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SUBCOMMITTEE ON EARLY CHILDHOOD, YOUTH AND FAMILIES
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6100

WITNESS LIST

WEDNESDAY, OCTOBER 18, 1995

Subcommittee on Early Childhood, Youth and Families
Hearing on English as the Common Language
11:00 a.m., 2175 Rayburn House Office Building

Panel I:

Honorable Bill Emerson (R-MO)
Member of Congress

Honorable Toby Roth (R-WI)
Member of Congress

Honorable Peter T. King (R-NY)
Member of Congress

Honorable Jose E. Serrano (D-NY)
Member of Congress

Honorable Richard C. Shelby (R-AL)
United States Senate

Panel II:

Honorable Sonny Bono (R-CA)
Member of Congress

Honorable Xavier Becerra (D-CA)
Member of Congress

Honorable Ed Pastor (D-AZ)
Member of Congress

Honorable Robert A. Underwood (D-GU)
Member of Congress

Honorable John T. Doolittle (R-CA)
Member of Congress

Honorable Gene Green (D-TX)
Member of Congress

OPENING STATEMENT
ON
"ENGLISH AS THE COMMON AMERICAN LANGUAGE"

REP. RANDY "DUKE" CUNNINGHAM (R-CA)
CHAIRMAN, HOUSE SUBCOMMITTEE
ON EARLY CHILDHOOD, YOUTH AND FAMILIES

WED., OCT. 18, 1995, 11:00 A.M.
2175 RAYBURN BUILDING

Good morning. Welcome to the first hearing of the House Subcommittee on Early Childhood, Youth and Families, on the subject of "English as the common American language."

The question of establishing English as the common language of the United States has gathered an increasing amount of public attention. Twenty-one states have enacted laws declaring English as the official language of those states, and of their official business. Among these is my state of California, where Article One, Section Six of our State Constitution establishes "English as the common language," and prohibits the Legislature from enacting "law which diminishes or ignores the role of English as the common language of the State . . . . "

But clearly the issue has grown beyond the law books into the public arena. In an address to the American Legion this past Labor Day, Senate Majority Leader Bob Dole brought the issue front and center to the national stage. He expressed an opinion held by many, when he said "(w)ith all the divisive forces tearing at our country, we need the glue of language to help hold us together."

In today's hearing, we will receive testimony from several members of Congress who have introduced legislation establishing English as America's common language. We will also hear from opponents of the policy known as "English-only" or "Official English." Many of these measures, though not all of them, fall under the jurisdiction of this Subcommittee. Thus, this Subcommittee is the ideal public forum for debate on this issue.

We can begin today where we agree. Anyone who hopes to achieve the American Dream must first know, understand and use the American language, English. That includes Americans born in America, and Americans and legal residents born elsewhere.

From that principle, we can present questions that witnesses at today's hearing will help

address.

For instance, would establishment of English as the common, national language send a strong message to new arrivals to this country, that the American Dream requires English fluency first?

Should Congress formally establish English as the language of American Government?

What are the legal and social implications of such policies?

And finally, are there other Federal policies or programs that significantly help people learn English? Or do certain policies or programs isolate people from the predominant national language, and keep them from achieving the American Dream?

I recognize that one such program that draws attention when Official English policies are discussed is the Bilingual Education program. There will be a time to discuss the particulars of Bilingual Education in this Subcommittee. It deserves its own hearing at some future date. Thus, I would ask that witnesses and Subcommittee Members please keep their remarks to the one issue at hand today, the establishment of English as the common language.

This hearing will be run on good Navy time, with the five minute rule in effect for witnesses' statements and Members questions. This respects every Members' right to ask and answer questions in a timely manner. Those who have additional statements and questions may submit them for the Record.

I will now recognize the Ranking Member of the Subcommittee, Mr. Kildee, for an opening statement. Then I will introduce our first panel.

# # # # #

Statement of Congressman Bill Emerson

Before the House Subcommittee on Early Childhood, Youth, and Families of the Comittee on Economic and Educational Opportunities

Hearings on "English as Official Language"

October 18, 1995

Mr. Chairman and distinguished members of the committee, I would like to thank you for the opportunity to appear before you today to discuss the importance of designating English as our official language.

As most of you know, I have been the leader of this movement in Congress for some seven years now. I believe very strongly that English should be designated as the official language of the federal government. Why? Let me offer you my answer...

English is our language by custom and practice only. It serves as a common bond in this diverse nation of immigrants. However, over the last fifteen to twenty years, this nation has had to wrestle with the difficulties of trying to serve its ever growing non-English speaking population. In an effort to assist the limited-English proficient individual, the Federal Government has sanctioned and promoted what amounts to unofficial multi-lingualism. When we allow the INS to conduct citizenship ceremonies in foreign languages and the IRS to print and distribute foreign language tax forms, then I believe we are establishing some genuinely dangerous precedents. It is ill-advised, in my view, to have multi-lingual governing for various, isolated, non-English speaking enclaves. Such a policy sends the very destructive message of linguistic and social separatism, and would effectively create a number of linguistic ghettoes across the country.

Some common sense parameters on the use of multiple languages in government would help to counterbalance such divisive messages. We cannot afford, either socially or

monetarily, to allow the advancement of multi-lingualism within the Federal Government.

Let me submit a few examples of the ways in which the government has practiced wasteful and misguided multilingualism in recent years. Just a few weeks ago, the General Accounting Office released a report on this very issue, in response to a letter I sent in conjunction with Senator Shelby and Representative Clinger. The GAO report identified the following unsettling evidence. Government and taxpayer resources have been expended to produce hundreds of documents in an array of languages, including Cambodian, Romanian, and Chinese. In Ukrainian, federal officials published a paper entitled "Investigation of the Ukrainian Famine 1932-1933." In Portugese, the Centers for Disease Control promulgated an "Investigation About the Reproductive Behavior of Young People in the City of San Paulo." The GAO study goes on to highlight of number of other disturbing figures and trends.

My legislation, H.R. 123, offers a balanced, reasoned approach to the common language issue. It recognizes that a common language is about empowerment and inclusion. Appreciating the powerful role of language in human society (having the ability to unite, or divide), it affirms that the job of government is to foster and advance the common good. A cooperative, prosperous country with an official policy of promoting our common language, English, is preferable to a nation divided by linguistic factions. It is for this reason that I support the idea of having English designated as our official language.

More than any other form of government, democracies require interaction between the people and the governing bodies; constant interaction that provides a barometer for those governing to use in determining the impact of their decisions upon the governed. A shared method of communication -- a common language -- is essential for this dynamic. Again, I

reiterate that my legislation is based on the principles of inclusion and empowerment.

I do not believe that we really help individuals by periodically offering certain services in some foreign languages. Rather, I believe that the money used to administer such foreign language functioning is better used teaching non-English speakers our common language. It is not enough to say -- here is a fish, feed yourself for a day -- We need to be providing non-English speaking individuals the rod that will allow them to catch their own fish for the rest of their lives. Please understand, that if we do not address this issue in a rational, forward thinking manner, then we will be guilty of having allowed a new type of welfare to have been institutionalized -- Linguistic Welfare.

Consider these figures which dramatically show that English-speaking ability is critical to stable income and a good quality of life. A study in Texas last year demonstrated that annual income is directly proportional to the level of English fluency. Fluent speakers included in the study collected salaries as high as $27,440 per year, while their less fluent peers were unable to keep up, earning as little as $750 annually. The general trends indicated that individuals and immigrants with fewer English skills earned less, were not as healthy, and are less hopeful for the future than similar people with better English proficiency. These facts are very telling.

I do not propose, as some do, the total abolishment of all foreign language assistance. I firmly believe that the common language debate suffers as a result of that type of philosophy. I want to set the record straight so that there is no misunderstanding. Within my legislation, H.R. 123, I have included an exemption clause which ensures that no essential services -- emergency, health, and justice -- would be restricted. It is not "English Only." The term "English Only" is most often used by the anti-common-language groups to promote

the falsehood that I am opposed to other languages. That could not be farther from the truth.

I recognize that there are individuals currently living in, and coming to, the United States who do not know English -- and we have an obligation to extend certain essential services to them. However, it is my strong belief that we have an even greater obligation to ensure that they get the chance to learn English so that they can partake of all the wonderful opportunities that exist in this great country of ours.

Surveys consistently reveal overwhelming support for English as the official language. In fact, the latest nationwide survey conducted on this issue revealed that 86 percent of those individuals surveyed support English as the official language. It also revealed that 81 percent of immigrants support English as the official language.

The idea of having an official language is not atypical. Nations around the world -- more than half of them, in fact -- designate official languages. Countries like Venezuela, which specifies that Spanish is its official language. Does that mean that Venezuela prohibits the use of any other language but Spanish? Of course not. It means only that the Government of Venezuela functions in Spanish and it is important to know Spanish in Venezuela.

Efficient communication among the branches of government and among our people enables stability and diversity. My act provides a precise, unequivocal form of communication for our nation's official business.

We must come together now and hammer out our differences on this issue and pass a bill. If we continue to wait, the problems inherent in not having an official common language will only continue to grow. This will inevitably result in increased polarization of the two sides of this debate, and the final outcome will be such deep-rooted hate and

resentment between the two that we may never be able to reach a compromised solution.

Again, I thank the Chairman and the members of the committee for conducting this hearing. I think that such a forum is tremendously important, and something that is welcomed by folks across the country. At this time I would be happy to answer any questions that you might have.

Richard Shelby
United States Senator • Alabama
For More Information Contact:
Laura Cox (202) 224-6518

STATEMENT OF
U. S. SEN. RICHARD C. SHELBY
RE: ENGLISH AS THE COMMON LANGUAGE
PREPARED FOR THE HOUSE COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES - OCTOBER 18, 1995

Mr. Chairman, thank you for the opportunity to speak regarding English as the Official Language of Government. English is the language of opportunity in America. It builds bridges and can foster hope--- without it, a person is limited and unnecessarily disadvantaged in America.

I believe, like Representative Emerson, that all functions of the federal government should be performed in English. According to the United Nations Report, "Study of the Problem of Discrimination Against Indigenous Populations," an official language is "a language used in the business of government (legislative, executive, administrative and judicial) and in the performance of the various other functions of the state." In comparison, a national language is defined in the study as "the language of a social and cultural entity which is in widespread use in a country."

I want to emphasize that I am advocating English as an "official" language - the language of record for official government functions. In no way do I believe we should limit an individual's use of his or her native language in the home, church, community or even work if the employer permits.

While bilingual education has been mentioned here today, my legislation does not amend, eliminate or in any way affect or address bilingual education programs.

Throughout history, language has been both a unifying force and a great divider. In the United States, English has been the de facto official language since the inception of this nation. Ever since the first settlers chose English, it has been the commonly accepted and spoken language in America. However, lacking any legislative action, we are not certain whether English will remain the official language, or whether an officially-designated, common language will exist at all. Currently, the United States is the fifth largest Spanish-speaking nation. Additionally, approximately 323 separate languages are now spoken in this country.

According to the General Accounting Office, the federal government is already printing documents in Spanish, Portuguese, French, Chinese, German, Italian, Russian, Ukrainian, Korean and others. If we choose to perform federal functions in these languages, how can we justify saying no to printing documents in the other existing languages, such as Chinook Jargon, Micmac or Syriac? We cannot.

Another fact, equally as important, is the types of documents we are printing in foreign languages? For example, the "Investigation About the Reproductive Behavior of Young People in the City of Sao Paulo" in Portuguese or the "Nutritive and Dietetic Guild to Wild Animals in Captivity" in Spanish. I do not believe these publications are in the nation's best interest.

Is it in the national interest to adopt an official language of government? Apparently 88 other nations think so. Eighty-eight of the 159 member nations in the United Nations have constitutional language policy provisions.

A recent national poll found that 86 percent of the respondents' support English as the official language. The issue transcends racial, ethnic, educational and sexual lines. Virtually any way you divided the population, support ranged from 80 to 91 percent. In fact, 81 percent of first generation immigrants support English as the official language.

The majority of people genuinely believe a common language serves as a bridge unifying communities by opening the lines of communication. In this diverse land of ours, English allows us to teach, learn about and appreciate one another. The fact that such a significant part of our nation's population values a common, established language for individuals to engage in conversation, commerce and political discussion substantiates the desire and the need for an official language.

Without a common language, the ability to maintain a law abiding citizenry is impaired and the ability to offer true representation is hampered if individuals cannot communicate their opinions. Participatory democracy in this country simply requires people learn the English language.

The bottom line is that English is the language of opportunity. English is the language that allows individuals to take advantage of the social and economic opportunities America has to offer. Legislating English as the official language does nothing more than to help individuals assimilate into American society.

This assimilation is essential if we are to assist any individual in the time of need and avoid the balkanization of this country into separate ethnic and national identities. Thank you.

-30-

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CONGRESSMAN BILL RICHARDSON
TESTIMONY OPPOSING ENGLISH AS A COMMON LANGUAGE
COMMITTEE ON EDUCATION AND ECONOMIC OPPORTUNITIES
Oct. 18, 1995

Mr. Chairman, as a Representative of a district where more than half of the population is either a Native American or Hispanic, I am quite aware not only of the importance of multilingualism for the well-being and prosperity of our society, but also for fulfilling the ideals of freedom and democracy. This is the reason why I strongly oppose English as a Common Language proposals, which negate the realization of these ideals by making America an English-only nation.

English-only bills would require the federal government to conduct its official business in English, including income tax forms, information materials and publications. Various bills also repeal the Bilingual Education Act, eliminate the Office of Bilingual Education and Minority Languages Affairs in the Department of Education and terminate provisions of the Voting Rights Act of 1965 regarding bilingual election requirements.

I want to make it clear that I understand that learning English in America is an imperative. Yet, I also realize the invaluable benefits and advantages that the mastering of a second language provide to the individual in modern society. At the beginning of this century, an individual with limited English skills and formal education could succeed because the economy, mainly industrial and agricultural, relied on unskilled labor. In today's high-skilled, high-technology labor market, it is extremely difficult, if not impossible to succeed without receiving a formal education. Bilingual education is one of the programs that has helped hundreds of thousands to get an education and realize the American dream.

According to a study conducted by the National Academy of Sciences (NAS), one of the most prestigious research bodies in the world, limited-English proficient (LEP) students in bilingual education programs posted higher test scores and were able to problem solve, analyze, and apply critical thinking skills earlier than LEP students in English-only settings because they could explore challenging matters long before students in monolingual English classrooms. The study also revealed that providing LEP students with substantial instruction in their native language did not interfere with or delayed their acquisition of English language skills, but helped them to 'catch up' to their English-speaking peers in subjects like English reading and math. The data concluded that by grade six, students provided with English-only instruction actually fall further behind their English-speaking peers.

In addition, multilingualism is extremely important for the well-being of our economy, which relies greatly on trade and international business. Four of five jobs in the United States are created through exports, and the majority of export jobs are service-related, which requires the mastering of a second language. A survey conducted this year found that 40 percent of big business executives in the United States hire bilingual employees. Although English-only legislation introduced in the House recognizes the need for language skills in international business and trade, it

eliminates all education programs for children who do not speak English.

Furthermore, it is counterproductive and dangerous to forbid those individuals who have a difficulty in learning English or are learning English from communicating with their government. Legislation would mandate that health and safety warnings would be published only in English, which is a safety hazard to people in our country who do not speak English. Doctors and nurses would be unable to communicate to non-English speaking patients, even in life threatening situations.

Dictating what language people can speak and read is also a strong limitation of individual liberties. Language is a powerful form of self-expression and to prohibit people to express themselves run counter to the ideals of freedom, tolerance and equality on which our nation is based. Beyond limiting personal freedom, English-only legislation impairs education, denies people the right to participate and vote in their democratic government and hampers our nations ability to be a leading world trading power.

TESTIMONY OF REP. PETER T. KING

ENGLISH AS THE COMMON LANGUAGE

ECONOMIC AND EDUCATIONAL OPPORTUNITIES

SUBCOMMITTEE ON EARLY CHILDHOOD, YOUTH AND FAMILIES

OCTOBER 18, 1995

MR. CHAIRMAN, I WOULD LIKE TO COMMEND YOU FOR HOLDING THIS HISTORIC HEARING ON MAKING ENGLISH THE OFFICIAL LANGUAGE OF THE UNITED STATES. I ALSO APPRECIATE THE OPPORTUNITY TO TESTIFY TODAY ON THIS IMPORTANT ISSUE.

FOR THE FIRST 190 YEARS OF OUR NATION'S HISTORY, MILLIONS OF IMMIGRANTS CAME TO OUR SHORES KNOWING THAT THEY WERE EXPECTED TO LEARN ENGLISH SO THAT THEY AND THEIR CHILDREN COULD BREAK FREE FROM THE SHACKLES OF THE GHETTO AND CLAIM THEIR SHARE OF THE AMERICAN DREAM. AND IT WORKED. THE GREAT AMERICAN MOSAIC OF COUNTLESS IMMIGRANT CULTURES, TRADITIONS AND BELIEFS BOUND TOGETHER BY THE GLUE OF A COMMON LANGUAGE BECAME THE ENVY OF THE WORLD.

UNFORTUNATELY, THE PURVEYORS OF POLITICAL CORRECTNESS HAVE BEEN SUCCESSFUL IN INSTITUTING BIG GOVERNMENT PROGRAMS TO ACTIVELY DISSUADE NEW IMMIGRANTS FROM LEARNING ENGLISH.

CURRENT LAW ACTUALLY MANDATES MULTILINGUAL PROGRAMS AND SERVICES. THE U.S. DEPARTMENT OF EDUCATION REQUIRES BILINGUAL

CLASSES BE PROVIDED TO SCHOOL CHILDREN. LOOK AROUND ANY MAJOR CITY AND YOU WILL SEE GOVERNMENT-SANCTIONED SIGNS IN OTHER LANGUAGES; IN NEW YORK STATE DRIVER'S LICENSE TESTS ARE GIVEN IN 21 LANGUAGES; IN THE CITY OF LOS ANGELES THERE ARE 6 LANGUAGES ON THE VOTING BALLOT; AND CLASSES IN NEW YORK CITY PUBLIC SCHOOLS ARE TAUGHT IN 115 LANGUAGES. IT SHOULD COME AS NO SURPRISE THAT AMERICA HAS BECOME A VIRTUAL TOWER OF BABEL.

AFTER 27 YEARS AND BILLIONS OF TAXPAYER DOLLARS, ONE THING IS CLEAR -- BILINGUAL EDUCATION IS A COSTLY FAILURE. THE NEW YORK CITY BOARD OF EDUCATION ADMITTED AS MUCH IN A REPORT IT RELEASED LAST YEAR. THIS REPORT SHOWED THAT LIMITED ENGLISH PROFICIENT CHILDREN WHO WERE TAUGHT IN ENGLISH FARE FAR BETTER THAN THOSE WHO RECEIVED INSTRUCTION IN THEIR NATIVE LANGUAGE. IN FACT 90% OF THE STUDENTS WHO ENTER BILINGUAL EDUCATION BETWEEN SIXTH AND NINTH GRADE FAIL TO MOVE ON TOWARD REGULAR CLASSES WITHIN THE REQUIRED THREE YEAR PERIOD.

NEARLY THREE DECADES OF LINGUISTIC WELFARE HAVE DISCOURAGED NEW AMERICANS FROM LEARNING ENGLISH AND BARRED THEIR ACCESS TO THE AMERICAN DREAM. IT IS TIME TO END THESE HARMFUL PROGRAMS AND HELP THESE NEW AMERICANS ACHIEVE THEIR RIGHTFUL PLACE IN SOCIETY. THAT IS WHY I HAVE INTRODUCED THE NATIONAL LANGUAGE ACT, HR 1005.

MY LEGISLATION WILL DECLARE ENGLISH THE OFFICIAL LANGUAGE OF THE UNITED STATES; REQUIRE THAT ALL GOVERNMENT PUBLICATIONS BE PRINTED IN ENGLISH; TERMINATE THE OFFICE OF BILINGUAL EDUCATION

AND USE THE SAVINGS FOR DEFICIT REDUCTION; PROVIDE STUDENTS WITH A TRANSITION PERIOD TO ENGLISH AS A SECOND LANGUAGE PROGRAMS; REQUIRE BALLOTS TO BE PRINTED IN ENGLISH; AND REQUIRE CITIZENSHIP CEREMONIES TO BE IN ENGLISH. HR 1005 IS COSPONSORED BY 36 OF OUR COLLEAGUES.

SUPPORT FOR MAKING ENGLISH THE OFFICIAL LANGUAGE HAS NEVER BEEN GREATER. POLL AFTER POLL SHOW THAT OVERWHELMING MAJORITIES OF AMERICANS ENTHUSIASTICALLY SUPPORT OFFICIAL ENGLISH. BOTH SPEAKER NEWT GINGRICH AND SENATE MAJORITY LEADER BOB DOLE HAVE ALSO ENDORSED MAKING ENGLISH THE OFFICIAL LANGUAGE. CLEARLY THE TIME TO ACT IS NOW.

THE ENGLISH LANGUAGE IS, AND HAS ALWAYS BEEN, THE COMMON BOND THAT UNITES US. A NATION WITH MORE THAN ONE OFFICIAL LANGUAGE CANNOT FUNCTION EFFECTIVELY OR WITH ANY DEGREE OF EQUALITY. BILINGUALISM CREATES TWO SOCIETIES THAT ARE BOTH SEPARATE AND VERY UNEQUAL.

I LOOK FORWARD TO WORKING WITH YOU, MR. CHAIRMAN, AND THE OTHER MEMBERS OF THE SUBCOMMITTEE TO PROVIDE INCENTIVE AND OPPORTUNITY TO IMMIGRANTS WHO SEEK TO BECOME PRODUCTIVE MEMBERS OF SOCIETY.

THANK YOU, MR. CHAIRMAN.

JOSÉ E. SERRANO
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TESTIMONY OF THE HONORABLE JOSÉ E. SERRANO
BEFORE THE HOUSE ECONOMIC AND EDUCATIONAL OPPORTUNITIES COMMITTEE
SUBCOMMITTEE ON EARLY CHILDHOOD, YOUTH, AND FAMILIES
OCTOBER 18, 1995

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to testify before the Subcommittee this morning on this very important issue. I strongly oppose any law which would designate English as the official language of the nation. I believe that such legislation is divisive, mean-spirited, and completely unnecessary. That is one reason why I have introduced H.Con.Res 83, the English PLUS Resolution, to express the sense of the Congress that while English is the primary language of our nation, we should respect and value other languages and cultures.

The title of this hearing is **English as The Common Language.** That is true, English is the common language of America. **Most of our population, 97% as of the last census, speaks English.** What I am at a loss to understand is why we require legislation to enforce what is already true? Mr. Chairman, 220 years ago, a group of very wise men drafted the governing document of the United States, the Constitution. Those men did not see the wisdom of designating English the official language of the nation, although many languages were spoken here. During the early 20th century, when people from all over the world, including, I suspect, ancestors of many current members of Congress, came to America speaking many different languages, seeking a better life, our government did not designate English the official language of our nation. Why this fervor to do so now?

Supporters of English-only believe that America has become a nation of ghettos, with people immigrating with no intention of speaking English. If that is true, why then are English-as-second-language classes oversubscribed from coast to coast? Supporters of English-only believe that our children are not learning English, and that eliminating bilingual education is the best way to insure that they do. That is just not true. Bilingual education is the most effective mechanism for insuring that as immigrant children learn English, they keep pace with their English-speaking peers in other major subject areas.

Supporters of English-only believe that bilingual education hinders the progress of immigrant children. In fact, the opposite is true. Studies have shown that students in bilingual education

classes posted superior test scores, because those students were allowed to continue to academically and cognitively develop as soon as they entered school through the use of their native language. Bilingual education students were able to problem solve, analyze, and apply critical thinking skills earlier because they could explore challenging content matter in their native language.

I was born in Puerto Rico. I am an American citizen. I grew up speaking Spanish, but I learned to speak English. Mr. Chairman, I can tell you that there is no conspiracy on the part of Spanish-speaking parents to prevent their children from learning English. When Hispanic immigrants sit around their dinner tables and the subject of language comes up, it's never about a plot to undo the English language. On the contrary! The conversation is usually about the fact that the children and grandchildren no longer speak Spanish; they have left that language behind and now speak only English.

In addition to being mean-spirited and unnecessary, English-only is just bad policy. In the past 3 years, Congress has passed both GATT and NAFTA, moving the United States closer to full participation in the global economy. In this context, passage of an English-only law makes no sense. These laws send a terrible message to our trading partners -- "we as a nation do not value diverse language skills, and we are not interested enough in doing business with you to recognize your language."

A national language policy would severely diminish the ability of the United States to participate in an ever-growing global marketplace. Given national and global trends towards service- and information-based economies, a foreign language background in combination with English skills is an extremely valuable asset. We know that this is true; we **require** the teaching of a foreign language in most high schools, and Berlitz and others exist to teach adults a second language. Why then, would we take an existing bilingual population and discourage them from maintaining their foreign language skills? English-only or official English policies send exactly that message to workers who strive to maintain their native fluency in languages other than English for both economic and cultural reasons.

English-only supporters say that up to 90% of the American people believe that English should be our official language, and therefore, it is our responsibility to enact legislation to accomplish this goal. I do not agree. Throughout our nation's history, there have been policies which were politically popular but wrong; slavery, not allowing women or African-Americans to vote, segregation. The list is quite long. I daresay that our nation would be vastly different had we allowed some of these laws to stand merely because they were politically popular.

English <u>is</u> our official language. It is the language of government, of business, of media, of music. It is the language of our society. The United States of America is a nation of diverse

origins and cultures. The ancestors of most Americans came here from other lands, speaking other languages. The ancestors of tomorrow's children arrive here daily, speaking other languages. There is **absolutely no need** to designate English as the official language of the government. All immigrants to this nation understand, indeed everyone knows, that learning English is absolutely critical to success.

The common thread which unites immigrants is their desire to be here and participate in American society, which they know means **speaking English.** America has always prided itself on its diversity; even bragged about it to the rest of the world; the melting pot, the salad bowl. Our diversity has always been a source of strength; English-only or official English laws imply that we are embarrassed by our diversity, even ashamed.

Contrary to the rhetoric of its supporters, the creation of a national language policy would not bind our citizens together -- implementing such a policy would only aggravate racial and ethnic tensions, and further isolate non-native speakers of English by discouraging them from fully integrating themselves into our society.

Mr. Chairman, I speak two languages. English is not my first language. But when I testify before Committees, when I fill out my income tax forms, when I speak on the House floor, I know that I must speak English. I do not believe that most immigrants think otherwise.

Aside from the philosophical reasons why English-only/official English policies are bad, there are many other reasons, including the Constitution and the public health and safety. All of the bills before this Committee would abolish bilingual ballots, which were designed to assist elderly immigrant-citizens in their participation in the electoral process. In addition to being mean-spirited and anti-democratic, this particular provision would be a direct attack on the Voting Rights Act.

Some of the bills before this Committee would pose significant difficulties for the many Members of Congress with non-English-speaking constituents. The failure of these bills to make any distinctions within the broad category of "communications" could be problematic. For example, some of these bills could be interpreted to **prohibit** Members of Congress and their staffs from dispensing information, either in writing or over the telephone, in any language other than English. This prohibition would severely hamper the many Members of Congress who represent people who speak languages other than English. It is also unconstitutional under the First Amendment.

An Arizona State law limiting governmental discourse to English was recently struck down in District Court. Among the arguments used was the fact that the law was " an overly broad restriction on the speech rights of state employees and the public

they served." The court believed that the law's language would "inevitably inhibit the protected speech of third parties..." Additionally the court found that the Arizona law "significantly interfered with communications by or with government employees related to the provision of government services and information, a form of public discourse entitled to greater constitutional protection. In fact, the court determined that government efficiency would actually be promoted rather than hindered by permitting public employees speech in languages other than English."

English-only/official English laws at the Federal level would be unconstitutional under similar grounds. Various bills before this Committee would severely restrict the ability of agencies from dispensing **any information about any federal program** to the public concerning either their rights under this government or their obligations to it.

In addition, English-only/official English legislation could have very expensive legal consequences. Under some of these bills, individuals who feel that their rights have been violated would have standing to sue in a private right of action in federal court. This could result in an explosion of litigation, potentially against the federal government and its agents, and Members of Congress and/or their staffs, who use languages other than English in the conduct of their official duties. This seems contradictory within the context of tort reform, and the desire of the Republican majority to limit frivolous lawsuits.

Further, Mr. Chairman, if this Congress enacts any form of this misguided and unnecessary legislation, I fear that the consequences at the state and local level would be disasterous. States and localities could use federal law to justify language restrictions on court translators, police departments, EMS technicians, 911 operators, and others, potentially threatening the public health and safety. It could also result in egregious violations of due process under the Constitution.

Mr. Chairman, I believe that we should not as a Congress pass any law which explicitly infringes upon the Constitutional rights of anyone who lives in our nation. We should, in fact, continue to affirm and applaud the diversity of our country. H.J.Res 83, **the English PLUS Resolution,** would reaffirm our national committment to diversity and multilingualism, while asserting what we know to be true, that **English is the primary language of the United States, and all members of our society recognize its importance to national life.** My resolution is an opportunity for Congress to show the nation that we can recognize English as our official language without infringing on anyone's rights. H.J.Res 83 is supported by a broad coalition of organizations, including the **National Education Association, the American Federation of Teachers, PTA, AFL-CIO, and the organizations in the Leadership Conference on Civil Rights.**

CONGRESSMAN TOBY ROTH
TESTIMONY - SUBCOMMITTEE
ON EARLY CHILDHOOD, YOUTH AND FAMILIES

October 18, 1995

Mr. Chairman & Members of the Subcommittee,

I want to thank you for the opportunity to testify at this historic first hearing on the importance of making English our official language.

For most of our nation's history, the English language has been the key to integrating new Americans, as well as the glue that has held our people together. That's all changing today. We're losing our common bond.

For one in seven Americans, English is a foreign language. The National Clearinghouse for Bilingual Education estimates that 40 million Americans will not speak English in five years.

At a time in our nation's history when we need a common language more than ever, our government policies work to erode English's place in almost every aspect of our lives. Today, Americans can vote, pay their taxes, take their driver's license exams and go to school entirely in languages other than English.

Did you know that driver's license tests are available in foreign languages in forty states across the country? Your home state of California alone, Mr. Chairman, provides the exam in thirty-one different languages. In the most recent election in Los Angeles, ballots were printed in six different languages. The Internal Revenue Service printed tax forms in a foreign language for the first time last year.

Even the most symbolic act of citizenship--the naturalization ceremony--is not safe from this trend. Recently, the Immigration and Naturalization Service held a citizenship ceremony almost entirely in Spanish.

In many places in America, English is no longer the first language in school. In the past, America gave the children of immigrants a precious gift--an education in the English language. As each wave of immigrants arrived on these shores, our public school system taught their sons and daughters English, so they could claim their piece of the American dream.

Today, our children are now taught, by law and with government funds, in dozens of languages other than English--12 different languages in New York City alone. Instead of a first-rate education in English, students in bilingual education classes are taught in their native tongue, and English is rarely spoken.

Bilingual education has proven to be a dismal failure at doing what Congress originally asked it to do: teach children English quickly and effectively. More tragic, however, it relegates countless children--unable to speak, understand and use English effectively--to a second-class future.

Let me tell you about two people's experiences which will illustrate the impact of our failed bilingual education programs. I've never heard the problems with bilingual education more succinctly or poignantly put than in the words of Ernesto Ortiz, a foreman on a south Texas ranch who said: "My children learn Spanish in school so they can become busboys and waiters. I teach them English at home so they can become doctors and lawyers." Ernesto understands that English is the language of opportunity in this country. He understands that denying his children a good education in English will doom them to a limited--as opposed to limitless--future.

Bilga Abramova also understands this simple truth. Bilga is a 35 year-old Russian refugee who has entered a church lottery three times in an attempt to win one of 50 coveted spaces in a free, intensive English class offered by her local parish. Her pleas in Russian speak volumes about the plight of all too many immigrants: "I need to win," she said. "Without English, I cannot begin a new life."

The stories of Ernesto Ortiz and Bilga Abramova put human faces on the tragic consequences of our government's misguided policies. But these policies have even greater potential costs--the cost of our fragmented national unity. Programs like bilingual education divide our country by undermining the common bond that holds our country together--English. We need to share a common language so our diverse people can exchange ideas, share experiences, forge common ideals. As a country of immigrants, we've always enjoyed--even depended on--the common thread of language to weave the fabric of our diverse nation together. Without that common language, America's unity and strength is threatened. There is no surer recipe for dividing America along ethnic and linguistic lines than to erode our common language.

Let us not forget that these programs have financial costs as well. All these linguistic services are provided for at the taxpayer's expense. Alameda County, California officials told me that they spent almost $100 a ballot to provide foreign language voting materials in their most recent election. The American Legislative Exchange Council estimated that bilingual education alone costs taxpayers $8 billion a year.

As you consider this issue today, I ask you to weigh the social, financial and national costs of these misguided policies. Ask yourselves if we can ask new Americans and America to continue paying this price.

I felt strongly enough about this issue to introduce legislation to make English our official language. The bill I have sponsored will end government's misguided multilingual policies and reaffirm that English is our national language.

Let me dispel some myths. Having English as our official language simply means that the primary language of instruction in schools is English, and that you vote and deal with the government in English. People will still be able, even encouraged, to speak and learn foreign languages, as well as preserve their heritage. The only significant difference will be that government actively reinforces our common language rather than erodes it.

For almost every American, this is just common sense. Just recently, a *USA Today Weekend Magazine* poll found that 97% of respondents wanted to declare English our official language. The people have spoken, and now the politicians are starting to listen. These hearings demonstrate that Congress is starting to show as much common sense as the American people.

My friends, as we consider this issue today, let us not lose sight of the fact that this is not some abstract public policy discussion. Your stand on this issue has consequences. When the educational policies we pursue to help new Americans learn English fail, the failures have names and faces attached to them. When our policies serve to divide rather than unite us, the rips appear in the very fabric of the American nation.

In the past, our nation has been a shining example of a place where people from every background can live and work together in harmony. I want to keep America one nation, one people. We must preserve the common bond that has kept this country of immigrants together for more than two centuries by making English our official language. Our future as a united nation depends on it.

Statement of Congressman Robert A. Underwood
Before the Subcommittee on Early Childhood,
Youth and Families
October 18, 1995

LANGUAGE POLICY

Mr Chairman and Members of the Subcommittee

I come before you today to express my strong feelings regarding legislation which would make English the official language of the United States. I feel that such legislation is unnecessary for the workings of American government, ill-advised and counterproductive. As officials of the federal government, we must recognize that it is unnecessary since it solves no problem in the operation and management of the federal government. It is ill-advised because it will contribute to a climate of nativism and communicates to speakers of languages other than English that they are somehow less a part of this country than others and that their ability to use another language is seen as potentially damaging to the core of our social unity. Lastly, it is counterproductive because it sends a negative and regressive message about the nation's development of language resources at a time when we need our people to learn more languages and when we need to cultivate existing linguistic resources.

English-only legislation and the declaration of English as the official language solves no problems with either the learning of English or the operations of the federal government. If there is ever legislation which seeks to solve problems which do not exist, these proposals offer the best examples. The best way to understand this point is to acknowledge, as do all speakers of other languages in this country, that English is the language of common purpose and communication in the federal government. No one seriously advocates that it be otherwise and no one offers other languages as potential official media for communication. If historically, there was discussion about the official language of this country, this discussion is over. English is the defacto official language of this country.

Moreover, currently there is no right to the use of another language in the federal government. This makes our situation radically different from any other nation in the world where there are advocates of official status for multiple languages. Therefore, any and all comparisons to what allegedly occurs in other societies when official languages are discussed simply makes no sense.

There are cases when languages other than English are used, but there is no right extended to those languages per se. Whenever our national government uses a language other than English, it is for the benefit of the entire society. By this, I mean that whenever a non-English language is used by the federal government, no right to the use of that particular language is sought or implied. In fact, the assumption is that we will use English except in some very narrow circumstances when some greater constitutional issue, educational practice or public health and safety concern is raised. For example, in order to

protect the rights of individuals who know little or no English in criminal cases, courts are expected to translate proceedings. In order to ensure the effective use of the right to vote, we have ballots in other languages. In order to protect public health and ensure the widest possible dissemination of information which protects all of us, messages in other languages are disseminated. In all of these instances, no specific right to any language other than English is being exerted or implied. The central issues in these examples do not pertain to language, but they do pertain to public health, the right to vote and constitutional rights in criminal proceedings.

This is the reality and, most importantly, no one challenges it. Some might then argue that since this is the case, what would be the objection to declaring English the official language of the federal government. The easy answer is that if this were the case, there is no need to declare English the official language. But many people still feel a need to send a message. The question then is what is that message and who is this message for. Obviously, this message is not being sent to people who speak only English. This message is not being sent to most of your constituents who can speak only English. This message is being sent to speakers of non-English languages; in large measure, people like those I represent, people like me, people whose life experiences have blessed them with the ability to speak more than one language or people who are in the process of learning English.

This message cannot be that you should learn English, because all of these people already do or soon will if they don't. Moreover, they are anxious to learn English. The message cannot be that in order to speak to the great national issues of this country, you must do so in English, because every one recognizes that the great issues are already appropriately discussed in English and I might add without coercion. The message cannot be that English is the common language of the nation, because it already is.

Well, what then is the message. The ill-advised message seems to be that we are less than those who can speak only English; that there is something foreign about our maintenance of a tongue different than most. I know many will say and some with a great deal of sincerity that no such affront is intended. But in light of the reality that there is no problem with the official use of English, any effort to coerce English-only at this time must be seen as giving life to the social forces of resentment. This resentment could stem from the rise of "foreign accents" in our day-to-day lives and the increasing use of languages other than English on the radio and television. It can manifest itself from the seriously misguided judge in Texas who told a mother that her continued use of Spanish to her child is a form of child abuse to the innocous, but revealing, refusal of an ice cream parlor to put "happy birthday" on a cake in another language. This kind of resentment is not based on a need to improve communication, it is based on a fear of being subsumed by a growing "foreignness" in our midst.

This may not be the intended result, but I submit that it will be the real result. And the fact that such resentment is based on attitudes which need adjusting rather than with policies which need fixing ought to reveal to us how ill-advised this type of legislation really is.

Lastly, the move to make this country English-only at the federal level will have a deleterious effect on the cultivation of our linguistic resources. The desire to learn other languages will soon be replaced by the necessity to learn other languages. This is a given in the world economy and in the conduct of business and foreign affairs. It is accepted as an article of faith in education that knowing a second language is a mark of education, not a sign of ignorance. We routinely reward students at the high school and university levels for studying other languages. But with little children who speak another language, we decide that bilingual education harms rather than contributes to their full citizenship and participation in the society. Why do we insist upon making it hard upon ourselves? Why do we wish to root out bilingual education for little kids struggling to understand instruction in the name of a greater social good while we preach the value of bilingualism? This makes as much sense as building cars with only one gear. In a global economy and a globalized world, we will be hampered as we shift into higher gears. We must learn to build cars with more gears, in more colors and with right as well as left hand drive.

The greatest recognition of language diversity in this country is not by the federal government or social activists in a few communities. It can be found in the MCI and AT&T advertisements and the Anheuser-Busch commercials. Maybe these corporations know something about the future and economic realities which we can't seem to accept.

For those of us with different mother tongues, it is not at all incompatible to practice the continuance of a mother tongue, be a good American and recognize that the lingua franca is English.

STATEMENT OF CONG. ED PASTOR

BEFORE THE EARLY CHILDHOOD, YOUTH, AND FAMILIES SUBCOMMITTEE

OF THE ECONOMIC AND EDUCATIONAL OPPORTUNITIES COMMITTEE

OCTOBER 18, 1995

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO SPEAK ABOUT A MATTER THAT IS OF PERSONAL SIGNIFICANCE TO ME. I COME BEFORE YOU AS CHAIRMAN OF THE CONGRESSIONAL HISPANIC CAUCUS TO ADVOCATE POLICIES WHICH NOT ONLY HELP GUARANTEE OUR FIRST AMENDMENT RIGHTS, BUT WHICH ALSO HELP ADVANCE A CLIMATE OF TOLERANCE, INCLUSION, AND UNDERSTANDING.

WHILE I RECOGNIZE THAT ENGLISH IS THE ACCEPTED AND COMMONLY SPOKEN LANGUAGE IN THE U.S., OUR INTEREST IN SEEING THAT EVERYONE IS ABLE TO COMMUNICATE IN IT MUST NOT INTRUDE ON OUR PRIVATE LIVES. WE MUST REMAIN VIGILANT AGAINST EXCESSIVE GOVERNMENT INTERVENTION AND CONTINUE TO PROTECT OUR MOST BASIC INDIVIDUAL FREEDOMS. I APPEAR BEFORE YOU TO ADMONISH YOU TO SAFEGUARD OUR CONSTITUTIONALLY-GUARANTEED RIGHT EMBODIED IN THE FIRST AMENDMENT TO THE CONSTITUTION.

I WOULD BE REMISS, THOUGH, IF I DID NOT MAKE A SPECIAL POINT TO EMPHASIZE THAT THE HISPANIC COMMUNITY HAS TRADITIONALLY SUPPORTED THE LEARNING OF ENGLISH. EVERYTHING THAT I SAY HERE MUST BE VIEWED WITHIN THIS CONTEXT, TO BE SURE THIS FACT IS NOT LOST WITHIN A DEBATE THAT OFTEN FOCUSES ON UNSUBSTANTIATED FEARS. IN FACT, LANGUAGE MINORITIES HAVE NEVER QUESTIONED THE WISDOM OF BECOMING PROFICIENT IN THE LANGUAGE OF THIS LAND. RATHER, FOR GENERATIONS, IT WAS RECENT ARRIVALS TO THIS COUNTRY WHO INSISTED THAT THEIR

CHILDREN FOCUS ON LEARNING ENGLISH EVEN TO THE EXCLUSION OF A NATIVE TONGUE.

HISPANICS AND OTHER NEW RESIDENTS HERE RECOGNIZE THE ECONOMIC IMPERATIVE OF LEARNING THE LANGUAGE SPOKEN BY THE MAJORITY. THIS TREND IS ACCELERATING, WITH THE DEMAND FOR ENGLISH CLASSES FAR EXCEEDING THE CAPACITY OF OUR SCHOOLS AND OTHER LANGUAGE INSTRUCTION CENTERS. THE TRUTH OF THE MATTER IS THAT OVER 95 PERCENT OF AMERICANS SPEAK ENGLISH, ACCORDING TO THE CENSUS. AND, ONLY SIX HUNDREDTH OF ONE PERCENT (0.06%) OF FEDERAL DOCUMENTS ARE IN LANGUAGES OTHER THAN ENGLISH, ACCORDING TO THE GENERAL ACCOUNTING OFFICE (GAO). I CANNOT HELP BUT FEEL THAT WE ARE NOT LOOKING AT A REAL ISSUE HERE BUT PERHAPS ONE THAT HAS BEEN ARTIFICIALLY CREATED TO DIVIDE OUR COUNTRY AND PROMOTE A SHORT-TERM POLITICAL GAIN.

THIS SAID, LET US FOCUS ON THE REAL ISSUE AT HAND: ENGLISH-ONLY POLICIES ARE UNNECESSARY AND IMPEDE EFFORTS TO MAKE GOVERNMENT MORE EFFICIENT AND RESPONSIVE. AN ARIZONA CASE CLEARLY ILLUSTRATES THIS POINT. AS YOU MAY KNOW, THE ARIZONA STATE LAW LIMITING STATE EMPLOYEES TO THE USE OF THE ENGLISH LANGUAGE WHILE CONDUCTING OFFICIAL DUTIES WAS CHALLENGED AND FOUND UNCONSTITUTIONAL EARLY THIS MONTH BY THE 9TH CIRCUIT COURT OF APPEALS.

THE COURT RULED IN THE CASE THAT THE ARIZONA STATE LAW VIOLATED THE FIRST AMENDMENT. THE LAW WAS INVALIDATED AS A BROAD RESTRICTION ON THE FREE SPEECH RIGHTS OF STATE EMPLOYEES AND THE PUBLIC THEY SERVED. FOR EXAMPLE, STATE LEGISLATORS WOULD HAVE BEEN PROHIBITED FROM SPEAKING TO CONSTITUENTS IN LANGUAGES OTHER THAN ENGLISH, STATE EMPLOYEES WOULD HAVE BEEN RESTRICTED FROM OFFICIALLY COMMENTING ON

MATTERS OF PUBLIC CONCERN IN SUCH LANGUAGES, AND STATE JUDGES WOULD HAVE BEEN BARRED FROM PERFORMING MARRIAGE CEREMONIES IN A REQUESTED NATIVE LANGUAGE.

I WOULD ALSO LIKE TO NOTE MR. CHAIRMAN THAT THE COURT FOUND THAT THE STATE EMPLOYEE ACTUALLY CONTRIBUTED TO THE EFFICIENT AND EFFECTIVE ADMINISTRATION OF STATE BUSINESS BY COMMUNICATING IN THE PREFERRED LANGUAGE OF THE PUBLIC. HAD THIS EMPLOYEE FAILED TO COMMUNICATE EFFECTIVELY WITH THE SPANISH-SPEAKING ARIZONA RESIDENTS, THE INTERESTS OF THE STATE WOULD NOT HAVE BEEN REPRESENTED, CONFUSION WOULD HAVE ENSUED, AND HER WORK WOULD NOT BEEN COMPLETED. BECAUSE SHE ALSO USED THE ENGLISH LANGUAGE WITH ENGLISH-SPEAKING RESIDENTS, HER USE OF SPANISH DID NOT VIOLATE ANYONE ELSE'S RIGHTS NOR INTERFERE WITH THE FUNCTIONING OF GOVERNMENT BUSINESS.

WE SHOULD NOT BLIND OURSELVES TO THE REALITIES AT HAND. WHILE WE PROMOTE FULL PROFICIENCY IN ENGLISH, WE MUST ALSO RECOGNIZE THAT SMALL SECTORS OF OUR POPULATION MAY FIND IT IMPOSSIBLE TO CONDUCT BUSINESS IN ENGLISH. ACCEPTING THE USE OF ANOTHER LANGUAGE DOES NOT MEAN THAT WE SHOULD NOT DO EVERYTHING IN OUR POWER TO CONTINUE TO PROMOTE LANGUAGE PROFICIENCY. IT MERELY ACKNOWLEDGES THOSE RARE CIRCUMSTANCE THAT ARE THE EXCEPTION RATHER THAN THE RULE.

I THANK YOU AGAIN FOR THIS OPPORTUNITY TO APPEAR BEFORE YOU AND WOULD WELCOME ANY QUESTIONS YOU MIGHT HAVE.

Subcommittee on Early Childhood,

Youth and Families

Hearing on English as the Common Language

Testimony by Congressman Gene Green, Texas 29

October 18, 1995

Mr. Chairman:

Thank you for the opportunity to appear before this Subcommittee and speak on the English-Only initiatives being proposed by this Congress. If I may quote an article from the USA Today, this issue is a "phony solution in search of an imaginary problem."

Let me be clear from the start, I strongly oppose any English-Only legislation because it limits our nation as never before in history.

English is now, and has always been, the first

language of the United States. If you try to file a document in Court or for public record it must be written in English or have an English translation. Our citizenship ceremonies are required to be taken in English. English is the language used in Congress and in all official activities of the United States government.

It is clear to me, and to a majority of Americans, that English stands as the primary common language of the United States. It's been the primary language for over 200 year and we haven't had to pass any laws. According to the U.S. Census, English is spoken by 94 percent of U.S. residents. Immigrants who come to this country know that learning English is important; there are long waiting lines for English classes. Everyone is aware of the importance of the English

language in our country.

Only 0.06 percent of federal documents are in languages other than English, according to the Government Printing Office. The GAO found of the over 400,000 documents produced by the federal government in the past five years, only 265 were printed in languages other than English.

America has remained strong and united because we share a common set of ideals and values, like freedom, democracy, equality, and opportunity. I strongly support bilingual education because it provides a quick and smooth language transition for children coming into this country. What the proponents of English-Only fail to see is that by not allowing this transition, they will create a TWO LANGUAGE SOCIETY, much like the one in Canada. The negative

consequence of outlawing bilingual education is to create a society with no mechanism to integrate new citizens into reading and writing English.

What the English-Only legislation serves to accomplish is not to stress the necessity of learning English, but rather to make the transition to American life, more difficult for non-English speakers. These various bills threaten to eliminate the opportunities that bilingual education provides. Bilingual education is a transitional tool that allows students to learn English without sacrificing progress in other subject areas like math and science. There is a false image that a child who starts bilingual classes in kindergarten will remain in bilingual classes until he or she graduates from high school. This is not true.

On the contrary, bilingual education has allowed

citizens from various backgrounds to integrate into our society. For example, in the last century, in my hometown of Houston, Texas, the first ever bilingual school was German. As a result of this successful bilingual program, the 43,351 constituents of German decent, that I represent, have integrated into our English-speaking society.

These English-Only proposals will severely undermine the successful bilingual education program in place today. There is a consensus in the research community both on the soundness of the theory and effectiveness of bilingual education. These studies have found that providing limited-English proficient students with substantial instruction in their primary language does not interfere with or delay their acquisition of English language skills, but helps them

"catch up" to their English-speaking peers in English language arts, English reading, and math.

Our world has changed dramatically and public education has changed with it. Educators today are preparing students from diverse ethnic and racial backgrounds for America's jobs of the future. Having knowledge of two or more languages in not a detriment, but a valuable resource in competing world market.

I believe that all students should be proficient in speaking, reading, and writing English. However, limited or non-English speaking students need to receive meaningful instruction in their native language while learning English so that they do not fall behind in their education. The English-Only proposals will not address the needs of these children.

I attended a majority Hispanic high school in my Congressional District during the 1960's. I saw first hand students leaving school because we had no transitional education system for non-English speakers. For the sake of the prosperity of our nation, we must not allow the Congress to create an educational system that discards students, merely because of their inability to speak English on the first day of school.

The English-Only bills are not only unnecessary, but they undermine the freedom which defines America. These proposals do not further our efforts to fully integrate our newest Americans, and do great harm by belittling the value and importance of other languages and questions the patriotism of speakers of other languages.

JOHN T. DOOLITTLE
TH DISTRICT, CALIFORNIA

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Congress of the United States
House of Representatives

Statement
of
The Honorable John T. Doolittle

before the
Subcommittee on Early Childhood, Youth and Families
Committee on Economic and Educational Opportunities

October 18, 1995

Good morning, Mr. Chairman and Members of the Committee. I would like to thank you for holding this important hearing today.

The idea that English should be is often referred to as being controversial and divisive. This need not be the case. In fact, there seems to be very little controversy in the minds of the vast majority of Americans. Most citizens of my state support official English. A San Francisco Chronicle poll found that 90 percent of the Filipinos, 78 percent of the Chinese and 69 percent of the Hispanics approved of having English as the official language of California. And at least one poll has revealed that 98 percent of the American people support making English our official language.

But the issue is divisive -- and this fact has much to do with the arguments and rhetoric being employed by bilingual and multilingual activists. For example, advocates of English as the official language are labeled "anti-immigrant." Yet, our intent is not to punish immigrants at all. Rather, we seek to integrate and assimilate new citizens so that they may prosper and thrive in American society. Indeed, I truly believe that requiring immigrants to learn English as soon as possible is the most pro-immigrant policy ever devised.

Opponents of legislative efforts to make English our official language also argue that they are not needed, that English is already our country's common language. They cite Census figures which reveal that 97 percent of the population above the age of four speaks English "well" or "very well." But when it comes to topics such as bilingual ballots, these same people claim that immigrants will be penalized by an English language requirement. You can't have it both ways.

I am convinced that bilingual education programs are not working well. Last month, *The New York Times* wrote an editorial that described the New York City bilingual education program

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as a "prison." The *Times* noted that "[e]nrollment in programs for student who have been labeled "limited English proficient" -- and therefore eligible for federal funds -- has nearly doubled in eight years... A bustling bilingual bureaucracy is now hard at work, often drafting children into the programs whether or not they need them."

In the Los Angeles Unified School District, approximately 265,000 Spanish-speaking children are enrolled in bilingual education. The district's Bilingual Methodology Study Guide advises teachers "not to encourage minority parents to switch to English in the home, but to encourage them to strongly promote development of the primary language." It seems that bilingual education programs are no longer providing a temporary transition until immigrants become fluent in English. Yet this temporary transition was the original goal when Congress passed the Bilingual Education Act in 1968. Linda Chavez, former director of the U.S Commission in Civil Rights wrote recently, "Studies confirm what common sense would tell you: the less time you spend speaking a new language, the more slowly you'll learn it."

Mr. Chairman, there are nearly 200 different languages spoken in America. It would be impossible to set up bilingual education programs for each one, but this step is the logical consequence of the arguments put forward by the proponents of existing bilingual programs. Already in Brooklyn and Queens there are some twenty schools that offer Haitian Creole as a language of instruction, a language that Haitians do not generally use.[1]

With 20 million immigrants now living in our country, Mr. Chairman, our country's schools and institutions have struggled with the important task of preserving our nation's heritage as a melting pot. While some have argued that newly-arriving immigrants should hold steadfast to their language and cultural identity, I think these advocates of multiculturalism and bilingualism are hurting the people they are trying to help.

The great seal of our nation reads "E pluribus unum" -- from many, one. No matter where our parents or grandparents were born, we Americans are and must remain one people. We need to reinforce the ties that bind us, not divide us, and I do not believe there is any more important tie than a common language.

That's why I have introduced a constitutional amendment declaring English the official language of the United States. An amendment is needed, I believe, to fortify state and federal English language laws against judicial attack. A special panel of federal judges within the 9th Circuit Court of Appeals recently struck down an official English law. My amendment is will protect the ability to implement official English statutes.

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[1] Richard Bernstein, *Dictatorship of Virtue: Multiculturalism and the Battle for America's Future*, Alfred A. Knopf, Inc., 1994, p. 244.

TESTIMONY OF CONGRESSMAN SONNY BONO
National Language Legislation Hearings, Wednesday, October 18, 1995

I thank my friend and colleague, Chairman Duke Cunningham, for holding these important hearings and giving me the opportunity to testify. Unfortunately, the Judiciary Committee is in the middle of a markup, so I will make my comments brief.

The importance of National Language legislation cannot be overstated. This is a land of opportunity because of the ability of all our people -- who come here from around the world -- to communicate with one another. This essential ability enables people to receive an education, a job, and enjoy all the rights and privileges of being an American. This is about being united, both as a country and as a society. As the son of immigrants, however, let me be the first to emphasize the need for this legislation. A majority of the American people support this. There is even overwhelming support among a majority of people who come from first, second, and third generation families. If we want to provide full opportunities for all the people of this country, we must enact National Language legislation. What people must understand is that this legislation is simply about opportunity for all people.

There are many compelling reasons for this. As you know, a major economic transformation is occurring in this country. We have shifted from an industrial base to an information age society. By ensuring a common language for our country, we can maintain our place as the world's leader in the information age revolution. In turn, we can guarantee all of our people a place in this revolution. Otherwise, we face the danger of becoming a divided nation in many ways, not just economically.

If I may now give a constructive suggestion to the Members of the Committee. There are currently several proposals for this legislation. As a mayor, I witnessed first hand the problems caused by a failure to adopt national language legislation. In my view, in order to be successful, any legislation must address all aspects of this problem, including, government business and operations, voting ballots, bilingual education, and immigration and citizenship standards. These are the pressing problems that we face. These programs work against our ability to come together as a country. A majority of the public agrees. Congress must gear up to give the public its solutions.

The time has come for this legislation. An overwhelming majority of the people want it. We must always heed the voice of the people. I am confident that you will consider these options as the Subcommittee begins its work on this subject.

Again, thank you Mr. Chairman. I yield the balance of my time.

Testimony of Congressman Xavier Becerra (D-CA)

Before the Subcommittee on

Early Childhood, Youth and Families

Committee on Economic and Educational

Opportunities

Hearing on English as the "Common" Language

Wednesday, October 18, 1995

Mr. Chairman, I appreciate having the opportunity to testify this morning on the subject of English as our official language.

As you may know, the acceptance of other languages has always been an important issue for me. As a conferee on the Elementary and Secondary Education Act, I was actively involved in the redrafting of Title VII, the Bilingual Education Act.

Multilingualism is also an important issue in my district in California; almost 80% of people in the district can speak a language other than English.

The English-Only movement, on the surface, appears to accomplish the important goal of affirming the preeminence of English in our country. In a recent survey, 98% of those polled believed that English should be made our official language. In fact, if you asked me that same basic question, I too might have answered "yes". However, if you look deeper into the English-Only movement, the campaign has implications and consequences which would prove to be detrimental to many Americans. English-Only proposals are in fact unnecessary, potentially divisive, and even constitutionally questionable.

First and foremost, the English-Only campaign is simply unnecessary. Everyone already knows that English is the common language of the United States. According to a U.S. Census Bureau report, 95% of all Americans already speak English.

Everyone, including immigrants, knows the importance of learning English. There are examples all over our nation of immigrants eagerly trying to learn the English language. At San Francisco City College, 20,000 adults learn English every semester and the waiting list is much longer. In De Kalb County, Georgia, 7,000 adults are studying English; in Brighton Beach, New York, 2,000 wait for a chance to learn.

The English-Only campaign has created the false impression that there is a large group of citizens who are shunning the English language and who must be made aware of the importance of English in the United States. Instead, just the opposite is true. There is a large group of individuals who yearn to learn English in order to become more integrated into American society.

Another argument put forth by the English-Only campaign is that by making English the official language, we will save the government millions of dollars in translation and printing costs. However, a recent study by the General Accounting Office found that less than 0.06 percent of government documents were reproduced in a foreign language. A listing of the subjects provided by the GAO revealed that most of the 265 documents dealt with health and safety issues and explanations of Social Security programs.

Eighty-three percent of the foreign language documents were in Spanish, the native language of over 3.5 million American citizens living in Puerto Rico alone. Only 1 of 400,000

government documents in the last five years was reproduced using a low-incidence language, like Ukrainian.

Not only have English-Only proponents exaggerated the number of documents that our government produces in foreign languages, but the documents that are printed are those which genuinely help individuals in our society. When our newest Americans come to this country, their transition into our society is made easier by ensuring that they understand the responsibilities and rights they have assumed.

The English-Only movement is divisive because it disconnects Americans from their government, threatens to eliminate the successes that bilingual education provides, and undermines the diversity that makes America so strong. The English-Only movement will shut out many individuals from both our government and our democratic process.

By mandating English as our official language, any chance of multilingual ballots would be eliminated. Multilingual ballots are critical in allowing those who are learning but not yet fluent in English the chance to participate in our democracy to make informed voting decisions.

It is counterproductive and undemocratic to prohibit people from communicating with their government. It becomes foolish when we self-impose this communications block on fellow Americans who are in the process of learning English or who have reached an advanced stage in life where acquiring English would be difficult.

Where does the English-only campaign take us? It would prohibit the translation of a Department of Agriculture bulletin on pesticide use, an Immigration and Naturalization Service pamphlet for recent immigrants on where to find English classes, a government insurance adjuster from using Polish to talk to citizens about their claims for relief from a natural disaster, Congressional staff from speaking to constituents in their native languages, and federal law enforcement agents from using languages other than English to gather information on a crime.

Some English-Only proposals would actually prohibit the official use of American Sign Language, preventing government communication with the hard-of-hearing. By mandating English-Only, a disabled language-minority American, for whom learning English would already be difficult, would be unable to receive the assistance of a translator when communicating with the government.

English-only proposals also threaten to eliminate bilingual education. Bilingual education is an important transitional tool that allows students to learn English without sacrificing progress in other subject areas such as math and science.

Bilingual programs increase overall intellectual development and improve problem solving skills and critical thinking

capacities. Students who participate in bilingual programs also have higher achievement in other key subjects. These benefits extend not only to minority students learning English but also to English speaking students who are given the chance to participate.

Bilingual programs are clearly in the national interest. They promote the overall development of students learning English, providing an orderly transition from their native language. We all end up benefitting by having Americans who are able to speak two or more languages. The Europeans and Japanese know this all too well.

House Speaker Newt Gingrich has claimed that, "If we allow the multicultural model of multilingual America to be dominant, this society will disintegrate." Let me disagree. In today's global economy, English-Only speakers are falling behind; multilingualism is becoming more and more essential in our world community.

Today, knowing more than one language makes individuals more competitive both here in America and internationally. Throughout the world, English is the language of choice. But in this global marketplace, the most important language is the language of your customer.

Multilingualism strengthens the cultures, diversity, and traditions that define our nation. America is a nation of immigrants; we have long seen ourselves as the melting pot of the world. We are united as a nation by the beliefs of freedom and democracy. It is English that binds and lets us communicate these beliefs. It would be un-American to insist that speakers of other languages abandon their own unique cultures and speak only English.

Finally, the constitutionality of the English-Only movement has been questioned. A federal appeals court recently struck down an Arizona constitutional amendment requiring state employees to speak only English in the workplace, concluding that this violates the First Amendment. The Court ruling determined that under the First Amendment protection, a government official or employee has the right to speak the language of his or her choice, as long as the foreign language spoken does not disrupt business. The court stated that the law was "especially egregious because it is not spread uniformly over the entire population but disproportionately effects the Hispanic community and other national origin minorities."

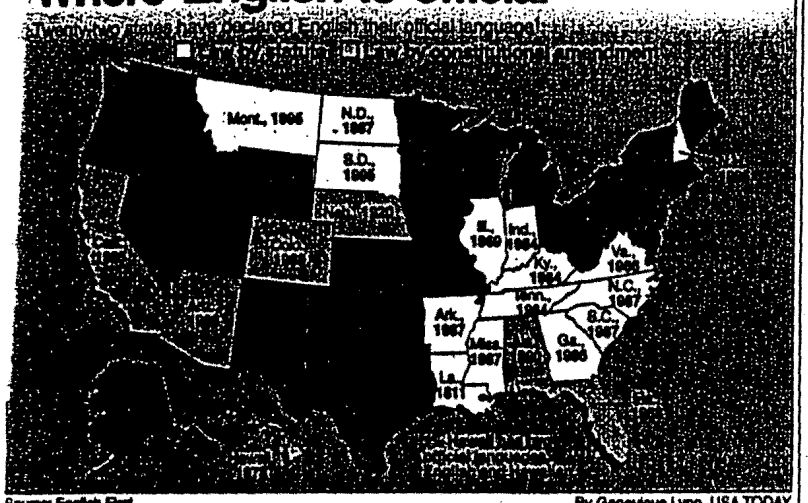
In conclusion, the English-Only movement, although on the surface a campaign to reinforce the importance of the English language in our nation, in fact does little to unite us as Americans. The English-Only campaign instead is unnecessary, potentially divisive, and even constitutionally questionable.

We, as Americans, share common values and beliefs of freedom

and democracy. It is these deeper and more fundamental convictions -- manifested through English and perhaps other languages, too -- that will continue to bring us together as a nation, not mandating English as the official language of the United States.

Thank you, Mr. Chairman and members of the committee, for the opportunity to address you today.

Where English is official



Source: English First

By Genevieve Lynn, USA TODAY

Today's debate: OFFICIAL ENGLISH

Phony solution in search of an imaginary problem

OUR VIEW Politicians are using official English to pander to public fear of immigrants.

Senate Majority Leader and presidential candidate Bob Dole obviously recognizes a popular slogan when he sees one. Monday, he became the latest advocate for making English the nation's "official language."

Official-English bills have been kicking around in Congress for years, and laws or constitutional amendments have been adopted in 22 states, including New Hampshire, Montana and South Dakota this year. The idea is simple and easy to sell. Unfortunately, it's also a feel-good answer to a largely imaginary problem — that American culture is threatened by non-English speakers. Dole, for instance, said "ethnic separatism" threatens the nation.

Hardly. While 32 million U.S. residents speak a foreign language at home, the vast majority speak English as well. Only 0.8% of the population, hardly enough to be a menace, can't speak English.

Census data show that nearly 90% of Latinos ages 5 and older speak English at home. And 98% of Latinos surveyed said they feel it is "essential" that their children learn to read and write English "perfectly."

In fact, the vast majority of today's Asian and Latino immigrants are acquiring English proficiency and assimilating as fast as did earlier generations of Italians, Russians and Germans. More than 95% of first-generation Mexican-Americans are English proficient, and more than 50% of second-generation Mexican-Americans have lost their native tongue altogether.

What would making English official mean? Dole didn't say. He hasn't endorsed any of the proposals pending in Congress.

But others have. The most widely supported, with 180 co-sponsors in the House and 17 in the Senate, would bar taxpayer funding of publications, forms and ceremonies in other languages and call on government to "preserve and enhance the role of English." A hearing is scheduled Oct. 18.

Two other bills would require all government communications to be in English, terminate support for bilingual education and end the Voting Rights Act requirement that election ballots be available in other languages where there are heavy concentrations of minority-language speakers.

A fourth would write an official-English provision into the Constitution.

State and local experience suggests none of them would achieve anything of value. Even backers are hard pressed to cite positive results, for government is in fact overwhelmingly conducted in English already.

Meanwhile, anecdotal evidence suggests official English invites unexpected trouble. Hundreds of complaints have been filed against employers, shopkeepers, even bus drivers who cited official-English laws — wrongly — as grounds for firing workers or denying service.

A federal law would do no better.

The notion of barring native-language voting help to elderly immigrant-citizens, whom it was designed to help, is downright mean-spirited.

And bilingual education, except for minor financial support, isn't even a federal issue. Done right, it helps children get started in substantive schooling while also learning English. Most youngsters in the programs move into regular classes in less than three years.

Where it's done wrong, the states and school districts that control education — not Congress — will have to find an answer. And official English is not it.

In Georgia and Maryland this year, governors rejected political pandering and vetoed official-English bills. In seven other states, proposals failed in the legislature.

Official English is one more law we're better off without.

Sen. Dole's New Cause

TAKEN ONE sentence at a time, most of what Sen. Robert Dole had to say in Indianapolis Monday about the English language is unobjectionable. Why is it then, that the whole comes across as hostile to new immigrants, manipulative of the genuine patriotic feelings of his audience—the American Legion—and generally directed at that edge of the Republican Party that he has recently, and almost desperately, been showering with bouquets?

Few would quarrel with the senator's statement that as a country "we need the glue of language to help hold us together." It is also true, as he emphasized, that it is in the personal interest of immigrants to learn the language quickly, and most of them do. So what prompts this apparent belief that the language is under threat and needs to be protected by a law declaring it to be "official"?

Some examples that have been given to justify legislation are simply wrong. The IRS, for example, prints all its forms in English. A one-year experiment with Spanish forms was quickly abandoned. Similarly, Immigration Service policy requires that naturalization ceremonies be conducted in English. A single judge's decision to use Spanish on one occasion was an anomaly. In fact, no one can become a citizen if he or she cannot speak, read and write English. And yet, in spite of these facts, Sen. Richard Shelby, author of the leading Senate bill on this subject, found it necessary to introduce legislation declaring that "No person shall be denied services . . . provided by the government solely because the person communicates in English." What on earth is the basis of this perceived threat?

At various times over the past 30 years or so, various interest groups have sought special language considerations from the government, and some of those demands have been out of line. But concessions that have been made are as much in the government's interest as the immigrants'. Schools can't provide instruction in a variety of languages, but they must be able to communicate with children in order to teach them English. Courts cannot conduct fair trials if any of the parties cannot speak English and are denied interpreters. Health education and services cannot be delivered in immigrant communities if providers are forbidden to speak or print notices in any language but English. Families of newcomers are in a transitional stage, and the move to English, especially by children, is remarkably fast. But a period of flexibility during the transition is needed and poses no threat to the common language.

What is disturbing about Sen. Dole's embrace of the English-only cause is that it appears to be totally motivated by nomination politics. He has never been on board this particular bandwagon. He isn't even familiar with various bills that have been introduced. People who speak English suffer no discrimination in this country, and he knows that. It is simply divisive to pretend that the large majority is threatened by newcomers seeking to impose their own languages or create permanent enclaves where English is not allowed to be spoken. The senator has addressed a straw man in an effort to impress the us-against-them crowd. He's capable of more enlightened policymaking, and he fools neither side with his sudden conversions and new enthusiasms.

The Washington Post
9/6/95

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THE NEW YORK TIMES EDITORIALS/LETTERS SUNDAY, SEPTEMBER 10, 1995

Campaign English From Senator Dole

Senator Bob Dole's declaration that English should be made "the official language of the United States" was couched in purest patriotism — to bind the nation together. But, as a contender for the Presidency, he surely knows this issue is divisive. It reeks of xenophobia and is particularly popular among the conservatives he seems too eager to please.

America is and must remain an English-speaking country. The ability of all Americans to communicate without translation is woven into the fabric of our open society. Foreigners who come here know that learning the language is in their own self-interest. Economic opportunity, employment and advancement depend on it — even following "E.R." on TV.

But requiring it by law is a sign that the society is not so open after all, that people who speak foreign languages are not welcome.

Addressing the American Legion convention in Indianapolis last week, Mr. Dole did not indicate how he would proceed, except to say that "alternative language education should stop." Insisting on fluency in English "is a welcoming act of inclusion," he said, "and insist we must." Most of the pending official-English bills in Congress would require that all government business be conducted in English, except where health and safety are involved. Some ban bilingual education and multilingual ballots.

Nebraska started the official-English movement in 1920 with an amendment aimed at German immigrants. More than 20 states have now adopted official English in some form, mostly during the last 15 years and because of concern over the influx of Hispanic and Asian immigrants. President Clinton signed the Arkansas official-English law as Governor in 1987. But George Bush, campaigning for President in 1988, opposed the official-English campaign then under way in Florida.

America is a land of immigrants. The overwhelming majority have proceeded to learn English if they did not already know it. But it offends the nation's freedoms to tell them they must.

Rocky Mountain News

Sept 10-95

Glue of language holding strong

How sad it is to watch the otherwise moderate Bob Dole pander to the ugliest element of the Republican Party with policy proposals based on distortions and fictitious crises.

The spectacle came a few days ago in a speech to an American Legion convention in Indianapolis. Dole criticized the much-derided National History Standards for focusing too much on what is wrong with the country and not enough on what is right. He accused the academics who formulated the standards of attempting to "disparage America."

Roger E. Hernandez

In this, Dole is correct. What academics tried to foist on us last year as the basic elements for teaching history is no more than a list of politically correct grievances that barely mentions the greatness of this nation's democratic foundations.

But Dole also brought in to this argument what does not belong: He came out for eliminating bilingual education and for making English the official language.

The radical Republicans Dole needs in the primaries think bilingual education is a liberal plot to undermine America's linguistic unity. Dole wants them to believe he shares these worries. "We must stop the practice of multilingual education as a means of instilling ethnic pride or as a therapy for low self-esteem or out of elitist guilt over a culture built on the traditions of the West," Dole said.

Actually, the main purpose of bilingual education (I have never heard of "multilingual education") is quite simple: While immigrant children learn English, they learn other subjects in their native languages, so they do not fall behind. Once they learn English, they join regular English-language classes.

Someone willing to make the point can surely find a school district where bilingual education coexists with history taught in ways twisted by the demands of political correctness. But these are two different issues. Bilingual education is an apolitical teaching strategy designed to keep schoolkids who do not speak English from falling behind. Arguing whether it is effective is legitimate, but it is the height of political cynicism to chase after conservative votes by equating bilingual instruction with the worst educational excesses of the left.

Dole did something similar when he pronounced himself in favor of making English the official language. "We need the glue of language to help hold us together," he said.

But English is in no danger of coming unglued. The children of immigrants are going to learn English sooner or later, no matter what. And their parents are fully cognizant that knowing English is essential for success. What purpose, then, does Official English serve? Just one: It gives people a superficially reasonable way to vent their anger at immigrants, and — it must be said — particularly at Hispanic immigrants.

You'll find no better example of how far language paranoia can go than the case of the Amarillo, Texas, judge who ordered a Mexican-American woman to speak English to her 5-year-old daughter at home. State district judge Samuel C. Kiser, ruling in a custody dispute, said that speaking Spanish to the little girl was child abuse.

The judge is apparently unaware that 5-year-olds learn new languages as if by osmosis. In a year or two, this girl will speak English better than Spanish. But his ignorance is less important than the fact that his ruling has brought English-only mandates from the arena of public policy to the intimacy of a family's home.

The far right, so concerned about government intrusion in private affairs, ought to think about that for a while.

King Features Syndicate

The Washington Post
NEWS ARCHIVES

NO FELICIDAD IN CONNECTICUT (80 words)

28 Apr 95 12:00am

From News Services

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SOUTHINGTON, CONN.

The manager of an ice cream store was suspended without pay after refusing a customer's request to write "Happy Birthday" in Spanish on a cake.

Ana Dicklow had gone to the Carvel store Saturday to get an ice cream cake with a Spanish "Happy Birthday" greeting for her 80-year-old father.

Dicklow said she offered to spell it out for store manager Fred Craig or write it herself on the frosting, but Craig said: "Nope. This is America, and I'll only write it in English."

THURSDAY
SEPTEMBER 7, 1995
San Jose Mercury News

ANGELO FIGUEROA

Señor Dole, you're all wet on bilingualism

SENATE MAJORITY leader Bob Dole is right, only he doesn't go far enough.

Let's not just end bilingual education, let's make it a criminal offense to speak any language in the United States besides English.

The next person who says *buenos dias* should get tossed in the slammer and forced to listen to Rosanne and Kathie Lee alternately sing the national anthem for 90 days.

That'll teach 'em to respect our monolingual nativism. And while were at it, lock up any smart aleck who points out that *mono* means monkey in Spanish.

It's time to get back to our roots. Time to give "the embarrassed to be American crowd," as Dole calls them, a kick in the rear. No more dim sum. Wipe Rosh Hashana off our calendars. Ban rap music and karaoke nights.

Let's make forks and spoons the official eating utensils. Anyone caught munching with chop sticks will be shipped in a bikini to Antarctica.

LET'S GET going with that wall. But why stop at the Rio Grande? Surround the entire mainland with it. It'll be the world's eighth wonder, putting China's to shame.

After all, who needs foreigners and a global marketplace? We have flea markets and garage sales.

It's time, as Dole said, "to return as a people to the original concept of what it means to be an American." I've always been a little confused about that, but I'm sure an Alaskan Eskimo or a Florida Seminole will clear that up.

Yessiree, elect Bob Dole president and happy days will be here again.

Of course, I'm being facetious. It's my way of laughing — instead of screaming — after Dole's Labor Day speech to the American Legion.

Boy, did it irk me. Along with many of the other Republican clones running for president, Dole seems intent on getting to *La Casa Blanca* by creating a wedge between Americans along ethnic and racial lines.

"It was a cultural purification speech," said Jim Lyons, executive director of the National Association for Bilingual Education.

"It's convenient for him to have these hot-button cultural issues to prevent people from focusing on the most pressing problems facing the nation."

Dole has it backward if he actually believes that bilingual education is designed to keep kids from learning English. Just the opposite is true.

"Our goal is to make sure children are learning in a language they understand, until their English comes up to speed," said Emerita Orta-Camilleri, director of bilingual programs for the San Jose Unified School District.

IT TAKES three to seven years before a child who speaks a foreign language is proficient enough to learn in an English-only classroom.

"Continuous learning is the key," said Lyons. "You don't want a kid to fall behind — to stop learning math, history and science — while he is trying to learn a new language. That's tremendously harmful and feeds right into the dropout rate."

I wish I could tell Señor Dole directly that in my America *se habla Español* and English.

As well as Vietnamese. Mandarin. German and Italian.

If he doesn't understand that bilingualism and bilingual education strengthens our nation, I'd hate to see the damage he'd do running our foreign and trade affairs.

Much less trying to lead a nation of immigrants.

Write Angelo Figueroa at the Mercury News, 750 Ridder Park Drive, San Jose, Calif. 95190; phone (408) 920-5896; fax (408) 288-8060. Send Mercury Center e-mail to FigueroaA.

Monday, September 18, 1995

The Washington Post

In Plain English: Chill Out

"This is Mr. Bay," Kim Oanh Cook says. "He just came from Vietnam."

Uh-oh. An immigrant. Probably can't speak like us. Probably one more reason folks want to make English our official language.

Alert Bob Dole.

Call Pat Buchanan.

Actually, as threats to linguistic unity go, Bay Van Ho isn't much. He's so slight that he's more like a 62-year-old rumor of a person.

How much English does he speak?

"Very little," Cook says.

She turns toward him.

"Speak English to him," she says, indicating me.

Bay looks uncomfortable in his chair.

"My name is Bay Van Ho," he says.

He had language lessons in Vietnam, but fluent he isn't. Can you believe it? None of your ancestors or mine came to these shores with such lousy English skills.

Did they?

Bay knows so little that he often travels to Falls Church to see Cook at the Vietnamese Resettlement Association, one of the organizations inhabiting a former Fairfax County public school that's now a multicultural center. Cook, the executive director, helps him figure out American ways because she is Vietnamese, too, having moved here for good in 1973.

Bay is a veteran of a losing army, the South Vietnamese one. For that, he spent a decade in prison after the fall of Saigon, followed by a decade as a laborer. The communists finally allowed him to emigrate to the United States, which accepted him under a program that helps those who served the government of our former ally. He arrived on June 23, with his seven children, ages 20 to 40.

Since their arrival, Bay has noticed something. It's an odd thing, given the buzz about declaring an official language.

"I only hear English," he says in Vietnamese, Cook translating.

Now that he mentions it, I only hear English, too. At Camden Yards, they do the lineups in English. Last season, "NYPD Blue" was in English, I believe. Even Bob Dylan sings in English, sort of.

Bay and I must not get around enough. English must be under siege from all the immigrant babbling. It must be in need of protection. Otherwise, many leaders, such as presidential candidates Dole and Buchanan, wouldn't be demanding that Congress enshrine English.

Would they?

Jim Boulet Jr., executive director of English First, a national group that supports making English the official language, suggests the movement has been misunderstood.

"There is no legislation in Congress pending or contemplated," he says, "that would force anyone to learn English, make anyone speak

See TWOMEY, D6, Col. 5

STEVE TWOMEY

Defusing a War on Words

TWOMEY, From D1

English at home, make anyone speak English on the street or eliminate Chinatown in downtown D.C."

The goal, Boulet says, is merely to ensure that the government speaks and promotes only English. Right now, the government mandates $8 billion worth of bilingual education for non-English-speaking youngsters, he says. It prints ballots and other documents in multiple languages. But studies have shown that bilingual education doesn't work, he says. It and other bilingual efforts—however well-meaning—wind up being costly failures that slow the pace at which immigrants are assimilated.

Instead, Boulet says, the government should stick to English to achieve what is in the interest of us all: the swift mastery by every newcomer of the one great thing that unifies this huge nation.

Who'd dispute that? Got to have a common language. And English is it.

Immigrants know that.

Bay knows that.

"He's taking ESL classes right now upstairs," Cook says, meaning English as a Second Language.

But so what if the government helps an immigrant's transition with a little bilingual behavior?

If bilingual education isn't working, fine. Kill it or reform it. But if the ancestors of a lot of us could speak, they just might say they would have adored having bilingual government forms when they applied for a benefit, and dual-language ballots that made the wording of a referendum clear, and health pamphlets in their mother tongue.

Sure, that assistance costs tax dollars. But all the fretting over English isn't only about money. It's about unease.

Too many Americans fear that the country isn't theirs anymore. Buchanan speaks of an "invasion." Pushing for English is a way of pushing back. It's a way of registering a complaint that too many cabbies are unintelligible and too many 7-Eleven clerks are foreign-born. English-only tells newcomers that the unwelcome mat is out. Nice.

(In fairness to English First, Boulet says that "not everyone supports our cause for the right reason" and that the number of people driven by fear of the immigrants themselves is a "minority.")

We've had immigrant angst before. It was as silly then as now. Earlier waves of newcomers got with the program and became Americans. Today's might be from Asia, Latin America and Africa instead of Europe, but they'll wind up English-speaking Americans, too, or if they don't, their children surely will. Everyone ought to sit back and chill.

"I have decided to come here to live here," Bay Van Ho says, "and I feel I have to get adjusted to this society, and I need English to get a job, to communicate, to adjust. I can't survive without it."

He's an American-in-progress. That's how it's been done over the years. People arrive a them and end up an us. You know what Cook says the Vietnamese call the United States?

Nation of United Races.

TIME
October 9, 1995 p. 40-50

EDUCATION

Putting Tongues in Check

Should bilingual schooling be silenced? Critics think so, yet a new study shows that it works

By MARGOT HORNBLOWER/WESTMINSTER

IN THE SUNNY SUBURBAN SPRAWL OF WESTMINSTER, California, a city of 72,000 southeast of Los Angeles, the first-grade classrooms of the Neomia B. Willmore School offer two distinct recipes for the American melting pot. In Room B-3, an English immersion class, teacher Judy Nguyen plinks on the piano. Winsome, if off-key, her 29 charges launch into "My country 'tis of thee," fading away uncertainly as they reach the line "Land of the Pilgrims' pride." About half the children are native Vietnamese speakers; nine are Hispanic. But the book box holds the Berenstain Bears and Dr. Seuss; cheery posters list the days of the week and the months of the year—in English only. At day's end the lesson is about "contours." With crayons, the children are to outline a picture of an apple. Most comply easily, but six-year-old Tuyen, uncomprehending, gaily colors the inside of the fruit.

In Room A-2, a bilingual class, 30 first-graders, all Latinos, belt out their favorite song, *El Rancho Grande*. In the book corner: *Los Tres Cochinitos*—The Three Little Pigs. On the wall: the seasons, the months, the days, in both Spanish and English. In a mock interview, teacher Marina Williams asks Fabiola, a gap-toothed charmer, "*Señora Presidente*, what should children do in school?" Fabiola shoots back: "*Aprender inglés!*"—learn English. But one small boy has another idea: "*Bailar!*"—dance. The teacher takes the hint, winding up the day with a session of *la quebradita*, a sort of Mexican jitterbug.

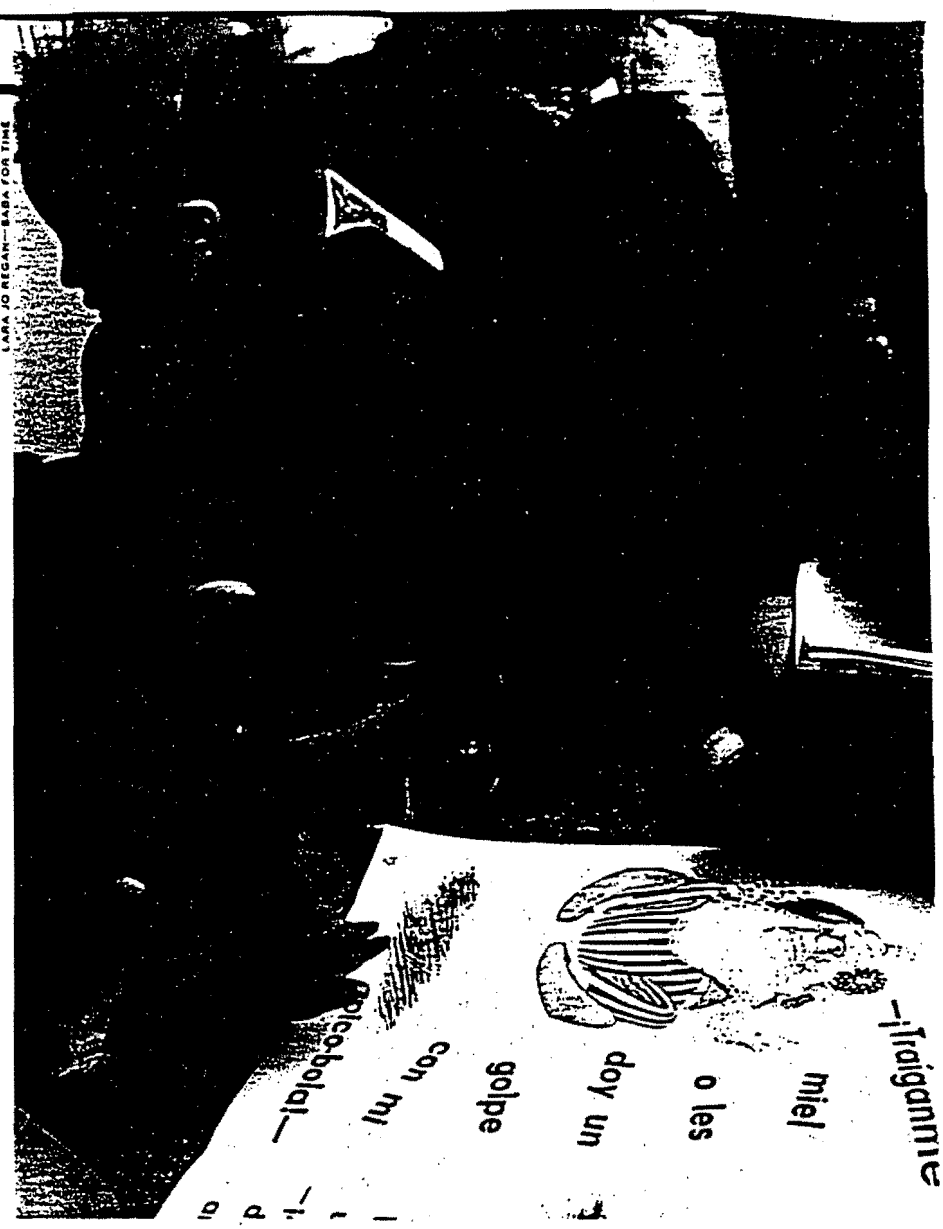
At Willmore, 78% of the students do not speak English well enough to follow a standard American curriculum. Like thousands of public schools across the country, Willmore faces a dilemma: Should immigrant children be instructed entirely in English? Or should they be taught academic subjects in their native language while gradually learning English? For three decades, researchers have debated the complex cognitive issues. Now, however, arguments have moved beyond pedagogy. Bilingual education is exploding into one of the nation's most divisive political issues, fueled, on one hand, by a backlash against immigration and affirmative action and, on the other, by the failures and ideological strictures of some existing bilingual programs. Last fall, for example, when Westminster officials pushed teachers to take Spanish and Vietnamese classes or face a transfer, the teachers' union organized a takeover of the school board, voting in three new members who have vowed to phase out bilingual classes such as Marina Williams'. "It is unconstitutional to force American citizens to learn a foreign language in order to keep their job," says Michael Verringia, the new school-board president.

SHOW-OFFS: Two first-grade students in the Chinese-English program at a New York City's school display their work

The issue has taken on national dimensions. Last month Senate majority leader Robert Dole injected it squarely into the presidential campaign, declaring, "We must stop the practice of multilingual education as a means of instilling ethnic pride or as a therapy for low self-esteem." The red-meat rhetoric pleased conservatives, and Dole plans to introduce legislation this month declaring English the nation's "official language." But in an interview Friday, he said he will not seek to end bilingual programs so long as they "ensure that people learn English in a timely fashion." Some pending bills, however, would virtually dismantle the Federal Government's 27-year support for bilingual schooling. Congressional budget proposals would slash current bilingual education funding as much as 66%.

Leaping into the fray last week, President Clinton told a thousand cheering supporters at a Congressional Hispanic Caucus dinner, "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 to let these children live up to the fullest of their God-given capabilities." But the issue does not divide purely along partisan lines. Although House Speaker Newt Gingrich and G.O.P. presidential hopefuls Richard Lugar and Patrick Buchanan back the English-only movement, G.O.P. Governor George Bush of Texas left popular bilingual programs untouched in his recent school reforms. In Florida, another key primary state, politically powerful Cuban Americans—most of whom are Republicans—were dismayed by Dole's stance. "Attacking bilingual education here is like attacking Mom and apple pie," says Mercedes Toural, head of Dade County's bilingual programs.

Nationwide, of the 43.6 million children attending public school, some 2.6 million are non-English-speaking—an increase of 76% in the past decade. As new waves of immigrants pour in, conflict grows over how to assimilate them. In New Jersey, Massachusetts, Michigan, New York, the District of Columbia and California, bilingual programs have recently been challenged by parents, teachers and school boards. Three-quarters of the young newcomers live in five states: California, New York, Florida, Texas and Illinois. Nonetheless, 43% of U.S. school districts have at least some non-English-speaking children. One in six U.S. teachers has non-English speakers in the classroom. In Columbus Junction, Iowa, where a third of the students are the offspring of Hispanic pork packers, principal Becky Furlong fears that federal budget cuts will wipe out her bilingual kindergarten. Meanwhile, at the elementary school in De Queen, Arkansas, principal Cindy Hale has no plans to teach the Latino children of local poultry workers—now a quarter of her students—in Spanish. "The quicker they adapt to speaking English, the better off they are," she says.



LARA JO REGAN—SABA FOR TIME

WESTMINSTER, CALIFORNIA: First-grade Hispanic students with books in Spanish during story hour at the Willmore School

Twenty-one years ago, a U.S. Supreme Court decision established the constitutional precedent for bilingual education when it found that San Francisco had discriminated against 1,800 Chinese children by failing to help them overcome their linguistic handicap. Last month the legal issues seemed to come full circle as a group of Brooklyn parents filed suit against the New York State commissioner of education, claiming that tens of thousands of children are "languishing" in poorly run bilingual programs. The suit charges that American-born children with Latino surnames and low test scores are consigned to Spanish-language classes even if their dominant language is English. Fearful of losing federal and state bilingual funds, schools allegedly pressure children to remain in bilingual classes far longer than necessary. "I missed out on three years of work," says 13-year-old Ariel Peña, who tried unsuccessfully to opt out of his school's bilingual class. Children from grades 5 through 8 were mixed in one classroom. "We had the same math book, back to page one, for two years in a row," adds Peña, a plaintiff in the suit. The state will fight the suit on the grounds that many children need more than three years of bilingual classes, but it will now review cases more carefully.

New York City schools have experienced a 49% increase in non-English-speaking immigrants in six years. Besides Spanish, classes are now taught in Chinese, Haitian Creole, Russian, Korean, Arabic, Vietnamese, Polish, Bengali and French. A few schools offer a full program in the student's native language, but most give at best an hour of native-language assistance, along with an hour of instruction in English as a Second Language (ESL). At Daniel Carter Beard Junior High in the borough of Queens, teacher Michael Cao faces a daunting task. His seventh-graders, most of whom speak little or no English, spend most of the day in mainstream classes. And then, in just 45 minutes, Cao must speed them through the baffling vocabulary they

THE RISE OF ENGLISH ONLY

Which of these statements is closest to your views on bilingual education?

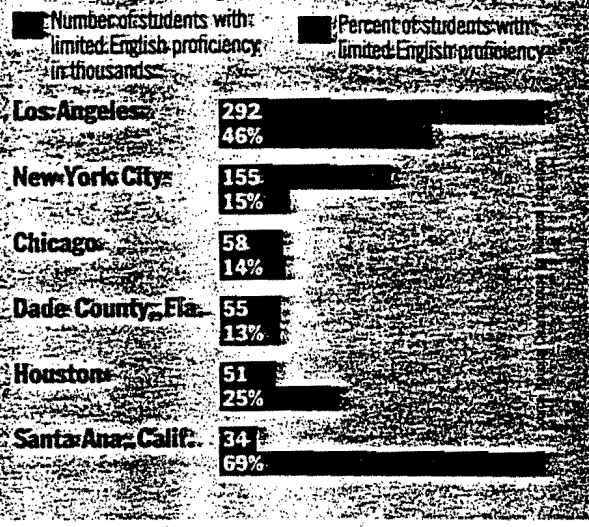
	Sept. 1993	Sept. 1995
Public schools should teach all children in English	40%	48%
Public schools should teach children in their native language only until they know enough English to join regular classes	48%	39%
Public schools should teach children in their native language as long as it helps the children learn or improves their self-esteem	11%	10%

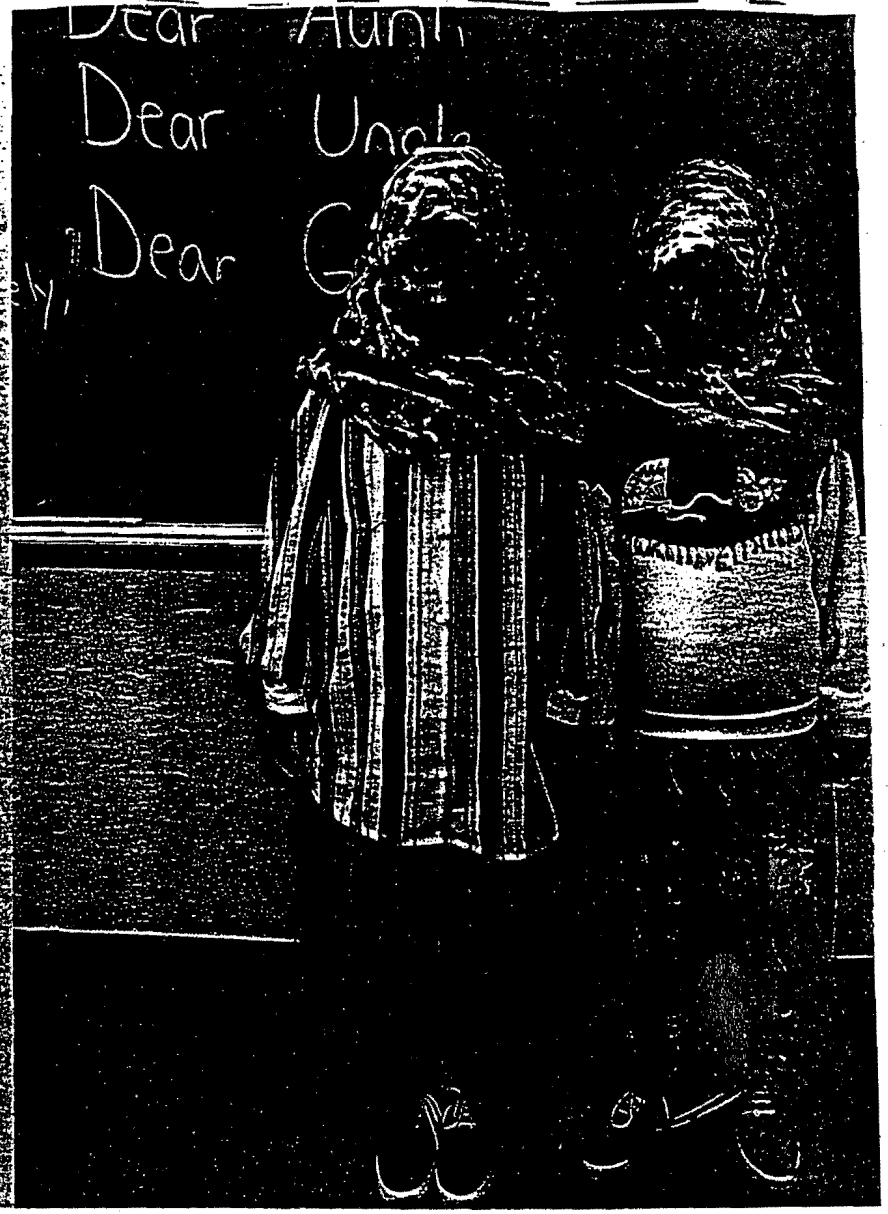
	Yes	No
Do you think there should be a law making English the official language of this country?	65%	31%

From a telephone poll of 1,000 adult Americans taken for TIME/CNN on Sept. 27-28 by Yankelovich Partners Inc. Sampling error: ±3%.

ENGLISH DEFICIENCY

Top school districts having students with limited English ability, 1993-94





DEARBORN, MICHIGAN: Two girls, native Arabic speakers, at a bilingual second-grade class at the Iris Becker Elementary School

STEVE LISS FOR TIME

have encountered. *Energy, gasoline, electron, molecule, dilute, bubble, wave, atom*—all new words to be explained in Mandarin. And, for a slender youth in the front row, in Cantonese. In three years, under state rules, newcomers are to be fluent enough to graduate into all-day mainstream classes. In practice, few are—and schools are caught between researchers who decry the unrealistic expectations and parents who blame the bilingual programs for not fulfilling them.

WHILE PUBLIC OPINION seems polarized between sink-or-swim nostalgics and politically correct diversitarians, serious research increasingly points toward a consensus: children learn English faster and are more likely to excel academically if they are given several years of instruction in their native language first. In a 1991 study endorsed by a National Academy of Sciences research team, David Ramirez, now a professor at California State University, followed 2,000 Latino schoolchildren. "It is a myth that if you want children to learn English, you give them nothing but English," says Ramirez. Both English-immersion and bilingual methods will fail, however, if classes are too crowded, taught by unqualified teachers, lacking in appropriate materials, or filled with the wrong combination of students—conditions that are all too common.

Later this year two George Mason University professors will release the largest study ever conducted on bilingual education, comparing the performance of 42,000 non-English-speaking students over 13 years. Although states such as Massachusetts and Illinois now push students out of bilingual classes within three years, the researchers found that children who had six years of bilingual education in well-designed programs performed far better on standardized English tests in 11th grade. Even with bilingual classroom aides and ESL training, children who are plunged into an English environment before they are fluent "are just left out of the discussion in their mainstream classes," according to Professor Virginia Collier. "It shows up in the long term, when the academic going gets tough."

The George Mason study also underscores the value of bilingual education's most avant-garde experiments. The highest achievers were children at "two-way" schools, where English-language children and non-English speakers are mixed together, with half the curriculum taught in a foreign language and half taught in English. In Chicago five years ago, there were three such schools teaching in Spanish and English; today there are 20. In the District of Columbia, the Oyster Bilingual Elementary School is a pioneer in two-way education. Its student body is 58% Hispanic, 26% white, 12% black and 4% Asian, and after six years of Spanish-English curriculum, its sixth-graders score at a ninth-grade level in reading and a 10th-grade level in math. At a two-way Chinese-English program in Public School 1 in New York City's Chinatown, three eight-year-olds—a Hispanic, a Chinese and an African American—last week recited

a poem they had written together in Cantonese and English. Patricia Nixon, a Manhattan resident who has sent her third-grader Anita there since kindergarten, boasts that the child can read storefront signs in Chinese and converse in the language. "She has a great opportunity," says Nixon, beaming.

Not all communities are braced for the challenge of multilingualism. At Salina Elementary School in the shadow of the hulking Ford Rouge auto plant in Dearborn, Michigan, 90% of the students are native speakers of Arabic. Academically, many of them lag far behind other students in the district. Earlier this year, spurred by the possibility of a five-year, $5 million federal grant, school superintendent Jeremy Hughes proposed forming a two-way Arabic-English program. Not only was the proposal rejected by the local board of education after heated public criticism, but it opened the way for a wholesale attack on bilingual education, directed at the city's Arab population. "This is America. Public money for public education should be used for English only," says Stephen Kovach, a medical-supplies consultant.

In California, home to 45% of the nation's non-English-speaking students, the magnitude of demographic change is breathtaking. Thirty years ago, California's schools were more than three-quarters non-Latino white. Today the proportion has dropped to 44%. A quarter of the state's 5 million public-school students—more than 1 million children—"do not speak English well enough to understand what is going on in a classroom," according to the 1993 report of a state watchdog agency. That agency charged that California's bilingual bureaucracy had "calcified into a self-serving machine ... an ideologically based program more concerned with the intrinsic virtues of bilingualism and biculturalism" than with teaching English.

While many California school districts embrace bilingualism, others, such as Stockton, Oakland and Westminster, have defied the imposition of native-language instruction, and the state has threatened to cut off millions of dollars in school aid. The debate heated up this summer as the state board of education, prompted by calls for more local control, made it easier for districts to opt out of bilingual programs. Westminster, which had hired only nine certified bilingual teachers—far fewer than the 90 required by the state to service its 4,000 Vietnamese and Spanish speakers—is now applying for permission to eliminate native-language instruction entirely. If granted, that will mean classes such as Marina Williams' will soon disappear. And in the squat, brick Willmore school, for better or worse, no one will be dancing *la quebradita*. ***—With reporting by Ann Blackman/Washington, Cathy Booth/Miami, Wendy Cole/Dearborn and Jenifer Mattos/New York***

Strangers in a Strange Land

By WENDY COLE WAUSAU

FIFTEEN YEARS AGO, WAUSAU, WISCONSIN, WAS HOMOGENEOUS AND COMPLACENT, among the whitest of cities in the country. No longer: beginning in the late 1970s, local churches began sponsoring displaced refugees from the wars in Southeast Asia, allowing them to settle in Wausau. As a result, the town (pop. 38,000) is now 15% Hmong, a people native to the mountains of Indochina who speak a language that until the 1950s had no written form.

Nowhere has the transformation been as dramatic and tense as in Wausau's school system, where today 30% of elementary students are Southeast Asian. Yet there is no formal bilingual program in Wausau because there are virtually no certified Hmong-speaking teachers. So the school system has relied on teaching English with assistance from bilingual aides, who step in to make the transition to the new language easier. But as the vast majority of Hmong children became concentrated in four of the district's 13 elementary schools, test scores showed the immigrant children were not keeping up with their U.S.-born peers. Two years ago, Lincoln Elementary School had a Hmong population of 70%. The situation prompted the school board to adopt a controversial busing plan in which six schools would swap about half their children. The restructuring, supported by 87% of teachers, was to boost academic achievement and bring together a community that was becoming more and more polarized by race.

STEVE LISS FOR TIME

A Hmong student by his locker at the Horace Mann Middle School in Wausau, Wisconsin

Instead, the community rebelled. Five school-board members who supported the plan were later recalled. Last year the partnership effort was dropped. No one felt the fallout more than ousted board member Fred Prehn, who had championed the plan. "I received phone messages telling me that I would get a bullet in my head and that my child would never reach the first grade," said Prehn, a dentist. He says eight white families stormed into his office, denounced him as a "Hmong lover" and took their business elsewhere. Under threat of a lawsuit by the American Civil Liberties Union, the new board conceived a plan for racial balance in the schools by redefining the boundaries of some neighborhoods. And while the busing continues, it is now mostly Hmong children who travel to other neighborhoods each day.

This year the district sought and received $700,000 in new federal grants, which pay for, among other things, a newcomer center that provides intensive half-day courses in English as a Second Language. Shu Blong Her, a bilingual aide at Horace Mann Middle School, says new arrivals have an easier time now than when he arrived in Wausau in 1979. "I struggled more, but I'm moving up. O.K. I'm getting used to the life-style of this country," he says. Wausau fifth-grader Chia Vang arrived five years ago and is currently fluent in English but still finds it tough to fit in at school: "I try to make friends with Americans, but it's hard because sometimes I'm shy to ask them."

No one disputes that English will be the common language of all Wausau citizens. "Right now we are like a new baby learning to walk and talk. But that will change," says Blong Moua, a Hmong job-placement counselor. The change has already started. Though 40% of Hmong are unemployed, nearly 90% of Hmong students graduate from high school—the same rate as among their white counterparts. "I don't know how much time it will take," says Peter Yang, who heads the Hmong Mutual Association. "But a Hmong can become mayor of Wausau." ■

Bilingual School Has Word for Dole: Wrong

Dual Languages Do Not Promote 'Ethnic Separatism,' Teachers in Miami Say

By William Booth
Washington Post Staff Writer

MIAMI—At Coral Way Elementary, the school days unfold like a page ripped from Norman Rockwell's sketchbook. Uniformed youngsters march in single file down the hallways, attending "citizenship day," reading the tall tales of Johnny Appleseed and holding mock elections.

Yet Coral Way, the first and perhaps best-known bilingual school in the nation, provides the kind of controversial education that Republican presidential hopeful Robert J. Dole (Kan.) recently attacked as promoting "ethnic separatism." The pupils at Coral Way learn English and Spanish in equal measure from kindergarten to fifth grade.

In a speech earlier this month before the American Legion in Indianapolis, Dole, the Senate majority leader, said schools should provide language classes for immigrant children, "as long as their purpose is the teaching of English. . . . But we must stop the practice of multilingual education as a means of instilling ethnic pride or as a therapy for low self-esteem or out of elitist guilt over a culture built on the traditions of the West."

But here in one of the most densely immigrant communities in America, most parents, teachers and students say Dole is wrong—wrong because most students here and in other immigrant cities are, in fact, quickly taught English even if they are encouraged to maintain their own native languages.

And wrong, they say, because bilingual education is producing citizens best able to excel in the modern, multilingual, post-NAFTA world.

"What is wrong with learning more than one language?" asked Coral Way Principal Migdania Vega in a manner that suggests she believes Dole did not do his homework. "What is wrong with preparing students for the future? What is wrong with self-esteem?"

The issue of bilingual education remains an emotional topic for many Americans, who feel the country not only is being overwhelmed with immigrants but also that somehow the new arrivals in this latest generation of immigrants are failing to become "real Americans." The United States is in danger, critics of bilingualism argue, of becoming a Balkanized Tower of Babel. And some school districts have been accused of trapping students in their native languages for years, condemning them to "linguistic prisons."

Dole's campaign press spokesman, Nelson Warfield, said the senator was concerned about students languishing in foreign language programs and not being pushed into English, kept there by "a liberal education establishment."

What Dole and Congress decide is important to local school systems like Miami's Dade County. Last year, Congress appropriated about $195 million to support bilingual programs. Next year, however, if the numbers approved by the House are supported by the Senate, federal expenditures will be reduced to $53 million.

Dade County, where more than half the citizens speak a language other than English at home, has been a lightning rod in the debate. In the 1980s, residents approved an "English-only" requirement for local government. But the measure was overturned two years ago, when the county commission declared it would accept Spanish and Haitian Creole as well.

Still, the issue simmers. "I'm not an educator but I do have sound common sense and we have been able to solve this problem over the centuries . . . by the obvious route: sink or swim," said Mike Thompson, past chairman of Florida Conservative Union and outspoken critic of bilingual education.

> *"What is wrong with learning more than one language? What is wrong with preparing students for the future?"*
>
> — Migdania Vega, principal, Coral Way Elementary School

By "sink or swim," Thompson is referring to the most common way immigrant students in the United States are taught English, through immersion in the language with little or no help in their native tongues. It is a method that Dade County's public schools, and hundreds more around the country, have rejected.

Instead, Dade teaches most of its English-deficient students (about 15 percent of its total) in a "transitional" bilingual program, meaning that as they are taught English, they are also instructed for an hour and 15 minutes a day in their native language.

But at Coral Way and other special schools, the program is completely bilingual. The mostly Hispanic, largely immigrant students split their days learning in English and Spanish and their test scores and English proficiency are equal or better than their peers'.

Dade County educators vehemently disagree with critics like Dole and Thompson.

"What these politicians do not understand is that learning another language does not mean not learning English," said Maria Miranda, Coral Way's lead teacher. "In fact, I believe that learning a native language makes learning English easier."

Coral Way students say that among themselves they like to speak English, even those recent arrivals who are still wobbly in the language. But they want to keep their Spanish too.

At Julie Puentes' class here, the third-grac ers were asked which language they pre ferred.

"ENGLISH!" they screamed.

In the immigrant communities here, bilir gual education largely has been embraced a the best, fastest and most painless way t transform students who know not a word (English into proficient speakers of the lar guage.

Many educators in Miami said it seemed a though Dole believed there were publi schools in America keeping children fror learning English, that radical Latino separat ists were somehow forcing children to spea Spanish.

"I believe that Senator Dole is misir formed. The goal of every bilingual prograr is to teach English," said Rosa Castro Fine berg, a Dade County School Board membe and associate professor of education at Flor da International University here. "There ar lots of success stories and Dade County is on of them."

The average time spent in the bilingu programs here is 2.7 years. Kindergartne learn the quickest. A recent immigrant wit no knowledge of English, who may not eve read or write in Spanish, takes the longest.

At classes at Coral Way recently, studen were busy reading Johnny Appleseed in En lish, but writing "apple stories" in English an Spanish. The children were using Johnny Ap pleseed not only for reading but also to lear vocabulary and geography in both languages

One teacher said the children wanted t know where Aspen, Colo., was because the had all seen the movie "Dumb and Dumber which takes place there.

"They're immersed in English and Amer can culture," third grade teacher Puente said. "They can't get enough of it."

In third and fifth grade classes filled wit students who started school with little know edge of English, a visiting reporter askin questions received enthusiastic and proficier responses in English or Spanish.

No one is really sure if bilingual program work better than the sink-or-swim approac Dade County's researchers say comparison among different schools are almost imposs ble. But school officials believe a transition approach is the most cost effective, efficier and humane.

In the late 1980s, David Ramirez of Cal fornia State University in Long Beach com pleted perhaps the largest study, comparin the different methods used to transform nor English speaking students into English prof cient ones.

The study was hampered by all the prol lems attendant in comparing test scores an IQs in rich and poor schools. But Educatio Prof. Kenji Hakuta of Stanford Universit who reviewed it with a panel of statistician for the National Academy of Sciences, said hi

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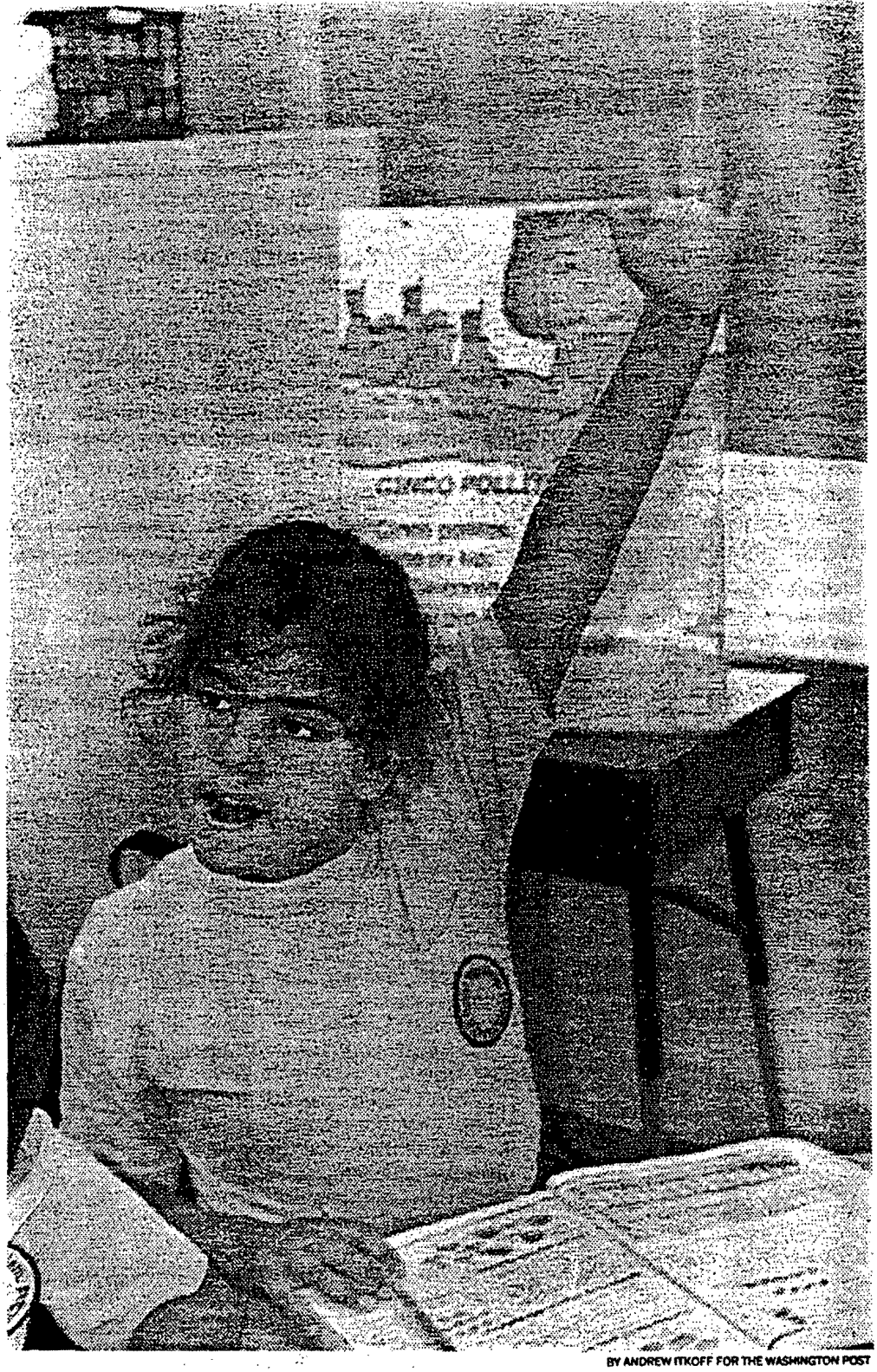


BY ANDREW ITKOFF FOR THE WASHINGTON POST

At Coral Way, Adriana Monzon, 6, prepares to answer question in first-grade Spanish class.

group generally supported the study's conclusions: That children in transitional and maintenance bilingual programs were doing better at learning English than students in English-only immersion programs.

"The differences were small, but statistically reliable. And in education, all effects are small," Hakuta said. "It appeared that using native languages doesn't get in the way of learning English."

Dole supporters in the conservative Cuban community, which values bilingualism, were surprised by the senator's speech. It put Miami's Cuban American representatives in Congress in an awkward position.

Rep. Ileana Ros-Lehtinen (R-Fla.) told the Miami Herald that she dropped her morning cup of coffee and gulped when she read Dole's remarks. "He gave the audience the idea that there are actual courses out there that don't want the students to learn English. That's not happening," she said.

An immigrant herself from Cuba, Ros-Lehtinen was put into a sink-or-swim English only school. "I sunk," she told the Herald.

Coral Way Principal Vega invited Dole to see her school.

"This is a fact, we're not making it up: Students who feel better about themselves learn better," she said. "And we're getting kids ready for the future, for the 21st century world. . . . Bob Dole should come visit us."

Raising language barriers

The simmering issue of English as the official language of the United States has been moved to the front burner by Sen. Bob Dole's sudden advocacy of a federal law that would end bilingual education. While it is desirable that English remain the dominant language – and there is every indication that it will – enough special circumstances mark the American scene to make English-only legislation a dangerous nuisance.

The language question has become entangled with immigration and the uneasiness, even hostility, some Americans feel toward the newly arrived. The growth of communities, many of them Spanish-speaking, where English appears to take a lesser role has fueled this concern. Bilingual education is an attempt to smooth the language transition for youngsters. Yet even when it is directed at quickly mainstreaming students, bilingual education has inspired opposition. In the current climate of nationalism, the English-only drive could fan the flames of anti-immigrant resentment.

As a practical matter, government, public schools, the courts and other institutions must adjust to the realities of the people they serve. Newly arrived immigrants, and even some who have lived in this country for years, might fail to acquire fluency in English but still have a contribution to make to American society. Flexibility on the language question is a positive step, as Californians, who passed an official language law, have discovered trying to enforce it.

Furthermore, it is difficult to believe that many children, exposed to television, radio, print materials and street activities, can fail to absorb English regardless of the language used at home.

New Americans are going to have to learn English if they are to compete, and it would be a tragic mistake to encourage a bilingual society such as Canada's. English is still a powerful language around the world. In the era of modern communications, Americans who think the English language needs the law to bolster its position betray a strange lack of confidence in its influence and appeal.

The Boston Globe
9/6/95

Practically English-Only

Associated Press

A congressional study requested by advocates of English as the government's official language found only a tiny fraction of government communications in any other tongue.

Of about 400,000 titles, the General Accounting Office identified only 265 foreign-language documents. The documents were released by the Government Printing Office and a Commerce Department agency over five years.

The total covers everything from full agency reports to fact sheets and maps. But it does not include foreign-language communications by the State and Defense departments, which most English-only proponents consider legitimate.

It also does not include publications put out independently of the official printer. The Government Printing Office estimates it handles half of the federal government's printing and binding.

The study "gives an idea of what the universe was," said its author, Timothy P. Bowling, the GAO's associate director for federal management and work-force issues.

Of the titles reviewed, fewer than 0.06 percent were in a foreign language. A recent Census study found that 8.7 percent of U.S. residents are foreign-born. Despite the numbers, Sen. Richard C. Shelby (R-Ala.), a sponsor of legislation mandating English for most federal communications, last week said the list of 265 "is in itself overwhelming," and shows the need for a language law.

More than 300 languages are spoken in the United States, he told a news conference. "It's unfathomable for the federal government to try to accommodate each and every language," he said.

The study found 221 of the documents were in Spanish, 17 were in multiple languages and 12 were in French. Of the rest, one to three documents were printed in each of 10 other languages.

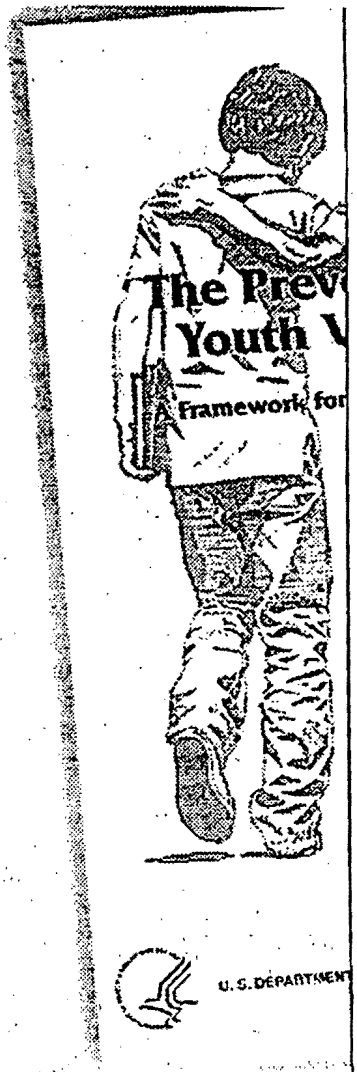
The Social Security Administration was the largest single source of foreign-language communications, producing 50 documents. The Food and Drug Administration produced 19 and the Education Department, 16.

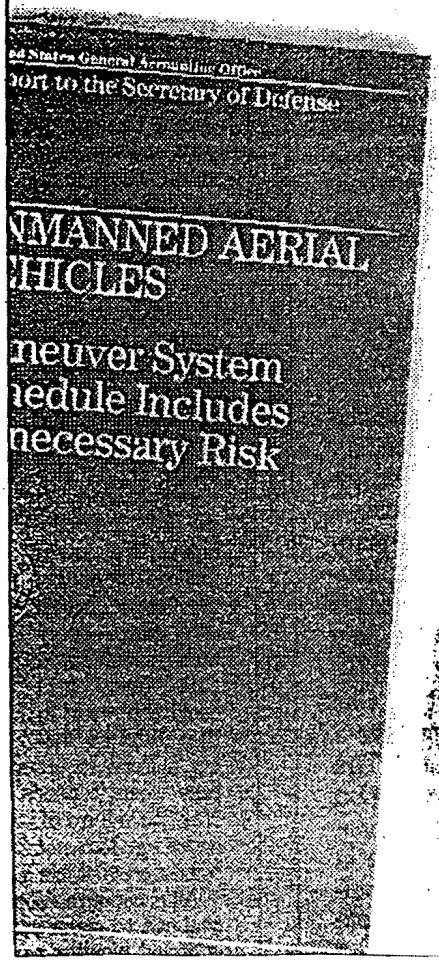
Shelby cited six titles as examples of the inappropriate use of tax dollars. They included "Investigation About the Reproductive Behavior of Young People in the City of Sao Paulo," produced in Portuguese by the Centers for Disease Control and Prevention; and, in Ukrainian, "Investigation of the Ukrainian Famine 1932-1933," by the Commission on the Ukraine.

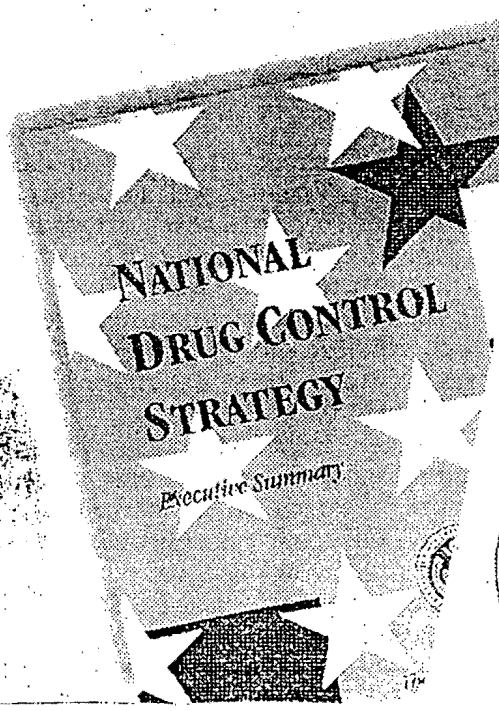
But a listing of the subjects provided by the GAO showed the bulk of the titles concerned health and safety issues and explanations of Social Security programs. There were 13 documents of advice in Spanish on how to do taxes, and dozens on health matters.

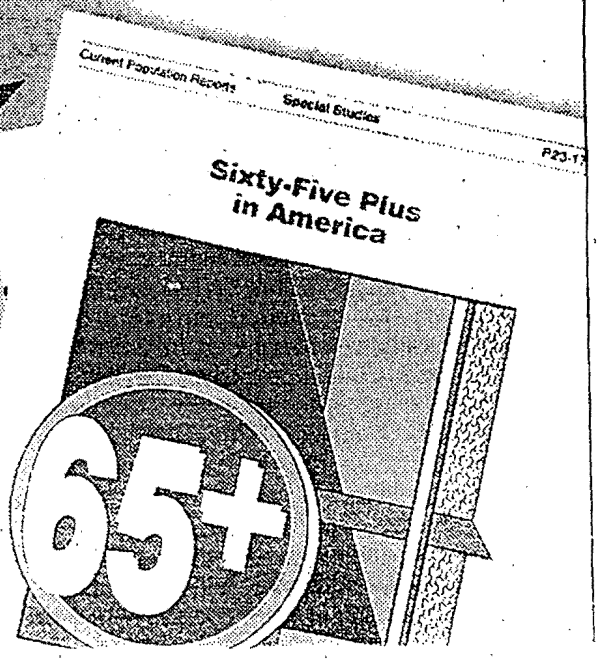
Senate Majority Leader Robert J. Dole (R-Kan.), a presidential candidate, has endorsed the idea of making English the official language.

Although English-only advocates criticize Washington's encouragement of foreign-language education for immigrants, most legislative proposals focus on making the government unilingual.









Congress of the United States
House of Representatives
Washington, DC 20515

March 10, 1995

Mr. Bernard L. Ungar
Director, Federal Human Resource
Management Issues
U.S. General Accounting Office
441 G St., N.W. Room 3150
Washington D.C. 20548

Dear Mr. Ungar:

We are writing to request a General Accounting Office (GAO) study to identify and quantify those federal government services provided in languages other than English. Specifically, we would ask the GAO to assess the precise impact of foreign language operations and services on the budget.

As supporters of the "Language of Government Act," a bill which would require that official operations of the federal government be conducted in English, we are interested in finding out the exact cost of all services currently offered by government agencies in languages other than English (excluding those offered by the Department of State and Defense.) Some of these might include any tax forms or documents printed in foreign languages and services offered by the Immigration and Naturalization Service in languages other than English. Your prompt assistance would be most appreciated.

Thank you for your attention to this matter and we look forward to hearing from you soon.

Sincerely,

Bill Emerson

BILL EMERSON
Member of Congress

Richard Shelby

RICHARD C. SHELBY
U.S. Senator

Bill Clinger

WILLIAM F. CLINGER, JR.
Member of Congress
Chairman, House Government Reform and
Oversight Committee

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of Congressional Relations 95 MAR 23 AM 11: 12

March 20, 1995

The Honorable Richard C. Shelby
United States Senate

Dear Senator Shelby:

We have received your letter of March 10, 1995, jointly signed by Representative Bill Emerson and Chairman William F. Clinger, Jr., House Committee on Government Reform and Oversight, requesting the General Accounting Office to conduct a study to identify and quantify federal government services provided in languages other than English.

We have forwarded your letter to our General Government Division. Staff from that Division will contact your office to discuss this matter further.

Sincerely yours,

William A. Gerkens
Legislative Advisor

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-266194

September 20, 1995

The Honorable Richard C. Shelby
United States Senate

The Honorable William F. Clinger, Jr.
Chairman, Committee on Government
Reform and Oversight
House of Representatives

The Honorable Bill Emerson
House of Representatives

This letter responds to your request that we identify federal government documents (excluding documents of the Departments of Defense and State) that are published in languages other than English. We found that no single, comprehensive data source existed within the federal government that could identify and quantify the total number of foreign language publications and documents issued both internally and externally by federal government agencies and organizations. However, we were able to identify two computerized databases containing information on publicly available publications and documents issued by federal agencies and organizations. The databases we identified were (1) the Government Printing Office's (GPO) monthly catalog of publications and (2) the National Technical Information Service's (NTIS) bibliographic database. In total, for the 5-year period, 1990 through 1994, the two databases contained over 400,000 records pertaining to federal agencies' reports, studies, fact sheets, maps, handbooks, conference proceedings, etc.

Table 1 presents the results of our searching these two databases for the 5-year period, 1990 through 1994. We identified 265 federal foreign language documents in the databases. The table presents, by federal department or agency, the number and percentage of foreign language documents published and available for distribution from these two data sources. As indicated in table 1, the federal agency that issued the greatest number of federal documents printed in a foreign language was the Social Security Administration. We identified 50 documents, or 19 percent of the 265 foreign language documents, as issued by the Social Security Administration.

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Table 1: Foreign Language Documents Issued by Federal Agencies, Calendar Years 1990 through 1994

Federal department/agency	Number of documents	Percent of total documents
Agriculture Department	8	3.0%
Bureau of the Census	9	3.4
Consumer Product Safety Commission	9	3.4
Customs Service	8	3.0
Education Department	16	6.0
Equal Employment Opportunity Commission	8	3.0
Energy Department	4	1.5
Environmental Protection Agency	4	1.5
Food and Drug Administration	19	7.2
Health and Human Services Department	26	9.8
Housing and Urban Development Department	4	1.5
Immigration and Naturalization Service	4	1.5
Inter-American Foundation	8	3.0
Internal Revenue Service	14	5.3
Justice Department	6	2.3
Labor Department	8	3.0
National Institutes of Health	14	5.3
Social Security Administration	50	18.9
Other[a]	46	17.4
Total	265	100.0%

[a]A total of 30 federal departments and agencies are included in this category.

Source: GAO analysis of the GPO and NTIS document databases.

As one might expect, the foreign language documents issued by the various federal departments and agencies covered subject matter and topics related to their operating missions and functions. For example, the Social Security Administration foreign language documents addressed such topics as Medicare, the Supplemental Security Income program, disability insurance, workers compensation, and various taxation topics. The foreign language documents of the National Institutes of Health included such topics as cancer, asthma, tooth care, and radiation therapy.

Our database document search identified Spanish as the most widely used foreign language in documents issued by federal departments and agencies. As indicated in table 2, of the 265 foreign language documents we identified, 221, or 83 percent, were written in Spanish. The next most frequently used language was French, in which 12 documents, or 5 percent, were written.

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Table 2: Breakout of Federal Documents by Type of Foreign Language, Calendar Years 1990 through 1994

Foreign language	Number of documents	Percent of total documents
Cambodian	1	0.4%
Chinese	2	0.8
French	12	4.5
German	1	0.4
Italian	1	0.4
Portuguese	3	1.1
Romanian	2	0.8
Russian	2	0.8
Samaritan	1	0.4
Spanish	221	83.4
Tagalog	1	0.4
Ukrainian	1	0.4
Multiple languages[a]	17	6.4
Total	265	100%[b]

[a]Documents in this category include text that was printed in more than one language--e.g. Spanish and English.

[b]Total does not add to 100 due to rounding.

Source: GAO analysis of the GPO and NTIS document databases.

It should be noted that the above information was obtained from a computerized information query of the two databases cited. The documents identified in the search were not verified back to the published source document. Also, according to a GPO official, not all federal foreign language publications and documents may be included in the GPO monthly catalogue database. Apparently, federal departments and agencies have the discretion to print and distribute some documents that are not to be included in the GPO database. Thus, the 265 foreign language documents we identified should not be considered to be a total federal governmentwide (excluding the Departments of State and Defense) figure for the cited 5-year period.

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We are sending copies of this letter to the Chairman, Senate Committee on Governmental Affairs, and will make it available to others upon request.

We trust that this information satisfactorily responds to your request. Please call me on (202) 512-3511 if you have any further questions.

Timothy P. Bowling
Associate Director
Federal Management and
Workforce Issues

(966681)

NATIONAL ASSOCIATION for BILINGUAL EDUCATION

NABE REPORT

Bilingual Education: Separating Fact from Fiction

September 18, 1995

Fiction: *"Studies prove that bilingual education doesn't work."*[1]

Fact: There is a consensus in the research community both on the soundness of the theory and effectiveness of bilingual education. The culmination of the research consensus is reflected in two studies, covering thousands of Spanish-speaking limited-English proficient (LEP) students, validated by the National Academy of Sciences (NAS) in 1992.

In 1990, the Department of Education asked the NAS to review these studies and critique their findings. The NAS is the most prestigious research body in the world. Composed of researchers and social scientists recognized by their peers as the best in their fields, the NAS is considered the "all-star team" of the research community. When an NAS review Committee can agree on the validity of research, it is believed that a research consensus has been reached.

The NAS review affirmed the finding that LEP students in bilingual education programs made greater academic gains in content areas, like math, than the students who received all instruction in English.[2]

Fiction: *"Many 'bilingual' programs use the student's native language almost exclusively in the first few years. Students aren't learning English."*[3]

Fact: This often heard claim is wholly refuted by the studies validated by the NAS. The studies found that English was used the majority of time in bilingual education programs and by the fourth grade only 3 percent of instruction was in the student's native language. Specifically, the studies found that in transitional bilingual education classrooms, English was used 65.8% of the time in Kindergarten, 69.1% in Grade 1, 74.5% in Grade 2, 80.3% in Grade 3, and 97.3% in Grade 4. Even in developmental bilingual programs, where the goal is fluency in both languages, English was used a majority of the time in Grades 3-6. Every bilingual education program has an English as a second language (ESL) component. That is, every bilingual education program includes significant coursework in teaching English language skills.[4]

Fiction: *"Studies confirm what common sense would tell you: the less time you spend speaking a new language, the more slowly you'll learn it."*[5]

Fact: The studies validated by the NAS directly addressed and refuted this claim. "The study concluded that providing LEP students with substantial instruction in their primary language does not interfere with or delay their acquisition of English language skills, but helps them to 'catch up' to their English-speaking peers in English language arts, English reading, and math. In contrast, providing LEP students with almost exclusive instruction in English does not accelerate their acquisition of English language arts, reading or math, i.e., they do not appear to be 'catching up.' The data suggest that by grade six, students provided with English-only instruction may actually fall further behind their English-speaking peers. Data also document that learning a second language will take six or more years [regardless of the instructional approach, English-only or bilingual education]."[6]

Students in bilingual education classes posted superior test scores because bilingual education students were allowed to continue to academically and cognitively develop as soon as they entered school through the use of their native language. Bilingual education students were able to problem solve, analyze, and apply critical thinking skills earlier than LEP students in monolingual English settings because they could explore challenging content matter long before students in monolingual English classrooms.

To use an example from Washington, DC, Public Schools, students at the Oyster Bilingual Elementary School -- where the student body is composed of roughly equal numbers of native English- and native Spanish-speakers -- are taught half of the time in English and half of the time in Spanish. Sixth grade students at the school posted scores equivalent to twelfth grade students in English language arts on the California Test of Basic Skills. In other words, sixth grade bilingual education students were not only performing at the level of high school seniors in English, they were also fully literate in Spanish.[7]

Fiction: *"How difficult can it be to learn English if Berlitz can teach someone to speak English in 30 days?"*[8]

Fact: There is a great difference between the conversational phrases taught by Berlitz and the high-level academic English needed to succeed in school, college, and high-skills job market. The conversational phrases taught at Berlitz and other short-term language programs permit the student to order food, make hotel reservations, or locate a train station. They do not claim to equip students with the ability to write a high school paper, for example, on the symbolism of the white whale in Herman Melville's *Moby Dick*, at the same level as a native English speaker.

In a soon-to-be-published study that mirrors the findings of studies validated by the NAS and many, many others on the length of time for English acquisition, two researchers from George Mason University examined school records of approximately 24,000 language-minority student records per school year with six to ten years of data on achievement in standardized tests, performance assessment measures, grade point averages, and high school courses in which enrolled. Students reached English fluency, as measured by the 50th percentile on an English standardized test, in 5 to 10 years if taught in English only and in 4 to 7 years if taught in bilingual education.[9]

Fiction: *"Language-minority parents and communities oppose bilingual education."*

Fact: Polls show that language-minority communities solidly support bilingual education. For example, more than 80% of the Latinos interviewed back bilingual education, according to a poll by the *Los Angeles Times*.[10]

Surveys cited by bilingual education opponents always use loaded questions that border on silliness. For example, English First, a national lobbying organization that helps to funnel campaign contributions to English-only supporters, offers this survey question result in their

promotional material: "the great majority of Hispanic parents -- more than three-fourths of Mexican-American parents and more than four-fifths of Cuban-American parents -- are opposed to the teaching of Spanish **at the expense of English.**" [emphasis added] It is almost surprising that only 75 percent of Hispanics affirmatively answered such a loaded question that way. The question is not whether Hispanic or other language-minority communities want their children to speak Spanish or another native language only, but rather what is the best way to teach an LEP student and does it produce students who speak both English and their native tongue. As this document shows, bilingual education teaches English and is the most effective way to teach children academic content areas.[11]

Fiction: *"Kids are being placed in bilingual education who can already speak English fluently just because they have a Hispanic or ethnic minority surname."*[12]

Fact: Anecdotes of inappropriate misplacement of non-LEP students in bilingual education are tragic. They reflect terrible education policy that no bilingual educator would condone and are against federal law. There have been no national studies nor evaluations that have even suggested that inappropriate misplacement of non-LEP students into bilingual education is anything but an abhorrent aberration.[13]

What has been well documented is that there are millions of LEP students who are not provided at all with services that enable them to understand instruction. More than a quarter (26.6 percent) of LEP students currently receives no tailored educational services to allow them to understand instruction, in violation of federal law.[14]

Even more troubling is the misplacement of LEP students into special education classes. A class action suit on behalf of over 1,000 Asian immigrant families accused the City of Philadelphia for misplacing their LEP children into special education classes without parental knowledge or consent in the late 1980's. In the initial case that led to the class action, an Asian refugee child was transferred to three separate middle schools but never received any assistance in learning English, in violation of state and federal law. After years in which the child failed to make any academic progress, the school tested him, found him to be mentally disabled, and placed him in a special education class, all without the knowledge or consent of his parents.[15]

Fiction: *"LEP dropout rates remain very high despite the widespread application of bilingual education."*[16]

Fact: High dropout rates of limited-English proficient (LEP) students cannot be blamed on bilingual education because over three-quarters of LEP students are not taught through bilingual education. Bilingual education is used to instruct only about one in four LEP students. English as a Second Language (ESL) instruction, in which the student's native language is not used for academic instruction, is used to teach just less than half of LEP students. Over a quarter of LEP students receive neither services to teach them English nor assistance tailored to help them understand what is being taught to them. This is often called a "sink-or-swim" approach to

teaching LEP students and is in violation of federal law. If a reading of this data suggests anything, it is that lack of bilingual education, an overeliance on ESL, and the prevalence of sink-or-swim approaches to teaching LEP students may be the real culprits in high LEP dropout rates.[17]

Fiction: ***"Bilingual education is impractical because it costs $8 to $11 billion and there are 180 languages spoken by America's students."***[18]

Fact: The $8 to $11 billion estimates of the costs of bilingual education offered by opponents are outrageous but simple to understand. The number reflects the cost of educating LEP students whether or not they are taught using bilingual education instructional techniques. There are approximately 2.3 million LEP students in the U.S., according to the U.S. Department of Education. If this number of students is multiplied by the average cost of educating a student in the U.S., about $5,000, one arrives at the often repeated $8 to $11 billion estimates. As one can see, $8 to $11 billion would be spent on instructing LEP children even if every school in the U.S. chose to use neither bilingual education nor ESL. The true cost of bilingual education is the additional amount of funds that a school expends to change a monolingual English program to a bilingual educational program. This additional cost is limited primarily to the purchase of additional instructional materials, which is marginal.[19]

The large number of language groups would only be a problem for schools if each school had to instruct students from many different language groups. While it is true that most major school districts have many language groups, most schools are linguistically homogeneous. For example, there are over 75 languages represented in the Tucson public schools, however, no single school has more than four languages represented. In Denver, there are 60 identified language groups, yet no more than three languages are spoken in any given school. In these situations, there is no question that bilingual education can, and should, be provided. Nationally, only one quarter of LEP students attends schools in which the numbers and diversity of LEP students would make it impossible to carry out a bilingual education program, according to data from the General Accounting Office.

Even when the numbers are not large and certified teachers sparse, there are many ways to use the students' native language and culture by drawing upon the resources of the language minority communities. In Fountain Valley, California, for example, Project GLAD students, who come from 12 different language groups, receive one hour each day of content and literacy instruction in the native language, taught by paraprofessionals from their communities. Bilingual education in most U.S. schools is not only desirable, but is also possible.

More important, arguments against the practicality of bilingual education forward the absurd proposition that because one LEP student cannot be served, no LEP students should be served. The Supreme Court in *Lau V. Nichols*, the landmark case that requires schools to ensure that LEP students can understand instruction, wrote that states can and should consider the numbers and diversity of their LEP students when considering what services schools can reasonably offer LEP

students.[20]

Fiction: *"My grandparents were immigrants and made it without bilingual education or any other special help."*

Fact: While there are surely extraordinary cases, examples of turn-of-the-century immigrants learning English and succeeding in the American job market are exceptions to the rule that are usually inapplicable to today's high-skills, high-technology labor market. Contrary to the widely accepted myth that earlier immigrant groups managed without special programs, most immigrant children who entered schools were more likely to sink than swim in English-only classrooms. In 1908, for example, just 13% of the twelve-year-olds enrolled in New York public schools, and whose parents were foreign-born, went on to high school, compared with 32% of white children whose parents were native born. Some immigrants with limited English skills and formal education could succeed because the economy, with its industrial and agricultural base, relied on uneducated and unskilled labor. For example, an immigrant factory worker could do quite well for himself with conversational English skills, but the same immigrant with the same conversational English skills would have much greater difficulty securing even an entry level job today with IBM.[21]

Fiction: *"Bilingual education is a 1960's creation of the federal government."*[22]

There is a tradition of bilingual education in the U.S. that dates from early nineteenth-century American schools. In the public schools of many states between 1839 and 1880 -- including Ohio, Louisiana, and New Mexico -- German, French, and Spanish were used for instruction. Between 1880 and 1917, German-English bilingual schools, in which both languages were used for instruction, operated in Ohio, Minnesota, and Maryland. In several other states, German was included in the curriculum as a subject rather than as a means of instruction. The same is true for Norwegian, Italian, Czech, Dutch, and Polish.

In private schools, mostly parochial, German-English bilingual education flourished throughout the United States before 1800. Also, during this period, many French schools were established in the northeastern United States (precursors of the modern-day Lycee Francais found in New York City, for example) and Scandinavian and Dutch schools were formed in the Midwest.[23]

Fiction: *"Ethnic leaders use bilingual education as a way to keep their constituencies easily manipulated and disenfranchised."*[24]

Fact: Of all the claims made against bilingual education, this is the single most ridiculous. The nation's highest language-minority elected officials -- Members of Congress -- are democratically elected every two years to represent the largest language-minority communities nationwide and millions of Latino voters. All Latino, all Native American, and the overwhelming majority of Asian American Members of Congress support bilingual education as a key to educational and life success. In contrast, those individuals who accuse Latino leaders of disenfranchising their

constituencies are usually not democratically elected officials and therefore in a poor position to represent the views of language minorities across the country.

Elected officials critical of language-minority leaders invariably do not represent significant numbers of language-minority voters (they hail from places like Wisconsin, Missouri, Kansas, or Georgia) and therefore are in no position to assert the "true" sentiments of language-minority communities. On the other hand, those non-language-minority elected officials who do represent language-minority communities are some of bilingual education's strongest supporters. Indeed, the claim seems to suggest that language-minority voters are incapable of electing representative leaders.

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1. For example, "No evidence exists to back up the claim that teaching children predominantly in their native tongues is better than other instructional models using intensive English, such as English as a Second Language." From Rosalie Pedalino Porter, "Bilingual Ed Flunks Out," *The American Experiment: A Quarterly Publication of the Center for Equal Opportunity*, Spring 1995, p. 1. Porter is Chair of the Research in English Acquisition and Development, Inc. (READ Institute) and is editor of the READ Perspectives publication. READ was founded with funds and assistance from U.S. English, a national lobbying grouping devoted to making English the official, federal language.

2. Michael M. Myer and Stephen E. Feinberg, Editors, Assessing Evaluation Studies: The Case of Bilingual Education, Panel to Review Evaluation Studies of Bilingual Education, Committee on National Statistics, and Commission on Behavioral and Social Sciences and Education, National Research Council, (National Academy Press: Washington, DC, 1992). The two Department of Education studies reviewed by the NAS are entitled: *The National Longitudinal Study of the Evaluation of the Effectiveness of Services for Language Minority Limited-English Proficient Students* and *The Longitudinal Study of Immersion Strategy, Early-exit and Late-exit Transitional Bilingual Education Programs for Language-Minority Students*. See Appendix A for the members of the Committee on National Statistics and the Panel to Review Evaluation Studies of Bilingual Education of the National Academy of Sciences.

3. Linda Chavez, "Bilingual Ed the Real Culprit," *USA Today*, Sept. 6, 1995, p. 13A. Linda Chavez is president of the Center for Equal Opportunity (CEO) and former executive director of U.S. English.

4. *The Longitudinal Study of Immersion Strategy, Early-exit and Late-exit Transitional Bilingual Education Programs for Language-Minority Students*, p. 90-91, as validated by the NAS review.

5. Linda Chavez, "One Nation, One Common Language," *Readers Digest*, August 1995, page 90.

6. Executive Summary, *The Longitudinal Study of Immersion Strategy, Early-exit and Late-exit Transitional Bilingual Education Programs for Language-Minority Students*, p. 1, as validated

by the NAS review.

7. Results reported in D.C. Public Elementary Schools Median Scores and Percentiles from May 1991 Examinations of Comprehensive Test of Basic Skills. The sixth grade students from Oyster Bilingual Elementary School scored at the 12.2 grade level, grade equivalent scores based on national norms.

8. Paraphrasing of Jim Boulet, executive director, English First, on numerous radio talk shows.

9. Wayne P. Thomas and Virginia P. Collier, "Research Summary of Study in Progress: Language Minority Student Achievement and Program Effectiveness," George Mason University, 1995. Publications to come on this series of studies: Report by Lynn Schnaiberg, *Education Week*, September or October 1995; research monograph by Thomas and Collier for the National Clearinghouse on Bilingual Education, late fall 1995; articles in *Bilingual Research Journal* and other education journals in 1996. For other studies on the length of time to acquire academic mastery of a second language see V.P. Collier, "Age and rate of acquisition of second language for academic purposes, *TESOL Quarterly*, 21, 617-641; Collier, "How Long? A Synthesis of research on academic achievement in second language," *TESOL Quarterly*, 23, 509-531; Collier, "A synthesis of Studies examining long-term language-minority student data on academic achievement," *Bilingual Research Journal*, 16 (1-2), 187-212; Collier and Thomas, How quickly can immigrants become proficient in school English, *Journal of Educational Issues of Language Minority Students*, 5; James Cummins, The Role of Primary Language Development in Promoting Educational Success for Language Minority Students, *Schooling and Language minority Students*, California Department of Education, 1981, and Interdependence of first- and second-language proficient in bilingual children, in Bialystok, ed., *Language Processing and Bilingual Children*, Cambridge University Press, 1991, and Bilingual Education and English Immersion: The Ramirez Report in Theoretical Perspective, *Bilingual Research Journal*, 16 (1-2); and F. Genesee, *Learning through two languages: Studies of Immersion and Bilingual Education*, Cambridge, MA: Newbury House, 1987.

10. Poll reported in *The Los Angeles Times*, Dec. 7, 1992.

11. English First, "Statement of English First in Opposition to S.B. 88." The president of English First is Larry Pratt, also president of Gun Owners of America.

12. Jorge Amselle, "When one language is better than two," Opinion Editorial in *The Washington Times*," August 24, 1995, page A19. He writes: "Bilingual education today means three to five years in a program where as much as 90 percent of child's [*sic*] day is spent in the native language, even if it isn't his or her native language. I have spoken to many parents and teachers all over the country who have similar horror stories."

13. "Students shall not be admitted to or excluded from any federally assisted education program merely on the basis of a surname or a language-minority status." Section 7502(b)(4) of the Improving America's School Act.

14. Data from the California Department of Education as reported by Reynaldo Macias, "More LEP Students Receive No Special Services," University of California Language Minority Research Institute, Volume 4, Number 2, p. 1. Data from California, which enrolls 42.1 percent of all LEP students, gives the best description of educational services to LEP students.

15. United States District Court, Eastern District of Pennsylvania, Class Action Complaint, *Y.S., a minor, by his father, Yin S., and Yin S. and Lim C., individually and on behalf of all others similarly situated, Plaintiffs, v. School District of Philadelphia, Defendant*, No. CA 85-6924.

16. For example, see Porter, "Bilingual Ed Flunks Out," p. 5. She writes: "Spanish speaking LEP students who have had the heaviest engagement in bilingual programs still have the highest dropout rates in the country at nearly 50 percent, compared to about 10 percent for English speakers."

17. Data from the California Department of Education as reported by Reynaldo Macias, "More LEP Students Receive No Special Services," University of California Language Minority Research Institute, Volume 4, Number 2, p. 1. Data from California, which enrolls 42.1 percent of all LEP students, gives the best description of educational services to LEP students.

18. Rep. Toby Roth and Jim Boulet in English First promotional materials.

19. Figures from the Office of Bilingual Education and Minority Language Affairs of the U.S. Department of Education for 1992 as reported by State Education Agencies.

20. Data cited by Senator Edward Kennedy during reauthorization of the Elementary and Secondary Education Act, 1992. *Lau v. Nichols* (1974).

21. U.S. Department of Education, *The Condition of Bilingual Education in the Nation: A Report to the Congress and the President*, Office of the Secretary, U.S. Department of Education, Washington, DC: 1991, p. 2.

22. Rep. Peter King, press release entitled "Rep. King Introduces English Language Bill," Spring-Summer 1995. King writes: "Beginning in 1968, however, the federal government began to reverse this proven policy by mandating bilingual education in our schools which meant that students would be taught in their native language rather than in English." Rep. King is author of HR 1005, a bill that would make English the official, federal language of the United States and eliminate bilingual education.

23. See James Crawford, *Hold Your Tongue: Bilingualism and the Politics of "English-Only"*, Reading, MA: Addison-Wesley, 1992; Arnold H. Leibovitz, *The Bilingual Education Act: A Legislative Analysis*, Washington, DC: InterAMerica Research Associates, Inc., 1980; Diego Castellanos with Pamela Leggio, *The Best of Both Worlds: Bilingual-Bicultural Education in the U.S.*, Trenton, NJ: New Jersey State Department of Education, 1983; and Bill Piatt, *Only English? Law & Language Policy in the United States*, Albuquerque, NM: University of New Mexico Press, 1990.

24. For example, see Rep. Newt Gingrich, "English Literacy is the Coin of the Realm," Opinion Editorial in *the Los Angeles Times*, August 4, 1995. He writes "Sadly, there are some ethnic leaders who prefer bilingualism because it keeps their voters and supporters isolated from the rest of America, ghettoized into groups more easily manipulated for political purposes often by self-appointed leaders."

AZ case

Maria-Kelley F. YNIGUEZ; Jaime P. Gutierrez,Plaintiffs-Appellees, and ARIZONANS AGAINST CONSTITUTIONAL TAMPERING, Intervenors-Plaintiffs-Appellees, and STATE of Arizona; Rose Mofford; Robert Corbin, et al., Defendants-Appellees,
v.
ARIZONANS FOR OFFICIAL ENGLISH; Robert D. Parks, Intervenors-Defendants-Appellants.
Maria-Kelley F. YNIGUEZ, Plaintiff-Appellant,
v.
STATE of Arizona; Rose Mofford; Robert Corbin, et al., Defendants-Appellees, and ARIZONANS FOR OFFICIAL ENGLISH; Robert D. Parks, Intervenors-Defendants-Appellants.
Maria-Kelley F. YNIGUEZ, Plaintiff-Appellee,
v.
STATE of Arizona; Rose Mofford; Robert Corbin, et al., Defendants-Appellants.

Nos. 93-15719, 93-15061, 92-17087

United States Court of Appeals, Ninth Circuit.

Argued and Submitted May 3, 1994

Filed December 7, 1994
Amended January 17, 1995
Order Granting Rehearing En Banc Filed May 12, 1995
Argued and Submitted July 20, 1995
Filed October 5, 1995

Appeals from the United States District Court for the District of Arizona Paul G. Rosenblatt, District Judge, Presiding

Robert J. Pohlman (Catherine Bergin Yalung on the brief), Ryley, Carlock & Applewhite, Phoenix, Arizona, for theplaintiff-appellee-cross-appellant.

Stephen G. Montoya (George Vice III on the brief), Bryan Cave, Phoenix, Arizona, for the intervenors-plaintiffs-appellees.

Grant Woods, Arizona Attorney General (Rebecca White Berch, Arizona Solicitor General, on the brief), Phoenix, Arizona, for the defendants-appellees.

Barnaby W. Zall, Williams & Jensen, Washington, D.C. (James F. Henderson, Scult, Lazarus, French, et. al., Phoenix, Arizona, on the brief), for the intervenors-defendants-appellants.

Before: J. Clifford Wallace, Chief Judge, Procter Hug, Jr., Harry Pregerson, Stephen Reinhardt, Cynthia Holcomb Hall, Charles Wiggins, Melvin Brunetti, Alex Kozinski, Ferdinand F. Fernandez, Andrew J. Kleinfeld, and Michael Daly Hawkins, Circuit Judges.

REINHARDT, Circuit Judge:

*1 These consolidated appeals require us to consider an important area of constitutional law, rarely reexamined since a series of cases in the 1920s in which the Supreme Court struck down laws restricting the use of non-English languages. See Meyer v. Nebraska, 262 U.S. 390 (1923); Bartels v. Iowa, 262 U.S. 404 (1923); Yu Cong Eng v. Trinidad, 271 U.S. 500 (1926); Farrington v. Tokushige, 273 U.S. 284 (1927). Here, once again, the state has chosen to use its regulatory powers to try to require the exclusive use of the English language.

Specifically at issue in this case is the constitutionality of Article XXVIII of the Arizona Constitution. Article XXVIII provides, inter alia, that English is the official language of the state of Arizona, and that the state and its political subdivisions-including all government officials and employees performing government business-must "act" only in English. Arizonans for Official English and its spokesman Robert D. Parks [FN1] appeal the district court's declaratory judgment that Article XXVIII is facially overbroad in violation of the First

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WESTLAW

Amendment. Maria-Kelly Yniguez, a former Arizona state employee who brought the present action, appeals the district court's denial of nominal damages.

This case raises troubling questions regarding the constitutional status of language rights and, conversely, the state's power to restrict such rights. There are valid concerns on both sides. In our diverse and pluralistic society, the importance of establishing common bonds and a common language between citizens is clear. See Guadalupe Organization, Inc. v. Tempe Elementary School Dist., 587 F.2d 1022, 1027 (9th Cir.1978). Equally important, however, is the American tradition of tolerance, a tradition that recognizes a critical difference between encouraging the use of English and repressing the use of other languages. Arizona's rejection of that tradition has severe consequences not only for its public officials and employees, but for the many thousands of Arizonans who would be precluded from receiving essential information from their state and local governments if the drastic prohibition contained in the provision were to be implemented. In deciding this case, therefore, we are guided by what the Supreme Court wrote in Meyer:

> The protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution-a desirable end cannot be promoted by prohibited means.

262 U.S. at 401.

We conclude that Article XXVIII constitutes a prohibited means of promoting the English language and affirm the district court's ruling that it violates the First Amendment. [FN2]

A three-judge panel of this court issued an opinion reaching this same conclusion last year. Yniguez v. Arizonans for Official English, 43 F.3d 1217 (9th Cir.1995). We then decided to reconsider the question en banc. 53 F.3d 1084 (9th Cir.995). Having done so, we conclude that our opinion was correct. Because the opinion was withdrawn when we went en banc, we re-publish it now, with only a few changes that discuss the applicability of intervening Supreme Court cases or expand on points that warrant further explanation. In almost all respects, however, our en banc opinion is identical to the opinion issued by the three-judge panel. [FN3]

I.
Factual Background

*2 In October 1987, Arizonans for Official English initiated a petition drive to amend Arizona's constitution to prohibit the government's use of languages other than English. The drive culminated in the 1988 passage by ballot initiative of Article XXVIII of the Arizona Constitution, entitled "English as the Official Language." The measure passed by a margin of one percentage point, drawing the affirmative votes of 50.5% of Arizonans casting ballots in the election. Under Article XXVIII, English is "the official language of the State of Arizona": "the language of ... all government functions and actions." §§ 1(1) & 1(2) (see appendix). The provision declares that the "State and all [of its] political subdivisions"-defined as including "all government officials and employees during the performance of government business"-"shall act in English and no other language." §§ 1(3)(a)(iv) & 3(1)(a).

At the time of the passage of the article, Yniguez, a Latina, was employed by the Arizona Department of Administration, where she handled medical malpractice claims asserted against the state. She was bilingual-fluent and literate in both Spanish and English. [FN4] Prior to the article's passage, Yniguez communicated in Spanish with monolingual Spanish-speaking claimants, and in a combination of English and Spanish with bilingual claimants.

State employees who fail to obey the Arizona Constitution are subject to employment sanctions. For this reason, immediately upon passage of Article XXVIII, Yniguez ceased speaking Spanish on the job.

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She feared that because of Article XXVIII her use of Spanish made her vulnerable to discipline.

In November 1988, Yniguez filed an action against the State of Arizona, Governor Rose Mofford, Arizona Attorney General Robert Corbin, and Director of the Arizona Department of Administration Catherine Eden, in federal district court. [FN5] She sought an injunction against state enforcement of Article XXVIII and a declaration that the provision violated the First and Fourteenth Amendments of the Constitution, as well as federal civil rights laws.

Yniguez's complaint was subsequently amended to include Jaime Gutierrez, a Hispanic state senator from Arizona, as a plaintiff. Gutierrez stated that, prior to the passage of Article XXVIII, he spoke Spanish when communicating with his Spanish-speaking constituents and that he continued to do so even after the article's passage. He claimed, however, that he feared that in doing so he was liable to be sued pursuant to Article XXVIII's enforcement provision.

The state defendants all moved for dismissal, asserting various jurisdictional bars to the action. While these motions were pending, the plaintiffs conducted discovery and compiled the defendants' admissions to interrogatories into a Statement of Stipulated Facts, filed with the district court in February 1989. Also filed with the court was the Arizona Attorney General's opinion regarding the interpretation of Article XXVIII, which explained that, "to avoid possible conflicts with the federal ... constitution[ ]," the Attorney General had concluded that the Article only covered the "official acts" of the Arizona government. Finally, the court heard testimony from Yniguez, Senator Gutierrez, and Jane Hill, a linguistic anthropologist, about the adverse impact of Article XXVIII on their speech rights, and the speech rights of the Hispanic population of Arizona.

*3 The district court issued its judgment and opinion on February 6, 1990. Yniguez v. Mofford, 730 F. Supp. 309 (D.Ariz.1990). First, the district court resolved the defendants' jurisdictional objections. The court reiterated a previous ruling that the Eleventh Amendment protects the State of Arizona from suit, and then ruled that Gutierrez's claims were barred as to all of the defendants. Id. at 311. It reasoned that because state executive branch officials lack authority to prosecute members of the legislative branch, none of the defendants had enforcement power against Gutierrez sufficient to satisfy the doctrine of Ex parte Young, 209 U.S. 123 (1908). In addition, the court held that Ex parte Young barred Yniguez's claim against the Attorney General because he had no specific authority to enforce Article XXVIII. Although the court found that Director Eden had authority to enforce Article XXVIII against Yniguez, it nonetheless held that, because Eden had not threatened to do so, she too should be dismissed as a defendant. The court did find, however, that Governor Mofford both had the authority to enforce Article XXVIII against Yniguez, and had sufficiently threatened to do so for Yniguez to maintain an action against her in accordance with Ex parte Young. [FN6]

The district court then reached the merits of Yniguez's claim. 730 F. Supp. at 313. It read Article XXVIII as barring state officers and employees from using any language other than English in performing their official duties, except to the extent that certain limited exceptions described in the provision applied. Finding that Article XXVIII, thus construed, infringed on constitutionally protected speech, the district court ruled that the provision was facially overbroad in violation of the First Amendment. [FN7] While granting declaratory relief, the court denied injunctive relief because no enforcement action was pending. Notwithstanding the district court's holding that a provision of the Arizona Constitution was unconstitutional under the United States Constitution, Governor Mofford-an outspoken critic of Article XXVIII-decided not to appeal the judgment. Senator Gutierrez, being satisfied with the constitutional determination, did not appeal the ruling that

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his claim was barred by Ex Parte Young.

In response to the state's decision not to appeal, Arizonans for Official English moved to intervene post-judgment pursuant to Fed. R. Civ. P. 24(a), for the purpose of pursuing an appeal of the district court's order. Immediately thereafter, the Arizona Attorney General sought to intervene pursuant to 28 U.S.C. § 2403(b) for the same purpose. The Attorney General also asked that the district court amend the judgment because it did not contain a ruling on the defendants' prior motion to certify to state court the question of Article XXVIII's proper interpretation. The district court denied all three motions. See Yniguez v. Mofford, 130 F.R.D. 410 (D.Ariz.1990) (holding, inter alia, that denial of certification was implicit in previous judgment, and that certification was inappropriate because Article XXVIII is not susceptible of a narrowing construction).

*4 On July 19, 1991, we reversed the district court's denial of the intervention motion of Arizonans for Official English. Yniguez v. Arizona, 939 F.2d 727, 740 (9th Cir.1991) ("Yniguez I "). We ruled that because the organization was the principal sponsor of the ballot initiative codified as Article XXVIII, its relationship to the provision was analogous to the relationship of a state legislature to a state statute. Specifically, we found that, as the initiative's sponsor, the group had "a strong interest in the vitality of a provision of the state constitution which [it had] proposed and for which [it had] vigorously campaigned." Id. at 733. Consequently, we held that Arizonans for Official English satisfied both the requirements of Rule 24(a) and the standing requirements of Article III, and could thus intervene for purposes of appeal. Id. at 740. In the same opinion, we affirmed the district court's denial of the Attorney General's motion to intervene insofar as he sought to be reinstated as a party to the appeal, but permitted his intervention pursuant to 28 U.S.C. § 2403(b) for the limited purpose of arguing the constitutionality of Article XXVIII. Id.

After we issued our opinion regarding intervention, the state filed a suggestion of mootness based on Yniguez's resignation from the Arizona Department of Administration in April 1990. In our second opinion in this case, Yniguez v. Arizona, 975 F.2d 646, 647 (9th Cir.1992) ("Yniguez II "), we rejected the state's mootness suggestion, reasoning that Yniguez had the right to appeal the district court's failure to award her nominal damages. Id. On December 15, 1992, after Arizonans for Official English filed its notice of appeal in the district court, Yniguez filed her notice of cross-appeal requesting nominal damages. [FN8]

The district court subsequently granted Yniguez's motion for an award of attorney's fees, and the state defendants conditionally appealed that ruling. Their appeal was consolidated with the original appeal on the merits filed by Arizonans for Official English and Yniguez's cross-appeal for nominal damages. All three appeals are now before us, although we do not reach the one relating to attorney's fees. See note 2, supra. To round out the procedural framework, we note that in 1994 we granted the motion of Arizonans Against Constitutional Tampering and its chairman Thomas Espinosa [FN9] to intervene as plaintiffs-appellees in the case. Arizonans Against Constitutional Tampering was the principal opponent of the ballot initiative that became Article XXVIII, had campaigned against it, and, like Arizonans for Official English, had submitted an argument regarding the initiative's merits which appeared in the official Arizona Publicity Pamphlet. Cf. Yniguez I, 939 F.2d at 733 (noting that sponsors of a ballot initiative have a strong interest in defending provision they campaigned for, so that there is a "virtual per se rule" that they may intervene in litigation involving it). However, in reaching our decision, which provides all the relief that Arizonans Against Constitutional Tampering seeks, we need not rely on that group's standing as a party. Yniguez's standing and that of the other parties and intervenors is sufficient to support the determination that we make here.

II.

The Proper Construction of Article XXVIII

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A.
The District Court's Construction

*5 Although eighteen states have adopted "official-English" laws, [FN10] Arizona's Article XXVIII is "by far the most restrictively worded official-English law to date." Note, English Only Laws and Direct Legislation: The Battle in the States Over Language Minority Rights, 7 J.L. & Pol. 325, 337 (1991). [FN11] Besides declaring English "the official language of the State of Arizona," Article XXVIII states that English is "the language of ... all government functions and actions." §§ 1(1), 1(2). The article further specifies that the state and its subdivisions-defined as encompassing "all government officials and employees during the performance of government business"-"shall act in English and no other language." §§ 1(3)(a)(iv), 3(1)(a). Its broad coverage is punctuated by several exceptions permitting, for example, the use of non-English languages as required by federal law, § 3(2)(a), and in order to protect the rights of criminal defendants and victims of crime, § 3(2)(e).

The district court, interpreting what it found to be the "sweeping language" of Article XXVIII, determined that the provision prohibits:

> the use of any language other than English by all officers and employees of all political subdivisions in Arizona while performing their official duties, save to the extent that they may be allowed to use a foreign language by the limited exceptions contained in § 3(2) of Article XXVIII.

Yniguez, 730 F. Supp. at 314.

For reasons we explain below, we agree with the district court's construction of the article.

B.
The Attorney General's Construction

The Arizona Attorney General proffers a highly limited reading of Article XXVIII under which it applies only to "official acts" of state governmental entities. [FN12] According to this construction of the provision, which the Attorney General has memorialized in a written opinion, the provision "does not mean that languages other than English cannot be used when reasonable to facilitate the day-to-day operation of government." Op. Atty. Gen. Az. No. I89-009 (1989).

The Supreme Court has, in the past, looked to the narrowing construction given a provision by the State's Attorney General as a guide to evaluating the provision's scope. Broadrick v. Oklahoma, 413 U.S. 601, 618 (1973). For two reasons, however, we do not adopt the Attorney General's construction of Article XXVIII in this case. First, the Attorney General's opinion is not binding on the Arizona courts, Marston's Inc. v. Roman Catholic Church of Phoenix, 644 P.2d 244, 248 (Ariz.1982), and is therefore not binding on this court. Compare Virginia v. American Booksellers Ass'n, 484 U.S. 383, 395 (1988) (refusing to accept as authoritative a non-binding attorney general opinion), with Frisby v. Schultz, 487 U.S. 474, 483 (1988) (accepting city's binding narrow interpretation). Second, we cannot adopt the Attorney General's limiting construction because it is completely at odds with Article XXVIII's plain language. The Supreme Court has made clear that a limiting construction will not be accepted unless the provision to be construed is "readily susceptible" to it. American Booksellers Ass'n, 484 U.S. at 397. Here, Article XXVIII's clear terms are simply not "readily susceptible" to the constraints that the Attorney General attempts to place on them.

*6 The Attorney General's reading of Article XXVIII focuses on § 3(1)(a), which provides, with limited exceptions, that the "State and all political subdivisions of this State shall act in English and in no other language." § 3(1)(a). The Attorney General takes the word "act" from § 3(1)(a) and engrafts onto it the word "official," found in the Article's proclamation of English as the official language of Arizona. In thus urging that the Article only applies to the "official acts" of the state, he also relies on a limited meaning of the noun "act," defined as a "decision or determination of a sovereign, a legislative council, or a court of justice." Op. Atty. Gen. Az. No. I89-009, at 21 (quoting Webster's

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International Dictionary 20 (3d. ed., unabridged, 1976) (third sense of "act")). In doing so, however, he ignores the fact that "act," when used as a verb as in Article XXVIII, does not include among its meanings this limited one. [FN13] Moreover, even were such a meaning somehow plausible if the two phrases were examined out of context, it is contradicted by the remainder of the provision.

Section 1(3)(a)(iv) broadly declares that the rule that Arizona "act in English and in no other language" applies to all government officials and employees during the performance of government business. This prohibition on the use of foreign languages when conducting government business supplements the Article's listing of "statutes, ordinances, rules, orders, programs and policies," an enumeration of presumably official acts on which the Attorney General relies heavily. § 1(3)(iii). Thus, not only is the Attorney General's narrow reading of Article XXVIII contradicted by the provision's expansive language, his reading would render a sizeable portion of the Article superfluous, "violating the settled rule that a [provision] must, if possible, be construed in such fashion that every word has some operative effect." United States v. Nordic Village, Inc., 112 S. Ct. 1011, 1015 (1992) (emphasis added); Mackey v. Lanier Collection Agency & Serv., 486 U.S. 825, 837 & n.11 (1988). Here, of course, it is not simply certain words that would, under the Attorney General's reading, become redundant; instead, entire subsections of the provisions would be rendered unnecessary and repetitive.

Indeed, the district court's broader construction of Article XXVIII is the only way to give effect to any of the exceptions contained in § 3(2). If, for example, public teachers in the regular course of their teaching duties would not otherwise be covered by the provision, then there would be no reason to include specific exceptions for some of their duties. See § 3(2)(a) & (c). Moreover, the provision's clear and specific exclusion of some of the functions of public teachers indicates that the measure on its face applies to other "government employees" performing other types of governmental duties that are not specifically excluded-employees such as clerks at the Department of Motor Vehicles or receptionists at state welfare offices, and other state employees who deliver services to the public. Public teachers' duties do not constitute "official acts" of the state any more or any less than do the duties of these other categories of employees.

*7 Certainly, there is no justification in the text of Article XXVIII for the Attorney General's ingenious suggestion that languages other than English may be used whenever such use would reasonably "facilitate the day-to-day operation of government"-that, in other words, the provision's plain and unequivocal prohibition on the use of other languages may be ignored if it is expedient to do so. To read such a broad and general exception into Article XXVIII would run directly contrary to its structure, scope, and purpose, and would effectively nullify the bulk of its coverage. Article XXVIII plainly does not set forth an innocuous, pragmatic rule that tolerates the use of languages other than English whenever beneficial to the public welfare. Its mandate is precisely the opposite. The use of languages other than English is banned except when expressly permitted. Indeed, the narrow exceptions that set forth the limited circumstances under which non-English languages may be spoken directly belie the conveniently flexible approach that the Attorney General has adopted for purposes of attempting to resurrect a facially unconstitutional measure.

C.
Abstention and Certification

The Attorney General argues, alternatively, that because the Arizona state courts have not had an opportunity to interpret Article XXVIII, we should abstain from deciding this case and certify the question of the proper interpretation of Article XXVIII to the Arizona Supreme Court. See Ariz. Rev. Stat. Ann. § 12-1861 (permitting federal courts to certify questions of state law to Arizona Supreme Court).

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First, we note that a federal court should abstain only in exceptional circumstances, Lind, 30 F.3d at 1121 (citing Houston v. Hill, 482 U.S. 451, 467 (1987)), and should be especially reluctant to abstain in First Amendment cases, Ripplinger v. Collins, 868 F.2d 1043, 1056 (9th Cir.1989). Abstention pending a narrowing construction of a provision by the state courts is inappropriate where the provision is "justifiably attacked on [its] face as abridging free expression." Id. at 1048 (citations and quotations omitted). In fact, the Supreme Court has made it clear that whenever federal constitutional rights are at stake "the relevant inquiry is not whether there is a bare, though unlikely possibility that the state courts might render adjudication of the federal question unnecessary." Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 237 (emphasis in original). "Rather," the Court continued, " 'we have frequently emphasized that abstention is not to be ordered unless the statute is of an uncertain nature, and is obviously susceptible of a limiting construction.' ' ' Id. (quoting Zwickler v. Koota, 389 U.S. 241, 251 & n.14.). It follows that a court may not abstain and certify a question of statutory interpretation if the statute at issue requires "a complete rewrite" in order to pass constitutional scrutiny. Lind, 30 F.3d at 1121 (citing Houston, 482 U.S. at 470-71).

*8 To be sure, the Supreme Court in American Booksellers did opt to certify the question of the proper interpretation of a statute to the Virginia Supreme Court. 484 U.S. at 386. However, American Booksellers presented the Court with a "unique factual and procedural setting." Id. In that case, the plaintiffs had filed a pre-enforcement challenge to a state obscenity statute that the State Attorney General conceded would be unconstitutional if construed as the plaintiffs contended it should be. Id. at 393 & n.8 (quoting state counsel as saying that if the plaintiffs' interpretation of the statute were correct, then the state "should lose the case"). Moreover, there were no non-governmental defendants such as Arizonans for Official English in the case, no state court had ever had the opportunity to interpret the pertinent statutory language, and both levels of lower federal courts had made critically flawed assessments of the statute's coverage because they had relied on invalid evidence. Id. at 395-97.

The Attorney General here, in contrast, has never conceded that the statute would be unconstitutional if construed as Yniguez asserts it properly should be. [FN14] Moreover, at least one Arizona state court has had the opportunity to construe Article XXVIII, and has done nothing to narrow it. See Ruiz v. State, No. CV 92-19603 (Jan. 24, 1994) (disposing of First Amendment challenge in three paragraphs). Thus, unlike in Virginia Booksellers, there are no unique circumstances in this case militating in favor of certification. See Lind, 30 F.3d 1122 n.7 (declining to certify question of state law interpretation in the absence of state concession that law would be unconstitutional on the plaintiff's construction). Accordingly, we must proceed to determine the constitutionality of Article XXVIII.

D.
Conclusion

We agree with the district court's construction of Article XXVIII. The article's plain language broadly prohibits all government officials and employees from speaking languages other than English in performing their official duties, save to the extent that the use of non-English languages is permitted pursuant to the provision's narrow exceptions section. We reject both the Attorney General's narrowing construction of the article and his suggestion of abstention and certification. We conclude that were an Arizona court ever to give the broad language of Article XXVIII a limiting construction similar to that proffered by the Attorney General, it would constitute a "remarkable job of plastic surgery upon the face of the [provision]." Shuttlesworth v. City of Birmingham, 394 U.S. 147, 153 (1963). Where, as here, a state provision has been challenged on federal constitutional grounds and a state's limiting construction of that

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provision would directly clash with its plain meaning, we should neither abstain nor certify the question to the state courts. Rather, under such circumstances, it is our duty to adjudicate the constitutional question without delay.

III.
Article XXVIII and The First Amendment
A.
Overbreadth

*9 After construing Article XXVIII, the district court ruled that it was unconstitutionally overbroad. Under the overbreadth doctrine, an individual whose own speech may constitutionally be prohibited under a given provision is permitted to challenge its facial validity because of the threat that the speech of third parties not before the court will be chilled. Board of Airport Comm'rs v. Jews for Jesus, 482 U.S. 569, 574 (1987). Moreover, a party may challenge a law as facially overbroad that would be unconstitutional as applied to him so long as it would also chill the speech of absent third parties. Lind, 30 F.3d at 1122-23 (finding statute unconstitutionally overbroad as well as unconstitutional as applied to plaintiff). The facial invalidation that overbreadth permits is necessary to protect the First Amendment rights of speakers who may fear to challenge the provision on their own. See Brockett v. Spokane Arcades, 472 U.S. 491, 503 (1985). However, in order to support a facial overbreadth challenge, there must always be a "realistic danger" that the provision will significantly compromise the speech rights involved. Board of Airport Comm'rs, 482 U.S. at 574.

A provision will not be facially invalidated on overbreadth grounds unless its overbreadth is both real and substantial judged in relation to its plainly legitimate sweep, and the provision is not susceptible to a narrowing construction that would cure its constitutional infirmity. See Broadrick v. Oklahoma, 413 U.S. 601, 613, 615 (1973); United States v. Austin, 902 F.2d 743, 744 (9th Cir. [illegible]), cert. denied, 498 U.S. 874 (1990). Accordingly, a law will not be facially invalidated simply because it has some conceivably unconstitutional applications. Members of City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 800 (1984). Rather, to support a finding of overbreadth, there must be a substantial number of instances in which the provision will violate the First Amendment. New York State Club Ass'n v. City of New York, 487 U.S. 1, 13 (1988).

Yniguez contends that Article XXVIII unlawfully prevented her from speaking Spanish with the Spanish-speaking claimants that came to her Department of Administration office. Yniguez, however, challenges far more than Article XXVIII's ban on her own use of Spanish in the performance of her own particular job. She also contends that the speech rights of innumerable employees, officials, and officers in all departments and at all levels of Arizona's state and local governments are chilled by Article XXVIII's expansive reach. At least as important, she contends that the interests of many thousands of non-English-speaking Arizonans in receiving vital information would be drastically and unlawfully limited. For those reasons, she challenges Article XXVIII as overbroad on its face and invalid in its entirety.

Article XXVIII's ban on the use of languages other than English by persons in government service could hardly be more inclusive. The provision plainly states that it applies to "the legislative, executive, and judicial branches" of both state and local government, and to "all government officials and employees during the performance of government business." §§ 1(3)(a)(i)(ii) & (iv). This broad language means that Article XXVIII on its face applies to speech in a seemingly limitless variety of governmental settings, from ministerial statements by civil servants at the office to teachers speaking in the classroom, from town-hall discussions between constituents and their representatives to the translation of judicial proceedings in the courtroom. [FN15] Under the article, the Arizona state universities would be barred from issuing diplomas in Latin, and judges performing weddings would be prohibited from saying

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"Mazel Tov" as part of the official marriage ceremony. Accordingly, it is self-evident that Article XXVIII's sweeping English-only mandate limits the speech of governmental actors serving in a wide range of work-related contexts that differ significantly from that in which Yniguez performed her daily tasks. The speech rights of all of Arizona's state and local employees, officials, and officers are thus adversely affected in a potentially unconstitutional manner by the breadth of Article XXVIII's ban on non-English governmental speech. Similarly, the interests of non-English-speaking Arizonans in receiving all kinds of essential information are severely burdened. For these reasons, we cannot say that the provision's "only unconstitutional application is the one directed at a party before the court...." Lind, 30 F.3d at 1122. Therefore, Yniguez's challenge to Article XXVIII properly implicates overbreadth analysis and, if unconstitutional, "the entire [provision] may be invalidated to protect First Amendment interests." Id.

*10 Facial invalidation is also appropriate here because the broad language employed throughout Article XXVIII relates to a single subject and is based on a single premise, which, as we will discuss subsequently, is constitutionally flawed. In cases such as this, where the provision in question "in all its applications ... operates on a fundamentally mistaken premise," Secretary of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947, 966 (1984), the Supreme Court "has not limited itself to refining the law by preventing improper applications on a case-by-case basis." Id. at 965 n.13. Rather, the Court will simply strike down the provision on its face. "[W]here the effect in the [provision] is that the means chosen to accomplish the state's objectives are too imprecise, so that in all its applications the [provision] creates an unnecessary risk of chilling free speech, the statute is properly subject to facial attack." Id. at 967-68.

Moreover, the nature and structure of Article XXVIII is such that if we determine it to be unconstitutionally overbroad, then we must invalidate the entire article and not simply some of its sections. Even a cursory reading of Article XXVIII demonstrates that the provision is an integrated whole that seeks to achieve a specific result: to prohibit the use in all oral and written communications by persons connected with the government of all words and phrases in any language other than English. There is no fair reading of the article that would permit some of its language to be divorced from this overriding objective.

Equally important, the article contains no severability provision that would suggest that any clause or section was intended to survive if other parts were held unconstitutional, cf. Brockett, 472 U.S. at 506 (citing a statute's severability clause as an important factor favoring partial rather than facial invalidation), and the parties before the court have never treated Article XXVIII as anything other than a single entity that must stand or fall as a whole. Indeed, appellees have always presented Article XXVIII as an integrated provision that is designed to eliminate all non-English words from governmental speech, although they have pressed for an artificially narrow construction of what constitutes such speech. Thus, if the article's specific restrictions on the use of languages other than English are unconstitutionally overbroad, then the language and structure of the amendment makes facial invalidation of the entire article the only appropriate remedy.

As we noted at the outset of this section, however, Article XXVIII will only be unconstitutionally overbroad if it violates the First Amendment in a substantial number of instances. New York State Club Ass'n, 487 U.S. at 13. To determine whether Article XXVIII's restrictions unconstitutionally impose on the speech rights of a substantial number of persons in government service in a substantial number of instances, we need only consider the article's impact on Arizona's numerous state and local public employees. In sheer number, these employees represent the most substantial target of Article XXVIII's restrictions on speech in languages other than English as they constitute the most common source of communications between the

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government and the public that it serves. In addition, a determination that Article XXVIII unconstitutionally infringes on the First Amendment rights of these employees will necessarily result in the conclusion that the article also unlawfully chills the speech of many others who serve in government, such as judges and legislators. The same restrictions that are unconstitutional as to the routine speech often engaged in by civil servants will a fortiori be unconstitutional as to the various kinds of speech engaged in by a substantial number of other persons who work in government and are therefore affected by the article's unusually broad reach. See Yniguez, 730 F. Supp. at 314; Cf. Bond v. Floyd, 385 U.S. 116, 132-33 (a state may not impose stricter First Amendment standards on legislators). [FN16]

*11 Yniguez's challenge to Article XXVIII thus presents us with a clear issue. If we determine that Article XXVIII's impact on the speech rights of public employees is unconstitutional, we will be compelled to invalidate Article XXVIII on its face and in its entirety. Before turning directly to the article's impact on the First Amendment rights of public employees, however, we must first address two preliminary arguments that are raised by the appellants and that could affect our analysis. First, Arizonans for Official English contends that Article XXVIII interferes only with expressive conduct and not pure speech. Second, the group contends that the state may not be compelled to provide information to all members of the public in a language that they can comprehend. For the reasons that we explain below, the two arguments do not affect the ultimate conclusions that we reach.

B.
Speech v. Expressive Conduct

Arizonans for Official English argues vehemently that First Amendment scrutiny should be relaxed in this case because the decision to speak a non-English language does not implicate pure speech rights. Rather, the group suggests, "choice of language ... is a mode of conduct"-a "nonverbal expressive activity." Opening Brief at 15, 18 (emphasis added) (quoting R.A.V. v. City of St. Paul, 112 S. Ct. 2538, 2544 (1992)). Accordingly, it compares this case to those involving only "expressive conduct" or "symbolic speech." E.g., Texas v. Johnson, 491 U.S. 397 (1989) (burning American flag for expressive reasons); Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969) (wearing arm band for expressive reasons); United States v. O'Brien, 391 U.S. 367 (1968) (burning draft card for expressive reasons). In such cases, the government generally has a wider latitude in regulating the conduct involved, but only when the regulation is not directed at the communicative nature of that conduct. Johnson, 491 U.S. at 406.

We find the analysis employed in the above cases to be inapplicable here, as we are entirely unpersuaded by the comparison between speaking languages other than English and burning flags. [FN17] Of course, speech in any language consists of the "expressive conduct" of vibrating one's vocal chords, moving one's mouth and thereby making sounds, or of putting pen to paper, or hand to keyboard. Yet the fact that such "conduct" is shaped by a language-that is, a sophisticated and complex system of understood meanings-is what makes it speech. [FN18] Language is by definition speech, and the regulation of any language is the regulation of speech.

A bilingual person does, of course, make an expressive choice by choosing to speak one language rather than another. [FN19] As Yniguez explained, her choice to speak Spanish with other bilingual people can [illegible] "so[illegible]arity" or "comfortableness." [FN20] Nonetheless, this expressive effect does not reduce choice of language to the level of "conduct," as posited by Arizonans for Official English; instead, it exemplifies the variety of ways that one's use of language conveys meaning. For example, even within a given language, the choice of specific words or tone of voice may critically affect the message conveyed. Such variables-language, words, wording, tone of voice-are not expressive conduct, but are simply among the

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communicative elements of speech. Moreover, the choice to use a given language may often simply be based on a pragmatic desire to convey information to someone so that they may understand it. That is in fact the basis for the choice involved in the constitutional challenge we consider here.

*12 The Supreme Court recognized the First Amendment status of choice of language in somewhat different circumstances when it ratified a speaker's freedom to say "fuck the draft" rather than "I strongly oppose the draft." Cohen v. California, 403 U.S. 15 (1971) (reversing conviction under California "offensive conduct" law). Like the proponents of Article XXVIII, the state in Cohen had described Cohen's choice of language as conduct equivalent to burning a draft card. Id. at 18 (citing O'Brien, supra); see also id. at 27 (Blackmun, J., dissenting) (arguing that Cohen's phrasing "was mainly conduct and little speech"). The Court unequivocally rejected the comparison, stating that Cohen's conviction rested "solely upon speech." Id. at 18.

Warning that the First Amendment does not, however, give people the absolute right to use any form of address in any circumstances, the Court next addressed the question of whether Cohen's conviction could potentially be upheld as a regulation of the manner of Cohen's speech. Id. at 19. Specifically, it framed the First Amendment issue by asking "whether California can excise ... one particularly scurrilous epithet from the public discourse." Id. at 23. Its answer to that question was, "No." Indeed, in justifying its conclusion, the Court echoed Yniguez's comments regarding her use of Spanish. It stated that "[illegible] often chosen as much for their emotive as their cognitive force"-to such an extent, in fact, that this emotive aspect "may often be the more important element of the overall message sought to be communicated." Id. at 26.

Under Article XXVIII, of course, the state is not singling out one word for repression, but rather entire vocabularies. Moreover, the languages of Cervantes, Proust, Tolstoy, and Lao-Tze, among others, can hardly be described as "scurrilous." In this case, therefore, the Court's admonishment that "in a society as diverse and populous as ours" the state has "no right to cleanse public debate" of unpopular words, rings even truer. Id. at 24-25. While Arizonans for Official English complains of the "Babel" of many languages, the Court in Cohen responds that this "verbal cacophony is ... not a sign of weakness but of strength." Id. at 25; see also Alfonso v. Board of Review, 444 A.2d 1075, 1085 (N.J.) (Wilentz, C.J.dissenting) (arguing that notice should be given in the language of the claimant and stating that to do so would show that "we are strong enough to give meaning to our fundamental rights when they are possessed by non-English speaking people in our midst"), cert. denied, 459 U.S. 806 (1982).

As we have noted, it is frequently the need to convey information to members of the public that dictates the decision to speak in a different tongue. If all state and local officials and employees are prohibited from doing so, Arizonans who do not speak English will be unable to receive much essential information concerning their daily needs and lives. To call a prohibition that precludes the conveying of information to thousands of Arizonans in a language they can comprehend a mere regulation of "mode of expression" is to miss entirely the basic point of First Amendment protections. [FN21]

*13 In sum, we most emphatically reject the suggestion that the decision to speak in a language other than English does not implicate pure speech concerns, but is instead akin to expressive conduct. Speech in any language is still speech, and the decision to speak in another language is a decision involving speech alone.

C.
Affirmative Versus Negative Rights

Arizonans for Official English next contends, incorrectly, that Yniguez seeks an affirmative right to have government operations conducted in foreign tongues. Because the organization misconceives Yniguez's

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argument, it relies on a series of cases in which non-English-speaking plaintiffs have unsuccessfully tried to require the government to provide them with services in their own language. See Guadalupe Org. Inc., 587 F.2d at 1024 (no right to bilingual education); Carmona v. Sheffield, 475 F.2d 738 (9th Cir.1973) (no right to unemployment notices in Spanish); Toure v. United States, 24 F.3d 444 (2d Cir.1994) (no right to notice of administrative seizure in French); Soberal-Perez v. Heckler, 717 F.2d 36 (2d Cir.1983) (no right to Social Security notices and services in Spanish), cert. denied, 466 U.S. 929 (1984); Frontera v. Sindell, 522 F.2d 1215 (6th Cir.1975) (no right to civil service exam in Spanish). These cases, however, hold only that (at least under the circumstances there involved) non-English speakers have no affirmative right to compel state government to provide information in a language that they can comprehend. The cases are inapplicable here.

In the case before us, there is no claim of an affirmative right to compel the state to provide multilingual information, but instead only a claim of a negative right: that the state cannot, consistent with the First Amendment, gag the employees currently providing members of the public with information and thereby effectively preclude large numbers of persons from receiving information that they have previously received. Cf. Union Free School Dist. No. 26, 457 U.S. at 866-67. [FN22] Such a claim falls squarely within the confines of traditional free speech doctrine, and is in no way dependent on a finding of an affirmative duty on the part of the state.

The clearest example of the distinction between affirmative and negative rights may be seen in the case of a state legislator who may seek office and be elected in part because of his ability to speak with his constituents in their native languages. No one could order such an official to speak Spanish or Navajo. Neither, however, can the state preclude him or his staff from transmitting information regarding official state business to persons resident in his district in whatever language he deems to be in the best interest of those he was elected to serve.

The cases relied on by the amendment's sponsors are inapplicable not only because they involve claims of affirmative rights but because they neither consider nor discuss the First Amendment. Rather, in all those cases the plaintiffs sought to justify the alleged right to compel the state to provide bilingual information and services by reference to equal protection and due process principles. Because mandating compliance with the plaintiffs' requests would have placed an affirmative burden on state and local agencies to supply a bilingual speaker-creating affirmative costs-the courts rejected the claims. See, e.g., Frontera, 522 F.2d at 1219 (emphasizing that the cost of bilingual civil service examinations "would ultimately be saddled upon the harried taxpayers of Cleveland"); Toure, 24 F.3d at 446 (requirement of notice in language of plaintiff would "impose a patently unreasonable burden upon the government").

*14 Accordingly, the argument of the amendment's sponsor is irrelevant to the right we consider in this case. For while the state may not be under any obligation to provide multilingual services and information, it is an entirely different matter when it deliberately sets out to prohibit the languages customarily employed by public employees. In this connection, we note that here, unlike in the affirmative right cases, there is no contention that "harried taxpayers" will be "saddled" with additional costs, or that the state will be subjected to a "patently unreasonable burden." All that the state must do to comply with the Constitution in this case is to refrain from terminating normal and cost-free services for reasons that are invidious, discriminatory, or, at the very least, wholly insufficient.

D.
Public Employee Speech
1.
General Principles

If this case involved a statewide ban on all uses of languages other than English within the geographical jurisdiction of the state of

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Arizona, the constitutional outcome would be clear. A state cannot simply prohibit all persons within its borders from speaking in the tongue of their choice. Such a restriction on private speech obviously could not stand. Meyer v. Nebraska, 262 U.S. 390, 401 (1923). However, Article XXVIII's restraint on speech is of more limited scope. Its ban is restricted to speech by persons performing services for the government. Thus, we must look beyond first principles of First Amendment doctrine and consider the question of what limitations may constitutionally be placed on the speech of government servants.

For nearly half-a-century, it has been axiomatic in constitutional law that government employees do not simply forfeit their First Amendment rights upon entering the public workplace. In 1972, the Supreme Court elaborated on this principle in upholding a constitutional challenge to a state college's refusal to renew the contract of a teacher who had criticized its policies. See Perry v. Sindermann, 408 U.S. 593, 597. "For at least a quarter century, this Court has made clear that even though a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests-especially his interest in freedom of speech.... [M]ost often, we have applied this principle to denials of public employment." Id. Only four years ago, the Supreme Court in Rutan v. Republican Party of Illinois, 110 S.Ct. 2729, 2736 (1990), reaffirmed this principle and reiterated these same words from Perry in upholding a First Amendment challenge to a governmental infringement on public employee rights. Thus, the Supreme Court has made it abundantly clear that prohibitions on speech may not be justified by the simple assertion that the government is the employee's employer.

2.
Regulation of Traditional Types of Public Employee Speech

*15 Arizonans for Official English acknowledges that public employee speech is entitled to First Amendment protection. The group then correctly points out that the Supreme Court has held in a series of cases that the government traditionally has a freer hand in regulating the speech of its employees than it does in regulating the speech of private citizens. See Waters v. Churchill, 114 S.Ct. 1878, 1886 (1994) (plurality opinion); Rankin v. McPherson, 483 U.S. 378, 384 (1987); Connick v. Myers, 461 U.S. 138, 147 (1983); Pickering v. Board of Educ. of Township High School Dist., 391 U.S. 563, 568 (1968). As the Court in Waters explained, "even many of the most fundamental maxims of our First Amendment jurisprudence cannot reasonably be applied to speech by government employees." 114 S.Ct. at 1886. Notably, the Waters Court stated that the Cohen rule mandating toleration of choice of language would be inapplicable to the government workplace and made it clear that, in fact, a government employer might appropriately bar its employees from using rude or vulgar language in the workplace. Id.; see also Martin v. Parrish, 805 F.2d 583, 584 (5th Cir.1986).

Elaborating on concepts previously expressed in Pickering and Connick, the Waters Court examined the reasons that less stringent scrutiny is ordinarily justified in reviewing restrictions on public employee speech. The Court found, in particular, that "the extra power the government has in this area comes from the nature of the government's mission as employer," id. at 1887, and it ultimately concluded that:

> [t]he key to First Amendment analysis of government employment decisions ... is this: The government's interest in achieving its goals as effectively and efficiently as possible is elevated from a relatively subordinate interest when it acts as sovereign to a significant one when it acts as employer. The government cannot restrict the speech of the public at large just in the name of efficiency. But where the government is employing someone for the very purpose of effectively achieving its goals, such restrictions may well be

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appropriate.
Id. at 1888 (emphases added); see also Pickering, 391 U.S. at 568; Connick, 461 U.S. at 146-47; Rankin, 483 U.S. at 388.

Thus, the Court has made it clear that it is the government's interest in performing its functions efficiently and effectively that underlies its right to exercise greater control over the speech of public employees. Even before Waters, the Court's concern for efficiency and effectiveness led it to conclude that when a public employee speaks "as an employee upon matters only of personal interest," then, "absent the most unusual circumstances," the challenged speech restriction will be upheld. Connick, 461 U.S. at 147; Rankin, 483 U.S. at 385 n.13. Concerned that "government offices could not function if every employment decision became a constitutional matter," the Court ruled that mere "employee grievances," (Connick, 461 U.S. at 146)-involving speech, for example, about "internal working conditions, affecting only the speaker and co-workers," (O'Connor v. Steeves, 994 F.2d 905, 914 (1st Cir.1993))-should rarely be protected by the federal courts.

*16 The Waters/Pickering cases also establish, however, that public employee speech deserves far greater protection when the employee is speaking not simply upon employment matters of personal or internal interest but instead "as a citizen upon matters of public concern". Connick, 461 U.S. at 147. In evaluating restrictions on speech of "public concern," the governmental interest in efficiency and effectiveness is important but not necessarily determinative. In such cases, the content of the speech requires that the government's concern with efficiency and effectiveness be balanced against the public employee's first amendment interest in speaking as emphasized in Perry and Rutan. See Waters, 114 S. Ct. at 1887; Gillette v. Delmore, 886 F.2d 1194, 1197 (9th Cir.1989). As the Court said in Waters, "a government employee, like any citizen, may have a strong, legitimate interest in speaking out on public matters. In many such situations, the government may have to make a substantial showing that the speech is, in fact, likely to be disruptive before it may be punished." 114 S.Ct. at 1887.

3.
The Interests Favoring Protection of the Prohibited Speech

Here the speech does not fit easily into any of the categories previously established in the case law. It is clear that the speech at issue cannot be dismissed as merely speech involving "employee grievances" or "internal working conditions"-speech that is ordinarily of little concern to the general public. Nor is it precisely the same as the speech generally denominated in past cases as "speech on matters of public concern," in part because here the employee is not simply commenting on a public issue but in speaking is actually performing his official duties. [FN23]

This case does not, however, require us to attempt to resolve any broad, general questions regarding the scope of government's authority to regulate speech that occurs as part of an employee's official duties. In many instances, the governmental interest in regulation will be at its height in such cases. For example, the government would have an indisputable right to prohibit its employees from using profanity or abusive language while conducting official business. See Waters, 114 S.Ct. at 1886 (noting that government might prohibit its employees "from being 'rude to customers' ' ') (citation omitted). Similarly, the government would ordinarily have the authority to determine the tasks that it asks its employees to perform and to dictate the content of the messages that it wishes its employees to communicate to the public. On the other hand, there are few First Amendment precedents in this area, and in at least one case involving a school teacher, we employed a traditional balancing test. See, e.g., Nicholson v. Board of Educ., 682 F.2d 858, 865 (9th Cir.1982) (applying Pickering balancing test to job performance speech). For present purposes, it is enough to note that the fact that the speech occurs as a part of the performance of the employee's job functions affects the nature of our analysis but does not

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necessarily determine its outcome. The context in which the speech occurs must be weighed along with the other relevant factors when we balance the conflicting interests. Here, the context actually militates in favor of protecting the speech involved. [FN24]

*17 In deciding whether to afford constitutional protection to prohibited employee speech, we must consider both the general interest of the public servant in speaking freely, as described in Perry and Rutan, and the importance to the public of the speech involved. See Connick, 461 U.S. at 149 (considering the public's interest in the speech in determining whether to protect it); Pickering, 391 U.S. at 571-72 (same). The employee speech banned by Article XXVIII is unquestionably of public import. It pertains to the provision of governmental services and information. Unless that speech is delivered in a form that the intended recipients can comprehend, they are likely to be deprived of much needed data as well as of substantial public and private benefits. The speech at issue is speech that members of the public desire to hear. Indeed, it is most often the recipient, rather than the public employee, who initiates the dialogue in a language other than English. See Connick, 461 U.S. at 149 (judging whether speech is of "public concern" by assessing whether it would convey information of use to the public); Piver v. Pender County Bd. of Educ., 835 F.2d 1076, 1079-80 (4th Cir.1987) (quoting Berger v. Battaglia, 779 F.2d 992, 998-99 (4th Cir.1985) (citations omitted), cert. denied, 487 U.S. 1206 (1988) (stating that speech is of ' 'public concern" based on whether the public wants to hear it)).

The practical effects of Article XXVIII's de facto bar on communications by or with government employees are numerous and varied. For example, monolingual Spanish-speaking residents of Arizona cannot, consistent with the article, communicate effectively with employees of a state or local housing office about a landlord's wrongful retention of a rental deposit, nor can they learn from clerks of the state court about how and where to file small claims court complaints. [FN25] They cannot obtain information regarding a variety of state and local social services, or adequately inform the service-givers that the governmental employees involved are not performing their duties properly or that the government itself is not operating effectively or honestly. Those with a limited command of English will face commensurate difficulties in obtaining or providing such information. Cf. Garcia v. Spun Steak, 998 F.2d 1480, 1488 (9th Cir.) (effect of English-only employment rule varies from workplace to workplace; in some circumstances it effectively may deny employees with limited proficiency in English the capacity to communicate on the job, and may therefore be invalid as applied to them), reh'g en banc denied, 13 F.3d 296 (1993), cert. denied, 114 S.Ct. 2726 (1994). Moreover, as we suggested earlier, the restrictions that Article XXVIII imposes severely limit the ability of state legislators to communicate with their constituents concerning official matters. For example, the provision would preclude a legislative committee from convening on a reservation and questioning a tribal leader in his native language concerning the problems of his community. A state senator of Navajo extraction would be precluded from inquiring directly of his Navajo-speaking constituents regarding problems they sought to bring to his attention. So would his staff. The legislative fact-finding function would, in short, be directly affected.

*18 Because Article XXVIII 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.' ' ' Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 757 (1976) (quoting Kleindienst v. Mandel, 408 U.S. 753, 762-63 (1972)). As the Court explained in Virginia Citizens, "freedom of speech 'necessarily protects the right to receive.' ' ' Id.; see also Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853, 866-68 (1982); Procunier v. Martinez, 416 U.S. 396, 408-09 (1974); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367,

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390 (1969); Lamont v. Postmaster General, 381 U.S. 301, 307-08 (1965) (Brennan, J., concurring); Meyer v. Nebraska, 262 U.S. 390 (1923) (invalidating statute prohibiting teaching of foreign languages in part because it interfered "with the opportunities of pupils to acquire knowledge"). Although Virginia Citizens is not controlling here because it involved a restriction on the speech of a private entity that willingly provided information to the public, [FN26] the "right to receive" articulated in Virginia Citizens and related cases is clearly relevant in public employee speech cases. Any doubt concerning this point was removed in the National Treasury Employees Union case. There, the Court expressly invoked Virginia Citizens in striking down a public employee speech restriction.

> The large-scale disincentive to government employees' expression also imposes a significant burden on the public's right to read and hear what the employees would otherwise have written and said. See Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 756-757, 96 S.Ct. 1817, 1822-1823, 48 L.Ed.2d 346 (1976). We have no way to measure the true cost of that burden, but we cannot ignore the risk that it might deprive us of the work of a future Melville or Hawthorne.

National Treasury Employees Union, 115 S.Ct. at 1015 (footnote omitted). Thus, National Treasury Employees Union makes it clear that public employee speech doctrine weighs heavily the public's "right to receive information and ideas" by affording First Amendment protection to speech that the public has an interest in receiving. See Connick, 461 U.S. at 149; Pickering, 391 U.S. at 571-72; Piver, 835 F.2d at 1079-80. In applying these principles, we note that the speech at issue here, mundane though it may be, is of far more direct significance to the public than was the speech referred to in National Treasury Employees Union.

Article XXVIII obstructs the free flow of information and adversely affects the rights of many private persons by requiring the incomprehensible to replace the intelligible. Under its provisions, bilingual public employees will be aware that in many instances the only speech they may lawfully offer may be of no value. The article effectively requires that these employees remain mute before members of the non-English speaking public who seek their assistance. At such moments of awkward silence between government employees and those they serve, it will be strikingly clear to all concerned that vital speech that individuals desire both to provide and to hear has been stifled by the state.

FN1. All further references to Arizonans for Official English also include by implication Parks.

FN2. We also hold that Yniguez is entitled to nominal damages. Given our affirmance on the merits, we need not rule upon the state defendants' claim that, in the event of a reversal, the plaintiff's attorney's fees award should be vacated.

FN3. Judge Thomas Tang of Arizona was a member of the three-judge panel and the en banc court. He died on July 18, 1995, two days before the en banc oral argument. He was replaced on the en banc court by Judge Kozinski. Because the decision of the en banc court is essentially identical to the panel opinion, it is important to note that Judge Tang contributed greatly to that earlier opinion. Many of the ideas and much of the language was his. Although he was unable to participate in the deliberations of the en banc court, this decision reflects his views and his wise understanding of the Constitution.

FN4. It should be noted that the bulk of the underlying facts in this case were stipulated to by Yniguez and the state defendants. Arizonans for Official English, however, makes certain factual allegations in its briefs on appeal that are unsupported or even contradicted by the record. Compare Opening Brief at 24 (Yniguez' use of Spanish "would interfere with the government's substantial interest in the efficiency of its workforce") with Stipulated Facts at 5 (Yniguez' use of Spanish "contributes to the efficient operation of the State"). Nonetheless, the organization made no effort to supplement the record on appeal or to seek a remand. Rather, it explicitly states in its brief that there are no material facts in dispute. At

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any rate, the facts stipulated to by Yniguez and the state defendants are in the main self-evident. Accordingly, our legal conclusions are based on the record as stipulated to by the original parties.

FN5. Yniguez' original complaint, filed November 10, 1988, named only the State of Arizona as a defendant. She later filed an amended complaint including the other defendants.

FN6. In particular, the court relied on the fact that "Mofford has officially stated that she intends to comply with Article XXVIII and expects state service employees, of which Yniguez is one, to comply with Article XXVIII." Yniguez, 730 F. Supp. at 312.

FN7. Because the district court found that Article XXVIII violated the First Amendment, it did not reach the other constitutional and statutory grounds that Yniguez asserted for invalidating the provision.

FN8. Asking this court to revisit issues already decided in Yniguez II, the cross-appellee state defendants assert that Yniguez's request for nominal damages is untimely because such damages were not specifically requested at trial, and their denial was not specifically appealed at that time. However, as we held in Yniguez II, Yniguez's blanket request for "all other relief that the Court deems just and proper under the circumstances," encompasses a request for nominal damages. 975 F.2d at 647. In addition, as to her appeal of the district court's denial of such damages, Yniguez has precisely followed the steps we described in that opinion. See id. at 647 & n.2 (stating that Yniguez "may raise the issue of nominal damages in a future cross-appeal"). Similarly, Yniguez suggests that the appeal of Arizonans for Official English is untimely because its notice of appeal was not filed within thirty days of the date that our order permitting intervention was entered on the district court's docket. However, we retained jurisdiction over the case during that period in reviewing the suggestion of mootness filed by the state. We did not relinquish jurisdiction until after September 16, 1992, when we filed our opinion rejecting the mootness suggestion. In that opinion, we specifically explained that "[t]he district court may now proceed to allow the parties to perfect their appeals and to conduct further proceedings in conformity with our dispositions." Yniguez II, 975 F.2d at 648. Although for some reason no mandate issued thereafter, the district court received the case back on November 5, 1992, and Arizonans for Official English timely filed its notice of appeal within thirty days of that date.

FN9. All further references to Arizonans Against Constitutional Tampering include by implication Espinosa.

FN10. The federal government of the United States has never recognized English as the "official language," either under the Constitution or federal law. See generally Perea, Demography and Distrust: An Essay on American Languages, Cultural Pluralism and Official English, 77 Minn. L. Rev. 269, 271-81 (1992) (noting that Continental Congress issued official publications in German and French, as well as English, and that the Framers purposely gave no special designation to English). As one academic commentator has explained, "early political leaders recognized the close connection between language and religious/cultural freedoms, and they preferred to refrain from proposing legislation which might be construed as a restriction on these freedoms." Heath, Language and Politics in the United States, in Linguistics and Anthropology 267, 270 (1977). Recent efforts to establish English as the official national language have not succeeded. See H.R.J. Res. 81, 101st Cong., 1st. Sess. (1989); S.J. Res. 13, 100th Cong., 1st Sess. (1987); see also Comment, The Proposed English Language Amendment: Shield or Sword?, 3 Yale L. & Pol'y Rev. 519 (1985); Harris v. Rivera Cruz, 710 F. Supp. 29, 31 (D.P.R.1989) (stating that "[i]n the United States, there is no official language, and if prudence and wisdom (and possibly the Constitution) prevail, there never shall be"). But cf. Soberal-Perez v. Heckler, 717 F.2d 36, 42 (2d Cir.1983) (asserting that "English is the national language of the United States"), cert. denied, 466 U.S. 929 (1984); DaLomba v. Director, 337 N.E. 2d 687, 689 (Ma.1975) (stating that "English is the official language of this country").

FN11. Besides Arizona, the states that have adopted such provisions are: Alabama, Ala. Const. amend. 509; Arkansas, Ark. Code Ann. § 1-4-117; California, Cal. Const. art. III § 6; Colorado, Colo. Const. Art. II § 309; Florida, Florida Const. art. II § 9; Georgia, Ga. Code Ann. § 50-

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3-30; Hawaii, Haw. Const. art. XV § 4; Illinois, Ill. Code § 460/20; Indiana, Ind. Code Ann. § 1-2-10-1; Kentucky, Ky. Rev. Stat. Ann. § 2.013; Mississippi, Miss. Code Ann. § 3-3-31; Nebraska, Neb. Const. art. 1 § 27; North Carolina, N.C. Gen. Stat. § 145-12; North Dakota, N.D. Cent. Code § 54-02-13; South Carolina, S.C. Code Ann. § 1-1-696; Tennessee, Tenn. Code Ann. § 4-1-404; and Virginia, Va. Code Ann. § 22.1-212.1. Compare Meyer, 262 U.S. at 395 (stating that "twenty-one States besides Nebraska have enacted similar foreign language laws") (argument of defendant). Two of these states-California and Hawaii-are in our circuit. The "official-English" provisions in these states, like those of other states besides Arizona, appear to be primarily symbolic. See, e.g., Puerto Rican Org. for Political Action v. Kusper, 490 F.2d 575, 577 (7th Cir.1973) (noting that official-English law appears with laws naming state bird and state song, and does not restrict use of non-English languages by state and city agencies). Article III, section 6 of the California Constitution merely establishes English as the official language of the state of California; it imposes no prohibition on other languages and does not affect their use in the functioning of state government. Hawaii's provision is unlike California's in that it recognizes both English and Hawaiian as official state languages, but it too appears to have little practical effect. Given the extent to which the California and Hawaii provisions differ from Article XXVIII, our opinion in this case should not be construed as expressing any view regarding their constitutionality.

FN12. At the oral argument before the panel, Arizonans for Official English partially endorsed the Attorney General's reading of Article XXVIII. While purporting to agree with the Attorney General that the provision's mandate that the state and its subdivisions "shall act in English" covered only official governmental acts, the organization nonetheless suggested vaguely that its interpretation of the provision was broader than that of the Attorney General, and that it might, for example, construe the provision as prohibiting state employees from speaking another language in the performance of their duties when unnecessary to do so. The organization's briefs to the panel were even less clear in indicating its position regarding Article XXVIII's proper scope. The briefs were, first of all, quite reticent on the question. However, the arguments asserted in support of the provision were quite sweeping, and seemed most appropriate to an extremely broad prohibition on the use of non-English languages by government officials and employees. Although we would, even absent these briefs, be entirely unconvinced by the proffered limiting construction (see below), we find "[t]hat construction even less plausible in light of the broad purposes that [the appellants] insist[ ] underlie the [provision]." Lind v. Grimmer, 30 F.3d 1115, 1123 n.8 (9th Cir.1994) (citing Erznoznik v. City of Jacksonville, 422 U.S. 205, 217 (1975)). Before the en banc court, Arizonans for Official English's and the Attorney General's explanations as to the initiative's scope were confused and self-contradictory. At best, they shed little light on how the amendment could rationally be construed in a limiting manner and at worst they helped make it clear that it could not be.

FN13. Similarly, Article XXVIII also describes English as the language of "all government functions and actions." § 1(2). Under no sense of either "functions" or "actions" are the two words limited to official acts. Cf. Powers v. Ohio, 499 U.S. 400 (1991) (finding state action in prosecutor's peremptory challenges of prospective jury members). We note also that the initiative's ballot materials and publicity pamphlets do not support the Attorney General's post-hoc construction of Article XXVIII. Instead, they described the "meaning and purpose" of the initiative to the voters in far broader terms. See Bussanich v. Douglas, 733 P.2d 646, 647 (Ariz.App.1986) (examining ballot materials and publicity pamphlets in construing an initiative).

FN14. The Attorney General has only stated that a narrow construction "may ... be necessary to avoid conflict" with the federal constitution, and his analysis on the point was based on the Equal Protection Clause of the Fourteenth Amendment rather than the First Amendment.

FN15. The district court held that the Eleventh Amendment barred State Senator Gutierrez from suing state officials in federal court to challenge Article XXVIII's application to legislators. The district court concluded that these state officials lacked the power to enforce Article XXVIII against him and thus could not be proper federal defendants under Ex Parte Young. See Yniguez, 730 F. Supp. at 311. This ruling is not before us on appeal and

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we intimate no opinion as to its merits. However, it is important to note that the court's ruling does not mean that Article XXVIII's broad reach imposes no chilling effect upon the speech of legislators. Even if it were true that state officials have no authority to punish a legislator who violates Article XXVIII, it remains the case that legislators are required to comply with the state constitution and that harmful consequences may flow from violation of its provisions, including the possibility of civil liability as a result of the initiative's enforcement provision. Thus, whatever Gutierrez's particular power to bring this suit in federal court, the First Amendment interests of state legislators are properly considered as part of an inquiry into Article XXVIII's overbreadth.

FN16. The Court's recent decision in United States v. National Treasury Employees Union, 115 S.Ct. 1003 (1995), is entirely consistent with our conclusion that if we find Article XXVIII to be unconstitutional, we must invalidate it on its face. In National Treasury Employees Union, the Court considered a challenge to a part of a statute that restricted the ability of persons in all three branches of the federal government to receive honoraria for making speeches or publishing articles. Although the Court upheld the constitutional challenge filed on behalf of "rank-and-file" civil servants in the executive branch, it offered three reasons for not also invalidating the provision as to senior officials in that branch, a group that was not before the Court. First, the Court explained that the senior officials received a 25 percent salary increase that was intended in part to offset the financial loss that the honoraria ban might cause. Id. at 1018-19. Second, it concluded that different justifications might support applying the ban to senior officials than to rank-and-file members. Id. at 1019. Finally, it concluded that relief could not be afforded in the manner ordered by the Court of Appeals without "tampering with the text of the statute[.]" Id. None of these factors is present here. First, all public officers and employees are treated identically under Article XXVIII. None received any compensating benefits. Second, if the article is unconstitutional as to civil servants, it is necessarily unconstitutional as to officers and elected officials. See Yniguez, 730 F. Supp. at 314; cf. Bond, 385 U.S. at 132-33. Finally, unlike in National Treasury Employees Union, here the relief we afford is simple and requires no tampering with the text of the measure.

FN17. We have no doubt, however, that even under the relatively relaxed test for expressive conduct set out in U.S. v. O'Brien, 391 U.S. 367 (1968), Article XXVIII would be unconstitutional. Under O'Brien, "a government regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." Id. at 377. Article XXVIII fails at least the final prong. See discussion, infra at §§ IIID(4) and IIID(6).

FN18. The paradoxical attempt to classify choice of language as conduct is useful, perhaps, in underscoring the weakness of the strict conduct/speech distinction. As the example of American sign-language illustrates, we describe various kinds of physical conduct-whether the making of specific sounds or specific hand movements-as language when they have reached a level of sophistication in grammatical structure and vocabulary to allow them to convey complex ideas with a sufficient degree of accuracy. See Johnson, 491 U.S. at 404 (in deciding whether particular conduct is protected by the First Amendment, asking "whether '[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it' ' ') (quoting Spence v. Washington, 418 U.S. 405, 410-11 (1974)).

FN19. It is important to recall, by contrast, that a monolingual person does not have the luxury of making the expressive choice to communicate in one language or another. If the person is to speak at all, it is in a language which may not be English.

FN20. Conversely, the deliberate choice to speak to someone in a language that he or she does not understand may convey a strong message of exclusion.

FN21. I would only add that to ignore the substance of speech and to look solely to form when analyzing the impact of a prohibition on

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speech is to be wholly mechanical and artificial. That approach to constitutional analysis ill serves the purpose of the Bill of Rights and denigrates the judicial function. When the effect of banning a form of speech is to prevent receipt of the message by the intended audience, it cannot seriously be argued that the ban is innocuous because it applies only to the mode of speech. Moreover, notwithstanding Chief Judge Wallace's assertion, see Wallace, concurring in dissent at 12781, the Court has found modes of speech to be protected by the First Amendment. For example, the Court has repeatedly protected a speaker's right to deliver his message anonymously. McIntrye v. Ohio Elections Com'n, 115 S.Ct. 1511 (1995); Talley v. California, 362 U.S. 60 (1960). In those cases, the Court did not hold that the speaker could not deliver an identical message without anonymity, rather that the speaker might not do so. Here, prohibiting delivery of all messages in languages other than English ensures that many Arizonans will not receive certain messages at all.

FN22. The distinction between affirmative and negative rights, though its legitimacy has been much disputed in academic circles, continues to find favor with the Supreme Court. See, e.g., DeShaney v. Winnebago County Dep't of Social Servs, 489 U.S. 189, 196-97 (1989) (rejecting the view that the Constitution imposes "affirmative obligations" on the state). In some instances, the line separating the affirmative from the negative is hard to draw-even though it may be critical to the outcome of a case. Compare Union Free School Dist. No. 26, 457 U.S. at 855-56 (asking "whether the First Amendment imposes limitations [upon the school board's power] to remove library books from high school and junior high school libraries") (plurality opinion) (emphasis added), and id. at 878 (stating that the right at issue does not involve "any affirmative obligation to provide students with information or ideas") (Blackmun, J., concurring) (emphasis added), with id. at 886 (complaining that "the plurality suggests that there is a new First Amendment 'entitlement ' to have access to particular books in a school library") (Burger, C.J., dissenting) (emphasis added). In the present case, however, there can be no doubt that Article XXVIII represents a prohibition on non-English speech, not simply a failure to provide it.

FN23. The dissent's statement that the speech in this case cannot be easily pigeonholed into one of the traditional legal categories is fully consistent with our analysis. However, unlike the dissent, we conclude, for the reasons discussed infra at 12736-39, that the speech prohibited by Article XXVIII of the Arizona Constitution more closely resembles public concern than private concern speech. Chief Judge Wallace's attempt to distinguish the speech of public employees who communicate information relating to governmental functions in languages other than English from off-the-job-speech in which public employees communicate their personal opinions relating to governmental matters only serves to prove our point conclusively. If the latter, as Judge Wallace correctly says constitutes speech of public concern, see Wallace, concurring in dissent at 12782-83, so, a fortiori, must the former.

FN24. The Court's statements concerning the state's authority to make content-based distinctions when it is the speaker are not to the contrary. See Rosenberger v. Rector and Visitors of Univ. of Va., 115 S. Ct. 2510 (1995); Rust v. Sullivan, 500 U.S. 173, 111 S. Ct. 1759 (1991). In both cases, the Court granted the government broad, but not unlimited, power to regulate government-subsidized speech of private parties. Rosenberger involved government subsidization of speech by private parties pursuing their own goals, Rust government subsidization of speech by private parties carrying out a government program. Neither Rosenberger nor Rust concerned the authority of the state to penalize the speech of its public employees, let alone to adopt a general prohibitory rule of sweeping applicability regarding such speech. We do not believe that isolated statements in these cases were meant to rewrite the Court's public employee speech doctrine. Nor do we believe that words used in cases dealing with wholly different issues should be wrenched from their context and applied mechanically to entirely different circumstances. While Rosenberger is of very recent origin, Rust has been with us for over four years. Rust has been cited more than 50 times by circuit courts, yet not once has it been applied in the context of a restriction on the speech of public employees. Rust is simply irrelevant here. In any event, we note that both cases demonstrate there are limitations on the restrictions that the state may impose. It is rare that governmental power is absolute, and constitutional limitations are wholly inapplicable. While government may certainly regulate or control

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speech when it is the speaker, it does not have unlimited power to regulate such speech; here, as elsewhere, it must act within constitutional constraints. The government could not, for example, force all public employees to wear pro-life lapel pins or deliver a pro-life message whenever in the performance of their work they communicate with members of the public, any more than it could require delivery of a pro-choice message under similar circumstances. To say that in most circumstances the government may regulate content by compelling or prohibiting on-the-job delivery of a particular message is a truism. However, pronouncing that truism does not resolve the question before us. It merely helps us reach the central issue of this case: Is the particular regulation-here, one that drastically affects not only public employees but also countless Arizonans who need desperately to communicate with their government-constitutional?

FN25. We note that in Gutierrez v. Municipal Court, 838 F.2d 1031 (9th Cir.1988), vacated as moot, 490 U.S. 1016 (1989), while striking down an English-only rule applicable to the private speech of Los Angeles Municipal Courts employees on the ground that it violated Title VII, we explained that serious constitutional questions would arise if such a rule were to forbid communication in Spanish with the non-English-speaking public. Id. at 1044 n.19.

FN26. In Virginia Citizens, the Court struck down a statute declaring it unprofessional conduct for a licensed pharmacist to advertise the prices of prescription drugs, holding that the statute violated the First Amendment. Specifically, it found that the government's suppression of the flow of prescription drug price information violated consumers' right to receive the information. Id. at 770.

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AZ case

Maria-Kelley F. YNIGUEZ; Jaime P. Gutierrez,Plaintiffs-Appellees,
and
Arizonans Against Constitutional Tampering, Intervenors-Plaintiffs-Appellees,
and
State of Arizona; Rose Mofford; Robert Corbin, et al., Defendants-Appellees,
v.
ARIZONANS FOR OFFICIAL ENGLISH; Robert D. Parks, Intervenors-Defendants-Appellants.
Maria-Kelley F. Yniguez, Plaintiff-Appellant,
v.
State of Arizona; Rose Mofford; Robert Corbin, et al., Defendants-Appellees,
and
Arizonans for Official English; Robert D. Parks, Intervenors-Defendants-Appellants.
Maria-Kelley F. Yniguez, Plaintiff-Appellee,
v.
State of Arizona; Rose Mofford; Robert Corbin, et al., Defendants-Appellants.

Nos. 92-17087, 93-15061, 93-15719.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted May 3, 1994.

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Amended Jan. 17, 1995.
Order Granting Rehearing En Banc Filed May 12, 1995.
Argued and Submitted July 20, 1995.
Filed Oct. 5, 1995.

Appeals from the United States District Court for the District of Arizona Paul G. Rosenblatt, District Judge, Presiding.

Before WALLACE, Chief Judge, HUG, Jr., PREGERSON, REINHARDT, HALL, WIGGINS, BRUNETTI, KOZINSKI, FERNANDEZ, KLEINFELD, and HAWKINS, Circuit Judges.

REINHARDT, Judge.

4. The Absence of Any State Interest In Efficiency and Effectiveness

*1 In light of the interests of both public employees and members of the public in the prohibited speech, a decision as to the constitutionality of Article XXVIII's restrictions involves at a minimum a weighing and balancing process similar to that conducted in the more traditional cases involving public employee speech of "public concern". [FN27] Here, the efficiency and effectiveness considerations that constitute the fundamental governmental interest in the usual "public concern" cases-and that provide the justification against which the employee's First Amendment interests must be weighed-are wholly absent. Indeed, as the parties acknowledged in the stipulation of uncontested facts, Arizona's interest in the efficiency and effectiveness of its workforce runs directly counter to Article XXVIII's restriction on public employee speech. See note 4, supra.

Specifically, the facts of this case unequivocally establish that Yniguez's use of Spanish in the course of her official duties contributed to the efficient and effective administration of the State. See Statement of Stipulated Facts at 5-6. More generally, the facts of this case, as well as elementary reason, tell us that government offices are more efficient and effective when state and local employees are permitted to communicate in languages other than English with consumers of government services who are not proficient in that language. Id. (stating that use of non-English languages promotes the "efficient administration of the State"); [illegible] v. Tucson Police Dept., 783 F. Supp. 458, 462 (D.Ariz.1992) (emphasizing that "the availability of Spanish-speaking personnel is necessary for effective performance of [the Tucson Police Department's] mission").

Additionally, as we explained earl[illegible] the purpose of Article XXVIII were to promote efficiency, it would not impose a total ban but would provide that languages other than

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English may be used in government business only when they facilitate such business and not when they hinder it. Article XXVIII plainly does not make this distinction. See, supra, at 12711-13.

On this point, we note that Arizonans for Official English's assertion that government inefficiency and "chaos" will result from Article XXVIII's invalidation is not only directly contrary to the stipulated facts but is predicated upon a wholly erroneous assumption as to the nature of Yniguez's claim. The group contends that appellees seek the right to speak another language at will and regardless of whether the intended recipient of the speech primarily speaks that language or is even able to comprehend it. However, such a "right" would be of a far different order than the right at issue here. As the facts show, Yniguez spoke Spanish with Spanish-speaking claimants and English with English-speaking claimants. She does not claim any right to "choose" to speak Spanish with claimants who would not understand her, nor would this or any other court uphold such a right. Accordingly, in the interests of clarity, we emphasize that by ruling that the state cannot unreasonably limit the use of non-English languages, we do not imply that the state is therefore forced to allow inappropriate or burdensome language uses. In short, we do not suggest that a public employee has a "right" to speak in another language when to do so would hinder job performance. Cf. Jurado v. Eleven-Fifty Corp., 813 F.2d 1406 (9th Cir.1987) (Title VII not violated by radio station's firing of announcer who refuses to follow programming format and insists on speaking in Spanish). We merely consider here the lawfulness of speech in languages other than English that furthers the state's traditional interest in efficiency and effectiveness.

5.
The Propriety of Considering State Justifications Other Than Efficiency and Effectiveness

*2 Because the speech at issue here does not adversely affect the state's interest in efficiency and effectiveness, and because the Waters/Pickering line of cases limits consideration of the governmental interest to these concerns, were we to apply the traditional Waters/Pickering balancing test, Arizonans for Official English would lose by default. There would be nothing on the non-free speech side of the scale. There have, however, been a number of other cases in which the Court (though sometimes giving some weight to efficiency and effectiveness concerns) has considered primarily the government's argument that a broader set of justifications supports a particular restriction on the First Amendment rights of public employees.

Most of the cases in which the government has relied on justifications other than efficiency and effectiveness have involved patronage practices, although some have involved restrictions on public employees' political activities. See, e.g., Rutan v. Republican Party of Illinois, 110 S.Ct. 2729, 2735-37 & n.4 (1990) (citing, inter alia, interest in preventing excessive political fragmentation and strengthening party system); Elrod v. Burns, 427 U.S. 347, 364-69 (1976) (citing, inter alia, interest in preserving the democratic process); Civil Service Comm'n v. Letter Carriers, 413 U.S. 548, 565 (1973) (citing, inter alia, interest in preventing development of a powerful and corrupt political machine). In those cases, the government has relied on the broader concerns that "the government might have in the structure and functioning of society as a whole." Rutan, 110 S.Ct. at 2735 n.4. In other words, the concerns on which the government has relied do not relate to ensuring an efficient workplace but instead involve more general societal interests. In such cases, there is no substantial nexus between the alleged governmental interest and job performance.

In a recent Supreme Court case in which the government sought to justify a limitation on public employee First Amendment rights on the basis of broad governmental interests rather than on traditional efficiency and effectiveness concerns, the majority applied a strict scrutiny test and rejected the challenged

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governmental practices. The majority concluded that because the government's interests in the regulations were not "employment-related," there was no reason to relax the strict scrutiny ordinarily applied to restrictions on speech. Rutan 110 S.Ct. at 2735 n.4. By contrast, the dissenters applied a more permissive balancing test, asking: "can the governmental advantages of this employment practice reasonably be deemed to outweigh its 'coercive' effects?" Compare Rutan, 110 S.Ct at 2735-36 & n.4 with id. at 2749-52 & n.3 (Scalia, J., dissenting). The dissenters adopted the premise that broader governmental interests were due no less deference than the governmental interest in efficiency and effectiveness. [FN28] Accordingly, the dissenters' approach essentially mimicked the Waters/Pickering balancing test; it simply broadened the scope of that test to account for interests other than efficiency and effectiveness.

*3 In an even more recent case, the Court invalidated a restriction on public employee speech without discussing the question of the applicable test, although it employed a balancing approach. See United States v. National Treasury Employees Union, 115 S.Ct. 1003, 1015-1018 (1995). In doing so, the Court did not even mention Rutan. Nor did it refer to or identify a specific level of scrutiny to be applied. Instead, it deemed it sufficient to evaluate the particular burdens imposed by the statute in light of the particular interests affected. Rather than fixing on superficially precise legal labels or formulae that are easily manipulated by sophisticated lawyers and judges, the Court conducted a thorough and judicious examination of the practical impact of the legislation involved, both positive and negative, and its effect on constitutionally protected interests. It then carefully weighed and balanced the various factors and reached its conclusion in a reasoned and measured manner. In doing so, it ably performed the quintessential function of judicial decision-making: the exercise of judgment.

The Court's approach in National Treasury Employees Union is consistent with the method of analysis we undertake. In any event, we need not decide what level of scrutiny or what approach to balancing is applicable here. Whether we apply strict scrutiny as suggested by Rutan, whether we use a form of balancing test similar to that advocated by the Rutan dissenters and modelled on the approach traditionally employed in the Waters/Pickering line of cases, or whether we follow the course chosen by the Court in National Treasury Employees Union, the result is the same: The restrictions on free speech are not justified by the alleged state interests.

6.
Evaluating the Alleged State Justifications

Arizonans for Official English claims, as it and others did when the initiative was on the ballot, that Article XXVIII promotes significant state interests. The organization enumerates these interests as: protecting democracy by encouraging "unity and political stability"; encouraging a common language; and protecting public confidence.

We note at the outset that the sweeping nature of Article XXVIII's restriction on public employee speech weighs significantly in our evaluation of the state's alleged interests. In National Treasury Employees Union, the Court explained that when the government seeks to defend a "wholesale deterrent to a broad category of expression by a massive number of potential speakers," 115 S.Ct. at 1013, its burden is heavier than when it attempts to defend an isolated disciplinary action. Id. Thus, we must examine the state's asserted justifications with particular care.

There is no basis in the record to support the proponents' assertion that any of the broad societal interests on which they rely are served by the provisions of Article XXVIII. We also note that the article itself contains no statement of findings that would suggest that it would serve the interests asserted by the appellants. The absence of any evidence to this effect is of particular significance given that the deference normally accorded legislative findings does not apply with the same force when "First Amendment rights are

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at stake." Landmark Communications, Inc. v. Virginia, 435 U.S. 839, 841 (1978). It is equally significant for a second reason-Article XXVIII is a ballot initiative and thus was subjected to neither extensive hearings nor considered legislative analysis before passage. Cf. United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. at 565-567 (noting the extensive legislative findings that supported the Hatch Act).

*4 In plain fact, Arizonans for Official English offer us nothing more than "assertion and conjecture to supports its claim" that Article XXVIII's restrictions on speech would serve the alleged state interests. Landmark, 435 U.S. at 841; National Treasury Employees Union, 115 S.Ct. at 1017 (citing Turner Broadcasting System, Inc. v. FCC, 512 U.S. ___, 114 S.Ct. 2445, 2450 (1994)). Accordingly, the appellants have not demonstrated that the benefits to be obtained outweigh the burdens imposed on First Amendment rights, particularly given the all-encompassing scope of the restriction they seek to defend. See National Treasury Employees Union, 115 S.Ct. at 1014 (explaining that the government's "burden is greater" in such cases).

We also reject the justifications for even more basic reasons. Our conclusions are influenced primarily by two Supreme Court cases from the 1920s in which nearly identical justifications were asserted in support of laws restricting language rights. See Meyer v. Nebraska, 262 U.S. 390 (1923); Farrington v. Tokushige, 273 U.S. 284 (1927). Meyer involved a Nebraska statute that prohibited the teaching of non-English languages to children under the eighth grade level; Tokushige, similarly, involved a Hawaii statute that singled out "foreign language schools," such as those in which Japanese was taught, for stringent government control.

In defending the statute at issue in Meyer, the state of Nebraska explained that "[t]he object of the legislation ... [is] to create an enlightened American citizenship in sympathy with the principles and ideals of this country." 262 U.S. at 393; see also id. at 398 (asserting that purpose of law was to prevent children from having "inculcate[d] in them the ideas and sentiments foreign to the best interests of this country"); id. at 390 (noting that law was designed "to promote civic development," and inhibit the acquisition of "foreign ... ideals"). More recently, the Court explicitly characterized the language restriction in Meyer as designed "to promote civic cohesiveness by encouraging the learning of English." Epperson v. Arkansas, 393 U.S. 97, 105 (1968). Despite these worthy goals, the Court ruled that the repressive means adopted to further them were "arbitrary" and invalid. Meyer, 262 U.S. at 403.

Similarly, the provision at issue in Tokushige had the specific purpose of regulating language instruction ' 'in order that the Americanism of the students may be promoted." 273 U.S. at 293. As in Meyer, the Tokushige Court recognized the validity of the interests asserted in defense of the statute. 273 U.S. at 299. Nonetheless, citing Meyer 's invalidation of the Nebraska law, it found that the statute's promotion of these interests was insufficient to justify infringing on the constitutionally protected right to educate one's children to become proficient in one's mother tongue. [FN29]

*5 Meyer and Tokushige also demonstrate the weakness of the second justification for Article XXVIII proffered by Arizonans for Official English: that of encouraging a common language. In Meyer, the statute reflected the belief that "the English language should be and become the mother tongue of all children reared in this state." 262 U.S. at 398. The statute in Tokushige would have similarly inhibited the spread of the Japanese language, presumably in favor of English. 273 U.S. at 298. Although there is probably no more effective way of encouraging the uniform use of English than to ensure that children grow up speaking it, [FN30] both statutes were struck down on the ground that these interests were insufficient to warrant such restrictions on the use of foreign languages.

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Like the Court in Meyer and Tokushige, we recognize the importance of (1) promoting democracy and national unity and (2) encouraging a common language as a means of encouraging such unity. See Guadalupe Organization, Inc., supra. [FN31] The two primary justifications relied on by the article's proponents are indeed closely linked. We cannot agree, however, that Article XXVIII is in any way a fair, effective, or appropriate means of promoting those interests, or that even under a more deferential analysis its severely flawed effort to advance those goals outweighs its substantial adverse effect on first amendment rights. As we have learned time and again in our history, the state cannot achieve unity by prescribing orthodoxy. See West Virginia Bd. of Education v. Barnette, 319 U.S. 624 (1943); Meyer, 262 U.S. 390, 392 (argument of plaintiff) (forced "Americanization" violates American tradition of liberty and toleration). Notwithstanding this lesson, the provision at issue here ' 'promotes" English only by means of proscribing other languages and is, thus, wholly coercive. Moreover, the goals of protecting democracy and encouraging unity and stability are at most indirectly related to the repressive means selected to achieve them. Next, the measure inhibits rather than advances the state's interest in the efficient and effective performance of its duties. Finally, the direct effect of the provision is not only to restrict the rights of all state and local government servants in Arizona, but also to severely impair the free speech interests of a portion of the populace they serve.

We should add that we are entirely unmoved by the third justification-that allowing government employees to speak languages other than English when serving the public would undermine public confidence and lead to "disillusionment and concern." To begin with, it is clear that the non-English speaking public of Arizona would feel even greater disillusionment and concern if their communications with public employees and, effectively, their access to many government services, were to be barred by Article XXVIII. Moreover, numerous cases support the notion that the interest in avoiding public hostility does not justify infringements upon constitutional rights. See, e.g., Buchanan v. Worley, 245 U.S. 60, 81 (1917) (possibility of race conflict does not justify housing segregation); Palmore v. Sidoti, 466 U.S. 429, 433-34 (1984) (society's racial animus not legitimate factor to consider in awarding custody of child). In short, the "concern" that some members of the Arizona public may feel over the use of non-English languages provides no basis for prohibiting their use no matter the degree of scrutiny we apply.

*6 Here, the full costs of banning the dissemination of critical information to non-English speaking Arizonans cannot readily be calculated. There would undoubtedly be severe adverse consequences which even the sponsors of Article XXVIII neither foresaw nor intended. The range of potential injuries to the public is vast. Much of the information about essential governmental services that, but for the initiative, would be communicated in a manner that non-English speaking Arizonans could comprehend may not be susceptible to timely transmission by other means. By comparison, the benefits that the initiative purports to offer are minimal, especially in light of the state's concession that its interests in "efficiency" and "effectiveness" are not served by the Article. Thus, under a balancing test, whether identified as a Waters/Pickering type of test, a test modelled after that standard, as employed by the dissenters in Rutan, or the National Treasury Employees Union approach to balancing, Article XXVIII must be held unconstitutional. A fortiori, the article could not survive a traditional strict scrutiny test. We reach our conclusions only after giving full consideration to the governmental interest in controlling the content and manner of the speech of its employees in the performance of their work assignments. Here, however, that interest, when balanced against the considerations we have examined, cannot outweigh the free speech interests impaired by Article XXVIII.

E.
Conclusion

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To conclude, Article XXVIII is not a valid regulation of the speech of public employees and is unconstitutionally overbroad. By prohibiting public employees from using non-English languages in performing their duties, the article unduly burdens their speech rights as well as the speech interests of a portion of the populace they serve. The article similarly burdens the First Amendment rights of state and local officials and officers in the executive, legislative, and judicial branches.

We note that the adverse impact of Article XXVIII's overbreadth is especially egregious because it is not uniformly spread over the population, but falls almost entirely upon Hispanics and other national origin minorities. Cf. Spun Steak, 998 F.2d at 1486 (English-only rule in the workplace may disproportionately affect Hispanic employees); see generally NAACP v. City of Richmond, 734 F.2d 1346, 1356 (9th Cir.1984) (holding, in case involving restriction on NAACP march against racist police practices, that courts "must examine restrictions on speech with particular care when their effects fall unevenly on different ... groups in society"); Tribe, supra, at 979. Since language is a close and meaningful proxy for national origin, [FN32] restrictions on the use of languages may mask discrimination against specific national origin groups or, more generally, conceal nativist sentiment. See, e.g., Yu Cong Eng v. Trinidad, 271 U.S. 500, 528 (1926) (statute prohibiting keeping of account books in any language other than English or Spanish denies equal protection of law to Chinese merchants); Lau v. Nichols, 414 U.S. 563, 566-69 (1974) (recognizing right under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, of non-English-speaking Chinese students to receive bilingual compensatory education, because "students who do not understand English are effectively foreclosed from any meaningful education"); Asian American Business Group v. City of Pomona, 716 F. Supp. 1328, 1332 (C.D.Cal.1989) (law restricting use of non-English alphabetical characters discriminates on basis of national origin); Hernandez v. Erlenbusch, 386 F. Supp. 752, 755-56 (D.Or.1973) (tavern's English-only rule constitutes illegal discrimination against Mexican-American patrons); Califa, Declaring English the Official Language: Prejudice Spoken Here, 24 Harv. C.R.-C.L. L. Rev. 293, 325, 328 n.225 (1989); Note, A Trait-Based Approach to National Origin Claims Under Title VII, 94 Yale L.J. 1164, 1165 & n.5 (1985). In light of these considerations, the equal protection ramifications of Article XXVIII's restrictive impact strongly support our holding, as well. [FN33]

*7 As President Franklin D. Roosevelt once remarked, "all of our people all over the country, all except the pure-blooded Indians, are immigrants or descendants of immigrants, including those who came over on the Mayflower." N.Y. Times, Nov. 5, 1944, at 38. Many and perhaps most immigrants arrived in the United States speaking a language other than English. Nonetheless, this country has historically prided itself on welcoming immigrants with a spirit of tolerance and freedom-and it is this spirit, embodied in the Constitution, which, when it flags on occasion, courts must be vigilant to protect.

In closing, we note that tolerance of difference-whether difference in language, religion, or culture more generally-does not ultimately exact a cost. To the contrary, the diverse and multicultural character of our society is widely recognized as being among our greatest strengths. Recognizing this, we have not, except for rare repressive statutes such as those struck down in Meyer, Bartels, Yu Cong Eng, and Farrington, tried to compel immigrants to give up their native language; instead, we have encouraged them to learn English. The Arizona restriction on language provides no encouragement, however, only compulsion: as such, it is unconstitutional.

IV.
Nominal Damages

Finally, we must consider the question of Yniguez's right to nominal damages. The State of Arizona expressly waived its right to assert the Eleventh Amendment as a defense to the award of nominal damages. In Carey v. Piphus, 435 U.S. 247, 266-67 (1978), the

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leading case on this issue, the Supreme Court held that plaintiffs in a § 1983 action were entitled to nominal damages for the deprivation of their due process rights even without proof of actual injury. The Court explained that:

> [c]ommon-law courts traditionally have vindicated deprivations of certain absolute rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed.

Id.; see also Lokey v. Richardson, 600 F.2d 1265, 1266 (9th Cir.1979), cert. denied 449 U.S. 884 (1980).

The right of free speech, like that of due process of law, must be vigorously defended. Indeed, the protection of First Amendment rights is central to guaranteeing society's capacity for democratic self-government. See Meiklejohn, Free Speech and Its Relation to Self-Government (1948); New York Times v. Sullivan, 376 U.S. 254, 269-70 (1964). Thus, even without proof of actual injury, Yniguez is entitled to nominal damages for prevailing in an action under 42 U.S.C. § 1983 for the deprivation of First Amendment rights. See Nakao v. Rushen, 635 F. Supp. 1362, 1364 n.5 (N.D.Cal.1986). [FN34]

V.
Conclusion

We affirm the district court's judgment that Article XXVIII of the Arizona Constitution is facially overbroad and violates the First Amendment, and that the article is unconstitutional in its entirety. We reverse and remand the district court judgment insofar as it denies Yniguez an award of nominal damages.

*8 AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

APPENDIX
ARTICLE XXVIII. ENGLISH AS THE OFFICIAL LANGUAGE

1. English as the Official Language; Applicability.

Section 1.(1) The English language is the official language of the State of Arizona.

(2) As the official language of this State, the English language is the language of the ballot, the public schools and all government functions and actions.

(3) (a) This Article applies to:

(i) the legislative, executive and judicial branches of government,

(ii) all political subdivisions, departments, agencies, organizations, and instrumentalities of this State, including local governments and municipalities,

(iii) all statutes, ordinances, rules, orders, programs and policies,

(iv) all government officials and employees during the performance of government business.

(b) As used in this Article, the phrase "This state and all political subdivisions of this State" shall include every entity, person, action or item described in this Section, as appropriate to the circumstances.

2. Requiring This State to Preserve, Protect and Enhance English.

Section 2. This State and all political subdivisions of this State shall take all reasonable steps to preserve, protect and enhance the role of the English language as the official language of the state of Arizona.

3. Prohibiting This State from Using or Requiring the Use of Languages Other Than English; Exceptions.

Section 3.(1) Except as provided in Subsection (2):

(a) This State and all political subdivisions of this State shall act in English and no other language.

(b) No entity to which this Article applies shall make or enforce a law, order, decree or policy which requires the use of a language other than English.

(c) No governmental document shall be valid, effective or enforceable unless it is in the English language.

(2) This State and all political subdivisions

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of this State may act in a language other than English under any of the following circumstances:
(a) to assist students who are not proficient in the English language, to the extent necessary to comply with federal law, by giving educational instruction in a language other than English to provide as rapid as possible a transition to English.
(b) to comply with other federal laws.
(c) to teach a student a foreign language as a part of a required or voluntary educational curriculum.
(d) to protect public health or safety.
(e) to protect the rights of criminal defendants or victims of crime.

4. Enforcement; Standing.
Section 4. A person who resides in or does business in this State shall have standing to bring suit to enforce this Article in a court of record of the State. The Legislature may enact reasonable limitations on the time and manner of bringing suit under this subsection.

FN27. The alternative is, of course, to apply the strict scrutiny test. See Rutan, 110 S. Ct. 2735 & n.4. See also discussion infra at 12737-39.

FN28. The dissenters concluded that it is wholly irrelevant whether the restrictions at issue are justified on the basis of the "employer" interests of efficiency and effectiveness, or broader interests. See id. at 2751 n.3 In their view, there is "no reason in policy or principle" why the government should not be free to further even its broader interests through appropriate restrictions on employee speech. Id.

FN29. The fact that the Supreme Court, deciding these cases in the 1920s, struck down the language restrictions in Meyer and Tokushige as violative of due process does not lessen their relevance. Substantive due process was the doctrine of choice for the protection of fundamental rights during the first part of this century, although it has now largely been replaced by other constitutional doctrines. See, e.g., Halter v. Nebraska, 205 U.S. 34, 42 (1907) (similarly framing free speech claim in terms of property rights). It should therefore be clear that the Court's formal labeling of the right as falling under the rubric of substantive due process does not control our consideration of it-and, in fact, the Court subsequently explicitly recharacterized Meyer as protecting First Amendment freedoms. See Griswold v. Connecticut, 381 U.S. 479, 482 (1965); see also Epperson, 393 U.S. at 105-06 (First Amendment case considering Meyer as relevant but noting that it "was decided before the Court expressly applied the specific prohibitions of the First Amendment to the States"); Yassky, Eras of the First Amendment, 91 Col. L. Rev. 1699, 1733 (1991) (describing Meyer as First Amendment case); Tribe, American Constitutional Law 1319-20 (2d ed. 1988) (noting that Justice McReynolds wrote Meyer " '[u]sing the tools of his time," but that it has been reinterpreted as embodying First Amendment principles).

FN30. The dissent in Bartels v. Iowa, 262 U.S. 404 (1923), which applied equally to Meyer, strongly emphasized this point. 262 U.S. at 412. The majority, however, remained unpersuaded that these concerns outweighed the fundamental rights at issue.

FN31. The dissent treats Guadalupe Organization, a case that does not even discuss the First Amendment and which focused on the right to be instructed in a foreign language about a foreign culture, as the touchstone for deciding this First Amendment challenge. We agree with Guadalupe Organization to the extent that it sets forth the advantages that accrue from encouraging those living in this nation to learn English and to share in our use of a common language. At the same time we recognize that cultural diversity and tolerance of differences are among our nation's greatest strengths, as is our unwillingness to impose uniformity or orthodoxy by fiat. This court's position regarding linguistic and cultural diversity and the constitutionally-permissible means for promotion of our growth as a unified nation are the ones expressed in this majority opinion and the concurrence of Judge Brunetti whose separate statements on this point we fully endorse. We disapprove, however, the part of Guadalupe Organization on which the dissent relies and which it quotes at pages 12779-81. By doing so, we do not intend to unsettle the holding of our earlier decision; the question resolved in Guadalupe Organization is not before us, and we do not consider the part of the opinion we disapprove

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essential to the conclusion the Guadalupe Organization court reached.

FN32. Cf. Hernandez v. New York, 111 S. Ct. 1859, 1872 (1991) (noting that in some contexts proficiency in particular languages might be "treated as a surrogate for race"); but cf. Carmona v. Sheffield, 475 F.2d 738, 739 (9th Cir.1973); Soberal-Perez v. Heckler, 717 F.2d 36, 41 (2d Cir.1983), cert. denied, 466 U.S. 929 (1984).

FN33. We note, once again, a strong similarity between this case and Meyer. Because the invalidated Nebraska statute to a large extent targeted the substantial German-American community in that state (and was enacted in the wake of World War I), Meyer has been viewed as a precursor to modern equal protection doctrine. Tribe, supra, at 1320 n.13; Hernandez, 111 S.Ct. at 1873. This reading of Meyer is strengthened by the fact that one of the laws struck down in Bartels v. Ohio, 262 U.S. 404 (1923), its companion case, specifically singled out the German language for repression. See Bartels, 262 U.S. at 410 n.2 (statute allowed teaching of non-English languages as elementary school subjects, "provided that the German language shall not be taught"). Even Justice Holmes, who otherwise dissented from the majority opinion, agreed that that statute was unconstitutional. Bartels, 262 U.S. at 413 (Holmes, J., dissenting). The speech of unpopular groups, of course, often meets with hostility and repression, though it is more commonly the message that is targeted than the language in which it is communicated. Given the link between unpopular speech and unpopular groups, it is not surprising that even some of our most venerable First Amendment precedents have an (albeit implicit) equal protection component. See, e.g., Barnette, supra (Jehovah's Witnesses); New York Times v. Sullivan, 376 U.S. 254 (1964) (black civil rights activists).

FN34. Indeed, an award of nominal damages in recognition of society's interest in vindicating the disputed right is singularly appropriate in First Amendment overbreadth cases such as this, for a successful plaintiff in an overbreadth case has convinced the court to strike down a law that would, if left standing, chill the constitutionally protected speech of large numbers of other members of society.

BRUNETTI, Circuit Judge, concurring.

*9 I agree that Article XXVIII of the Arizona Constitution is facially invalid and I join in the majority opinion. I write separately to emphasize that the article's unconstitutional effect on Arizona's elected officials would alone be sufficient reason to strike the provision down.

I.

As indicated in the majority opinion, the government employees affected by the article's unconstitutional limitations outnumber the elected officials affected. However, the extent of the damage caused by Article XXVIII's restrictions on elected officials is not diminished by the fact that their population is smaller than that of government employees.

Article XXVIII offends the First Amendment not merely because it attempts to regulate ordinary political speech, but because it attempts to manipulate the political process by regulating the speech of elected officials. Freedom of speech is the foundation of our democratic process, and the language restrictions of Article XXVIII stifle informative inquiry and advocacy by elected officials. By restricting the free communication of ideas between elected officials and the people they serve, Article XXVIII threatens the very survival of our democratic society.

To begin with, Article XXVIII interferes with the ability of candidates for re-election to communicate with voters. These First Amendment protections are equally applicable to all candidates, not simply those running for re-election. However, I address specifically candidates running for re-election because Article XXVIII only affects elected officials.

A candidate must be able to communicate with voters in order for voters to make an informed decision about whether to cast their ballot for that candidate. Indeed, the Supreme Court has said:

Legislators have an obligation to take

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positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them.

Bond v. Floyd, 385 U.S. 116, 136-37 (1966). Communication between candidates and voters is at the core of all political action. The First Amendment prevents the disenfranchisement that results when candidates for re-election are disabled from communicating with any certain group.

Article XXVIII not only interferes with a voter's ability to assess candidates, but it also interferes with officials' ability to represent their constituents once they are elected. "The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy." Id. at 135-36. Elected representatives cannot fully serve their constituents if they are precluded from fully expressing their views to, and learning the views of, those constituents. The First Amendment precludes a successful electoral majority from restricting political communications with a certain segment of the electorate.

*10 In addition to interfering with voting and political representation, Article XXVIII attempts to reconfigure the political landscape. Language is at the foundation of the cultural and ethnic diversity in our democratic and political processes, and is inextricably intertwined therein. Article XXVIII attempts to impose political conformity by requiring that the same language be used for all political and governmental dialogue. See Legislative Council Arguments Favoring Proposition 106, at 26 (describing the need to "reverse the trend" of "language rivalries" by requiring discourse in English only).

It does not take much "judicial prediction or assumption[,]" Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973), to conclude that Article XXVIII impermissibly chills elected officials' speech. Under principles of third-party standing in the First Amendment area, Yniguez's overbreadth claim permits this panel to examine Article XXVIII's impact on elected officials. See id. The harm to society from such unconstitutional interference with the democratic process requires that the article be struck down as facially overbroad. Accordingly, I would hold that Article XXVIII's unconstitutional restriction on elected officials' speech is sufficient to find facial overbreadth.

II.

That being said, I agree with the other members of the majority that the article is also unconstitutional and facially overbroad for the independent reason that it restricts the speech of government employees, such as Yniguez. While I feel there may be some tension between the public interest in receiving Yniguez's public services in Spanish as described by the majority, and our prior cases which hold that there is no right to receive government services in a language other than English, our holding today does not conflict with those prior cases. See, e.g., Carmona v. Sheffield, 475 F.2d 738, 739 (9th Cir.1973) (no right to unemployment notice in Spanish); Soberal-Perez v. Heckler, 717 F.2d 36, 41-43 (2d Cir.1983) (no right to Social Security notices and services in Spanish), cert. denied, 466 U.S. 929 (1984).

As the majority carefully describes, we are only considering the interest of the public in receiving speech when government employees exercise their right to utter such speech, and we do not create an independently enforceable public right to receive information in another language. Our consideration of the public's interest in receiving Yniguez's speech is dictated by the Waters/Pickering test. Under the Waters/Pickering test, we must balance " 'the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.' " United States v. National Treasury Employees Union, 115 S. Ct. 1003, 1012 (1995)

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(quoting Pickering v. Board of Ed. of Township High School Dist., 391 U.S. 563, 568 (1968)) (alteration in original). The public's interest in receiving Yniguez's speech weighs in on both sides of the test.

*11 Speech touches a matter of public concern if the community that constitutes the speaker's audience has an interest in receiving that speech. Cf. Connick v. Myers, 461 U.S. 138, 148 (1983) (finding that certain speech was not a matter of public concern because "[speaker] did not seek to inform the public"); id. at 149 (relying on this country's "demonstrated interest" regarding the subject matter of other speech to conclude that the subject matter was one of public concern). When determining whether an employee's speech addresses a matter of public concern, we look to "the content, form, and context of a given statement, as revealed by the record as a whole." Id. at 147-48. In this case, the parties stipulated that Yniguez communicates the Risk Management Division's dispositions of malpractice claims in Spanish to persons who are only able to speak in Spanish, persons whose English is not well-developed, and persons who are unable to understand the English language to comprehend the legal import of the document they are signing. Those claimants clearly have an interest in receiving information about their claims in Spanish since they would not otherwise be able to understand the information. Therefore, Yniguez's Spanish language communications touch matters of public concern.

On the efficiency side of the Waters/Pickering balance, the public's interest in receiving Yniguez's communications is once again an important factor. If a recipient of Yniguez's information did not have an interest in receiving the information in Spanish, it would not be efficient for Yniguez to communicate with that person in Spanish. For example, if Yniguez's audience was a mono-lingual English-speaker, undeniably it would be inefficient for her to talk to that person in Spanish. But that is not the situation here. The parties in this case stipulated that Yniguez only speaks Spanish to mono-lingual Spanish-speakers, or people whose "English language [skills] were not sufficiently well-developed to understand all of the English language expressions and ideas which [Yniguez] desired to communicate." Use of Spanish under these circumstances, as the parties stipulated, "contributes to the efficient operation of the State."

Under the facts of this case, the public interest in Yniguez's use of Spanish is a necessary consideration under the Waters/Pickering test. Consideration of the public's interest in receiving Yniguez's Spanish language communications is only for the purpose of establishing her right to speak, not of establishing the public's right to receive. Yniguez's Spanish-speaking audience has an interest in listening to her Spanish-language speech, and that interest helps define her right to speak in Spanish. Nowhere is it implied that her audience has a right to hear her, or any other government employee, speak in Spanish.

REINHARDT, Circuit Judge, concurring specially.

Judge Kozinski's separate dissent requires separate comment. In the latest chapter of his crusade against the use of languages other than English in public, it is what Judge Kozinski does not say that is most revealing. My learned colleague, who is surely expert in these matters by now, ignores completely the constitutional interests of the numerous non-English speakers. There is nothing novel about the fact that the interests of the audience as well as of the speaker are protected by the First Amendment. Yet Judge Kozinski does not even mention, let alone discuss Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 478 (1976), or United States v. National Treasury Employees Union, 115 S. Ct. 1003 (1995), decisions that make it clear that in dealing with First Amendment questions we must consider the needs of the audience. In fact, the constitutional interests of the public are at their height when its members seek information of vital importance from the government. In the end, then, it is the

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interests of non-English speaking persons, often poor and uneducated, that are so compelling here.

*12 If Judge Kozinski had his way, bilingual government clerks would not be able to advise persons who can speak only Spanish-or Chinese or Navajo-how to apply for food stamps, or aid for their children, or unemployment or disability benefits. Public employees would be prohibited from helping non-English speaking residents file complaints against those who mistreat them or who violate their rights or even from helping them secure driver's licenses or permits to open small businesses. Bilingual traffic officers would not be able to give directions to nearby medical clinics or schools. Migrant farm workers who cannot speak English would find themselves cut off from almost all government assistance by an impenetrable language barrier. Recent immigrants in general, including many who fled persecution, would find their lives in their adopted land unduly harsh and bewildering. Yet, not a word of concern for the less fortunate among us finds its way into Judge Kozinski's constitutional analysis.

At the same time that Judge Kozinski callously ignores the interests of people, he stretches eagerly to place the powers of the government, in its role as speaker, beyond the reach of the Constitution. Indeed, it is the rights of the government that Judge Kozinski stresses at every opportunity. If Judge Kozinski had his druthers, public employees would be stripped of all First Amendment rights while performing their governmental functions. [FN1] There would be nothing that Government-from the tiniest municipality on up-could not compel its employees to say, no matter how racist or abhorrent, and nothing that Government could not fire its employees for saying, no matter how innocuous. His would be an Orwellian world in which Big Brother could compel its minions to say War is Peace and Peace is War, and public employees would be helpless to object. It would not matter whether government had a legitimate purpose or even whether it had a purpose at all.

The difference between the majority's view and Judge Kozinski's is simple. The majority says that under the First Amendment there are limits to what the government can force its employees or officials to say in the course of performing their official duties while Judge Kozinski says that there are none. To me, unlimited government power in any form is a foreign notion indeed.

Judge Kozinski does Abraham Lincoln no honor by seeking to enlist his words in support of a mean-spirited, nativist measure-a measure that would create so much division and ill will and that would so severely penalize those among us who are unable to communicate in English. The end result of Judge Kozinski's legal approach would be to punish people who are not as fortunate or as well educated as he-people who are neither able to write for nor read the Wall Street Journal, and indeed would have little cause to do either.

Nor does Judge Kozinski advance his cause by disingenuously suggesting that his argument is a limited one, that the Arizona initiative might be unlawful for other reasons-just not on First Amendment grounds. Judge Kozinski has previously argued that languages other than English should be banished from the public arena. He openly favors conformity over diversity and would "preserv[e] native tongues and dialects for private and family gatherings." Gutierrez v. Mun. Ct. Of S.E. Judicial Dist., 861 F.2d 1187, 1193 (9th Cir.1988) (Kozinski, dissenting). Judge Kozinski's view of the rights of non-English speaking persons would make the Statue of Liberty weep. The divided house that Judge Kozinski fears is a world in which Spanish, Chinese, or Navajo is heard in public, a world in which individual liberty rather than government-mandated orthodoxy thrives.

*13 Judge Kozinski trots out a parade of horribles that he insists will come to haunt us if we do not accept his absolutist, authoritarian view. All his examples are absurd. No court in this country would protect a government employee who adopted one of

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the outlandish stances that Judge Kozinski so casuistically suggests. Were we to withhold rights from individuals because clever judges could conjure up hypothetical examples of frivolous law suits, there would soon be no rights left at all. Scare tactics are hardly a novel technique in my talented colleague's arsenal of en banc dissents. Recently, he warned that the majority opinion in another en banc case was a disaster of nearly unprecedented proportions, in fact a "tsunami." U.S. v. Gaudin, 28 F.3d 943, 955 (9th Cir.1994) (Kozinski, dissenting). In Gaudin, he wrote: "It's not every day, after all, that we provoke a conflict with every other regional circuit, defy Supreme Court authority, implicitly overrule several lines of our own case law-thereby creating a spider web of secondary circuit conflict...." Id. The majority held firm. The decision that Judge Kozinski so vehemently denounced was affirmed soon thereafter by the United States Supreme Court by a vote of 9-0. U.S. v. Gaudin, 115 S.Ct. 2310 (1995).

The true horror of this case is what could happen if Judge Kozinski's view prevailed. Government employees could be compelled to parrot racist and sexist slogans, to hurl hateful invective at non-English speaking people asking for assistance, to publicly declare their loyalty to political parties, and to bow toward the national or state capitol three times a day-and the First Amendment would offer them no protection whatsoever. Under Judge Kozinski's approach, non-English speakers would be relegated to second class status, deprived of information they desperately need to meet the basic necessities of their daily lives, and grievously handicapped in their efforts to pursue the American dream. It would be a sad day indeed for the Constitution were we to betray our nation's history and uphold a measure that is so alien to America's most basic traditions.

FN1. I do not mean to suggest that my worthy colleague would discriminate against public employees. They would fare no worse in his regime than private employees. Judge Kozinski would strip the latter of the rights of the basic job protection provisions that they fought for so long and so bitterly. See Judge Kozinski's dissent in Sanders v. Parker Drilling Co., 911 F.2d 191, 204 (9th Cir.1990), in which Judge Kozinski advocated upholding permanent discharges of employees on the basis of mere suspicion, notwithstanding a just-cause-for-discharge clause.

FERNANDEZ, Circuit Judge, with whom Chief Judge Wallace and Judges Hall and Kleinfeld join, dissenting.

The State of Arizona, through its initiative process, added Article XXVIII to the State's constitution. That Article made English the official language of "the public schools and all government functions and actions." Ariz. Const. art. XXVIII, § 1(2). It also directed that the State and all of its political subdivisions shall "act in English and in no other language," except in a handful of instances. Id. at § 3. The Article applies to "all government officials and employees during the performance of government business." Id. at § 1(3)(a)(iv). Maria-Kelley F. Yniguez [FN1] does not like Article XXVIII as a matter of policy. I can understand and sympathize with that. It is when she goes beyond the realm of policy and seeks to show that the Article violates the First Amendment to the United States Constitution that she goes astray. It is there that we part company.

*14 She, in effect, proceeds from the fundamentally flawed assumption that while performing government business an official [FN2] or employee has much the same freedom as a private citizen. That leads her into a thicket of incorrect assumptions and assertions about the nature of her speech rights, the nature of language, [FN3] and the rights and duties of the State when it chooses to speak for itself. As a result, she has left the proper analytical pathway and become hopelessly lost in a forest of her own hopes.

I believe that a relatively brief explanation of the relevant constitutional principles will adumbrate the proper path and show that Article XXVIII does not violate Yniguez's First Amendment rights. [FN4] In so doing I will assume, without deciding, that Article

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XXVIII is just as broad as it appears on its face and that it will, indeed, preclude Yniguez and other employees and officers of the State from speaking in a language other than English when performing state business, unless one of the special exceptions applies.

There can be no doubt that a public employee, like Yniguez, does not have a full panoply of freedoms to do what she likes when she is performing her job. On the contrary, the State can place numerous restrictions upon its employees. The very nature of the employment relationship allows that. For example, even were it assumed that "the citizenry at large has some sort of 'liberty' interest within the Fourteenth Amendment in matters of personal appearance," an employee may be restricted unless the regulation "is so irrational that it may be branded 'arbitrary.' " Kelley v. Johnson, 425 U.S. 238, 244, 248, 96 S. Ct. 1440, 1444, 1446, 47 L. Ed. 2d 708 (1976). Similarly, a citizen's Fourth Amendment privacy rights may be limited at his place of work. See O'Connor v. Ortega, 480 U.S. 709, 724-25, 107 S. Ct. 1492, 1501, 94 L. Ed. 2d 714 (1987). And even restrictions that reach beyond the job itself to activities outside the workplace may be proper. See United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers, 413 U.S. 548, 557-65, 93 S. Ct. 2880, 2886-90, 37 L. Ed. 2d 796 (1973) (political campaigning or officeholding); cf. United States v. National Treasury Employees Union, ___ U.S. ___, 115 S. Ct. 1003, 1013-15, 130 L. Ed. 2d 964 (1995) (at least persons who are not senior executive officers, members of Congress, or judges cannot be subjected to a blanket ban on honoraria when they address "a public audience ... outside the workplace, and [the] content [is] largely unrelated to their government employment").

It is true that we have come some way since Holmes, then a Justice of the Supreme Court of Massachusetts, wrote that "[a policeman] may have a constitutional right to talk politics, but he has no constitutional right to be a policeman." McAuliffe v. Mayor of New Bedford, 29 N.E. 517, 517 (Mass.1892). Still and all, as demonstrated by our continued restrictions on political action, we have not entirely abandoned even that concept. It is also true that " 'the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected.' " Keyishian v. Board of Regents, 385 U.S. 589, 605-06, 87 S. Ct. 675, 685, 17 L. Ed. 2d 629 (1967); see also Wieman v. Updegraff, 344 U.S. 183, 191-92, 73 S. Ct. 215, 218-19, 97 L. Ed. 216 (1952) (oath regarding joining a revolutionary political party). But none of this is helpful to Yniguez, for the erosion of the restrictions upon employees has taken place in the area of their activities while they are not performing government functions. Membership in a political party or engaging in nongovernmental writing or other private activities is not the performance of a government function.

*15 The distinction cuts closer to the bone when the Supreme Court's treatment of public versus private speech is considered. I will not go through the extensive history of that jurisprudence because its details have little to do with this case. The law in that area keys on the content of the speech itself. That is, was the speech on a matter of public concern or was it on a matter of private concern? See, e.g., Waters v. Churchill, ___ U.S. ___, 114 S. Ct. 1878, 1887, 128 L. Ed. 2d 686 (1994). Here, the issue involves the language used, not the public or private concern content of the language. An employee might well speak out on a matter of public concern in any language, or might simply engage in private-concern grumbling or disruption in any language. The language does not, in the sense used here, change the content at all.

What is important, however, is the Supreme Court's description of the strength of the government's interests and the scope of a government employee's First Amendment rights. If the matter involved is not one of public concern, the court has left the matter almost entirely in the hands of the employing authority. As the Court said in Connick v. Myers, [illegible] U.S. 138, 146-47, 103 S. Ct. 1684, 1690, 75 L. Ed. 2d 708 (1983):

[I]f Myers' questionnaire cannot be fairly

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characterized as constituting speech on a matter of public concern, it is unnecessary for us to scrutinize the reasons for her discharge. When employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment. Perhaps the government employer's dismissal of the worker may not be fair, but ordinary dismissals from government service which violate no fixed tenure or applicable statute or regulation are not subject to judicial review even if the reasons for the dismissal are alleged to be mistaken or unreasonable.

....

[W]hen a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior.... Our responsibility is to ensure that citizens are not deprived of fundamental rights by virtue of working for the government; this does not require a grant of immunity for employee grievances not afforded by the First Amendment to those who do not work for the State.

The Court went on to say that not "all matters which transpire within a government office are of public concern...." Id. at 149, 103 S. Ct. at 1691. See also Waters, ___ U.S. at ___, 114 S. Ct. at 1886-87 (1994).

It is worthy of note that even if the speech is of public concern, the employee does not have all of the freedom of speech of a private citizen. The government can still discipline the employee in the name of efficiency and the like if the government's interests in promoting those other concerns outweigh the employee's interest in speaking out. See, e.g., id. at ___, 114 S. Ct. at 1887-88; Connick, 461 U.S. at 149-54, 103 S. Ct. at 1691-93; Pickering v. Board of Educ., 391 U.S. 563, 568-71, 88 S. Ct. 1731, 1734-36, 20 L. Ed. 2d 811 (1968). It is from this public concern balancing that Yniguez seeks to draw substantial support because the State has conceded that her speaking in a language other than English would often be more efficient. But efficiency is not the point because this is not a public concern speaking-out case. Nor, as I have said, do I think it is exactly a private concern case. In fact, none of the Supreme Court decisions regarding public or private concern speech involved an employee who was hired to speak for the government and who performed that function in a manner contrary to her instructions.

*16 However, if I were forced to place this case in one pigeonhole or the other, I would say that it is more like a case of private concern speech. The simple fact is that the State, through its constitution, has determined that its work will be done in English, and Yniguez, for her own private reasons, does not wish to obey that determination. At any rate, unless one is thoroughly committed to the economic theory of law, which I am not, one must agree that more than efficiency drives the policies of government. Indeed, as most dictators seem to believe, freedom itself can be very very inefficient.

Yniguez nevertheless argues that her use of a language of her choice to perform the State's business cannot be restricted. It can be said that each language has a content of its own and that languages are a mode of expressing ideas. Yniguez argues that because words are the skins of ideas, the content of what is said changes as one moves from one language to another. I think that it is true, but true to a limited extent. It is sometimes difficult enough to make oneself understood in a single language, and the difficulty can be multiplied when one attempts to translate that language into another. However, we should not put too much weight on the difficulties, for it is pellucid that languages are not so protean that we cannot recognize ideas in translation. Yet, I will assume (along with Yniguez) that the content does change to a measurable extent when the State's rules, regulations, and messages are changed into a different language, even if language is not pure

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content.

If that is true, it is a powerful reason to uphold Article XXVIII. It is well settled that the State has the right to control the content of what it is paying for; it can control what is said by those who are acting on its behalf. As the Supreme Court put it in Rosenberger v. Rector and Visitors of Univ. of Va., ___ U.S. ___, ___, 115 S. Ct. 2510, 2518-19, 132 L. Ed. 2d 700 (1995):

> [W]hen the State is the speaker, it may make content-based choices. When the University determines the content of the education it provides, it is the University speaking, and we have permitted the government to regulate the content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message. In the same vein, in Rust v. Sullivan [500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991)] we upheld the government's prohibition on abortion-related advice applicable to recipients of federal funds for family planning counseling. There, the government did not create a program to encourage private speech but instead used private speakers to transmit specific information pertaining to its own program. We recognized that when the government appropriates public funds to promote a particular policy of its own it is entitled to say what it wishes. 500 U.S. at 194. When the government disburses public funds to private entities to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee.

*17 Cf. Garcia v. Spun Steak Co., 998 F.2d 1480, 1487 (9th Cir.) (private employers may preclude speaking of a language other than English on the job-"an employee must often sacrifice individual self-expression during working hours"), reh'g en banc denied, 13 F.3d 296 (1993), cert. denied, ___ U.S. ___ 114 S. Ct. 2726, 129 L. Ed. 2d 849 (1994); Jurado v. Eleven-Fifty Corp., 813 F.2d 1406, 1410-12 (9th Cir.1987) (private radio broadcaster may insist that its employees broadcast in English); Garcia, 13 F.3d at 302 ("No reasonable person would suggest that Title VII requires the operator of an English language radio station to permit a hired broadcaster to broadcast ... in another language....") (Reinhardt, J., dissenting from denial of rehearing en banc); Gutierrez v. Municipal Court, 838 F.2d 1031, 1041 (9th Cir.), reh'g en banc denied, 861 F.2d 1187 (1988), vacated as moot, 490 U.S. 1016, 109 S. Ct. 1736, 104 L. Ed. 2d 174 (1989).

Thus, to the extent that language involves content, the State may choose to direct what that content must be. Moreover, it can hardly be doubted that the State can even choose to foster a particular language to some extent. As the Supreme Court said in Meyer v. Nebraska, 262 U.S. 390, 402, 43 S. Ct. 625, 628, 67 L. Ed. 1042 (1923) (emphasis added): "The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned." Certainly, if the State can require teaching in a particular language, it can itself choose to use a particular language to express the content of what it has to say.

To the extent that a language involves a mode of expressing ideas which themselves could be expressed in different languages, Yniguez's argument fares no better. It is most difficult to see why the State cannot constitutionally require its employees to use one mode of expression-one language-just as it can require that its employees use a particular mode of performing the rest of their duties. Surely, for example, the State can direct that its ditches be dug and that its contracts be let in particular ways, even if an employee correctly thinks that another mode of performance would be more efficient. Any good employer will listen to its employees' suggestions about how a job may best be done, but employers are not required to follow those suggestions. Nor does the First Amendment change that. Cf. Smith v. Arkansas State Highway Employees, 441 U.S. 463, 465, 99 S. Ct. 1826, 1828, 60 L. Ed. 2d 360 (1979) (per curiam).

When a mode of expression attracts First Amendment scrutiny, it is because it

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implicates ideas themselves. There is nothing sacrosanct about the mode. It, as a mode, could be regulated if the regulation only be rational. But where the mode becomes laden with content, the mode itself may be scrutinized so that any protected content will not be injured. As the Supreme Court said in R.A.V. v. City of St. Paul, ___ U.S. ___, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992), in reference to sound trucks and fighting words: "[e]ach ... is a 'mode of speech' ...; both can be used to convey an idea, but neither has, in and of itself, a claim upon the First Amendment." Id. at ___, 112 S. Ct. at 2545. See also Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293-95, 104 S. Ct. 3065, 3068-69, 82 L. Ed. 2d 221 (1984) (assuming-not deciding-that overnight camping is expressive conduct, it can still be regulated); United States v. O'Brien, 391 U.S. 367, 375, 88 S. Ct. 1673, 1678, 20 L. Ed. 2d 672 (1968) ("We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea."). The point is underscored by Texas v. Johnson, 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989). There, even though the mode of showing contempt was the highly expressive and content-laden act of burning the flag, only a bare majority of the Court was willing to find constitutional protection for the defendant's activities. Id. at 420, 109 S. Ct. at 2548.

*18 Thus, Yniguez cannot seek First Amendment protection of the pure mode element of a language. The mode must itself seek shelter under the wing that protects the expressive or content element. However, as already indicated, the content element cannot help her here.

Of course, none of this means that the State can preclude the general public from learning or speaking a particular language. The State cannot do that. See Farrington v. Tokushige, 273 U.S. 284, 299, 47 S. Ct. 406, 409, 71 L. Ed. 646 (1927); Bartels v. Iowa, 262 U.S. 404, 411, 43 S. Ct. 628, 630, 67 L. Ed. 10[illegible] (1923); Meyer, 262 U.S. at 400-03, 43 S. Ct. at 627-28; cf. Pierce v. Society of Sisters, 268 U.S. 510, 534-35, 45 S. Ct. 571, 573, 69 L. Ed. 1070 (1925). It does mean that any protection must be sought in a place other than the First Amendment, or for something other than the mode itself.

The penultimate line needed to sketch the path out of Yniguez's thicket can be drawn by considering the fact that individual citizens have no constitutional right to require that state services be performed in any particular language. When plaintiffs asserted that they had a constitutional right to have the State supply Spanish-speaking employees and notices in Spanish, we turned that claim aside. See Carmona v. Sheffield, 475 F.2d 738, 739 (9th Cir.1973). And when a demand for bilingual education was made, we also turned that aside. Guadalupe Org., Inc. v. Tempe Elementary Sch., Dist. No. 3, 587 F.2d 1022, 1026-27 (9th Cir.1978). As we saw it, that was a question of a high political order and was one for the people themselves to decide. Id. at 1027. The people of Arizona decided the question here, for good or ill.

This case, then, presents a confluence of lines of argument. Employees of the State are subject to numerous restrictions upon their freedoms, their actions, and their speech, which the government could not impose upon the general public. The State can, in general, control the content and mode of its own speech, and the general public does not have a constitutional right to have the State provide services in any particular language. In the face of all of that, it is well nigh unintelligible to say that individual officers and employees of the State can perform state business in a language of their own choice, despite the State's direction that they shall use a particular language.

Of course, I recognize that a State's restrictions upon its employees must not be so irrational that they may be branded arbitrary. See Kelley, 425 U.S. at 248, 96 S. Ct. at 1446. Can this Article of the Arizona Constitution be so branded if we believe it to be ill-conceived? I think the answer lies in Guadalupe Organization, 587 F.2d at 1027 (citation omitted):

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Linguistic and cultural diversity within the nation-state, whatever may be its advantages from time to time, can restrict the scope of the fundamental compact. Diversity limits unity. Effective action by the nation-state rises to its peak of strength only when it is in response to aspirations unreservedly shared by each constituent culture and language group. As affection which a culture or group bears toward a particular aspiration abates, and as the scope of sharing diminishes, the strength of the nation-state's government wanes.

*19 Syncretism retards, and sometimes even reverses, the shrinkage of the compact caused by linguistic and cultural diversity. But it would be incautious to strengthen diversity in language and culture repeatedly trusting only in the syncretic processes to preserve the social compact. In the language of eighteenth century philosophy, the century in which our Constitution was written, the social compact depends on the force of benevolence which springs naturally from the hearts of all men but which attenuates as it crosses linguistic and cultural lines. Multiple linguistic and cultural centers impede both the egress of each center's own and the ingress of all others. Benevolence, moreover, spends much of its force within each center and, to reinforce affection toward insiders, hostility toward outsiders develops.

The fundamental nature of these tendencies makes clear that their scope varies from generation to generation and is fixed by the political process in its highest sense. The Constitution, aside from guaranteeing to individuals certain basic rights, privileges, powers, and immunities, does not speak to such matters; it merely evidences a compact whose scope and strength cannot be mandated by the courts but must be determined by the people acting upon the urgings of their hearts. The decision of the appellees to provide a predominantly monocultural and monolingual educational system was a rational response to a quintessentially "legitimate" state interest. The same perforce would be said were the appellees to adopt the appellants' demands and be challenged by an English-speaking child and his parents whose ancestors were Pilgrims.

Whatever may be the consequences, good or bad, of many tongues and cultures coexisting within a single nation-state, ... [their validity] cannot be determined by reference to the Constitution.

In fine, the people of the State of Arizona did not violate the First Amendment when they adopted Article XXVIII. For good or ill, it was a question "for the people to decide." Id.

Therefore, I respectfully dissent.

FN1. She has been joined by Arizonans Against Constitutional Tampering (AACT), but this opinion will generally hereafter refer only to her for notational convenience.

FN2. I see no substantial difference between employees and state officials when the officials are performing the business of the state.

FN3. I use the word "language" to refer to those bodies of words and their pronunciation and methods of combining them which are used and understood by a considerable community and established by long usage. See Webster's Third New International Dictionary 1270 (1986). Most prominently mentioned in this case are English and Spanish.

FN4. I undertake this explication with some disquiet because a jurisdictional question broods over this case. Yniguez herself no longer works for the State. That certainly moots her claim for injunctive relief. The Attorney General says that the State has expressly waived its Eleventh Amendment defense to nominal damages, but Yniguez did not ask for those damages in the district court. It seems unusual to allow her to now appeal the failure of the district court to grant those damages. See Fitzgerald v. Century Park, Inc., 642 F.2d 356, 359 (9th Cir.1981) (declining to consider plaintiff's request for nominal damages raised for the first time on appeal). As to AACT, we have no evidence before us to indicate that it meets the requirements of the traditional standing doctrine. See Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441, 53 L. Ed. 2d 383 (1977). However, we have

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declared a special rule that public interest group sponsors and supporters of initiative measures have standing as of right. See United States v. City of Oakland, 958 F.2d 300, 301 (9th Cir.1992); Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 527-28 (9th Cir.1983), aff'd, 790 F.2d 760 (9th Cir.1986); Washington State Bldg. & Constr. Trades Council v. Spellman, 684 F.2d 627, 630 (9th Cir.1982), cert. denied, 461 U.S. 913, 103 S. Ct. 1891, 77 L. Ed. 2d 282 (1983). The same rule must apply to public interest group opponents of initiative measures. Thus, I press on.

WALLACE, Chief Judge, concurring.

*20 I fully join Judge Fernandez's dissent. I add the following:

Yniguez's claim that the Article regulates speech, not merely the expressive mode of speech, is dubious. The difficulties of Yniguez's claim become apparent when one tries to identify exactly what speech or message the Article suppresses. If Yniguez is able to identify to us in English the messages that the Article suppresses, she would thereby communicate those messages which she claims only Spanish can convey. In other words, by stating in English the speech or message which the Article restricts, Yniguez undermines her claim that her message can only be expressed in Spanish. Saddled with this problem, the majority, therefore, never identifies the content of the speech which the Article suppresses and writes vaguely about the Article's restrictions.

It is untenable for the majority to hold that the Article restricts pure speech yet fail to identify suppressed messages. This difficulty strengthens the undeniable conclusion that the Article regulates the mode of speech, not pure speech. This conclusion should end the matter, for mere regulation of government employees' mode of speech does not implicate the First Amendment or require the various balancing tests which the majority employs.

The majority's failure to identify clearly the meaning conveyed by using one language rather than another confuses its evaluation of the interests favoring First Amendment protection. Building on recent Supreme Court decisions, the majority considers the public's right to "receive information and ideas" in order to determine whether Yniguez's speech is protected. Yet, the majority can point to no bit of information about medical malpractice claims which can only be communicated in a non-English language-and which Article XXVIII would thereby restrict Yniguez from communicating and the public from receiving. The majority is simply unable to show the public's interest in the unique content and meaning which Yniguez can only convey in the Spanish language. Instead, it points to the interests members of the public have in receiving Yniguez's message in a manner and language they can easily understand. In effect, the majority asserts that many Arizonans would prefer Yniguez speak in a mode which they can easily understand-no doubt a true observation, but the public's interest in a civil servant's particular mode of communication does not warrant First Amendment protection.

Also, the majority's view that when Yniguez speaks in a language other than English, she comments as a citizen on a matter of public concern ignores the cases which define "matter of public concern." These cases look to the content of public employees' speech to see whether it contributes to public debate. See United States v. National Treasury Employees Union, 115 S. Ct. 1003, 1015 (1995) (matter of public concern were speeches and articles for which government employees received payment); Rankin v. McPherson, 483 U.S. 378, 386 (1987) (matter of public concern was employee's highly negative opinion of President's policies); Connick v. Myers, 461 U.S. 138, 148 (1983) (questions about pressure [illegible] government lawyers to participate on political campaigns did not constitute speech on matter of public concern); Pickering v. Board of Educ. of Township High School Dist., 391 U.S. 563, 569 (1968) (matter of public concern was letter to editor discussing school budget).

*21 Contrary to precedent, the majority rules that if members of the public would like to receive public employees' speech in a

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certain way, that desire constitutes a matter of public concern. Such reasoning ignores the difference between a government employee who contributes to the marketplace of ideas and an employee who speaks in a mode which helps members of the public understanding what he says. The most recent Supreme Court case on point found that speech is of public concern when it "addresse[s] a public audience, [is] made outside the workplace, and involve[s] content largely unrelated to ... government employment." National Treasury Employees, 115 S. Ct. at 1013. The purportedly suppressed speech here does not fit this description.

KOZINSKI, Circuit Judge, with whom Judge Kleinfeld joins, dissenting.

A house divided against itself cannot stand.- Abraham Lincoln

Government has no mouth, it has no hands or feet; it speaks and acts through people. Government employees must do what the state can't do for itself because it lacks corporeal existence; in a real sense, they are the state. This case is about whether state employees may arrest the gears of government by refusing to say or do what the state chooses to have said or done.

The majority says yes. Or, to be precise, it says the employees may force their employer into federal court and make it prove, to the exacting standard of the First Amendment, that its interest in enforcing its laws outweighs their right not to make statements they find objectionable. This is an extraordinary ruling with explosive and far-reaching consequences. Almost everything government does involves a communication of some sort and those charged with carrying out government functions sometimes disagree with what they are ordered to say or do. Before today, however, it was understood that government employees have no personal stake in what they say in the course of employment because that speech is the government's, not theirs.

Today's decision rends this fundamental understanding of how government works by giving bureaucrats the right to turn every policy disagreement into a federal lawsuit. Maria-Kelly Yniguez was hired by the State of Arizona to perform various functions connected with processing medical malpractice claims. The people of Arizona-Yniguez's ultimate superiors then augmented her duties: They charged her with promoting English by using only that language for official business. The people of Arizona were warned that this might disrupt services and make government employees less efficient. See Arizona Publicity Pamphlet 32-33 (General Election, Nov. 8, 1988) (arguments against Proposition 106 by Rose Mofford, Governor; Morris K. Udall, U.S. Representative; Jesus "Chuy" Higuera, Arizona State Senator). Arizonans nevertheless chose to make this tradeoff. Since they were paying Yniguez's salary, I had assumed it was their call whether Yniguez spent her work-time processing claims, promoting English or twiddling her thumbs.

*22 Not so, says the majority. Because the law in question requires Yniguez to speak, she acquires First Amendment rights in the content and manner of that speech. Majority Op. at 12734-44. What Yniguez says, and in what tongue, is thus no longer a business judgment by her employer; it's a constitutional question. If Yniguez disagrees, she can haul her employer into federal court and force it to prove that the law's advantages outweigh her right to say what she pleases. Nor is this pro forma, rationality review. As the interminable majority opinion demonstrates, this is high-octane review involving all sorts of substantive judgments about the wisdom and efficacy of the law in question. Majority Op. at 12744-54.

Such scrutiny is highly intrusive, as well as costly and time-consuming. We must ask ourselves, therefore, whether similar challenges could be raised by other government employees with qualms about the laws they're hired to enforce. The alarming truth is that there's nothing unique about Yniguez's situation, nothing unusual about her claim. The same sort of challenge could be

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raised by just about every disgruntled government employee.

Consider the following example: A Deputy Attorney General develops doubts about whether the death penalty is constitutional; he files a brief urging the state supreme court to vacate a death sentence. Can the Attorney General discipline him? Not anymore. Like Yniguez, the Deputy can claim the brief is his speech (after all, it carries his name) and he has First Amendment rights not to say things that chafe his conscience and offend the Constitution. He can argue, as does Yniguez, that the law in question serves no legitimate purpose; he can show, like Yniguez, that abandoning the law would make him more efficient.

How can the state meet such a challenge? How can it hope to establish, to the demanding standard erected by the majority, that its interest in pursuing the death penalty outweighs the Deputy's First Amendment right to espouse a contrary view? Whether the death penalty deters violent crime or serves other legitimate ends are questions about which reasonable minds differ; there are many-including some of my colleagues, see, e.g., Stephen Reinhardt, "The Supreme Court, The Death Penalty, and the Harris Case," 102 Yale L.J. 205, 216 (1992) (" [T]he courts may be functionally incapable of handling death penalty cases fairly and judiciously.")-who believe the death penalty is a cruel anachronism. The state couldn't demur that the Deputy's superiors had made the policy judgment and merely assigned him the task of implementing it. Yniguez's superiors had decided to promote the use of English and merely assigned her the job of implementing that policy. Like Yniguez, the prosecutor would be entitled to argue that the federal court should change his job description.

So too would millions of other government employees, like the following:

* City adopts bilingual policy to give non-Anglophone residents better access to government services, but employee claims a First Amendment right to speak only English. In his view, use of other languages denies minority groups a fair opportunity to assimilate.

*23 * Social worker disagrees with county's policy of encouraging single mothers to enter the workforce and tells mother to stay home with her baby.

* Public school teacher disagrees with school district's policy of teaching evolution and tells students that man sprang into being from the tears of the Egyptian god Ra-Atum.

* Deputy sheriff thinks Miranda warning is silly and tells suspects, "Lawyers are slimeballs. 'Fess up, and the judge'll go easy on you."

* Recruiter for public university disagrees with state's affirmative action policy and tells minority applicants not to "expect any favors."

Most cases may, after much litigation, be resolved in favor of the government. But there would be no way to keep them out of court. And in no case would the state be entitled to say, "We chose policy X because we had a hunch it might work, but we haven't any proof." No, indeed. When confronted with what will come to be known as a Yniguez challenge, states, cities, counties, even the federal government, will have to prove that their laws are worth the candle; courts will routinely make judgments traditionally reserved for the legislature and the people themselves. By comparison, Lochner v. New York, 198 U.S. 45 (1905), will seem like a paean to judicial restraint.

This problem cannot be solved by tinkering with the fine points of the rule announced today. The fault lies in the rule's central premise-the dangerous notion that government employees have a personal stake in the words they utter when they speak for the government. The force of this idea will turn government employment into a platform for endless attacks on government policy and governance into a tug of war between those who make the laws and those who enforce them.

The majority masks the enormity of its departure by pretending this is just another employee-speech case like Pickering v. Board

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of Educ., 391 U.S. 563 (1968), or Waters v. Churchill, 114 S. Ct. 1878 (1994). But the question in those cases was whether employees could be disciplined for what they said as private citizens. In such circumstances, the Court explained, "[t]he problem ... is to arrive at a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Pickering, 381 U.S. at 568 (emphasis added). Yniguez's case has nothing in common with Pickering because the speech here belongs to the government; there's nothing to balance.

Under Pickering and Waters, Yniguez can try to change the law through the political process; she can speak out against Article XXVIII on her own time, and in any language she pleases; she can campaign for its repeal. This is much different from the right the majority creates for her-the right to block government policy because she happens to disagree with it.

*24 Twice in recent years has the Supreme Court relied on the pivotal distinction the majority ignores. In Rust v. Sullivan, 500 U.S. 173 (1991), federally-funded medical clinics were prohibited from counseling about abortion; the clinics argued that this prohibition violated the free speech rights of their employees. The Supreme Court shrugged: Those who work in clinics that take federal money must conform their on-the-job speech to federal law. This doesn't offend the First Amendment because "[t]he employees remain free ... to pursue abortion-related activities when they are ... acting as private individuals." Id. at 198-99.

The Court again addressed the issue in Rosenberger v. University of Virginia, 63 U.S.L.W. 4702 (U.S. June 29, 1995). The question in Rosenberger was whether the state could deny funding to a student publication based on its content. The Court said no, because the speech at issue wasn't the government's. In reaching this conclusion, it distinguished Rust and Widmar v. Vincent, 454 U.S. 263 (1981), as standing for the proposition that "when the State is the speaker, it may make content-based choices." 63 U.S.L.W. at 4706. The Court went on to explain that it has "permitted the government to regulate the content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message." Id. (emphasis added).

Confronted with recent Supreme Court cases that cut the heart from its analysis, the majority responds with ... a footnote. Majority Op. at 12735 n.24. And what a footnote! As best one can tell, the majority reads Rust and Rosenberger as applying only where the government uses a private party to disseminate its message, not where it speaks through its own employees. This would be a pretty good argument, were it not for two things: the Supreme Court's language and common sense. As for language, one need look no farther than the passage from Rosenberger underscored above. The Court there holds that government may control the content of speech both where "it is the speaker" and where "it enlists private entities to convey its own message." Rosenberger, 63 U.S.L.W. at 4706. Since government "is the speaker" only through its employees, Rust and Rosenberger clearly encompass Yniguez's situation. In dismissing these cases as dealing with "entirely different circumstances," the majority overlooks what the Court in fact said.

But put language aside and consider the logic of the situation: What earthly reason would there be to give employees of government-subsidized entities fewer First Amendment rights than public employees? Does the majority think the government could refuse to fund an otherwise qualified private group because its employees speak out against the government? Or belong to the wrong political party? Or practice an unpopular religion? Surely not. Pickering, Waters and Branti v. Finkel, 445 U.S. 507 (1980), protect employees of private entities vying for government funding no less than public employees. The reason Rust and Rosenberger saw no First Amendment problem when government controls the speech of those who

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carry its message is that this is perfectly consistent with Pickering. Rust and Rosenberger stand squarely for the proposition that the government may write the script when it is the speaker.

*25 This is not to say that Arizona's English-only policy is constitutional. As the majority and the concurrence point out, Article XXVIII makes it harder for many Arizonans to receive government services. A successful challenge might be raised by those whose ability to deal with their government is thereby impaired. Nor is the First Amendment the only basis on which the policy might be attacked; Yniguez also charges that the English-only policy violates equal protection and conflicts with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. No court has yet considered these arguments, which go more directly to the heart of this dispute. But to give Yniguez the right to decide what she will say when she is the state's agent opens the courthouse door to countless other employees who disagree with some expressive aspect of their jobs. While I understand my colleagues' eagerness to do away with a law they see as misguided and divisive, the price they pay is too high. No rational society can afford it.

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