodriguez, "The Misplaced Application of English-Only Rules in the Workplace," 14 Chicano-Latino L. Rev. 67 (1994). By the year 2000, it is expected that whites will make up less than 50% of California's population. *Id.* at n.9, citing Carol Ness, "The Un-Whitening of California," San Francisco Examiner, April 14, 1991, at A-1.

in America do speak English. In any event, this increased anxiety by English-only advocates has also spilled over into the workplace. Employers have adopted English-only rules in varying contexts, which generally require employees to refrain from speaking languages other than English on the employer's premises. In the context of education, a growth in the number of elementary and secondary schoolchildren with limited English proficiency has made bilingual education an increasingly important educational component. Attached are also some background materials on the English-only Movement.

II. Impact on Public Services

Various states and localities have undertaken measures in response to the English-only movement. In 1980, Dade County, Florida, passed an ordinance barring use of county funds for activities that involve a foreign language or that promote non-American culture. As of 1992, 18 states had passed a constitutional amendment or legislation declaring English the "official" state language.² More recently, voters in Allentown, Pennsylvania, passed an English-only ordinance that directs the city to print materials in English only, except when required by state or federal law.³

² See Stephanie Kralik, "Civil Rights -- The Scope of Title VII Protection for Employees Challenging English-Only Rules -- Garcia v. Spun Steak Co., 998 F.2d 1480 (9th Cir. 1993)," 67 Temp. L. Rev. 393 n.5 (1994). Those states are as follows: Ala. Const. amend. 509; Ariz. Const. art. XXVIII, § 1; Cal. Const. art. III, § 6; Colo. Const. art. II, § 30a; Fla. Const. art. II, § 9; Neb. Const. art. I, § 27; Ark. Code Ann. § 1-4-117 (Supp. I 1993); 1986 Ga. Laws 70; Ill. Rev. Stat. ch. 1, para. 3005 (1989); Ind. Code § 1-2-10-1 (1988); Ky. Rev. Stat. Ann. § 2.013 (Michie/Bobbs-Merril 1993); Miss. Code Ann. § 3-3-31 (1991); N.C. Gen. Stat. § 145-12 (1993); N.D. Cent. Code § 54-02-13 (1989); S.C. Code Ann. §§ 1-1-696 to 1-1-698 (Law. Co-op. 1991); Tenn. Code Ann. § 4-1-404 (1991); Va. Code Ann. § 22.1-212.1 (Michie 1993). In addition, Hawaii's constitution provides that English and Native Hawaiian are the state's coequal official languages. Haw. Const. art. XV § 4.

Several versions of an English Language Amendment to the United States Constitution have also been proposed. See H.R.J. Res. 96, 99th Cong., 1st Sess. (1985); S.J. Res. 20, 99th Cong., 1st Sess. (1985); H.R.J. Res. 169, 98th Cong., 1st Sess. (1983); S.J. Res. 167, 98th Cong., 1st Sess. (1983); S.J. Res. 72, 97th Cong., 1st Sess. (1981).

³ Jonathan J. Higuera, "Allentown Latinos Fight English-Only Ordinance," Hispanic Weekly Report (Oct. 3, 1994).

The impact of these state and local efforts vary. In some cases, laws that declare English as the state's "official language" may be treated as symbolic. However, laws having specific prohibitions may result in ending state and locally funded bilingual services and programs. For example, Dade County's 1980 ordinance prohibiting the County from funding activities that involve a language other than English resulted in the termination of bilingual signs and services ranging from medical services at the county hospital, direction signs for a public transportation system, and multi-ethnic cultural festivals.⁴

III. Employment

In the employment context, there have been a number of cases challenging English-only rules as a form of national origin discrimination that violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* Title VII does not specifically prohibit English-only rules as a form of discrimination, and this relationship has been interpreted by the courts and the EEOC.

As a response to some adverse early court decisions, the EEOC promulgated regulations addressing English-only rules as they relate to national origin discrimination. See EEOC Guidelines on Discrimination Because of National Origin, 29 C.F.R. 1606.7. The Guidelines recognize that the "primary language of an individual is often an essential national origin characteristic."

The most significant recent federal pronouncement on the use of English-only law in the workplace is *Garcia v. Spun Steak Co.*, 998 F. 2d 1480 (9th Cir. 1993), cert. denied, 1154 S. Ct. 2726 (1994), which involved a Title VII challenge to a rule that required workers at a poultry and meat distribution plant to speak only English during working hours. The court of appeals rejected the analysis required by the EEOC's Guidelines.

The plaintiffs in *Spun Steak* filed a petition for certiorari. Upon request of the Supreme Court, the Justice Department Civil Rights Division filed an amicus brief taking the position that the court of appeals decision was incorrect, since it made it too difficult for plaintiffs to challenge English-only rules. However, the Supreme Court declined to review the case on June 20, 1994. The *Spun Steak* case holding is only applicable in the 9th Circuit.

⁴ See attached Pamphlet, National Coalition for Language Freedom, "Questions and Answers About the English-Only Movement" (prepared by the American Civil Liberties Union of Northern California).

IV. Education

The Civil Rights Division has pending the following cases and matters regarding the protection of language minority students. In addition, other relevant matters and areas are under investigation and cannot be disclosed at this time.

- ◆ Lau v. Nichols (N.D. Cal.) This longstanding case provides relief to non and limited English speaking students in the San Francisco Unified School District. The school district provides bilingual and ESL instruction. The more highly populated "major" language groups receive bilingual education, the less populated groups benefit from other strategies. The United States intervened in this lawsuit as a plaintiff in 1974.
- ◆ United States v. State of Texas (E.D. Tex.) (C.A. 5281) This is the longstanding state-wide Texas desegregation case. Under Section G of the court order the state is obligated to require local school districts in the state to provide compensatory services including services to non and limited English speaking students. The state has promulgated requirements that require bilingual education at the lower grade levels and ESL or other strategies at the higher grade levels.
- ◆ United States v. Chicago Board of Education (N.D. Ill.) This school desegregation case was resolved by a consent decree in 1980 which provide relief for African American and Hispanic students. The consent decree requires that the Board implement a plan to ensure that non and limited English speaking students are provided with instructional services necessary to assure their effective participation in the educational programs in the school district. The school district provides bilingual education and also uses other educational techniques.
- ◆ Sinajini v. Board of Education of the San Juan County School District, Utah (D. Utah) The United States recently intervened in this lawsuit, based on a referral from the United States Department of Education, complaining that the school district has failed to adequately identify and provide services to non and limited English speaking Native American students. The lawsuit is ongoing.
- ◆ United States v. Midland Independent School District, (W.D. Tex.) A recent consent decree entered in this longstanding school desegregation case provides relief for non and limited English speaking students, primarily Hispanic.
- ◆ Cuba, New Mexico The United States entered into a settlement agreement with the school district which provides relief for non and limited English speaking Navajo students. Our investigation revealed that the school district failed to adequately identify such students and provide them services. We

also found that such students were sometimes improperly placed in special education classes. This year, we will visit the school district to monitor the ongoing implementation of the remedy.

V. Voting Rights

a) Enforcement of the Minority Language Requirements of the Voting Rights Acts--Statutory requirements

The Voting Rights Act contains two minority language provisions, Section 4(f)(4) and Section 203, which apply to particular states and counties and require that they provide minority language information, materials, and assistance to enable minority language citizens to participate in the electoral process as effectively as English-speaking voters. See the Appendix to the minority language guidelines, 28 C.F.R. Part 55, 7/1/94 edition, for the list. The minority language provisions protect persons of Spanish heritage, American Indians, Asian Americans, and Alaskan Natives.

The enactment of the Voting Rights Language Assistance Act of 1992 extended and expanded Section 203 of the Voting Rights Act. Assuring that language minority citizens are able fully to participate in the electoral process is a priority of the Civil Rights Division. To enhance our enforcement in this area, we have established a Minority Language Task Force.

b) Cases

(1) Litigation- American Indians

The Civil Rights Division's aggressive enforcement of Section 203 led to lawsuits filed since January 20, 1993 against--

- ◆ Cibola County, New Mexico
- ◆ Socorro County, New Mexico

These lawsuits resulted in consent decrees imposing detailed minority language election information programs to benefit Native Americans.

Moreover, expanded consent decrees were entered imposing detailed minority language election information programs against--

- ◆ Apache County, Arizona
- ◆ Navajo County, Arizona

• *Sandoval County, New Mexico*

Lawsuits against these counties had been filed in earlier years. These suits are intended to enable American Indians to become full electoral participants. Additional areas subject to the Voting Rights Act's minority language requirements with respect to American Indians are under investigation.

(2) **Litigation - Hispanics**

In 1993, the Civil Rights Division successfully sued--

♦ *Dade County, Florida*

On March 11, 1993, we sued Dade County for distributing a voter information pamphlet regarding a special election for its county commission in English but not Spanish. The special election was the county's first under a new single-member district electoral system resulting from litigation under Section 2 of the Voting Rights Act. The county claimed that dissemination of the voter information in Spanish would violate a local "English-only" ordinance. After an evidentiary hearing, the court entered a temporary restraining order requiring the county to distribute a Spanish translation of the pamphlet in time for the election. Subsequently, a permanent consent decree was entered requiring the county to comply with Section 203, and the newly elected county commission repealed the English-only ordinance.

At the same time, the Civil Rights Division persuaded Los Angeles officials that the city must provide minority language assistance at the polls for its municipal elections, and the city assigned bilingual poll workers to assist minority language voters at the polls in its April 1993 election.

(3) **Litigation - Asian Americans**

On April 13, 1995, the Civil Rights Division sued Alameda County, California, to remedy the county's inadequate Chinese language election procedures. With the complaint, we filed a consent decree that would provide a Chinese language election information program for the county. (Census data show there are 11,394 Chinese citizens of voting age in need of Chinese-language assistance.) Among the problems that we are seeking to remedy is the county's failure to employ Chinese Americans in the county clerk's office and as pollworkers. We are awaiting action by the court.

c) **Section 5 Objections**

Many jurisdictions subject to the minority language requirements of the Voting Rights Act are also subject to the preclearance requirement of Section 5 of the Voting Rights Act. These include the states of Alaska, Arizona, and Texas (and all political subunits within them) and counties in the states of California, Florida, and New York. See the Appendix to the minority language guidelines, 28 C.F.R. Part 55, 7/1/94 edition, for the complete list (coverage under §4(f)(4)). These jurisdictions must seek federal preclearance of all voting changes, including changes in the use of minority languages, to assure that they are not discriminatory in purpose or effect.

Since January 20, 1993, minority language objections have been interposed to the following jurisdictions:

◆ *New York City, New York*

Objections under Section 5 on August 9, 1993, and May 13, 1994, were interposed to the Chinese language election procedures of New York City (Kings and New York Counties). The objections led to the adoption by the city of far-ranging procedures for incorporating Chinese language information into the election process in the city.

◆ *State of Texas*

On February 17, 1995, the Civil Rights Division interposed a Section 5 objection to the Spanish language procedures to be used in the implementation of the National Voter Registration Act by the Texas Secretary of State. Our investigation revealed that errors, omissions, and misspellings in the Spanish translations of voter registration materials will have an adverse impact on potential Hispanic registrants.

◆ *San Antonio (Bexar County), Texas*

On October 21, 1994, the Civil Rights Division interposed a Section 5 objection to the procedures for providing Spanish language election materials for the August 13, 1994, special referendum election for San Antonio (55.6% Hispanic). Although the city provided assistance and many materials bilingually, it provided the substantive explanation of the referendum question in English only. Because the city held the election without preclearance and the referendum failed, our objection served to put the city on notice about its

failure to comply with the bilingual requirements of the Act.

◆ *Judson Independent School District (Bexar County), Texas*

On December 8, 1994, the Civil Rights Division declined to withdraw our November 18, 1994, objection to a special bond election for the Judson ISD (24% Hispanic). We objected because the school district distributed in English, with no Spanish translation, election materials that included a school district newsletter that discussed the purpose of the bond election, and a pamphlet and other publicity prepared by a committee organized by the school district to campaign in favor of the bond proposal. In declining to withdraw the objection, we rejected the school district's assertions that the newsletter was not election material, that the committee was an independent citizens group, and that there is no need for bilingual materials in the district. The school district subsequently submitted a new special bond election for which it distributed bilingual materials.

d) **Election Coverage by Federal Observers**

Under Section 8 of the Voting Rights Act, the Attorney General is authorized to ask the Office of Personnel Management to send federal observers to monitor elections in counties certified under Section 6 of the Act or under court order under Section 3(a) of the Act.

Since 1993, federal observers have been sent to Arizona, New Mexico, and Utah to monitor minority language compliance with respect to American Indians and to New York City to monitor minority language compliance with respect to Hispanics and Chinese Americans.

Federal observers have monitored the following elections for this purpose:

- ◆ *Apache County, Arizona: September 13, 1994; November 8, 1994*
- ◆ *Navajo County, Arizona: September 13, 1994; November 8, 1994*
- ◆ *Cibola County, New Mexico: February 2, 1993; February 1, 1994; June 7, 1994; November 8, 1994*
- ◆ *McKinley County, New Mexico: February 2, 1993; June 7, 1994; November 8, 1994*

- ◆ *Sandoval County, New Mexico*: June 7, 1994; November 8, 1994; February 7, 1995
- ◆ *Socorro County, New Mexico*: June 7, 1994; November 8, 1994; February 7, 1995
- ◆ *New York City, New York*: September 14, 1993; November 2, 1993; September 13, 1994; November 8, 1994
- ◆ *San Juan County, Utah*: November 8, 1994

e) **National Voter Registration Act**

The Civil Rights Division is vigorously enforcing the National Voter Registration Act of 1993 (the motor voter law), to remove unnecessary barriers to voter registration and bring large numbers of new registrants into the electoral process. This Administration fought for a law which promised to bring new voices to the political process by making it easier for all Americans to exercise their fundamental right to vote. We will fulfill the promise of the law, which should especially benefit language minorities, by ensuring that all states live up to their responsibilities.

We pressed states to comply with the NVRA by the January 1, 1995, deadline. Most states are in compliance, but a few states declined to comply by the deadline. We have sued those states that have not made a good faith effort to implement the NVRA. We have sued seven states, so far:

- ◆ **California**

We achieved a quick victory in the California suit, the first to be decided. On March 2, 1995, the court heard arguments regarding the constitutionality of the NVRA and ruled from the bench that the NVRA is constitutional. The court entered an injunction ordering the state to comply and denied the state's motion for stay pending appeal. On July 24, 1995, the 9th Circuit affirmed the district court's judgment.

- ◆ **Illinois**

On March 28, 1995, the court ruled in our favor and ordered the state to comply with NVRA requirements. On June 6, 1995, the Seventh Circuit affirmed the district court's ruling upholding the constitutionality of the NVRA.

◆ *Michigan*

We filed suit against Michigan on June 12, 1995. We plan to file a motion for summary judgment, and a hearing on dispositive motions is scheduled for October 25.

◆ *Mississippi*

In a lawsuit filed on April 20, 1995, we claimed that the state had adopted dual (federal/state) voter registration without Section 5 preclearance, and that some state agencies were refusing to offer voter registration applications to their clients as required by the NVRA. On July 24, 1995, the court rejected our Section 5 argument; whether the state is in compliance with the agency registration requirements of the NVRA remains at issue. Trial is scheduled to be held in March 1996, but we are examining ways to accelerate the resolution of this matter.

◆ *Pennsylvania*

On March 30, 1995, the court ruled in our favor, finding the act constitutional and the state not in compliance. The state did not appeal.

◆ *South Carolina*

The court held a hearing in February 1995 on our preliminary injunction motion but has not yet announced its decision.

◆ *Virginia*

The trial is set for October 3, although the state contends that the NVRA does not apply to it until March 5, 1997.

Attachment

CC: John E. Thompson
CC: Beverly B. Thierwechter
CC: Norwood J. Jackson Jr
CC: Steven D. Aitken
CC: Kumiki S. Gibson
CC: Elena Kagan
CC: S. Lael Brainard
CC: Michael A. Ash
CC: Tracey E. Thornton
CC: Bruce N. Reed
CC: Robert Malley
CC: Eric P. Schwartz
CC: Alice E. Shuffield
CC: Charles S. Konigsberg
CC: John C. Angell
CC: Rahm Emanuel
CC: James C. Murr
CC: James J. Jukes
CC: Nancy J. Duykers



The EEOC and National Origin Discrimination Based on Language and Accent

- Title VII of the Civil Rights Act of 1964, as amended (Title VII), prohibits employment discrimination based upon, among other things, an individual's national origin. The Commission defines national origin broadly to include one's birthplace, ancestry, physical, cultural, or linguistic characteristics of a national origin group. This definition is set out in EEOC's *Guidelines on Discrimination Because of National Origin (Guidelines)*, 29 C.F.R. Section 1606.1.
- The Commission recognizes that an individual's primary language is often an essential national origin characteristic and that prohibiting an employee from speaking in his/her primary language while at work may disadvantage the employee on the basis of his/her national origin.

Speak-English-Only Rules

- It is the Commission's position that rules requiring employees to speak only English in the workplace (speak-English-only rules) have an adverse impact on individuals whose primary language is not English (language-minority) or who are limited-English proficient (LEP). Such rules, when applied at all times, are presumed to violate Title VII and will be closely scrutinized.
- Limited English-only rules that apply only at certain times may be lawful if the employer can show they are justified by business necessity. If a limited English-only rule is adopted due to business necessity, the employer should inform all employees of the rule and explain the circumstances under which speaking only in English is required. The employer should also make sure that employees are aware of the repercussions of violating an English-only rule. If an employer fails to provide notice of an English-only rule, including the consequences of breaking the rule, the employer's taking adverse action against an employee for violating the rule constitutes national origin discrimination.
- An English-only rule applied only to a particular group(s) but not others violates Title VII as unlawful disparate treatment. English-only rules, whether applied at all times or only at certain times, may create a hostile working environment, which could constitute unlawful harassment under Title VII.
- The Commission's policy on speak-English-only rules is set out in the *Guidelines*, 29 C.F.R. Section 1606.7 (See Attachment A).

Language/Accent Discrimination

- If a job applicant is not hired because of his/her accent or manner of speaking, the employer must show that the accent materially interfered with the person's ability to perform the job in order to defend against a charge of violating Title VII. Investigations will focus on the qualifications of the person and whether his/her accent or manner of speaking had a detrimental effect on job performance.
- The Commission's position on language and accent discrimination is set out in the *Guidelines*, 29 C.F.R. Section 1606.6 (See Attachment A), and in EEOC Compliance Manual Section 623.

Recent Caslaw Developments -- Garcia v. Spun Steak

Ninth Circuit Ruling

The Commission's Guidelines on National Origin Discrimination (Guidelines) were generally accepted as the authoritative interpretation of Title VII until July 1993 when the U.S. Court of Appeals for the Ninth Circuit decided *Garcia v. Spun Steak Company*. In a 2-1 ruling that reversed a district court decision, the Ninth Circuit upheld a California employer's speak-English-only rule and declined to defer to the Commission's Guidelines -- noting its disagreement with certain aspects of the Commission's position.

In particular, the court held that plaintiffs had to prove adverse impact, not merely assert it. The court found that Spun Steak's bilingual employees could not show that they suffered discriminatory adverse impact because they could comply with the speak-English-only rule.

Supreme Court Review

After the Ninth Circuit's decision, plaintiffs petitioned the U.S. Supreme Court to review the case. In preparation for the review, the Court invited both the EEOC and the U.S. Department of Justice (DOJ) to file an *amicus curiae* brief. The EEOC and Justice Department filed the brief on June 1, 1994, arguing that the Ninth Circuit erred in its *Spun Steak* ruling, and that the Commission's Guidelines should be followed to find the speak-English-only rule a violation.

The EEOC/DOJ brief quoted the *Spun Steak* dissent in which Judge Reinhardt of the Ninth Circuit observed that banishing a person's primary language from the workplace communicates not only "a rejection of the excluded language and the culture it embodies, but also a denial of that side of an individual's personality."

The EEOC/DOJ brief also concurred with Judge Reinhardt's contention that "[s]ome of the most objectionable discriminatory rules are the least obtrusive in terms of one's ability to comply: being required to sit in the back of a bus, for example." Furthermore, the brief noted that under the court of appeals' analysis, a black employee could not challenge a rule requiring black employees to use separate bathrooms and drinking fountains, and an Orthodox Jew could not challenge a rule forbidding the wearing of head coverings.

Upon completion of its review on June 20, 1994, the Supreme Court denied *certiorari* and announced it would not hear the appeal of the Ninth Circuit ruling in *Spun Steak*. Language-rights experts believe that the Supreme Court's denial of *certiorari* was based on its desire to allow other courts of appeal an opportunity to review the English-only issue before the Court considers it. In the 15 years since EEOC promulgated its Guidelines, the Ninth Circuit's decision remains the only appellate ruling on English-only requirements.

Current EEOC Enforcement

- The Ninth Circuit's decision in *Spun Steak* affects only field offices within that court's jurisdiction, which covers Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. In all other federal circuits, the Commission's position remains unaffected and is being enforced as stated in the Guidelines. Moreover, the Commission has not revised or modified its position on this issue, nor does it anticipate doing so.
- On March 14, 1995, the EEOC held a special meeting on national origin discrimination in which invited experts from affected national origin communities addressed the Commission. Topics discussed included the issues of language and accent discrimination, including speak-English-only rules, and their effects on the American workplace.

Following the panel's presentations, Chairman Casellas called on the Commission to increase its outreach and enforcement activities on behalf of traditionally underserved national origin communities, in accordance with section 111 of the Civil Rights Act of 1991 (also known as the *Serrano Amendment*).

- Historically, the EEOC did not break down its national origin charge data by language or accent violations. Affected language-minority communities repeatedly indicated to the EEOC that this type of discrimination is a growing problem in the workplace. Moreover, the agency has been and continues to be a party in numerous English-only lawsuits across the country.

Due to the Commission's increased focus on national origin language-related issues, new tracking codes were recently added to EEOC's national Charge Data System and Litigation Management Information System. These tracking codes will enable the agency to more closely monitor specific charges and litigation involving language and accent discrimination, including English-only violations.

- Generally, national origin-based charges filed between fiscal years (FY) 1990 and 1995 averaged approximately 7,250 charges per year -- accounting for an average of 10% of all charges filed with the agency over the past six years.

EEOC Litigation

- During the period from FY 1991 through FY 1995, the EEOC filed approximately 10 lawsuits against private employers for violations of Title VII involving speak-English-only rules. These lawsuits were filed in federal district courts by EEOC regional offices in the following locations: Los Angeles, San Antonio, Miami, Phoenix, Houston, New York, and Baltimore. The following are summaries of the three most recent lawsuits brought by the Commission in this area:
 - EEOC v. Sears Security Systems:
Filed: May 3, 1995, by EEOC's New York District Office.
Facts: Three Hispanic employees were immediately terminated after their supervisor overheard two of them conversing in Spanish. The charging parties, the only Hispanics employed by the company, were all fired even though the third employee was not speaking Spanish.
Outcome: Litigation pending.
 - EEOC v. American Red Cross:
Filed: November 2, 1994, by EEOC's Baltimore District Office, and settled on December 6, 1995.
Facts: Chinese employees at two American Red Cross laboratories in Maryland were prohibited from speaking English and Chinese interchangeably to each other during office hours and during telephone conversations to family members.
Outcome: The settlement obtained by the EEOC provided for the termination of the English-only rule and sensitivity training to American Red Cross employees on English-only issues at the two laboratories in Rockville, Md.
 - EEOC v. Wynell, Inc. d/b/a A&B Nursery School:
Filed: December 21, 1992, by EEOC's Houston District Office, and currently on appeal.
Facts: Hispanic employees of a children's day care school were prohibited from speaking Spanish on the premises at any time, even during their lunch break. The approximately 20 employees who worked at the school -- the majority of whom were Hispanic women with rudimentary English skills -- were often assailed by the director and threatened with termination for speaking Spanish on the premises.
Outcome: The district court ruled that because no one was actually discharged, the director's action did not effect the terms and conditions of employment. The EEOC appealed the decision to the 5th Circuit Court of Appeals, where it is now pending.

ATTACHMENT A

Selected Sections of Guidelines on Discrimination Because of National Origin 29 C.F.R. Part 1606

Section 1606.6 - Selection Procedures

(b) The Commission has found that the use of the following selection procedures may be discriminatory on the basis of national origin. Therefore, it will carefully investigate charges involving these selection procedures for both disparate treatment and adverse impact on the basis of national origin. However, the Commission does not consider these to be exceptions to the "bottom line" concept:

(1) Fluency-in-English requirements, such as denying employment opportunities because of an individual's foreign accent, or inability to communicate well in English.

Section 1606.7 - Speak-English-Only Rules

(a) *When applied at all times.* A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment. Therefore, the Commission will presume that such a rule violates Title VII and will closely scrutinize it.

(b) *When applied only at certain times.* An employer may have a rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity.

(c) *Notice of the Rule.* It is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Therefore, if an employer believes it has a business necessity for a speak-English-only rule at certain times, the employer should inform its employees of the general circumstances when speaking only in English is required and of the consequences of violating the rule. If an employer fails to effectively notify its employees of the rule and makes an adverse employment decision against an individual based on a violation of the rule, the Commission will consider the employer's application of the rule as evidence of discrimination on the basis of national origin.

Note: Footnotes have been omitted from the excerpted text of the Guidelines.

Prepared by EEOC's Office of Communications and Legislative Affairs (March 1996)

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET



TO: Steven Warnath

DPC

FAX NO: 456-7028

FROM: JOHN TRASVINA

PHONE: 202/514-2111

DATE: 10/4

NO. OF PAGES: 4 (EXCLUDING COVER)

COMMENTS: English Only



U. S. Department of Justice

Office of Legislative Affairs

Deputy Assistant Attorney General

Washington, D.C. 20530

M E M O R A N D U M

To: Steven Warnath
From: John Trasviña
Re: Update on English Only
Date: October 4, 1995

On October 18, the Early Childhood, Youth & Families Subcommittee of the House Economic & Educational Opportunities Committee will hold a hearing on English Only. As you know, a number of bills and constitutional amendments have been introduced on the general subject of English as the official language of the United States. In general, bills either

- 1) simply stating English is the official language,
- 2) prohibit government communication in languages other than English and repeal bilingual education and ballot laws,
- 3) do the same as #2 but contain exceptions for public health and safety, or
- 4) amend the U.S. Constitution to make English the official language.

I have been in contact with the Democratic staff of the Subcommittee as has Luis Castro of the Department of Education. We have learned that there will be more than one hearing and that the October 18 hearing is devoted to testimony from House members. A second hearing would include advocates and outside experts.

Thus far, it is best not to have the Administration testify before the Subcommittee nor request to testify. If the bill(s) start moving, we could then ask to testify and/or submit policy and constitutional analyses (yet to be done) on the impact of whatever legislation is moving. I will be having the Civil Rights Division and Office of Legal Counsel review the various bills. Because the legislation itself covers many subjects beyond education, I believe it appropriate that various agencies similarly examine the impact English only bills would have.

I am also a member of the White House working group on Puerto Rico. Since the bills would have a special impact on Puerto Rico, I am letting Jeffrey Farrow of the working group know of the English Only bills as well.

Thought you would be interested in the attached fax.

High Latino Drop-Out Rate Targeted by Education Task Force

By Joseph Torres

A seven-member group formed by the U.S. Department of Education to combat the disproportionately high Hispanic drop-out rate held its first meeting to lay the groundwork for its year-long mission of finding solutions.

Sponsored by Under Secretary of Education and the Office of Bilingual Education and Minority Languages Affairs, the Hispanic Drop-out Project is made up of seven educators whose experiences range from working with at-risk youth to teachers working at the

middle and high school levels.

At its Sept. 18 meeting in Washington, D.C., the group discussed reasons contributing to the high Hispanic drop-out rate, including social and economic barriers, overcrowded and underfunded schools and whether schools meet the educational needs of Latino students.

"We want to look at schools and programs successful in dealing with the Hispanic drop-out rate," said group member Cipriano Muñoz, a science coordinator at a San Antonio high school.

According to the American Council on Education, Hispanics have the lowest secondary education completion rate of any major group. Slightly more than half of the Hispanic 18- to 24-year-old population earned a high school diploma in 1992. The Hispanic completion rate trailed whites by 26% and blacks by 17%.

The group, headed by Walter Secada of the University of Wisconsin, will meet periodically through September of 1996.

Its next meeting will be held in San Antonio in December.

Clinton Praises Hispanic Family Values

continued from page 1

thriving community," he was disappointed that he didn't address legal immigrants' status in welfare reform.

"I wish he would have taken a stronger stance on welfare reform. That's going to affect a lot of Hispanic families."

In his introduction of Clinton, Congressional Hispanic Caucus chairman Ed Pastor (D-Ariz.) said he believed history will remember Clinton as "very kind and caring to the Hispanic community."

"President Clinton has shown us that leaders look for solutions, not scapegoats," he said.

The banquet drew top Hispanic leaders from across the country, including Democratic CHC members, Cabinet members Henry Cisneros and Federico Peña, and U.S. Attorney General Janet Reno.

Rep. Bill Richardson (D-N.M.) and Cisneros were singled out by Clinton.

Conspicuously absent were the three Hispanic Republican members of Con-

gress and Rep. Henry B. González (D-Texas).

"They were all invited," said CHCI gala producer Cecilia García. "It's up to them to see if they have time in their schedules."

She noted that Rep. Henry Bonilla (R-Texas) attended an earlier CHCI function that same day and Rep. Ileana Ros-Lehtinen (R-Fla.) nominated one of the night's honorees.

Miami physician Manuel Alzugaray received a distinguished service award for his work with the Miami Medical Team Foundation and actress Carmen Zapata of the Bilingual Foundation of the Arts received a role model award.

Major sponsors of the event were Anheuser-Busch Companies and The Coca-Cola Company.

The \$500,000 raised will be used for CHCI operating costs, including support of its fellowship program and education clearinghouse, said Rita Elizondo, the institute's executive director.

House Passes Stiffer Cuba Trade Sanctions

By Joseph Torres

Hispanic congressional members were divided on a bill that calls for tougher sanctions against Cuba and would allow U.S. citizens to file lawsuits in U.S. courts for remuneration for property confiscated in Cuba after the 1959 revolution.

The "Cuban Liberty and Democratic Solidarity Act" passed the House of Representatives Sept. 21 by a vote of 294-130, with Latino members voting 9-8 against it. The bill also calls on President Clinton to organize an international embargo against Cuba and authorizes the administration to develop a plan that provides assistance to a transitional government in a post-Castro Cuba. It also denies U.S. visas to foreigners who own or benefit from the use of the confiscated property.

The three Cuban-American members, Reps. Robert Menéndez (D-N.J.), Lincoln Díaz-Balart (R-Fla.) and Ileana Ros-Lehtinen (R-Fla.) applauded the bill's passage.

"The legislation creates a climate for democratic change," said Menéndez. "It lets the Cuban people know that we are not their enemies."

Rep. Xavier Becerra (D-Calif.) questioned whether the United States has the authority to regulate business dealings of foreign countries.

The Senate is expected to take up the bill shortly. Clinton has indicated he will veto the bill in its current form.

Truck Driver Cited for Failing to Speak English

By Fernando Trulin

A Queens, N.Y., truck driver told Weekly Report that he will contest a traffic citation issued by a New Jersey state trooper for not speaking English.

Félix Zamora received the citation Sept. 21 during a routine traffic inspection on the New Jersey Turnpike near Philadelphia.

The trooper issued the citation because Zamora was having difficulty understanding him, said N.J. State Police spokesman Al Della Fave.

"I have been traveling this route for five years...I had been stopped before for the inspections but never cited for this," said Zamora in Spanish. "If he (the officer) asked for the papers and I gave them to him, then it is obvious that he understood

me well enough."

There are federal and state laws that require English-language proficiency for commercial truck drivers, according to Della Fave. "He was unable to respond to official inquiries made by the trooper and was unable to make entries on reports and records," the spokesman said.

Interstate truck drivers are required to log in rest times to comply with a 10-hour driving day limit.

Zamora, who has been driving trucks for 14 years, said he took his driving test in Spanish from the New York Department of Motor Vehicles. "Nowhere on the test did it say English is required," he said.

Zamora has called on New Jersey Gov. Christine Whitman to investigate. If found guilty, Zamora could be fined up to \$80.

CORRECTION

Last week's story on the late Willie Velásquez incorrectly said that in 1993 César Chávez became the first Latino to receive the Presidential Medal of Freedom. In 1984, Héctor García, founder and longtime president of the American G.I. Forum, received the nation's highest civilian honor from President Reagan.

Adela Cepeda

My Life as an Abused, Spanish-Speaking Child

I'm still recuperating from the discovery that my parents abused me for the 18 years I lived in their home.

Texas District Judge Samuel Kiser set me straight when, in the now-notorious Amarillo child custody case, he accused Marta Laureano of abusing her 5-year-old daughter and condemning the child to a life sentence as a housemaid.

Laureano's "crime" was speaking only Spanish at home.

My parents are abusers of five children.

Never once did they tell us, as the English-speaking parents of

some of my friends told their children, "Get up, kids. It's time for school."

Instead, they said, "*Estudia, estudia para que adelantes en la vida.*"

I will confess this readily to any child-abuse-prevention squad that interrogates me about my childhood of pain. The hair on my head frizzes out when I recall how indifferent my parents were to U.S. law and custom.



CEPEDA

I can forgive them for the years we lived in South America. They were just trying to fit in. Everyone there spoke Spanish.

But then they immigrated to the United States, leaving all their friends and relatives behind to work like beasts in factories and shipyards. And they didn't even speak English at home!

'NO ONE CAN SAY IT RIGHT'

But it was worse than that. As if it were only yesterday, I can still hear the sermons my four siblings and I were given when we tried to speak English to our parents or each other. "Speak our native language. You must be proud of your heritage."

After being here a couple of years, my little brother Juan Carlos figured out it was better to be called "John" than his given name "Juan" at school. It made his life easier with his schoolmates and teachers. It was his short-cut to becoming "American."

My parents told him, "Juan is the name of the king of Spain."

"But we're not in Spain," he protested.

"It's your grandfather's name. There is nothing to be ashamed of," they tried again.

"But he's dead," my brother cried. "And it IS something to be ashamed of. No one can ever spell it or say it right."

Of course, my parents were never around when other boys made fun of him on the playground.

Nor was Judge Kiser around in our home to inform them that they were relegating Juan Carlos to a lifetime of dusting furniture, mopping floors and cleaning toilets.

If the judge had been there, Juan could have had Mom and Dad prosecuted and then asked to be adopted by a wholesome, milk-

drinking, English-speaking, native-born family.

To avoid further confrontation, my brother settled on using his middle name, Carlos. Girls didn't seem to mind saying it.

But today, he remains a victim of the "housekeeper" curse Judge Kiser warned us of: his house is neat as a pin.

The greatest damage was inflicted on my two younger sisters, who were born in Chicago. When asked, "What are you?", they could say, proud and loud, "American," and, hands over their hearts, go right into the pledge of allegiance.

MY SISTERS LIVED WITH FOREIGNERS

But when their other little "American" friends came over, they had to translate everything for my law-violating parents. Things like, "*Tienen hambre, quieren comer.*"

My parents seldom served peanut butter and jelly. Instead, my grandmother would rush to fix some of her *empanadas*, or the visitors might get really unlucky and come when she was making her special *moz con pollo* served with un-American vegetables like fried *plátanos* or *yuca*. Yuck! For some inexplicable reason, my sisters' friends always came around at dinner time.

My poor mistreated sisters. Born in the USA, they still had to endure Spanish at home, eat ethnic foods, and live with foreigners -- their parents and older siblings.

It was so unfair. My grandmother would actually sleep in the same bed with them. I hope that 85 is not too old to have her pay for all her crimes.

But then look how ignorant my sisters ended up. One graduated from an Ivy-League college. She studied languages and speaks three or four. Another graduated from a fine college, but has had to work overseas for foreign (as well as U.S.) companies. She claims her multilingualism is a very good thing -- she too speaks four languages. But what does she know?

NO CHOICE BUT TO ATTEND HARVARD

Their immigrant siblings haven't fared better. One lives in Japan. Japanese is one of the five languages he studied while attending the University of Pennsylvania. When he's not translating a major monthly magazine from English to Spanish, he teaches English and current affairs to Japanese businessmen.

Because I spoke English as a second language, only a few colleges would accept me. I was left with no choice but to attend Harvard, where "multiculturalism" was in vogue. Then I received an MBA from the University of Chicago Business School, but had to leave town to get a job -- with a Wall Street firm.

That's my family story, judge. And we're all ready to testify about our abusive parents whenever you need us.

(Adela Cepeda, of Chicago, is a self-employed executive in the financial services industry.)

Sin pelos en la lengua

TRUST ME: A recent University of Texas poll asked 1,001 adults whom they trust. Fourth from the bottom of a list of 22 professionals and institutions were newspaper reporters.

That offers a perfect segue into today's tidbits:

AXE ME: The Sept. 25 U.S. News & World Report cover story on "ONE NATION, ONE LANGUAGE," spread over nine pages, includes an ugly hatchet job on bilingual education.

A sample of the objective prose of Susan Hadden:

"Along with crumbling classrooms and violence in the hallways, bilingual education has emerged as one of the dark spots on the grim tableau of American public education."

Don't waste \$2.95 to have your intelligence insulted.

BURY ME: When President Clinton spoke at the Congressional Hispanic Caucus Institute dinner Sept. 27, his strong support for bilingual education and condemnation of official English legislation -- plus the extra-enthusiastic reception he received -- should have been, by any standards, news.

Did the nation's most political paper think so?

No, no. The Washington Post shoved the story back into its Style section, giving reporter Kim Masters a chance to babble nonsense about Clinton's use of a few Spanish words:

"Now that Bob Dole has taken his bold pro-English stand, a little language goes a long way with this crowd."

At least the Post only costs a quarter.

--Kay Bárbara

Our Language Needs No Law

By Mark Falcoff

The United States, the most successful country in history, manages to be kept awake at night by imaginary perils. The latest threat to our well-being seems to be the prospect of losing our national language. Apparently you and I won't be speaking English much longer if something isn't done to prevent it.

But not to fear! Congress is riding to the rescue, with English-only legislation that would forbid the use of foreign languages on ballots and other Federal documents. The House has passed a bill that would make English the official language, and Bob Dole favors the idea. The object, we are told, is to accelerate the adoption of English by immigrants and discourage the persistence of linguistic ghettos.

Though 150 or so languages are spoken in this country, the supporters of the bill aren't worried about Urdu or Mandarin. They are concerned about the 14 million people whose native language is Spanish.

The United States is one of the world's major Spanish-speaking countries. It produces some of the most important Spanish-language television and radio programs. It has a vigorous Spanish-language press, and even mainstream publishers are beginning to print Spanish-language novels, essays and other nonfiction.

Should this worry us? House

The irrational fear of Spanish.

Speaker Newt Gingrich thinks so, and as an example of the perils of linguistic pluralism he cites the movement in French-speaking Quebec to secede from English-speaking Canada.

Outside of Washington, particularly in the West and Southwest, the response to the "Spanish peril" has bordered on the hysterical, fed by small groups of populist xenophobes. They are often driven to this position by the incendiary rhetoric of Hispanic activists who threaten to "take back" the West.

Let's look at the facts, not emotions. Most Spanish-speaking immigrants come to the United States seeking a better life, not to widen the territorial arc of their language. Most regard learning English as fundamental to economic and social advancement. The persistence of Spanish reflects not so much resistance to linguistic integration as it does the uninterrupted flow of newcomers. If there were no new immigrants from Spanish-speaking countries for 20 years, the percentage of Spanish speakers would diminish. If that is what most Americans want, let us revise the immigration laws.

Those who think English requires special protective legislation should look at what is going on in our society and elsewhere. English is the international language of finance, commerce, diplomacy, science and educa-

tion, particularly higher and technical education. As the lingua franca of popular culture, it is spreading across the globe, particularly among young people, who consider English the key to all things modern, prosperous and hip. Why should teen-agers of Latin origin be any different?

The United States is not vulnerable to the traps of linguistic separatism exemplified by countries with more evolved, bilingual cultures. Unlike Canada, Belgium or Switzerland, America has no literary intellectual class dedicated to maintaining a consistent level of quality in a second language. (Indeed, the quality of spoken Spanish in the United States is often poor; some "bilingual" advertisements in New York subway cars are full of grammatical howlers.)

As Hispanics integrate economically and culturally into our society, they will likely lose their linguistic distinctiveness. Though the presence of a large Spanish-speaking population is a reality, we will never become a linguistically bifurcated country.

There are many divisive forces in American society, but language is not one of them. The United States is not a Balkan principality; there is no point in it acting as if it were. □

Abroad at Home

ANTHONY LEWIS

Are There No Prisons?

ORLANDO, Fla.

President Clinton's decision to sign the bill ending the national commitment to help poor children has been widely described as a political watershed, a Democrat turning away from the New Deal. It is that, but it signals something more: a change in basic American attitudes.

Optimism and generosity have been the hallmarks of the American character. We could solve any problem, bear any burden together: a can-do society.

The welfare bill is the opposite. Out of pessimism or indifference, it abandons the effort to solve a profound social problem. For generosity it substitutes callousness.

That our welfare system needs rethinking is accepted now by most people, liberal or conservative. Instead of the emergency help envisaged when the program of Aid to Families with Dependent Children was created in 1935, it has become a way of life for millions. There is a culture of dependency.

But the new welfare legislation hardly even pretends to deal with real problems. It simply passes the buck to the states, gives them reduced block grants and assumes that they will do better with less money.

Consider the question of work, for example. The bill cuts off benefits if a family head does not go to work in two years. Everyone agrees that welfare recipients should work if they can. But everyone also knows that mothers on welfare cannot work unless they have help on child care and medical needs — help that will cost government more, not less. The much-applauded welfare plan of Wisconsin's Republican Governor, Tommy Thompson, meets

Our can-do society has turned callous.

those needs. The new Federal legislation does not.

"It helps to build their self-esteem and puts them to work," said Representative E. Clay Shaw Jr., Republican of Florida, and author of the bill. Sure. A young mother with no work experience and no child care will find a job at once.

What the legislation will do is victimize poor children. Its "fearsome assumption," Senator Daniel Patrick Moynihan said, is that "the behavior of certain adults can be changed by making the lives of their children as wretched as possible." He predicted that the bill will force hundreds of thousands of children to live on the streets — "children on grates, because there is no money in the states and cities to care for them."

THE NEW YORK TIMES
MONDAY, AUGUST 5, 1996

Dennis

It is a Dickensian picture, and Charles Dickens knew the mentality that produced such horrors. The Victorian worthies who put the poor on treadmills in workhouses said it was for their own good — said helping the poor would only spoil their characters. As Scrooge said when asked for charity, "Are there no prisons?"

Some argue that welfare is an incentive to teen-agers to have children, so cutting it would help cure another serious social problem: the growing number of children born to unmarried mothers. But once again it is wishful thinking without substance. Welfare payments have in fact dropped in recent years without slowing the rise in teen-age births. And other Western societies, with different welfare systems, are experiencing the same phenomenon.

The truth is that we do not understand these ills afflicting our society, and we do not have solutions for them. So in a piece of legislation like the welfare bill we act in ignorance and frustration. Feeling resentful, we act punitively.

The bill is full of gratuitous meanness. It cuts hard at food stamps, for example, assuring that more people in this rich country will go hungry.

President Clinton said he did not like some provisions of the bill. But he agreed to it for the reason that we all know: politics. And that is the really troubling part of this episode. For it tells us that the American public, which Mr. Clinton wants to please, is feeling mean, resentful, ungenerous.

The welfare bill is not the only sign of this change in the old American spirit. The increasingly punitive character of our criminal law and the legislative attacks on immigrants are among others.

But there is something especially troubling about the victimization of children, for they will grow up to haunt our society. Some day more Americans will agree with what Representative John Lewis, Democrat of Georgia, told his colleagues as the welfare bill passed: "Where is the sense of decency? What does it profit a great nation to conquer the world, only to lose its soul?" □

Mark Falcoff is a resident scholar at the American Enterprise Institute.