

Withdrawal/Redaction Sheet

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| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
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| 001. memo | Juanita C. Hernandez to Adrien Silas re: Comments to H.R. 739 and S.356, English Only bills; Control # L95101002481 (10 pages) | 10/12/1995 | P5 |

COLLECTION:

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

FOLDER TITLE:

[English Only - Legislation] [1]

ds73

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET



TO: Steve Wernuth

FAX NO.: 456-7028

FROM: JOHN TRASVINA

PHONE: 202/514-2111

DATE: 9-20

NO. OF PAGES: 1 (EXCLUDING COVER)

COMMENTS: DRAFT English Only Q + A.
Comment if you like.

- John
Also attached is my memo.

English as the Official Language

Q. Senator Dole recently announced his support for a constitutional amendment to make English the Official Language of the United States. Where does the Administration stand on that?

A. I think everyone, particularly newcomers to the United States, knows that to get ahead you have to know English. The government has a proper role, indeed a responsibility, to encourage English language proficiency. But that role properly is in educating children and adults. By contrast, the legislation and constitutional amendment focus on limiting people's access to government documents or services if they are not fully proficient in English.

Q. What do you find objectionable in the bill?

A. No hearings have been scheduled so we have not taken a formal position on the bill. However, some of the problems we have heard about include the provision to requiring federal employees to speak only English to U.S. citizens and repealing the Voting Rights Act provision which makes the process more understandable for citizens, particularly the elderly, not fully proficient in English. There are any number of appropriate uses of languages other than English, such as OSHA warning signs, court interpreters, and public health information, that would be called into question by the bill.

Q. Isn't the underlying solution to all the languages now being spoken to have a moratorium on all legal immigration?

A. No. We support a reduction in legal immigration that is consistent with the important principles of family reunification, fairness to United States workers, and encouragement of naturalization. The Jordan Commission rejected the notion of cutting off all legal immigration and so do we.



U. S. Department of Justice

Office of Legislative Affairs

Deputy Assistant Attorney General

Washington, D.C. 20530

M E M O R A N D U M

To: The Attorney General
From: John Trasviña
Re: Getback on English Only Legislation
Date: September 12, 1995

You have asked about the status of English Only legislation. The issue has recently surfaced because of Senate Majority Leader Dole's speech to the American Legion in support of making English the official language of the United States. The American Legion has long supported a constitutional amendment for this purpose. Approximately 22 states now have some version of an English Only law, most of which are solely symbolic, similar to an official bird or official flower law. Some state laws are intended to have teeth, but even these have not been implemented in ways which restrict constitutional rights.

We are working with the White House on various aspects of this issue and expect that the President or Vice President may speak to (i.e., against) the English Only issue during Hispanic Heritage Month, September 15-October 15.

A positive message to present is that there is an appropriate role for government to encourage English language usage--education, particularly for new or prospective citizens. These bills, by contrast, simply limit an individual's access to government without providing any additional resources to language training. Furthermore, in areas where English Only has become a public issue, hate crimes against Hispanics, Asian Americans and immigrants have increased. Finally, the issue ignores the situations of Native Americans and Puerto Rico residents who are U.S. citizens at birth but have a non-English speaking culture.

Constitutional Amendment

A constitutional amendment making English the official language of the United States was introduced by Senator Shelby and now has 18 sponsors. Although Constitution Subcommittee Chairman Hank Brown has expressed concern about the bilingual voting provisions of the Voting Rights Act, he has not expressed an interest to take up the constitutional amendment. Senators Hatch and Specter have supported bilingual voting in the past and would likely oppose a constitutional amendment. In short, a

constitutional amendment is unlikely to get out of the Judiciary Committee.

On the House side, there is more support for a constitutional amendment to make English the official language. Since there are so many new members of the House Judiciary Committee and it was always bottled up in subcommittee by Chairman Edwards, there is no reliable head count in the House on a constitutional amendment.

Legislation

Legislation to make English the official language of government is a more likely vehicle than the constitutional amendment. The House Early Childhood, Youth and Families Subcommittee Chairman Cunningham (R-San Diego) has announced but not yet scheduled a hearing on English only legislation this fall. In the Senate, the Governmental Affairs Committee is in flux with new chairman Senator Stevens of Alaska potentially reachable by Alaskan Natives in support of bilingual services.

In addition to repealing Title VII, the federal bilingual education law, and the bilingual provision of the Voting Rights Act, the key legislation, with over 180 House sponsors, would

- * Declare English the official language of government
- * Declare English the preferred language of communication among citizens of the United States
- * Require that communications by officers and employees of the federal government with U.S. citizens be in English.
- * Encourage U.S. citizens to read, write, and speak English to the extent of their physical and mental abilities.
- * Bar INS from waiving the English language requirement for senior citizens applying for naturalization
- * Require all naturalization ceremonies be conducted entirely in English
- * Not apply to use of languages other than English for religious purposes, training in foreign language for international communication or as terms of art in government documents.
- * Preempt any inconsistent state or federal law.

The legislation creates a private right of action and grant of attorney fees.

By eliminating federal educational and language assistance programs, and lacking an exemption for public health and safety, the bill has numerous flaws. Barring federal communications in languages other than English would implicate court interpreters, OSHA safety warnings, FDA warnings, even information to parents of school children who are not proficient in English.

Appropriations

Advocacy groups believe there is a minuscule possibility that a floor amendment could be drafted that would effectively cut off funds for language assistance or written materials in languages other than English. The House HUD-VA appropriations bill contains a provision that would bar HUD from investigating any state or local government that enacts English only legislation. Secretary Cisneros had previously raised a concern about a local Pennsylvania town ordinance that might have interfered with HUD programs by prohibiting the use of bilingual documents or depriving housing information to non-English speakers. HUD says this appropriations rider is of no consequence.

It is important to reformulate the debate into the proper role of the government to encourage people to learn English-- education. The House Labor-HHS-Education appropriations bill zeroes out bilingual support services and professional development and provides just one-third of the President's request on bilingual instructional services. On immigrant aid, reimbursement to states via a formula based on immigrant population, the House bill appropriates \$50 million, the same as FY95 but only half of the Administration's request.

Departmental Position

Because there have been no hearings, the Administration has not squarely addressed amending the Constitution to make English the official language. However, the previous Administration supported continuing the bilingual provisions of the Voting Rights Act through the year 2007 supported and President Clinton spoke out against English Only during the 1992 campaign.

Also, in 1993, the Department filed a brief seeking Supreme Court review of a 9th Circuit case, Garcia v. Spun Steak Co., and described English-Only rules in the workplace as having "a significant adverse impact on bilingual members of national origin minorities" because they limit an employee's range of expression and deprive persons of the opportunity to use the language in which they communicate most effectively.

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95-1054 EPW
October 20, 1995

CRS Report for Congress

Congressional Research Service • The Library of Congress

English as the Official Language of the United States: An Overview

Steven R. Aleman

Education and Public Welfare Division

Andorra Bruno

Government Division

Charles V. Dale

American Law Division

Congressional interest in designating English as the official language of the United States has recently increased as a response to a perceived challenge to English as the common language in America. Consideration of official English proposals raises not only specific issues as to design, but also broader issues regarding the direction of social policy. With respect to proposal design, questions raised include whether to amend the constitution or enact an official English statute, whether to limit application only to official government business, and whether to address related areas such as bilingual education. Regarding the direction of social policy, questions include the need for an official language, whether individual expression would be infringed, and the effect on cultural diversity. This report provides background on contemporary efforts to declare English the official language, a review of selected issues raised by official English proposals in Congress, and a summary of arguments that have been advanced in favor of and in opposition to such proposals.

Recent Developments

Thus far in the 104th Congress, seven official English bills and resolutions have been introduced. The House Committee on Economic and Educational Opportunities held a hearing on the topic of English as the official language of the United States on Oct. 18, 1995. Additional congressional hearings on the subject are anticipated this fall.

Background

INTRODUCTION. Throughout its history, America has had a linguistically diverse population. At the time of Independence, English was spoken as well as, for example, German, Dutch, French, and native American languages. The 1990 census found that 31.8 million persons age 5 years and older spoke a language other than English (14% of the total population). The census revealed that there were 39 languages with at least 50,000 speakers in the United States. The census reported that 6.7 million persons age 5 years and older indicated that they spoke English "not well" or "not at all" (3% of the total population).

Questions involving language policy have been before the Nation during this century. In 1906, Congress required that persons becoming naturalized citizens of the United States demonstrate the ability to speak and understand English. In 1923, the Supreme Court



CRS-2

ruled in *Meyer v. Nebraska* that the State's interest in fostering "a homogeneous people with American ideals" was not adequate justification to prohibit the teaching of school children in a foreign language. In 1968, the Bilingual Education Act (BEA) was enacted providing Federal aid to public schools for programs to meet the special educational needs of children of limited English proficiency. In 1975, Congress amended the Voting Rights Act requiring bilingual voting procedures where there are a significant number of citizens who do not speak English.

Today, some accommodations for individuals who are not able to communicate in English are made by Federal agencies. These accommodations generally take the form of providing documents in other languages and providing bilingual translators. The General Accounting Office (GAO) recently reported, for instance, that from 1990 to 1994, Federal agencies, other than the Defense and State Departments, published 265 documents in languages other than English.¹ The Social Security Administration was responsible for the single largest share of these documents (19%).² The exact extent and cost of all accommodations made by the Federal Government for language minorities are not known.

CONGRESSIONAL ACTION. Contemporary efforts in Congress to declare English the official language of the United States began in 1981 with the introduction of a Senate joint resolution proposing an amendment to the U.S. Constitution. Joint resolutions proposing different versions of an English language constitutional amendment have been introduced in every Congress since then, including the 104th. Hearings on English language amendment resolutions were held in 1984 by the Senate Judiciary Subcommittee on the Constitution and in 1988 by the House Judiciary Subcommittee on Civil and Constitutional Rights. No further action on the measures occurred.

While continuing to introduce resolutions to establish English as the official language by constitutional amendment, official English advocates tried another approach in the 101st Congress. In 1990, House and Senate bills were introduced to declare English as the official language of the U.S. Government by amending the United States Code. Official English bills incorporating this general approach, but varying in specific content, were also introduced in the 102nd and the 103rd Congresses. No action beyond committee referral was taken on any of these bills.

In the 104th Congress, multiple bills have been introduced to make English the Nation's official language by amending title 4 of the United States Code. The bills propose to add to title 4 a new Language of the Government chapter, which would declare English as the official language of the U.S. Government. As part of the new chapter, most of the bills would include a section stating that the U.S. Government shall conduct its official business in English. The term *official business* is defined in several bills as "those governmental actions, documents, or policies which are enforceable with the full

¹These documents represented less than 1% of all of the government documents reviewed by the GAO. See: U.S. General Accounting Office. Letter to Honorable Richard C. Shelby, Honorable William F. Clinger, Jr., and Honorable Bill Emerson. Washington, Sept. 20, 1995.

²These documents primarily provided information on various government benefits.

CRS-3

weight and authority of the Government." Each of the bills, however, provides for various exceptions to the required use of English. Some of the bills contain provisions requiring that naturalization ceremonies be conducted solely in English. Some explicitly repeal Federal bilingual education and bilingual voting requirements.

In addition to joint resolutions proposing English language constitutional amendments and bills to amend the United States Code, various other English language measures have been proposed in Congress over the years. One, a symbolic measure to express the sense of the Congress that English be declared the official language of the United States, was the subject of a Senate floor vote in 1982. This measure, which was offered as an amendment to an immigration bill, was adopted on a vote of 78 to 21.³

Symbolic measures introduced in the 104th Congress include a concurrent resolution recognizing the cultural importance of the many languages spoken in the United States and indicating the sense of the Congress that English should be maintained as a common language. Also before the current Congress is the "English Plus Resolution," which urges the U.S. Government to pursue policies that encourage all residents to become proficient in English and to learn other languages, and that "oppose 'English-only' measures⁴ and similar language restrictionist measures."

STATE ACTION. While congressional action on official English measures has been limited thus far, the official English movement has made considerable gains at the State level. Twenty-one States have declared English to be their official language, either by statute or by constitutional amendment. The majority of these declarations have occurred since 1984. State official-English designations vary in content. Some consist solely of statements that English is the State's official language, while others are more detailed and include such components as enforcement provisions.

Selected Issues

LEGAL QUESTIONS RAISED. The simple legislative declaration of English as the "[t]he official language of the Government of the United States" is a largely symbolic act of negligible legal effect. While it may be a congressional affirmation of the central place of English in our national life and culture, such declaration *per se* would neither require nor prohibit any particular action or policy by the Government or private persons. Nor would it, without more, imply repeal or modification of existing Federal or State laws and regulations sanctioning the use of non-English for various purposes. To varying degrees, however, the official English proposals before Congress give substance to this declaration by requiring adherence to English in the official affairs of all branches of the Federal Government -- the executive, judicial, or legislative.

³The immigration bill (S. 2222, 97th Cong.) was not enacted into law.

⁴Some opponents of official English measures use the terms *official English* and *English only* interchangeably. Supporters maintain that the terms are distinct. They argue that official English proposals would require only that the business of the U.S. Government be conducted in English, and would not prohibit the use of other languages in other contexts.

CRS-4

The "Language of Government Act of 1995" -- H.R. 123, H.R. 345, S. 175, and S. 356 -- makes a basic distinction in coverage between the "official business" of Government, meaning "enforceable" actions, documents or policies, and certain other unofficial governmental communications. Two of these bills, H.R. 345 and S. 175, also make an explicit exception for "primarily informational or educational" activities, an exemption that may be implicit in the definition of "official business" itself. However, because no legislative "bright line" appears to separate the official from unofficial business of government, questions could arise as to the official English status of various governmental functions which partake of both informational and sovereign attributes. One example may be taxpayer assistance programs conducted by the Internal Revenue Service to advise taxpayers of their legal rights and liabilities under the Federal income tax laws. Congressional operations -- involving the varied interaction of Members, Senators, and staff, with constituents, lobbyists, or other groups in their legislative or representative capacities -- may be another. H.R. 739 and H.R. 1005 may be less ambiguous in this regard. The former applies, with only minor exception, to "communications" generally -- presumably comprehending all forms of government information -- while H.R. 1005 likewise defines the Government's "official" business more broadly to include all "publications, income tax forms, and informational materials."

Another interpretative issue is whether the "official business" of government, subject to the official English mandate, embraces only the form of speech or linguistic medium used by the Federal Government, or its employees, to communicate with the public or may also extend to the content or substance of the message being communicated. If narrowly interpreted to reach only the formal aspect of governmental speech, and not its substance, the bills may have marginal impact on existing Federal rules and regulations governing treatment of linguistic minorities in education, voting, and public or private employment. On the other hand, the Language of Government Act could conceivably be read to apply both to form and substance of governmental speech so as to possibly preclude imposition of Federal bilingual requirements in these and other contexts. Absent legislative clarification, arguments may be marshalled on either side of this legal issue. Thus, apart from H.R. 739 and H.R. 1005 -- which expressly repeal Federal bilingual education and voting requirements -- the impact of official English legislation for current Federal statutory programs which require or permit diverse linguistic usage may be unclear.

Finally, an issue of constitutional dimension may shadow these Federal proposals. An Arizona State law limiting governmental discourse to English recently met with judicial disapproval on First Amendment grounds because of its silencing and chilling effect on the constitutionally protected speech of bilingual, or monolingual, Spanish-speaking public employees. *Yniguez v. Arizonans for Official English*⁵ challenged a referendum in the form of a State constitutional amendment providing, *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 during the performance of government business" -- must "act" only in English. The law was invalidated as an overly broad restriction on the free speech rights of State employees and the public they served. The Ninth Circuit *en banc* ruling in the Arizona case was one of first impression as regards

⁵1995 WL 600877 (filed Oct. 5, 1995).

CRS-5

the First Amendment implications of official English and may be appealed to the Supreme Court. Consequently, constitutional law on the subject is far from settled and may develop more fully in the near term as the Arizona case, or similar controversies from other States, proceed through the Federal courts.

ROLE OF BILINGUAL EDUCATION. Some of the official English proposals touch upon bilingual education either by abolishing or amending the BEA. The most appropriate method of teaching limited English proficient (LEP) school children has been the subject of much debate. There are several approaches that schools utilize. The basic difference between them is the degree to which the child's native language is used while the child is taught English and other academic subjects; some approaches, such as immersion, make little use of the native language while other approaches, such as transitional, rely more heavily on the native language.⁶ The BEA currently has a funding preference for projects that include the child's native language -- with limited exception, no more than 25% of all grants made to school districts by the U.S. Department of Education (ED) can be for projects that do not make use of the child's native language. About \$157 million was appropriated for the BEA in FY1995.

ROLE OF NATURALIZATION. Some of the proposals address the naturalization process either by strengthening the English language test or requiring that naturalization ceremonies be conducted only in English. Under current law, eligible aliens seeking to become naturalized citizens must, among other things, demonstrate the ability to read, write, speak, and understand English. Some observers believe that one reason why more eligible aliens do not naturalize is because of the lack of English training courses to prepare them for the English language test. The task of preparing those wishing to naturalize is left largely to nonprofit organizations, churches, and public schools. The primary Federal program that is a potential source of English training for immigrants is the Adult Education Act, administered by ED. Participating States must outline in their plan for adult education how they will meet the needs of LEP adults. About \$279 million was appropriated for the Adult Education Act in FY1995, although the amount devoted to services for immigrants and LEP adults is not known.⁷

| |
|-------------------------------------|
| <p><i>Pro/Con Arguments</i></p> |
|-------------------------------------|

Supporters of the effort to make English the official language of the United States argue that historically the English language has served to unite the Nation's diverse population. In their view, having a common language has enabled the United States to avoid the language, cultural, and political divisiveness seen in Canada. Official English advocates believe that the role of English as a national bond is threatened today in a society that is becoming increasingly fractionalized and multilingual. They argue that

Research on the most effective method of instruction indicates that there are several factors, such as the child's age and past exposure to formal education and availability of trained staff and materials, that determine which approach is likely to be more successful in teaching LEP children English.

A former program under the Adult Education Act had English language training for immigrants and LEP adults as its sole purpose. The English literacy grants program was last funded in FY1992 at \$1 million.

CRS-6

costly Government policies, such as bilingual education and bilingual voting, encourage immigrants to use their native languages rather than learn English and, thus, hinder immigrants' assimilation and socioeconomic advancement. Supporters maintain that designating English as the Nation's official language would make it clear that it is essential to learn English to fully participate in American society. At the same time, they emphasize that individuals would still be able and encouraged to learn and use other languages and to preserve their cultural heritage.

Opponents argue that there is no need to make English the official language of the United States. They reject the idea that the primacy of the English language is threatened and point out that the overwhelming majority of government business is conducted in English. They maintain that today's immigrants recognize the necessity of learning English and are doing so as quickly as their predecessors. Opponents believe that an official language is incompatible with the Nation's tradition of cultural diversity. In their view, making English the official language would have negative consequences. They believe it would encourage resentment and intolerance of non-English speakers, and create social division. They contend that the lesson of the Canadian experience is that efforts to *restrict* minority language use threaten national unity and produce conflict. Opponents argue that having an official U.S. language would impede rather than facilitate the assimilation of immigrants. They fear that it could result in non-English speakers being denied services, opportunities, and rights.

**Related CRS
Products**

The following CRS Reports for Congress provide further information relating to the official English controversy:

- U.S. Library of Congress. Congressional Research Service. *Bilingual and Immigrant Education: Status in the 104th Congress*, by Steven R. Aleman. [Washington] 1995.
CRS Report for Congress No. 95-999 EPW
- *Legal Analysis of Proposals to Make English the Official Language of the United States Government*, by Charles V. Dale and Mark Gurevitz. [Washington] 1995.
CRS Report for Congress No. 95-1043 A
- *Naturalization of Immigrants: Policy, Trends, and Issues*, by Ruth Ellen Wasem. [Washington] 1995.
CRS Report for Congress No. 95-298 EPW
- *The Voting Rights Act of 1965, As Amended: Its History and Current Issues*, by Garrine P. Laney. [Washington] 1995.
CRS Report for Congress No. 95-896 GOV



FACSIMILE TRANSMISSION

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DATE: Nov 22 TIME: _____

TO: Steve Wainath

FROM: Karen Narandi

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TOTAL NUMBER OF PAGES INCLUDING THIS COVER - 24

NOTES:

Thanks for - your thoughts!
le

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**NATIONAL
ASIAN
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WRITTEN TESTIMONY OF

**KAREN K. NARASAKI
EXECUTIVE DIRECTOR
NATIONAL ASIAN PACIFIC AMERICAN
LEGAL CONSORTIUM**

ON

ENGLISH AS THE OFFICIAL LANGUAGE/ENGLISH-ONLY PROPOSALS

BEFORE THE

SUBCOMMITTEE ON EARLY CHILDHOOD, YOUTH AND FAMILIES

EDUCATION COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

Asian American
Legal
Defense &
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Asian Pacific
American
Legal Center
of Southern
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November 14, 1995

Mr. Chairman and Members of the Subcommittee, the National Asian Pacific American Legal Consortium (the "Consortium") is a nonprofit organization whose mission is to advance and protect the legal and civil rights of Asian Pacific Americans across the country. English-only policies are of particular concern to the Consortium because of the large percentage of recent limited English proficient (LEP) immigrants in the Asian Pacific American community and the long history of racially discriminatory treatment of Asian and Pacific Islander immigrants by our country's laws.

The Consortium and its affiliates, the Asian American Legal Defense and Education Fund in New York, the Asian Law Caucus in San Francisco and the Asian Pacific American Legal Center of Southern California, collectively have over a half a century of experience in providing direct legal services, community education and advocacy on immigrant issues, voting rights and other issues involving language barriers.

The Consortium has several concerns regarding the proposed English-only laws. First, the Consortium believes that if the current English-only proposals become law, they will join a long list of examples of institutionalized discrimination against immigrants from Asia. Second, as several members of the Subcommittee have noted in the hearings, these proposals are being offered to address a nonexistent problem. Third, these are not benign proposals, but violate several cornerstones of our democracy, the First Amendment right to free speech, the Fifth and Fourteenth Amendments' right to equal protection and due process under our laws, and the right to vote. Fourth, they raise public health and public safety issues, as well as threaten the education of our children and the economic growth of our nation. Finally, while it is true that many proponents of English-only type laws are well-meaning, it is also true that it is a cause that is extremely divisive in its pandering to bigots and xenophobes.

I. HISTORY OF ANTI-ASIAN IMMIGRANT LAWS

It is no secret that the history of this country's immigration laws has been fraught with racial bias. The Chinese Exclusion Act of 1882 which prohibited the immigration of Chinese laborers, epitomizes this country's particularly infamous record on immigration from Asia.¹ Over the next 50 years, anti-Asian sentiment resulted in several other laws which all but end immigration from Asian and Pacific Island countries. These laws include the Gentleman's Agreement with Japan limiting Japanese immigration;² the Immigration Act of 1917 which banned immigration from almost all countries in the Asia-Pacific region;³ the Quota Law of 1921 which limited the annual immigration of a given nationality to three percent of the number of such persons residing in the U.S. as of 1910;⁴ the National Origins Act of 1924 which banned immigration of persons who were ineligible for citizenship;⁵ and, a decade later, the Tydings-McDuffie Act of 1934 which placed a quota of 50 Filipino immigrants per year.

It has been just one generation since the Chinese Exclusion Act and its progeny were repealed in 1943.⁶ The intensity of the discrimination against immigrants from Asia is reflected in the fact that they were not allowed to become naturalized citizens for over 160 years. A 1790

law allowed only "free white persons" to become citizens. Even after the law was changed to include African Americans, similar legislation to include Asian Americans was rejected.⁷ The Supreme Court upheld the laws making Asian immigrants ineligible for citizenship.⁸ The last of these laws were not repealed until 1952.⁹

Asian immigrants who managed to enter the U.S. became the victims of other forms of discrimination. As early as the 1850's, states enacted various laws which targeted Asians by taking advantage of the discriminatory nature of naturalization laws. California imposed a "foreign miner's tax" which imposed a tax on any non-citizen miner.¹⁰ As intended, virtually all of the \$1.5 million collected under the "foreign miner's tax" came from Chinese miners.

The California Alien Land Law Act of 1913 is another striking example. This law was primarily directed at Japanese immigrant farmers and prohibited persons ineligible for citizenship to purchase land and obtain long term leases or crop contracts. Twelve other states adopted similar laws, the last being Utah, Arkansas and Wyoming in the 1940s. The last law was not repealed until 1962.¹¹

Similarly, in 1922, the Supreme Court upheld a law that aliens ineligible for citizenship cannot form corporations,¹² and in 1945 California enacted legislation denying commercial fishing licenses to persons ineligible for citizenship.¹³ At the time, Asians were the only racial group ineligible for citizenship.

Education is also an area in which Asian Pacific Americans have been historically discriminated against. In 1860, California barred Asian Pacific Americans from attending its public schools entirely. After the California Supreme Court ruled that this was unconstitutional, the State set up a system of "oriental" schools and the California Supreme Court upheld the constitutionality of "separate but equal" schools for Asian Pacific American students in 1906. In 1927, the U.S. Supreme Court upheld the exclusion by Mississippi of Asian American students from white schools.¹⁴

In the early 1970's frustrated Chinese American parents brought a class action suit against San Francisco Unified School District, alleging that unequal educational opportunities resulted from the District's failure to establish a program to address the limited English proficiency of students of Asian ancestry. In *Lau v. Nichols*, the Supreme Court ruled that the District's failure to provide English language instruction was a violation of the Civil Rights Act of 1964.

Many proponents are fond of citing polls noting the popularity of some of these English-only proposals and note with pride the fact that 22 states have adopted some version of English as an Official Language laws. This was also true of the many discriminatory laws that our country has since condemned and repealed as immoral and antithetical to the highest values we hold. Would we today applaud the reintroduction of the Alien Land Laws? Or the internment of Japanese Americans during World War II which was popular in its day? A California newspaper

during that time asked its readers how many would support the deportation of American born citizens of Japanese ancestry. An overwhelming majority supported that proposal, yet this Congress has since apologized for the actions taken against Japanese Americans and noted it happened because of a failure of leadership. Congress should not permit another such failure of leadership.

II. ENGLISH-ONLY ADDRESSES A NONEXISTENT PROBLEM

Many supporters of English-only laws or Official-English laws appear to believe that there is a threat to the English language. There is absolutely no basis for that belief. According to the 1990 U.S. Census, 97% of Americans speak English "well" or "very well." A recent study by a University of Southern California demographer, Dowell Myers, found that "immigrants do not remain unassimilated and unchanged. The speed of immigrants' upward mobility is striking -- reflecting their rapid incorporation into the American economy and society." The study tracked immigrants who arrived during the seventies and found that the proportion of English speakers among Asian immigrants rose from 39% to 53% in 10 years from 1980 to 1990.¹⁵

In addition, according to the National Immigration Forum, "immigrants are losing their native language at a faster pace than immigrants early in this century. Previously, it had taken three generations for an immigrant family to completely lose its native tongue. . . . In recent decades, there appears to be a trend towards monolingual English speaking in the children of immigrants."

Clearly there is no need for any additional punitive "incentive" to encourage immigrants to learn English. The data shows that immigrants are becoming not only fluent in English, but monolingual English-speaking within a generation. Consequently, English-only is inappropriate as it is a response to a misidentified problem. The problem is not that immigrants are refusing to learn English, but rather that there is a lack of resources to meet the need for English as a Second Language classes. Even such groups as U.S. English agree that "immigrants want and need to learn English."¹⁶ Indeed, statistics show that there are long waiting lists of people who want to study English. In Washington, D.C., an estimated 5,000 immigrants were turned away from English as a Second Language classes in the 1994 school year. In New York, the schools have had to resort to a lottery system to decide enrollment in English classes. In Los Angeles, there are waiting list as long as 40 to 50 thousand waiting to enroll in English classes.

Congress should focus on increasing resources for English classes rather than on punishing those who already want to learn English, through English-only laws.

III. ENGLISH-ONLY LAWS VIOLATE CONSTITUTIONAL RIGHTS

The Supreme Court in *Meyer v. Nebraska*¹⁷ stated that:

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.

A. Prohibiting Translation Compromises Due Process

The civil and criminal judicial process would be seriously compromised by official English legislation. There have been instances where Asian Pacific American crime victims have been mistakenly jailed while the real criminals walk away because they were able to speak English. Asian and Pacific Islander women have suffered "revictimization" by the very sources from whom they have sought help because of language and cultural barriers. In one case, a woman who had been repeatedly abused by her husband was preparing dinner when he tried to attack her. When she tried to ward him off, he lunged and fell onto the knife she had been waving in front of her. Terrified, she ran to call the police but when the police came, her husband, who spoke better English, accused her of attacking him. She was arrested and put in jail with bail set at \$500. The case is still pending.¹⁸ This kind of situation is not atypical. If interpreters or language assistance is not allowed, how do the police and investigators communicate with crime witnesses or victims who might have pertinent information?

The Massachusetts Commission to Study Racial and Ethnic Bias in the Courts found that non-English speaking participants in the legal system obtain fewer restraining orders in domestic violence cases. Moreover, because restraining order forms are only in English, victims of domestic violence often were unable to obtain them unless they could find a volunteer interpreter.¹⁹ They also are more likely to lose the custody of their children when interpreter services are unavailable in the early stages of a care and protection proceeding. At public hearings, people told the Commission that judges had actually asked defendant husbands to act as interpreters for their battered wives.

Government must be permitted or even required to provide certified translators for criminal and family court cases. Reliance on volunteer translators can result in judicial procedures that fail to provide due process or equal protection. A 1994 Virginia State Supreme Court study cited several incidents when an improper translation seriously affected a trial's outcome. It concluded that there is a "widespread breakdown in due process and equal protection for non-English speaking litigants who appear before the courts."²⁰ A court administrator for a Maryland court said that poor translation during a trial can mean excessive jail time or fines for non-English speaking defendants.²¹

B. English-only Laws Violate the First Amendment

English-only laws violate the First Amendment right to free speech for government employees and for elected officials. Just this year, the Ninth Circuit, *en banc*, held that an Arizona English-only law with similar features as to the various proposed legislation in Congress, "was not a valid regulation of the speech of public employees and is unconstitutionally over broad. 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 it serves. The article similarly burdens the First Amendment rights of state and local officials and officers in the executive, legislative and judicial branches."²² As Judge Brunetti noted in his concurrence in *Yniquez v. Arizonans for Official English*, "By restricting the free communication of ideas between elected officials and the people they serve, [Arizona's English-only law] threatens the very survival of our democracy." He added, "The First Amendment precludes a successful electoral majority from restricting political communications with a certain segment of the electorate."²³

C. English-only Laws Disenfranchise Voters

Many of the legislative proposals either explicitly or implicitly repeals Section 203 of the Voting Rights Act which requires jurisdictions with Hispanic, Asian or Native American populations meeting a threshold requirement to provide language assistance in voting, from registration through voter education and the voting booth. In reauthorizing and broadening Section 203 in 1992 with bipartisan support and the support of President Bush, Congress acknowledged the need to ensure the importance of language assistance to providing Hispanic, Asian and Native American citizens with an effective vote.

The affiliates of the Consortium have monitored voting practices in New York, San Francisco and Los Angeles. Bilingual assistance is extremely important to ensuring the full participation of Asian Pacific American voters. Many elections cover complex subjects that even native born English speakers find difficult to understand. Negotiating one's way through a polling place and through ballot instructions involves vocabulary not used in everyday communications. In the November 1994 elections, 31% of the Chinese American voters polled in New York City and 14% of the Chinese American voters polled in San Francisco indicated they used election materials translated into Chinese. These are individuals who want to participate in the democratic process, but who might not be able to do so if English-only becomes the law of the land.

IV. ENGLISH-ONLY LAWS CREATE UNJUST PUBLIC POLICY

The issue is whether government should try to prohibit the use of other languages to the detriment of other American values such as due process, equal treatment, effective and efficient delivery of services, health care, education and public safety.

Every official English bill before Congress would amend Title 4 of the United States Code making English the nation's official language of Government. It is important to point out that "official English" is English-only because it would become illegal for federal employees or documents to communicate in a language other than English.

Most of the seven bills include a section stating that the U.S. Government shall conduct its official business in English. Yet, it is unclear as to exactly what "official business" means. In several bills, the term is defined as "those governmental actions, documents, or policies which are enforceable with the full weight and authority of the Government."²⁴ However, there is no clear distinction between official and unofficial business. Furthermore, do English-only laws simply refer to the form of speech or linguistic medium or does it extend to the content or substance of the message?¹ More importantly, is this a really a debate about the importance of speaking English or is it about the government regulating what language may be used?

The public is hardly well-versed in the details and legalities of what "official" uses of language could entail. In some states with English-only statutes, people are led to believe that because an English-only law exists, they are permitted and even required to impose English-only rules at work, including restricting conversations at work and lunchtime, in administrative settings, and other settings.²⁵ Some people may also use the statute, however well-intentioned, for further discrimination.

A. English-Only is Unenforceable

Another potential problem is policing the use of English. What is an English word? In a recently published commentary in the U.S. News & World Report, the author described the English language as a 'glorious mongrel.' The English language is an immense amalgamation of words adopted from over fifty languages. Three out of the four words in the dictionary are foreign born. The English language is ever developing, taking foreign words and making them our own. Who will be the official government arbiter of what is an English term? An enormous government apparatus would be needed to enforce these laws.

Several proposed English-only bills would allow citizens to sue one another if the new federal "preference" for English is violated. One can only imagine the divisiveness and invasion of privacy that this "bounty hunter" provision would engender. Our courts would be clogged with cases where parties would be arguing over the use of a word or phrase that may or may not be English and that may or may not have been used in an "official" communication.

For example, would schools be sued for having "tacos" or "salsa" on their menus? Would the President be sued for using a foreign phrase in an official greeting? This law would have prohibited President Kennedy from making his famous "Ich bin ein Berliner" speech. The U.S.

Mint would be required to remove the Latin motto of the United States of America, *E Pluribus Unum*, and *Novus Ordo Seclorum* from the one dollar bill.

B. English-Only Laws Impair the Government's Ability to Provide Important Services to Taxpaying Americans

Prohibiting language assistance by government employees would further limit the delivery of government services to many Americans not proficient in English who, because of language barriers, may not be aware of either social services or their right to seek such services.

1. Health Care

One in five Asian Pacific Americans are limited-English proficient (LEP). For these persons, language becomes a formidable barrier to accessing and receiving health and safety information and health care services.²⁶ Prohibiting public health entities and workers from providing information and forms in other languages would have terrible consequences for the health and safety of Asian Pacific Americans and the general public.

Asian Pacific Americans who have limited English skills will not have access to preventative services and will be turned away from public hospitals. Even worse, the lack of accurate communication between physician and patient may result in misdiagnoses, unnecessary and expensive tests, and delayed second class care. One study found that language differences caused treatment to take 25-50 percent longer than treatment for English-speaking patients.²⁷ Such delays may have serious, even fatal consequences. According to the statement by Dennis P. Andrulis, Ph.D., one physician bluntly stated, "I've seen patients die because of the inability to communicate their problem to their provider."

A study on interpretation and translation services released in March 1995, revealed that over one in ten U.S. teaching hospital patients face significant challenges in communicating care needs to their provider as a result of language barriers or hearing impairment. However, while the use of professional interpreters is common in international business and diplomacy, professional interpreters are rarely available in health care.²⁸ What the system requires is more, not less, assistance.

Lack of trained translator services has resulted in malpractice. When LEP persons are forced to rely upon untrained interpreters and family members, they often avoid seeking care when it might involve embarrassing disclosures. For example, a mother may not want to talk about female problems in front of a male neighbor or a young son. Inaccurate translations result in inappropriate care and failure to understand the health care options that are available to them.²⁹

There was a case in Chicago when a woman complained of severe abdominal pains after prematurely delivering her son. The doctor understood a little Spanish and told her that the pains

were normal and ordered aspirin and orange juice for her. The next morning, she died of a brain hemorrhage.³⁰ In another case, a patient had undergone kidney surgery but did not know whether the entire kidney or part of it had been removed. She continued to go back for follow-up visits and took eleven medications she did not know what they were for. Only when a community health center worker called the hospital to investigate, did she learn that her entire right kidney had been removed due to complications of TB and the follow-up visits/medications were unnecessary.³¹

Existing bilingual services are effective in providing Asian Pacific Americans with adequate health care. In Miami, Jackson Memorial Hospital provides comprehensive and sensitive interpretation services to meet the needs of the multi-ethnic population of Miami. Since its existence, several hundred thousand non-English-speaking patients have been served. Bilingual health education are very important in educating people about prevention of transmittable diseases such as AIDS. Without bilingual education health programs, there would be more disease spread and the overall health and safety of Americans would be affected.

2. Public Safety

There are many 911 emergency assistance programs that provide translation services through AT&T Language Line. Without translators, many Asian Pacific Americans and other minorities would not be able to get 911 emergency assistance; a service their taxes support and a service vital to public safety.

Moreover, access to law enforcement and protection would be effectively eliminated if government employees and agencies are prohibited from communicating to the Asian Pacific American community in their native languages. Language barriers are one of the greater barriers to effective law enforcement in immigrant communities. LEP persons cannot report crimes or assist the police or prosecutors if there are no translators to aid them. In an area such as Los Angeles where there are an overwhelming number of Asian Pacific Americans, if officers cannot use their language skills or use qualified interpreters, Asian gangs and organized crime cannot be infiltrated and eliminated. Murders, robberies, rapes and domestic violence will go unreported or unprosecuted. If these crimes are not reported and prosecuted, then the public safety of the entire community will be endangered.

3. Education

Some of the official English bills would either abolish or amend the Bilingual Education Act. The BEA provides Congressional funds for a variety of state and local bilingual educational programs. The BEA came about as a result of the 1974 Supreme Court decision of *Lau v. Nichols* in which the Court declared that all students have the right to an equal educational opportunity. In other words, non-English speaking immigrant students have the same right to a meaningful education as English-speaking students. Furthermore, failing to provide language assistance

constitutes a violation of Title VI of the Civil Rights Act.

Bilingual education is not about instilling ethnic pride or creating ethnic separatism. Bilingual education is a method of teaching English to language minority children while they continue to learn other subjects in their native tongue. There are studies that show students who become proficient in their native language actually do better in a variety of other subjects and even make the transition to English more easily.

Enactment of any of the proposed measures would jeopardize the education of Asian Pacific Americans. Although a survey in 1980 identified over 450 Asian bilingual education programs throughout the nation, they appear to be underfinanced and are often fragmented and uncoordinated.³² If bilingual education were to be eliminated or to become illegal, teachers would be unable to teach or communicate with many of their students. Furthermore, English-only laws would prohibit teachers and school administrators from speaking with the students' parents to discuss problems or to encourage parents' school involvement. A Montgomery County Maryland school official has stated, "If parents are involved and they know what's going on, their kids do much better."³³ In a time where there are studies to show how important parent involvement is for the future well-being of our children, English-only laws would promote just the opposite.

A middle school in Fairfax County Virginia initiated a special outreach effort for immigrant families. A Southeast Asian father appreciated the effort and said, "Without a translator, I couldn't come. It's too uncomfortable." A Pakistani father said that the multilingual information program gave him and his wife the feeling that "We belong."³⁴

V. OTHER CONCERNS

The Consortium believes that the proposed legislation is racially divisive. For example, during the debate over an English-only sign ordinance in Monterey Park, the public meetings generated discussion rife with racism and bigotry. The debate split the community even though only 13 of 1,000 businesses in Monterey had no English on their signs.

Public officials who encourage the politics of division legitimize acts of hate violence. The debate over Proposition 187 led to increased incidents. In the Consortium's anti-Asian violence audit report for last year, we found an all too common theme running through the incidents. For example:

- An Asian American man was stabbed by a white man in Sacramento, California. The attacker explained that he was acting "to defend our country."
- A White man attacked an Asian American man with a bat while yelling, "You're in my country--Get out!" "Go back to your country, this is America."

- An Indian American student in Pennsylvania was assaulted by a group of white youths who were yelling "Go home, f---ing Iranian, you f---ing Asian sh-t, go home foreigner."

As this debate moves forward, it is important that the Subcommittee exercises its leadership in ensuring that the discussion remains on the principles involved and that their statements do not, however inadvertently, add to the xenophobia and bigotry that has already begun to take their toll.

CONCLUSION

English-only and English as the "official" language laws are divisive and are an unnecessary solution to a nonexistent problem. Moreover, they violate First Amendment rights, as well as rights to due process and equal protection under the Fifth and Fourteenth Amendments. Finally, they are antithetical to the public welfare of our country. They seek to punish Americans not fluent in English by effectively withholding vital public services such as education, health care, law enforcement protection and public safety warnings. These laws will have a disproportionate impact on Asian and Latinos who have made up 80% of the immigration stream over the past two decades.

Proponents of these laws who sincerely want to ensure the increase in the ability of our newest Americans to speak English would do better to invest in providing funding for English classes.

END NOTES

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3. Act of Feb. 5, 1917, 39 Stat. 874.
4. This quota limited nonEuropean immigration. For example, Great Britain with two percent of the world's population had 43% of the quota. National Lawyers Guild, *Immigration Law and Defense*, pp. 2-4.
5. At the time, only immigrants from Asia were ineligible for citizenship solely on the basis of race. See *Ozawa v. U.S.*, 260 U.S. 178 (1922).
6. Ch. 344, 57 Stat. 600 (1943).
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WRITTEN TESTIMONY OF

KAREN K. NARASAKI
EXECUTIVE DIRECTOR
NATIONAL ASIAN PACIFIC AMERICAN
LEGAL CONSORTIUM

ON THE
IMMIGRATION REFORM ACT OF 1995

BEFORE THE
SUBCOMMITTEE ON IMMIGRATION
JUDICIARY COMMITTEE
U.S. SENATE

For September 13, 1995 Hearing

Mr. Chairman and Members of the Subcommittee, the National Asian Pacific American Legal Consortium (the "Consortium") is a nonprofit organization whose mission is to advance and protect the legal and civil rights of Asian Pacific Americans across the country. The area of immigration policy is particularly important to the Consortium because of the large percentage of recent immigrants in the Asian Pacific American community and the long history of racially discriminatory treatment of Asians and Pacific Islanders by our country's immigration laws.

The Consortium and its affiliates, the Asian American Legal Defense and Education Fund in New York, the Asian Law Caucus in San Francisco and the Asian Pacific American Legal Center of Southern California, collectively have over a half a century of experience in providing direct legal services, community education and advocacy on immigration law and immigrant rights issues.

We have not been able to obtain a copy of the actual legislation, so our comments will be limited to changes being proposed to the family immigration system.

The Consortium believes that it is important that Congress not make immigration policy without first fully considering the historical context. For non-European immigrants, particularly those from Asia, repercussions of this country's discriminatory immigration laws are still being felt.

I. HISTORY OF DISCRIMINATORY IMMIGRATION LAWS

It is no secret that the history of this country's immigration laws has been fraught with racial bias. The Chinese Exclusion Act of 1882 which prohibited the immigration of Chinese laborers, epitomizes this country's particularly infamous record on immigration from Asia.¹ In 1907, anti-Asian sentiment culminated in the Gentleman's Agreement limiting Japanese immigration.² Asian immigration was further restricted by the Immigration Act of 1917 which banned immigration from almost all countries in the Asia-Pacific region,³ the Quota Law of 1921 which limited the annual immigration of a given nationality to three percent of the number of such persons residing in the U.S. as of 1910,⁴ and the National Origins Act of 1924 which banned immigration of persons who were ineligible for citizenship.⁵ A decade later, the Tydings-McDuffie Act of 1934 placed a quota of 50 Filipino immigrants per year.

It has been just been one generation since the Chinese Exclusion Act and its progeny were repealed in 1943.⁶ Even after the repeal, discriminatory quotas were set using formulas giving special preference to immigration from Europe. Until 1965, for example, the German annual quota was almost 26,000 and the Irish almost 18,000 while the annual quota from China was 105, for Japan was 185, the Philippines was 100 and the Pacific Islands was 100.⁷

The intensity of the discrimination against immigrants from Asia is reflected in the fact that they were not allowed to become naturalized citizens for over 160 years. A 1790 law allowed only "free white persons" to become citizens. Even after the law was changed to include African Americans, similar legislation to include Asian Americans was rejected.⁸ The Supreme

Court upheld the laws making Asian immigrants ineligible for citizenship.⁹ The last of these laws were not repealed until 1952.¹⁰

Congress finally acknowledged the immorality of the racial bias imbedded in the immigration system with the passage of the Immigration and Naturalization Act of 1965, but did not redress the effect of earlier biases. In fact, the 20,000 per country limit, imposed without any connection to size of originating country or demand, resulted in extremely long waiting lists for Asian immigrants.¹¹

The Immigration Act of 1990 failed to address the tremendous backlogs that already existed for countries like Mexico, India, the Philippines, South Korea, China and Hong Kong. Instead, Congress exacerbated the problem by reducing the number of visas available for adult sons and daughters of U.S. citizens. At the time the backlog consisted primarily of children of Filipino veterans who are allowed to naturalize under the Act because of their service to this country in fighting in World War II. Despite this fact, Congress cut the quota in half and reduced other family categories causing the backlog to increase by close to 70%.¹² Now, on the 50th anniversary of the end of World War II, this bill would deny these war heroes the comfort of their children in their waning years.

As a result, although Asians have constituted approximately 40% of this country's immigration for the past two decades, the community still constitutes less than 4% of the U.S. population and well over 1.5 million Asian immigrants are still waiting in backlogs for entry visas to reunite with their families. Any additional restrictions or reduction in the overall numbers, particularly in the family preference categories, will have an inordinate impact on Asian Pacific American families.

II. PROPOSED CHANGES TO THE LEGAL IMMIGRATION SYSTEM

The Consortium, together with other Asian Pacific American community-based organizations such as the Organization of Chinese Americans, Japanese American Citizens League, Chinese for Affirmative Action, National Association of Korean Americans, Asian Pacific American Labor Alliance/AFL-CIO, and the National Asian Pacific American Bar Association, strongly opposes the elimination of any of the family preference categories and any related drastic reduction in legal immigration.

We understand that Senator Simpson intends to introduce a bill that would slash family immigration by abolishing three of the four existing categories of family immigration and limiting one other category. Adult children and brother and sister family preference categories would be eliminated and parents would be severely limited. Only minor children and spouses of U.S. citizens and legal permanent residents, and parents of U.S. citizens, will be allowed to immigrate in the family categories. Special restrictions are placed on the ability of parents of U.S. citizens to immigrate.

We question the necessity of any cuts in the current level of immigration. Annual taxes paid by immigrants to all levels of government more than offset the costs of services received, generating a net annual surplus of \$25 billion to \$30 billion.¹³ Moreover, immigrants have been a driving force behind urban revitalization. Asian, Latino, Caribbean and Russian Jewish immigrants revived dying neighborhoods in Brooklyn, New York.¹⁴ Asian and Russian Jewish immigrants have revitalized parts of Seattle and Latinos revived a South Dallas neighborhood.¹⁵ Asian and Latino immigrants have been important to Atlanta and Chinese immigrants brought back a long neglected industrial section of Los Angeles.¹⁶

A recent survey by the Federal National Mortgage Association found that immigrants come to America because they believe in the American Dream. Fannie Mae Chairman and Chief Executive Officer James Johnson said,

Far from being a burden on society, the survey shows that immigrants are a vital and vibrant part of American life. . . . [T]hey are optimistic about our nation's economic future; and they are willing to work and save to buy a home. That desire translates into millions of American jobs - in homebuilding, real estate, mortgage banking, furniture and appliance manufacturing, and the dozens of other industries that are dependent on a strong housing market. They hold significant economic power which, if realized, translates into jobs for Americans and prosperity for our nation. . . . Before Congress enacts legislation to further restrict immigration, it should consider what the costs of 'people protectionism' are likely to be for neighborhoods, job creation and the democratic ideals upon which our nation was founded.¹⁷

Families are the backbone of our nation. Family unity promotes the stability, health and productivity of family members and contributes to the economic and social welfare of the United States. Consequently, family-based immigration and family reunification have rightly been the cornerstone of U.S. immigration policy for decades.

Immigrants who have entered the U.S. through the family reunification process as adult children and brothers and sisters include countless individuals who have contributed to the productivity of our workforce, filled economic needs and served honorably in our Armed Forces. In addition, the ability of American businesses to attract skilled international personnel to compete in the global market place is in part dependent on the ability of those employees to consolidate their family members in the U.S. Also, the ability of refugees to become economically stable and socially integrated into society increases when their family members are able to join them.

Arguments by anti-immigration proponents that cuts in family immigration are justified by lower immigrant quality overlook some key facts. According to a study by the Alexis de Tocqueville Institution, the education levels of immigrants have been improving-- not declining. Mean number of years of schooling have continuously increased; the proportion of new immigrants with less than an eighth grade education has been trending down and the

proportion with a college degree or more has actually risen.¹⁸

While we support the concept of accelerating the immigration for spouses and minor children of Legal Permanent Residents -- indeed we joined many communities in making that recommendation to the U.S. Commission on Immigration Reform -- we believe that it can and should be accomplished without forcing other family members to remain separated.

Yet this legislation would devastate many Asian American families. Over the past two decades, immigration from Asia has constituted 40% of the flow into this country. Demand is much higher as evidenced by the backlogs that have grown. Based on a January State Department report, over 55% of the family immigrants eliminated will be members of Asian American families. Under the legislation, 1.3 million Asian siblings and adult children will be prevented from joining their families.

Changing the rules now would make a mockery of the legal immigration process and would put Asian Pacific Americans in the untenable position of having to choose between circumventing the law in order to have their parents, children or siblings join them in America or living with the loss from separation for the rest of their lives.

A: Parents of U.S. Citizens.

The Consortium strongly opposes the proposed radical changes to the entry requirements of parents of U.S. citizens. Under the current law they are given immediate relative priority. In 1994, about 56,370 parents were admitted. 58% were parents of Asian Pacific Americans.¹⁹ The proposed legislation requires that the parent be at least 65 years in age and that a majority of the children reside in the U.S. In addition, the children must demonstrate that the parent will have coverage by comprehensive and long term health care insurance before the parents can be eligible for entry.

Making it difficult for U.S. citizens to reunite with their parents weakens the family structure of that U.S. family. Parents help to stabilize the family by providing emotional support and guidance to their children. As grandparents, they also play an important role in the family -- teaching and taking care of grandchildren, enabling both parents to work. There is little logic to requiring that parents be 65 years old. This means that they may not be able to join their families when their children are most in need of their assistance in helping to provide care for their grandchildren. It also means that they have no opportunity to work in this country to earn a pension, develop savings or pay into the social security system. Given the welfare reform measures that pass the Senate, this age restriction makes little economic sense.

We also see no underlying rationale for requiring that a majority of the children already be in the U.S. before their parent can qualify for immigration under the family preference. The welfare reform bill contains provisions that make family sponsor support affidavits

enforceable, as well as limitations on eligibility for government aid programs, so this provision seems unnecessary if the concern is an economic one. Moreover, decisions about parent care do not rest on numbers of family members, but on the ability of a particular son or daughter to take care of that parent or to share in the care of that parent. Such an arbitrary rule ignores the individual dynamics of each family and needs of the children and the parents.

The additional requirement that U.S. citizens prove that they have pre-purchased health insurance for their parents comparable to the comprehensive coverage available under Medicare and the long term coverage under Medicaid erects a totally unreasonable barrier to reunification for a multitude of reasons.

First, because Congress has failed to reform the health care industry, insurance companies are free to discriminate against applicants on any basis they so choose. In fact, some insurance companies discriminate against applicants on the basis of lack of citizenship, others on the basis of limited English proficiency and national origin, and still others on the basis of age or other factors. U.S. citizens, who pay taxes to support the Medicare and Medicaid system for other families, will have to be able to also pay unlimited premiums for their own parents -- that is assuming the equivalent insurance is even available to them.

Second, few if any insurance companies would be willing to issue insurance for individuals who have not had a health exam in this country and who are not yet legally resident in this country. Moreover, this is an unnecessary requirement that is ripe for abuse by consumer fraud artists and insurance scams. Again, the bill provides for enforceable affidavits of support that will make it in the sponsor's best interest to obtain some coverage, if available. Congress said last year in rejecting health care reform that it was wrong to make such economic decisions for individual families.

B. Adult Children

We also strongly oppose the complete elimination of the adult children categories by the proposed legislation. Currently, 73,100 children are allowed to enter each year.

Approximately 240,000 Filipino adult children of U.S. citizens and legal permanent residents are waiting for visas. Of the remaining 584,000 adult children waiting for visas, about 23,000 are from China, 17,000 are from India, 11,000 are from Taiwan and 10,000 are from South Korea.

The parent-child ties do not disintegrate immediately upon a child turning 21 years-old. Adult children still benefit from the wisdom and stabilizing influence of their parents. Moreover, as the parents age it becomes more important for the parents to have the support of their children. Given the draconian elimination of eligibility for elderly legal permanent residents for government benefit programs being proposed in this Congress, this proposal is

not only harsh but short-sighted. Most of these children generally immigrate to the U.S. at the prime of their working lives and can contribute much to our economy and culture.

C. *Brothers and Sisters*

The Consortium strongly opposes the proposed elimination of the brother/sister category. Currently, only 65,000 are allowed to immigrate each year. Of the 1.6 million brothers and sisters waiting for family preference visas, over a million are from Asian countries: almost 285,000 are from the Philippines; 207,000 are from India; 154,000 are from China; 135,000 are from Vietnam; 86,000 are from Taiwan; 67,000 are from South Korea; 52,000 are from Hong Kong; and 37,000 are from Pakistan.

Congress first codified this preference in 1921,²⁰ and has championed the importance of this relationship since the Immigration Act of 1952. In 1965, Congress gave it the largest share of worldwide visas.

The Consortium believes that our nation is enriched by cultures which honor the family, not just the nuclear family but also among generations and brothers and sisters. This notion of the family is important not only to Asian Pacific Americans, but to Latinos, Eastern Europeans, Irish, Italians, and countless other Americans. To deny that brothers and sisters are an integral part of the family is to impose a sadly narrow concept of the family at a time when all Americans would do well to reconstruct these ties.

Brothers and sisters share in the support of their parents and look after each other as well as provide back up support to each other's children. Brothers and sisters help stabilize the family as an economic and social unit.

It would be highly inequitable to change the rules for those who have been patiently waiting for years to reunite with their families. Many on the list have been waiting for as long as 17 years for an entry visa. For this country to change the rules against them now violates the principle of fairness that Americans so highly prize. Their families have paid the filing fees, and in many instances, attorneys fees as well, with the expectation that this country would honor its commitments. Imagine the pain inflicted on a Vietnamese refugee who was separated from her family members in the chaos of fleeing before the fall of Viet Nam and has been waiting for more than 5 years to have her brother join her, if she is now told that the wait has been for not.

While there is a backlog to address, it is a peculiarly cynical solution to take care of the backlog by simply eliminating the category. The fact that eight of the ten countries with the highest number of applicants waiting for these visas are Asian have caused Asian Pacific Americans concern that this could be yet another attempt to limit Asian immigration to the United States.

III. OTHER CONCERNS

The Consortium urges the Subcommittee to keep the legislation on undocumented immigration separate from that on legal immigration. The blurring of these two issues has immediate consequences for the Asian Pacific American community. In the Consortium's anti-Asian violence audit report for last year, we found an all too common theme running through the incidents. For example:

- An Asian American man was stabbed by a white man in Sacramento, California. The attacker explained that he was acting "to defend our country."
- A White man attacked an Asian American man with a bat while yelling, "You're in my country--Get out!" "Go back to your country, this is America."
- An Indian American student in Pennsylvania was assaulted by a group of white youths who were yelling "Go home, f---ing Iranian, you f---ing Asian sh-t, go home foreigner."

As this debate moves forward, it is important that the Subcommittee exercises its leadership in ensuring that the discussion remains on the principles involved and that their statements do not, however inadvertantly, add to the xenophobia and bigotry that has already begun to take their toll.

CONCLUSION

We should focus on the national interest in this debate on immigration. But that national interest is not in conflict with the current system of immigration that we have today. What has become lost in this debate is that immigration is more than just about numbers. Immigration is about people and about what kind of nation we want to be. The national interest is in working to revitalize our economy and maintaining our competitiveness in the global market place. The national interest is in our living up to our country's principles of fairness and equity and not reviving our shamefully discriminatory policies of the past. The national interest is in valuing families.

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3. Act of Feb. 5, 1917, 39 Stat. 874.
4. This quota limited nonEuropean immigration. For example, Great Britain with two percent of the world's population had 43% of the quota. National Lawyers Guild, *Immigration Law and Defense*, pp. 2-4.
5. At the time, only immigrants from Asia were ineligible for citizenship solely on the basis of race. See *Ozawa v. U.S.*, 260 U.S. 178 (1922).
6. Ch. 344, 57 Stat. 600 (1943).
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17. J. Johnson, "What Immigrants Want," *Wall Street Journal*, June 20, 1995; Fannie Mae National Housing Survey 1995.
18. The Alexis de Tocqueville Institution, *The Truth About Immigrant "Quality,"* at p. 12 (April 1995).
19. U.S. Immigration and Naturalization Service, Statistics Division.
20. "Legal Immigration to the United States: A Demographic Analysis of Fifth Preference Visa Admissions," a staff report, U.S. Senate Subcommittee on Immigration and Refugee Affairs, Comm. on the Judiciary, (100th Cong. 1st Sess. April 1987) at 4.

Title VII--Bilingual Education Revitalization in a New Direction

A NEW DIRECTION IN POLICY

Moving away from the deficiency model of bilingual education, Title VII is the legislative tool to implement a new direction in bilingual education. This new direction is conceptualized in a set of principles that include:

- 1) All children can learn to high standards.
- 2) Linguistically and culturally diverse children and youth must be provided with an equal opportunity to learn the challenging content and high level skills that school reform efforts advocate for all students.
- 3) Proficiency in two or more languages should be promoted for all students. Bilingualism enhances cognitive and social growth and develops the nation's human resources potential in ways that improve our competitiveness in the global market.

A NEW DIRECTION IN IMPLEMENTATION

Title VII also moves away from its previous highly prescriptive programmatic structure to one that (1) recognizes the existing knowledge in the field and (2) promotes capacity building in the local educational agencies to meet the needs of linguistically and culturally diverse students.

- Title VII provides leadership in the development of programs that serve limited English proficient (LEP) children and youth in a comprehensive manner. The legislation promotes and emphasizes the development of new and enhancement of existing programs into comprehensive instructional programs for LEP students.
- Title VII places a new emphasis on bilingual education programs that are comprehensive and that embrace the concept of systemic reform and high standards for LEP children and youth through four types of discretionary funding:

(1) Development and Implementation grants--3 year grants designed to assist local educational agencies develop and implement bilingual education programs;

(2) Enhancement grants--2 year grants to assist local education agencies to improve, expand, or refine existing bilingual education programs;

(3) Comprehensive School grants--5 year grants to assist LEAs in their reform efforts to restructure and upgrade all the elements of a school's program to fulfill the educational needs of all of a school's LEP students.

(4) Systemwide Improvement grants--5 year grants to assist LEAs to improve, reform and upgrade relevant programs throughout the entire K-12 learning experience to fulfill the educational needs of LEP students. The emphasis is not on administrative boundaries but on comprehensive educational systems that create strong linkages between all of the educational stages of children and youth.

IMPROVED RESEARCH AND EVALUATION

Title VII calls for an unprecedented coherent research agenda for bilingual education that includes requiring the Department of Education to collect and integrate into its data systems, reliable data on language-minority and LEP students.

Research. The research agenda will result in reliable research findings and in practical knowledge to be applied in the field to lead to substantive improvement in meeting educational needs of cultural and linguistically diverse students. Title VII includes several provisions to move forward this agenda:

- funding for research activities, including field-initiated research
- Academic Excellence Awards for dissemination
- State educational agency grants to assist in the data collection and evaluation
- National Clearinghouse for Bilingual Education for collecting, analyzing and disseminating information
- Technical Assistance Centers, as currently existing, through FY 1996; Per Title XIII to be integrated into a network of Comprehensive Regional Assistance Centers.

Title VII--Bilingual Education Revitalization in a New Direction

Evaluation Methods and Practice. These must be reliable and must facilitate program accountability for the academic progress of students. Title VII requires that assessment be linked to instruction in order to accurately measure the progress of linguistically and culturally diverse students and hold Title VII funded programs accountable.

STRENGTHENED PROFESSIONAL DEVELOPMENT

Title VII, as ESEA in general, makes a major investment of educational resources into the professional development of the educational workforce. Two important tenets underlie Title VII's emphasis on professional development: the field of bilingual education is mature and educational personnel--especially teachers--will be the ultimate implementors of reform. Four types of grants are provided to systematically improve both the quality and quantity of training available to education personnel:

- 1) **Training for All Teachers Program**--up to 5-year grants to a variety of educational institutions to foster the incorporation of courses and curricula on appropriate and effective instructional and assessment strategies specific to the education of LEP students;
- 2) **Bilingual Education Teachers and Personnel Grants**--up to 5 year grants to Institutions of Higher Education in consortia with SEAs or LEAs to develop and expand postsecondary programs to train bilingual education personnel to high professional standards; grants to LEAs and SEAs are also authorized to provide inservice professional development;
- 3) **Bilingual Education Career Ladder Program**--up to 5 year grants to institutions of higher education in consortia with LEAs or SEA to upgrade qualifications and skills of non-certified educational personnel; and
- 4) **Graduate Fellowships in Bilingual Education Program**--Fellowships for masters, doctoral, and post-doctoral study related to instruction of children and youth of limited English proficiency.

OVERALL FLEXIBILITY WITHIN SYSTEMIC REFORM

The new Title VII provides needed flexibility for the field to develop and implement the best approaches to serve the educational needs of their particular universe of linguistically and culturally diverse students. The flexibility is guided by a framework of systemic educational reform and a knowledge base of bilingual education to render programs that move *all* students towards achieving high standards. In sum, Title VII provides three cornerstones to move bilingual education into a new phase of excellence for our linguistically and culturally diverse children:

- (1) A redefined model that builds upon the strengths of culturally and linguistically diverse students to assist them in achieving to high standards;
- (2) Resources and programmatic flexibility guided by the Department's funding priorities to foster the development of bilingual education programs that will leverage state and local funds to help LEAs build their own capacity; and
- (3) A re-focused research agenda, guidelines for assessment and performance measurement to evaluate the implementation of Title VII programs and students' progress towards achieving high standard goals. In addition, the development of comprehensive technical assistance centers to assist in the educational reform efforts in general and in particular, to ensure that linguistically and culturally diverse children benefit from these reform efforts.

Title VII, as reauthorized also includes the Foreign Language Assistance Program and the Emergency Immigrant Education Program which are not explained here.

To receive further information, please call the National Clearinghouse for Bilingual Education at 1-800-321-NCBE to sign-up for the FAX-Newsletter issued by the Office of Bilingual Education and Minority Languages Affairs.

MEETING THE NEEDS OF LINGUISTICALLY AND CULTURALLY DIVERSE STUDENTS

The present generic consensus model would be something like this:

- **The program** is bilingual/bicultural and places emphasis on primary (home) language development but with attention to English learning. Instructional activities are always cognizant of language development issues. Wherever possible, students learn math, literature, science, and other content initially in the primary language. There is a strong multicultural component to the program. Not only are artifacts from different cultures featured, but in addition, teachers interact with students and set up classroom structures that are suited to children's cultural characteristics.
- **The curriculum** is experiential and cognitively oriented; it is "developmentally appropriate." The program encourages exploration, discovery, and the development of academic and social skills and positive self-concept. Positive self-concept is partly accomplished through featuring the child's culture in the classroom.
- **Parent involvement** and participation is encouraged by making parents feel welcome to the center and in all classrooms. Signs and printed matter are in English and the parents' home language. Center staff are fluent in the parents' home language; staff are also culturally aware, informed, and responsive. Parents classes are held to address numerous topics requested by parents themselves. Topics include obtaining a GED, improving English oral and written skills, improving home discipline, how to help your child at school, etc. Parents are strongly encouraged--and assisted--to take a leadership role in setting policy.

Some questions which need to be addressed by all programs:

Language

- how should home language and English be used?
- what are the goals of the program, what are the instructional standards/expectations for students?
- is instruction aligned with goals, standards, curriculum and student assessments?
- is there danger of language loss, disruption of family communication?
- what if parents want English emphasized, even to the exclusion of home language?

Culture

- What about cultural matches/mismatches, e.g. differences in sociolinguistics, participation patters? which matter and need accommodation?
- if the program's curricular emphasis (exploration, discovery) is different from socialization patters, teaching styles at home (direct teaching/telling and modeling for learning), will this create a problem for children?

Parents

- how is parent involvement promoted, particularly for working parents and parents with young children at home?
- what role do parents' educational values and beliefs and their educational practices at home play in promoting children's successful adaptation to school?

Professional Development

- Do teachers and other educational personnel have appropriate expertise and credentials?
- Does the program include a long-term plan for enhancing the expertise and credentials of ALL staff?

Equal Employment Opportunity Comm.**§ 1606.3**

(1) There is widespread confusion concerning the extent of accommodation under the *Hardison* decision.

(2) The religious practices of some individuals and some groups of individuals are not being accommodated.

(3) Some of those practices which are not being accommodated are:

—Observance of a Sabbath or religious holidays;

—Need for prayer break during working hours;

—Practice of following certain dietary requirements;

—Practice of not working during a mourning period for a deceased relative;

—Prohibition against medical examinations;

—Prohibition against membership in labor and other organizations; and

—Practices concerning dress and other personal grooming habits.

(4) Many of the employers who testified had developed alternative employment practices which accommodate the religious practices of employees and prospective employees and which meet the employer's business needs.

(5) Little evidence was submitted by employers which showed actual attempts to accommodate religious practices with resultant unfavorable consequences to the employer's business. Employers appeared to have substantial anticipatory concerns but no, or very little, actual experience with the problems they theorized would emerge by providing reasonable accommodation for religious practices.

Based on these findings, the Commission is revising its Guidelines to clarify the obligation imposed by section 701(j) to accommodate the religious practices of employees and prospective employees.

PART 1606—GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN**Sec.**

1606.1 Definition of national origin discrimination.

1606.2 Scope of Title VII protection.

1606.3 The national security exception.

1606.4 The bona fide occupational qualification exception.

1606.5 Citizenship requirements.

1606.6 Selection procedures.

1606.7 Speak-English-only rules.

1606.8 Harassment.

AUTHORITY: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.

SOURCE: 45 FR 85635, Dec. 29, 1980, unless otherwise noted.

§ 1606.1 Definition of national origin discrimination.

The Commission defines national origin discrimination broadly as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group. The Commission will examine with particular concern charges alleging that individuals within the jurisdiction of the Commission have been denied equal employment opportunity for reasons which are grounded in national origin considerations, such as (a) marriage to or association with persons of a national origin group; (b) membership in, or association with an organization identified with or seeking to promote the interests of national origin groups; (c) attendance or participation in schools, churches, temples or mosques, generally used by persons of a national origin group; and (d) because an individual's name or spouse's name is associated with a national origin group. In examining these charges for unlawful national origin discrimination, the Commission will apply general title VII principles, such as disparate treatment and adverse impact.

§ 1606.2 Scope of Title VII protection.

Title VII of the Civil Rights Act of 1964, as amended, protects individuals against employment discrimination on the basis of race, color, religion, sex or national origin. The title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination. These Guidelines apply to all entities covered by title VII (collectively referred to as "employer").

§ 1606.3 The national security exception.

It is not an unlawful employment practice to deny employment opportunities to any individual who does not fulfill the national security requirements stated in section 703(g) of title VII.¹

¹See also, 5 U.S.C. 7532, for the authority of the head of a federal agency or department.

Continued

§ 1606.4

§ 1606.4 The bona fide occupational qualification exception.

The exception stated in section 703(e) of title VII, that national origin may be a bona fide occupational qualification, shall be strictly construed.

§ 1606.5 Citizenship requirements.

(a) In those circumstances, where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they are prohibited by title VII.²

(b) Some State laws prohibit the employment of non-citizens. Where these laws are in conflict with title VII, they are superseded under section 708 of the title.

§ 1606.6 Selection procedures.

(a)(1) In investigating an employer's selection procedures (including those identified below) for adverse impact on the basis of national origin, the Commission will apply the *Uniform Guidelines on Employee Selection Procedures* (UGESP), 29 CFR part 1607. Employers and other users of selection procedures should refer to the UGESP for guidance on matters, such as adverse impact, validation and record-keeping requirements for national origin groups.

(2) Because height or weight requirements tend to exclude individuals on the basis of national origin,³ the user is expected to evaluate these selection procedures for adverse impact, regardless of whether the total selection process has an adverse impact based on national origin. Therefore,

ment to suspend or remove an employee on grounds of national security.

²See *Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. 86, 92 (1973). See also, E.O. 11935, 5 CFR 7.4; and 81 U.S.C. 699(b), for citizenship requirements in certain Federal employment.

³See CD 71-1529 (1971), CCH EEOC Decisions 16231, 3 FEP Cases 852; CD 71-1418 (1971), CCH EEOC Decisions 16223, 3 FEP Cases 580; CD 74-25 (1973), CCH EEOC Decisions 16400, 10 FEP Cases 260. *Davis v. County of Los Angeles*, 866 F. 2d 1334, 1341-42 (9th Cir., 1977) vacated and remanded as moot on other grounds, 440 U.S. 625 (1978). See also, *Dolhard v. Rawlinson*, 433 U.S. 321 (1977).

29 CFR Ch. XIV (7-1-91 Edition)

height or weight requirements are identified here, as they are in the UGESP,⁴ as exceptions to the "bottom line" concept.

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

(1) Fluency-in-English requirements, such as denying employment opportunities because of an individual's foreign accent,⁵ or inability to communicate well in English.⁶

(2) Training or education requirements which deny employment opportunities to an individual because of his or her foreign training or education, or which require an individual to be foreign trained or educated.

§ 1606.7 Speak-English-only rules.

(a) *When applied at all times.* A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment.⁷ Therefore, the

⁴See Section 4C(2) of the *Uniform Guidelines on Employee Selection Procedures*, 29 CFR 1607.4C(2).

⁵See CD ALA8-1-155E (1969), CCH EEOC Decisions 16008, 1 FEP Cases 921.

⁶See CD YAU9-048 (1969), CCH EEOC Decisions 16054, 2 FEP Cases 78.

⁷See CD 71-446 (1970), CCH EEOC Decisions 16173, 2 FEP Cases, 1127; CD 72-0281 (1971), CCH EEOC Decisions 16293.

Equal Employment Opportunity Comm.**§ 1606.8**

Commission will presume that such a rule violates title VII and will closely scrutinize it.

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

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

§ 1606.8 Harassment.

(a) The Commission has consistently held that harassment on the basis of national origin is a violation of title VII. An employer has an affirmative duty to maintain a working environment free of harassment on the basis of national origin.*

(b) Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitute harassment when this conduct: (1) Has the purpose or effect of creating an intimidating, hostile or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects

*See CD CL68-12-431 EU (1969), CCH EEOC Decisions 16085, 2 FEP Cases 295; CD 72-0621 (1971), CCH EEOC Decisions 16311, 4 FEP Cases 312; CD 72-1561 (1972), CCH EEOC Decisions 16354, 4 FEP Cases 852; CD 74-05 (1973), CCH EEOC Decisions 16387, 6 FEP Cases 834; CD 76-41 (1975), CCH EEOC Decisions 16632. See also, Amendment to *Guidelines on Discrimination Because of Sex*, § 1604.11(a) n. 1, 45 FR 7476 by 74677 (November 10, 1980).

an individual's employment opportunities.

(c) An employer is responsible for its acts and those of its agents and supervisory employees with respect to harassment on the basis of national origin regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of harassment in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees with respect to harassment of employees in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

PART 1607—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

COMPREHENSIVE TABLE OF CONTENTS

GENERAL PRINCIPLES

- 1607.1. Statement of Purpose
 - A. Need for Uniformity—Issuing Agencies
 - B. Purpose of Guidelines
 - C. Relation to Prior Guidelines
- 1607.2. Scope
 - A. Application of Guidelines
 - B. Employment Decisions

OCLA fax

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DOCUMENT: EEOC Guidelines on English-Only rules

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER): 4

SPECIAL INSTRUCTIONS:

*As we discussed, English only rules
in the context of Title VII / National Origin
discrimination.*



NATIONAL
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— for —
BILINGUAL
EDUCATION

POSITION PAPER

"ENGLISH-ONLY"

A Dangerous Solution to a Non-Existent problem

"English-Only" is a debate about new government regulations on language use, not about the importance of speaking English in the U.S. Everyone -- English-Only proponents and opponents, immigrants, ethnic minorities, and language minority leaders -- recognizes that it is impossible to take advantage of all of the opportunities offered by the U.S. unless one speaks English. Rather, the issue is whether it is necessary for the government to enact new government laws or regulations on language use.

"Official English" is English-Only. Every English-Only bill before Congress would make it illegal for federal employees or documents to communicate in a language other than English. Some bills go further and establish a new federal preference for English in private communication between citizens.

English-Only is unnecessary. Over 97 percent of Americans speak English, according to the Census. And current generations of language-minorities are learning English faster than previous generations, according to a leading researcher. In Los Angeles, demand for English classes is so great that some schools run 24 hours a day and 50,000 students are on waiting lists. And over 99.9 percent of federal documents are in English, according to the General Accounting Office (GAO).

English-Only laws would prompt extensive, divisive, and frivolous litigation. At best, proposed English-Only laws would allow anyone who believes that they have been discriminated against for communicating in English to the federal government to sue in federal court. There are no documented cases of discrimination for communicating to the federal government in English. It could potentially allow those disgruntled with government services to sue over accents or dialects spoken by federal employees. At worst, proposed English-Only laws would permit citizens to sue one another in federal court over a violation of the new federal "preference" for English in private communication among citizens.

American ideals of freedom, democracy, and tolerance -- not language -- have been and always will be the bonds that hold America together. America has remained strong and united because we share a common set of ideals and values based on American political traditions of freedom, democracy, equality, and tolerance. American soldiers in World War II did not fight to "make the world safe for English," but rather to "make the world safe for democracy." An official federal language could

- CONTINUED -

NABE POSITION PAPER

not have prevented the American Civil War nor could it have prevented the current civil strife in the former Yugoslavia.

English-Only gives government officials open license to regulate how Americans talk. In 219 years of American history, the federal government has neither had an official language nor involved itself in regulating how people talk. By inaugurating a new and an unprecedented role for the federal government, English-Only laws emboldens government officials who have already twisted the law to prohibit the speaking of any language but English. In a Texas child custody case, a State Judge threatened to remove a child from custody of her mother because the mother had spoken Spanish to her daughter. The Judge equated the mother's use of Spanish with "child abuse." Indeed, federal regulation of language use is similar to federal regulation of religion. Just as the U.S. has never established an official, federal religion, in contrast to other nations, the U.S. would be ill-served by establishing an official, federal language.

English-Only laws make government more expensive and less efficient. As the Ninth Circuit Court of Appeals noted in recently striking down the Arizona State English-Only mandate, the use of a language other than English can make it easier to serve taxpayers. In the Arizona case, a bilingual state employee found it easier, quicker, and less expensive to collect medical malpractice information from claimants who were more comfortable conversing in Spanish. The Arizona English-Only mandate outlawed government communication in Spanish or other languages. Federal English-Only laws would outlaw communication between Members of Congress and their constituents in any language but English and prohibit federal law enforcement agents from using languages other than to English to gather information on a crime.

English-Only disconnects millions of Americans from their government. For millions of American citizens and nationals on the island of Puerto Rico, Native American reservations, or U.S. territories in the Pacific, the right to communicate in a native language is protected by treaty or custom. It is counterproductive and dangerous to forbid elderly language-minority Americans, who have a difficult time learning English, or those in the process of learning English from communicating with their government. English-Only laws would also forbid official use of American Sign Language (ASL), preventing government communication with the hard of hearing.

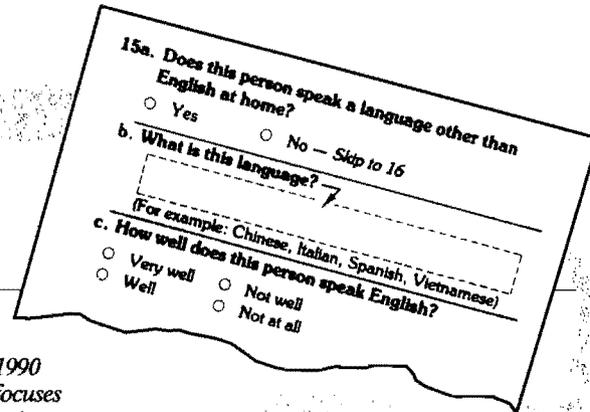
America should be thinking how to learning more, not fewer, languages. Four of five jobs in the US are created through exports, and the majority of exports jobs are service-related. To succeed, American business must follow the credo of a sage Japanese salesman. When asked if English was the most important language to know in international business, he replied: "Not necessarily. The most important language to know is the language of the customer." In this regard, the 32 million American who speak languages in addition to English are a competitive advantage.

Grades K-12 Total Enrollment, LEP Enrollment, and Percent LEP
Enrollment, by State: 1993-94

| State | Total K-12 Enrollment | Total K-12 LEP Enrollment | Percent LEP Enrollment ^{a/} |
|--|-----------------------|---------------------------|--------------------------------------|
| Alabama | 714,916 | 3,214 | 0.4 |
| Alaska | 125,813 | 26,812 | 21.3 |
| Arizona | 808,039 | 95,011 | 11.8 |
| Arkansas | 445,913 | 4,002 | 0.9 |
| California | 5,841,520 | 1,215,218 | 20.8 |
| Colorado | 669,654 | 26,203 | 3.9 |
| Connecticut | 554,039 | 21,020 | 3.8 |
| Delaware | 129,129 | 1,584 | 1.2 |
| District of Columbia | 89,537 | 4,498 | 5.0 |
| Florida | 2,561,207 | 144,731 | 5.7 |
| Georgia | 1,298,407 | 11,877 | 0.9 |
| Hawaii | 213,312 | 11,761 | 5.5 |
| Idaho | 241,250 | 6,883 | 2.9 |
| Illinois | 2,210,179 | 99,637 | 4.5 |
| Indiana | 1,073,870 | 5,342 | 0.5 |
| Iowa | 542,499 | 5,343 | 1.0 |
| Kansas | 451,536 | 6,900 | 1.5 |
| Kentucky | 658,488 | 2,207 | 0.3 |
| Louisiana | 901,952 | 6,277 | 0.7 |
| Maine | 226,665 | 1,886 | 0.8 |
| Maryland | 947,520 | 14,336 | 1.5 |
| Massachusetts | 1,002,065 | 44,094 | 4.4 |
| Michigan | 1,706,395 | 45,163 | 2.6 |
| Minnesota | 884,798 | 20,108 | 2.3 |
| Mississippi | 545,270 | 3,259 | 0.6 |
| Missouri | 951,981 | 4,765 | 0.5 |
| Montana | 171,201 | 8,265 | 4.8 |
| Nebraska | 322,505 | 3,714 | 1.2 |
| Nevada | 246,218 | 14,370 | 5.8 |
| New Hampshire | 204,011 | 1,126 | 0.6 |
| New Jersey | 1,355,532 | 53,161 | 3.9 |
| New Mexico | 350,083 | 79,829 | 22.8 |
| New York | 3,168,546 | 216,448 | 6.8 |
| North Carolina | 1,179,852 | 12,428 | 1.1 |
| North Dakota | 127,879 | 9,400 | 7.4 |
| Ohio | 2,028,199 | 12,627 | 0.6 |
| Oklahoma | 616,452 | 26,653 | 4.3 |
| Oregon ^{e/} | 548,611 | 19,651 | 3.6 |
| Pennsylvania | <i>c/</i> | <i>c/</i> | -- |
| Rhode Island | 173,834 | 8,529 | 4.9 |
| South Carolina | 693,403 | 2,036 | 0.3 |
| South Dakota | 153,997 | 5,438 | 3.5 |
| Tennessee | 996,574 | 3,533 | 0.4 |
| Texas | 3,788,769 | 422,677 | 11.2 |
| Utah | 475,870 | 21,364 | 4.5 |
| Vermont | 101,591 | 859 | 0.8 |
| Virginia | <i>c/</i> | <i>c/</i> | -- |
| Washington | 984,876 | 30,627 | 3.1 |
| West Virginia | <i>c/</i> | <i>c/</i> | -- |
| Wisconsin | 993,783 | 17,677 | 1.8 |
| Wyoming | 101,769 | 2,013 | 2.0 |
| Total U.S. and D.C. | 44,579,509 | 2,804,556 | 6.3 |
| American Samoa | 14,650 | 13,945 | 95.2 |
| Guam | <i>c/</i> | <i>c/</i> | -- |
| Marshall Islands | 15,755 | 15,755 | 100.0 |
| Micronesia | 36,087 | 36,010 | 99.8 |
| Northern Marianas | 9,727 | 9,346 | 96.1 |
| Palau | 3,317 | 2,719 | 82.0 |
| Puerto Rico ^{f/} | 754,401 | 149,824 | 19.9 |
| Virgin Islands | 29,943 | 5,767 | 19.3 |
| Total U.S., D.C., and Territories | 45,443,389 | 3,037,922 | 6.7 |

^{a/} Percentage was calculated based on totals from only those states responding to both data items.
^{b/} Percentage was calculated based on totals from only those states responding to this data item for both years.
^{c/} SEA did not participate
^{d/} Data not reported
^{e/} The LEP count for Oregon is for LEP participating and is therefore an undercount of the actual LEP in the state.
^{f/} Puerto Rico has responded with numbers of Limited Spanish Proficient (LSP) students.

We asked... You told us Language Spoken at Home



The Census Bureau conducts a census of population and housing every 10 years. This bulletin is one of a series that shows the questions asked in the 1990 census and the answers that you, the American people, gave. Each bulletin focuses on a question or group of questions appearing on the 1990 census questionnaires.

In question 15a on the 1990 census forms, we asked people if they spoke a language other than English at home. For those who answered yes, we asked which language they spoke (part b) and how well they spoke English (part c). From what you told us, we learned that:

- In 1990, 31.8 million U.S. residents, or 14 percent of the population 5 years old and over, reported they spoke a language other than English at home. These figures compare with 23.1 million persons or 11 percent in 1980.

Which Languages Were Spoken?

- After English, Spanish was the most common language spoken at home in 1990. More than half (54 percent or 17.3 million) of those who spoke a language other than English at home reported they spoke Spanish (see table). This is a sharp increase over 1980, when 11.1 million persons spoke Spanish at home, or 48 percent of those who spoke a non-English language.
- Spanish was nine times more frequent than French (including Creole), which was the second most common non-English language spoken at home and was used by 1.9 million persons. Then followed German, with 1.5 million speakers, and Chinese and Italian, each with 1.3 million. In total, 4.5 million persons spoke an Asian or Pacific Island language.
- The top 15 non-English languages spoken at home in 1990 reflected both new and old immigration patterns to the United States. The recent substantial immigration of Asian and Pacific Islander groups was evident in the dramatic increases between 1980 and 1990 in the number of speakers of Vietnamese, Hindi, Korean, Chinese, and Tagalog.
- In contrast, significant declines were noted over the decade in the number of speakers of some European languages, such as Italian, Polish, and Greek, whose peak wave of immigration was early in this century.

Top 15 Languages Other Than English Spoken at Home: 1990 and 1980

| Language | Number (thousands) | | Percent change, 1980-90 |
|--------------------|--------------------|--------|-------------------------|
| | 1990 | 1980 | |
| Spanish | 17,345 | 11,116 | +56 |
| French | 1,930 | *1,609 | +20 |
| German | 1,548 | 1,587 | -2 |
| Chinese | 1,319 | 631 | +109 |
| Italian | 1,309 | 1,618 | -19 |
| Tagalog (Filipino) | 843 | *452 | +87 |
| Polish | 723 | 821 | -12 |
| Korean | 626 | 266 | +135 |
| Vietnamese | 507 | 195 | +161 |
| Portuguese | 431 | 352 | +22 |
| Japanese | 428 | 336 | +27 |
| Greek | 388 | 401 | -3 |
| Arabic | 355 | 217 | +63 |
| Hindi (Urdu) | 331 | *130 | +155 |
| Russian | 242 | 173 | +40 |

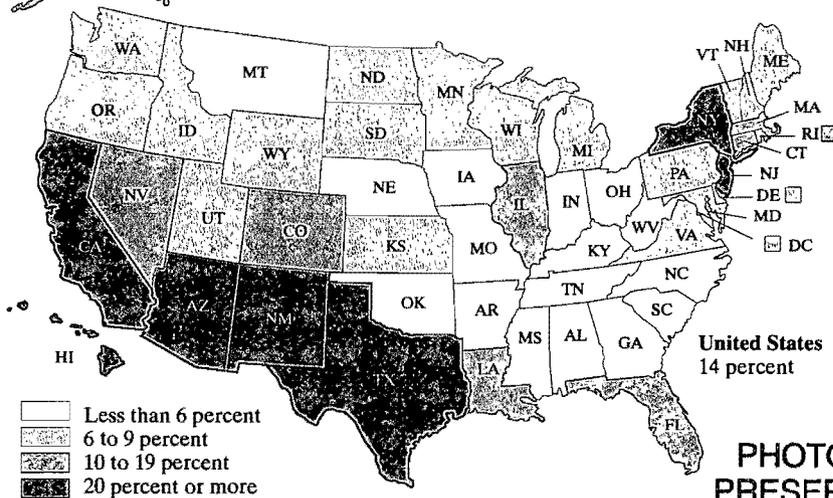
*3 years and over; all other figures, 5 years and over

Which States Had the Largest Percentage of Persons Who Spoke Another Language?

- New Mexico had the largest percentage of persons who spoke a non-English language at home—36 percent—followed by California, with 31 percent (see map). Only five other States—Texas, Hawaii, New York, Arizona, and New Jersey—had a figure of 20 percent or more.
- In comparison, for the majority of States (34 in all), fewer than 10 percent of the population spoke another language at home. In seven States—all in the South—3 percent or fewer did so.



Other-Language Speakers More Prevalent in the Southwestern States, Hawaii, New York, and New Jersey
Percent Who Spoke a Non-English Language at Home: 1990



Census Trivia: According to the 1990 census, which large metropolitan area had the highest percentage of persons who spoke a language other than English at home? Which one had the lowest? (Answer below.)

Languages Spoken at Home Varied by Region and State

- In all four regions, Spanish was the most frequent language other than English spoken at home in 1990. The next most widely used language, however, was different. In the Northeast, Italian was second; in the Midwest, German; in the South, French; and in the West, Chinese.
- In 39 States and the District of Columbia, Spanish was the most common non-English language spoken at home. The most frequent non-English language for the remaining 11 States varied. French was the most common in Louisiana, Maine, New Hampshire, and Vermont. German was most used in Minnesota, Montana, and North and South Dakota. Portuguese was first in Rhode Island, Yupik in Alaska, and Japanese in Hawaii.

Which States Had the Largest Number of Other-Language Speakers?

Slightly more than half of all non-English language speakers in the United States resided in just three States: California (8.6 million), Texas (4.0 million), or New York (3.9 million). Half of all Spanish speakers lived in California or Texas. More than 4 in 10 speakers of an Asian or Pacific Island language lived in California.

Ability to Speak English

- The pie chart shows that most of the 31.8 million persons who spoke a language other than English at home reported they also spoke English "very well." Only 6 percent said they did not speak English "at all."
- Non-English language speakers varied markedly in their ability to speak English. Not surprisingly, the Nation's more recent immigrants were more likely to have difficulty with English. Among Chinese, Korean, and Vietnamese speakers, whose numbers doubled in the last decade, at least 60 percent reported they had some difficulty with English, that is, they reported speaking English less than "very well."
- Among other groups such as French, German, Greek, or Italian speakers, whose heaviest immigration was in earlier decades, one-third or fewer reported some level of difficulty with English.

NOTE: Data for language spoken at home and for ability to speak English are based on a sample and are subject to sampling variability.

Who Uses This Information? Just a few examples:

- Federal Government to identify jurisdictions needing voting materials in different languages to comply with the Voting Rights Act
- State and local governments and private social service agencies to assist in delivering health, social, or special educational services
- Television and radio stations to define foreign language service areas and marketing companies to meet demands for products and services tailored to other-language populations

Want to Know More?

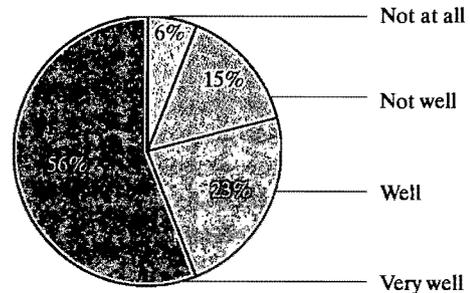
Consult the series of 1990 census reports, CP-2, *Social and Economic Characteristics*, at a large public or university library. Also for sale by Superintendent of Documents, U.S. Government Printing Office (GPO).

Call:

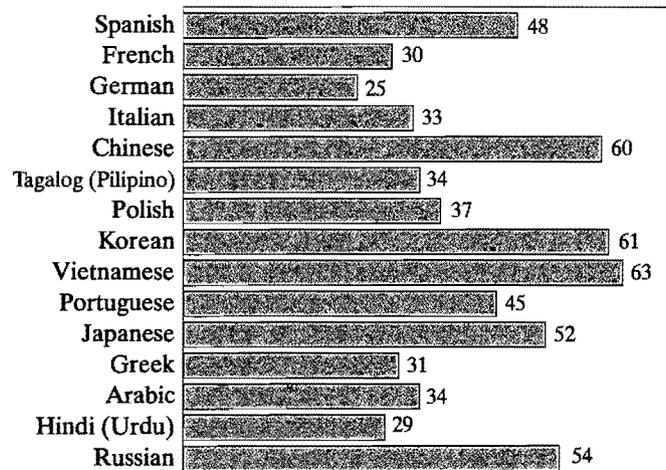
- Customer Services at the Census Bureau, 301-763-4100 for ordering information about the GPO reports listed above
- OR for copies of CQC bulletins ■ Rosalind Bruno, 301-763-1154, for more information about this bulletin or on language spoken at home
- Karen Mills, 301-763-4263, for general information on CQC bulletins

Over Half of Other-Language Speakers Spoke English Very Well

Ability to Speak English for Non-English Language Speakers: 1990



Percent Who Spoke English Less Than Very Well: 1990 Top 15 Languages



Trivia Answer: Of the 20 largest metropolitan areas in 1990, Miami had the highest percentage of persons who spoke a language other than English at home (42 percent); St. Louis had the lowest (4 percent).



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U.S. Department of Commerce
Economics and Statistics Administration
BUREAU OF THE CENSUS

PHOTOCOPY
PRESERVATION

ROBERT A. UNDERWOOD
GUAM

NATIONAL SECURITY COMMITTEE

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SUBCOMMITTEES

NATIONAL PARKS, FORESTS AND LANDS
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Washington, DC 20515-5301

October 18, 1995

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THE KETCHUP-ONLY BILL: OUR NATIONAL CONDIMENT!

Dear Colleague,

I was surprised to learn that salsa has replaced ketchup in sales as our nation's leading condiment. I hope you share my concern that a country built on ketchup should take steps to ensure the predominance of this vegetable as our national condiment. I am preparing draft "Ketchup-Only" legislation to make the use of ketchup mandatory in all government (food) services, and I invite you to join me in cosponsoring this bill.

Our nation was founded on commonality. Salsa, and to a great extent soy sauce, threatens the (dietary) fibre of our nation. Those who would urge diversity do not understand the importance ketchup plays in our schools. Those who do not like ketchup should not be encouraged to keep using whatever condiments suit their palates. We would have schools spending scarce resources just to stock every condiment imaginable! And never mind trying to wean students off salsa, let them go cold turkey. Many people have acquired the taste for ketchup, and it never killed them. If people want to come to this country, they should be prepared to use our condiments. We can even put up signs at the border: "Eat This".

Thank you for supporting Ketchup-Only!

Not Sincerely,

ROBERT A. UNDERWOOD
Member of Congress



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

TELEFACSIMILE COVER SHEET

DATE: 9/25/95 TIME: 5:20 p.m.

TO: Steve Wainath

PHONE: 456-5576

FAX: 456-7028

FROM: Juanita C. Hernandez
OFFICE OF THE ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
FAX NUMBER: 202-307-2839
PHONE: 202-514-3653

COMMENTS: Steve, Here is English Only - Memo on
Language Protection Cases Memo plus Phil S.C.T.
Spur Steak Brief Comment in AG briefing
came as result of Spur Steak position not OSL.
Call if I can be of assistance on this.
Please send me a final copy of position paper

NUMBER OF PAGES TRANSMITTED (INCLUDING THIS SHEET) 24
(max. 30 pages)

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National Coalition for Language Freedom

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Questions and Answers About The English-Only Movement

This document was prepared by Edward M. Chen, Staff Attorney with the American Civil Liberties Union of Northern California.

- In 1980, Dade County, Florida passed an ordinance barring use of county funds for activities which involve a foreign language or which promoted non-"American" culture. As a result, funding for ethnic festivals, bilingual hospital services, signs, and tourist promotions was terminated.
- In 1984, three municipal court judges in Southern California imposed a workplace rule prohibiting court clerks from speaking to co-workers in Spanish.
- Monterey Park and other cities in Southern California enacted ordinances prohibiting or restricting the use of foreign languages on private business signs.
- English-only advocates have mounted protests against telephone companies for their use of Hispanic Yellow Pages, and multilingual operators and against fast food chains for their use of Spanish language menus.
- In 1986, 1988 and 1990 the voters of California, Florida, Arizona, Colorado and Alabama passed statewide initiatives designating English the "official" state language.

These acts threaten our country's proud heritage of freedom, tolerance and diversity, as well as the civil liberties of millions of Americans. They are manifestations of a growing English-only movement.

The primary focus of this movement is the enactment of laws designating English as the "official" language and limiting the use of foreign languages in the provision of government services and by businesses.

The National Coalition for Language Freedom vigorously opposes the English-only movement and "Official English" laws because they threaten the civil rights and liberties of individuals who are not proficient in English. The intolerance and bigotry they canonize are contrary to the spirit of tolerance and diversity embodied in our Constitution.

With the enactment of city and state laws, and the proposal for an English Language Amendment to the United States Constitution, the debate over English-only has become increasingly intense. Many people are confused about "Official English" laws.

Inside is summary of frequently-asked questions and answers which explain why we oppose English-only legislation.

**-1-
What is the English-only movement?**

The English-only movement seeks to restrict or terminate the use of languages other than English by the government and in some cases, private businesses. English-only advocates have urged that bilingual voting assistance and ballots be terminated, bilingual education be severely restricted, and that other bilingual services or governmental communications be ended. The ultimate goal of the English-only movement is to amend the U.S. Constitution to make English the nation's "official" language.

toward a bilingual society" and that permitting the use of foreign languages by government and business discourages immigrants from learning English. They argue that there is an increasing number of immigrants who refuse to learn English, thereby threatening the primacy of English the "common bond" which holds our society together. English-Only advocates argue the government's endorsement of bilingualism threaten to divide our society along language and ethnic lines.

English-only advocates argue that our nation is threatened by a "mindless drift

**-2-
Isn't English already the official language of the United States?**

No. Although English is universally acknowledged as our nation's common language, the Constitution does not explicitly make English the nation's "official" language. The Founding Fathers debated whether an official language should be designated. Historians believe an official language was not adopted because many of the Founding Fathers were concerned with its potential impact on religious freedom and immigration, and felt that identification of

a national common language should be made by free choice rather than imposed from the top down by law.

Currently, seventeen states have "Official English" laws. Although some were passed at the turn of the century during periods of nativism, most were passed within the last several years. There are few court decisions interpreting these laws and thus their legal effect is not yet clear.

**-3-
Is the English Language in America being threatened?**

No. Although there has been a large influx of immigrants from Asia and Latin America since the 1960's, the primacy of English as the nation's common language is not threatened. Over 98% of U.S. residents over the age of four speak English "well" or "very well" according to the 1980 Census. In fact, a greater proportion of the American population spoke German in the early 1800's than those who speak Spanish today. Contrary

to what some English-only advocates suggest, there is no broad based movement to make Spanish or any other foreign language the "official" language of the United States. Hence there is no need to declare English as our "official" language.

**-4-
Is it true that today's immigrants, unlike earlier immigrants, are not learning English?**

No. Today's immigrants are assimilating into U.S. society and acquiring English proficiency at the same rate as prior generations of immigrants. Sociologist Calvin Veltman has found that today's Hispanic immigrants are learning English as fast as earlier generations of European immigrants. A 1985 Rand Corporation study found that while roughly half of Mexican

immigrants to California speak English, over 95% of first generation Mexican-Americans are English proficient, and that more than 50% second generation Mexican Americans have lost their mother tongue entirely. According to 1980 Census data, nearly 90% of Hispanics ages 5 or older speak English in their households.

Today's immigrants recognize their

**-4-
(Continued)**

responsibility to learn English. According to a 1985 survey, 98% of Latino parents surveyed, as compared to 94% of Anglo and Black parents, felt it was essential for their children to read and write English perfectly. Latinos, Asians, and other new immigrants fill the long waiting lists for over-enrolled adult English classes. In Los Angeles, the waiting list is over 40,000; in New York the list is over 26,000. In 1987, a group

of immigrants filed a lawsuit in Los Angeles Superior Court to force the County to expand English classes for non-English speaking immigrants. The problem is not a lack of desire to learn English, but the lack of educational resources to teach English.

**-5-
Isn't it necessary to protect the English language since it serves as the common bond of American society?**

The United States is and has always been a nation of immigrants, most of whose native languages are those other than English. Since the founding of our nation, there have been large pockets of German, French, and Spanish-speaking populations in our country. Indeed, the Continental Congress printed many documents, including the Articles of Confederation, in German for the benefit of non-English speaking patriots. In the 18th and 19th centuries, bilingual education in German and Yiddish were common in the Mid-west and Eastern cities. Even the official minutes of some town meetings in the Mid-west were kept in German.

cultural diversity never undermined our national unity. Nor is it a threat today. Today's Hispanic and Asian immigrants, much like yesterday's Italian, Irish, and German immigrants, have come to the United States to escape adverse political or economic conditions. The common heritage shared by new and old immigrants alike is their mutual quest for freedom and opportunity. The bond that holds this nation together is our shared belief and commitment to democracy, freedom and justice. That bond runs far deeper than the English language.

Our nation's history of linguistic and

**-6-
Won't "Official English" laws unite our country and prevent divisions along language lines as in Canada?**

Language diversity need not result in social divisiveness. For instance, Switzerland has four official national languages, and there is no divisiveness between the various linguistic groups. On the other hand, Ireland has long experienced internal violent conflict despite linguistic homogeneity.

More to the point, our nation's long history of linguistic diversity has not prevented national progress and unity. A good example of the positive effects of bilingualism is New Mexico, which has been officially bilingual since 1912. Government documents and ballots are printed in English and Spanish. Rather than linguistic and cultural conflicts, New Mexico enjoys the highest rate of political participation (and hence integration into

the political mainstream) by Hispanics in the nation.

The conflict between French-speaking and English-speaking Canadians is often cited by English-only supporters as reason for "Official English" laws. But the Canadian conflict is not the result of official bilingualism. The tension derives from the historical economic, social, and political conflicts particular to Canada. The call to make French the official language was the symptom rather than the result of this historic conflict.

History teaches that the attempt to impose an official language over members of a minority group invariably results in increased divisiveness, whereas tolerance and recognition of minority languages lessens tensions. The Canadian

-6-
(Continued)

experience is relevant in this regard. In 1974, the French-speaking majority in Quebec declared French the exclusive language in order to stifle what it viewed as a threat from the English-speaking minority. Draconian language laws, such as those prohibiting businesses from posting signs in English, caused a great deal of divisiveness.

It is already evident that "Official English" laws in this country have caused division rather than unity. Ethnic tension was exacerbated in Dade County, Florida, Monterey Park, California, and other cities where such measures were introduced.

Unity comes from tolerance and mutual respect, not forced conformity.

Many of the world's most virulent wars have been based on religion; yet, despite the diversity of religious faiths within our country we have avoided the intense religious wars and conflicts experienced elsewhere. Why? Because the First Amendment guarantees tolerance and teaches mutual respect of different faiths, rather than allowing the imposition of an official orthodoxy. In contrast, "Official English" laws impose an official orthodoxy that breeds intolerance. It is intolerance not diversity which threatens our nation's unity.

-7-
Who is behind the English-only movement?

The main organization leading the English-only movement is U.S. English. U.S. English was organized in 1983 as an offshoot of the Federation for American Immigration Reform (FAIR), a group which advocates tighter restrictions on immigration. Its founders were former Senator S.I. Hayakawa and Dr. John Tanton, a Michigan ophthalmologist and population-control activist. U.S. English claims membership of over 300,000. Its stated purpose is "to defend the public interest in the growing debate on bilingualism and biculturalism."

While not all its members are xenophobic and anti-immigrant, the sentiments of its founder, Tanton, are evident in a memorandum he wrote in 1986 intended as a private paper but which came to light two years later. Tanton's memo attacks Hispanics for their "tradition of the bribe" low "educability," Roman Catholicism, and high fertility all of which he claimed threaten the American way of life. He wrote, "Perhaps this is the first instance in which those with their pants up are going

to get caught by those with their pants down."

Another major English-only organization is English First, founded in 1986 as a project of the Committee to Protect the Family. It claims 200,000 members. Its solicitation letter states that "immigrants these days refuse to learn English", "never become productive members of American society," and "remain stuck in a linguistic and economic ghetto." It brands the "'bilingual' movement" as "radical." The founder of English First, former Virginia state legislator Lawrence Pratt, was the secretary of the Council for Inter-American Security which published a report in 1985 warning that Hispanics who support bilingual education pose a national security threat to the United States.

-8-

What effect will "Official English" laws have on bilingual services and programs?

The impact could be almost non-existent or it could be disastrous: the effects will probably depend on the language of the particular laws. In some states, laws which declare English as the state's "official" language may be treated purely as symbolic, much like laws which name the official state bird or flower. Where the laws have more specific prohibitions, they may result in wiping out bilingual services and programs.

For instance, Florida's Dade County passed an ordinance in 1980 which prohibited the County from funding activities which involve a language other than English. As a result, bilingual signs and services ranging from medical services at the county hospital, direction signs in the public transit system, and multi-ethnic cultural festivals were terminated.

Some versions of the English Language Amendment, a proposed amendment to the U.S. Constitution to make English the nation's "official" language, would bar all state and federal laws requiring the provision of services in languages other than English. This could jeopardize bilingual assistance in voting, the right of defendants, victims and witnesses to translators in court and administrative proceedings, bilingual education, and multilingual social services such as employment training and referral, drivers license exams, welfare termination notices, and medical services such as pregnancy counselling and AIDS prevention education.

-9-

Can "Official English" laws affect private businesses?

Most "Official English" laws are directed specifically at government. However, these laws can affect businesses indirectly. For instance, several southern California cities have passed ordinances which prohibit or restrict the use of foreign languages on business signs, and their sponsors have cited the state's "Official English" law to support such restrictions. If sued, the cities may argue that a state's "Official English" law establishes public policy and provides a

substantial governmental interest which overrides the right of free speech.

In addition, English-only advocates have directly opposed private firms' use of foreign languages. They have opposed a telephone company's establishment of multilingual operators, F.C.C. licensing of Spanish language radio stations, as well as use of ethnic yellow pages and bilingual menus at fast food outlets.

-10-

Why should there be bilingual ballots since one must be a citizen in order to vote and to be a citizen one must be literate in English?

Naturalization for U.S. citizenship requires only fifth grade English literacy. Today's ballots and voter materials are far more complicated than the rudimentary literacy requirements for citizenship.

Moreover, U.S. law drops English literacy as a condition for naturalization for those who are over 50 years of age and who have been in the United States for 20 years or more. Most of those who need bilingual ballots are elderly immigrants who are U.S. citizens and

who have paid U.S. taxes; they should not be denied the right to vote because of their limited proficiency in English any more than an illiterate U.S. born citizen should be denied that right.

-11-

Don't bilingual ballots allow the uninformed to vote and discourage the learning of English?

Information about elections and candidates are commonly available in many languages through ethnic media outlets. Many voters who use bilingual ballots speak and understand English better than they can read and thus obtain information about candidates and issues through radio and television. The assumption that those unable to read ballots are not sufficiently intelligent or informed to vote is similar to earlier arguments used to defend discriminatory literacy requirements imposed against blacks in the South.

Moreover, the purpose of publishing bilingual voting materials and election

pamphlets is to increase the information available to limited English-speaking voters. Thus bilingual materials enhance rather than detract from an informed vote.

There is no evidence that bilingual ballots discourage the learning of English. Hispanics are rapidly learning English even though bilingual ballots have been required by federal law in many states since 1975. Bilingual ballots will not discourage the learning of English any more than a ban on literacy requirements discourages literacy.

-12-

Doesn't bilingual education retard the learning of English? Isn't the best method of teaching English the "sink or swim" method by which earlier immigrants made it?

Bilingual education involves the use of two languages (one English, the other the child's native tongue) as mediums of instruction to assist children of limited-English speaking ability. Its primary purpose is to make immigrant students proficient in English.

Although the debate over its effectiveness continues, recent studies show that bilingual education is a successful method of helping students make the transition to instruction in English. Indeed, some show that the more extensive the instruction in the native language, the better the students perform in a variety of subjects, such as math and science, as well as English. These studies indicate that students in bilingual education programs outperform students in classes where no native language instruction is used.

Native language instruction allows students to keep up in math, science, and other courses while they learn English. Also, studies show that increasing proficiency in a child's native language increases his or her cognitive abilities and understanding of grammar and structure, thereby enhancing their ability to acquire a second language (English). Bilingual education also avoids the implied degradation of the child's native language

and culture which often accompanied traditional "sink or swim" methods; bilingual education thus fosters immigrant students' self-image and respect.

The argument that experience proves the traditional "sink or swim" method works best since prior immigrants "made it" without bilingual education is illusory. Although some immigrants succeeded, many more sank than swam. In 1911, the U.S. Immigration Service found that 77% of Italian, 60% of Russian Jew, and 51% of German children of immigrant parents were one or more grade levels behind in school, far in excess of the 28% ratio for native white children. Moreover, because educational requirements for jobs are much more demanding now than at the turn of the century when agricultural and manufacturing jobs were prevalent, many of those who "made it" (i.e. survived economically) under the old "sink or swim" method would not have survived in today's economy.

**-13-
Were there laws
restricting the use
of earlier
immigrants' native
tongues?**

Until the late 1800's, our nation had a tolerant policy towards linguistic diversity. Bilingualism in government and education was prevalent in many areas. German language was prevalent in schools throughout the mid-West. But the influx of Eastern and Southern Europeans and Asians gave rise to nativist movements and restrictionist language laws in the late 1800's and early 1900's. The Federal Immigration Commission issued a report in 1911 contrasting the "old" and "new" immigrant. The report argued that the "old" immigrants had mingled quickly with native-born Americans and became assimilated, while "new" immigrants from Italy, Russia, Hungary, and other countries were less intelligent, less willing to learn English, had intentions of not settling permanently in the United States, and were more susceptible to political subversion, arguments not unlike those advanced by today's English-only movement.

In response, English literacy requirements were erected as conditions for public employment, naturalization, immigration, and suffrage in order to "Americanize" these "new" immigrants and exclude those perceived to be lower class and "ignorant of our laws and language." The New York Constitution was amended to disenfranchise over one

million Yiddish-speaking citizens by a Republican administration fearful of Jewish voters. The California Constitution was similarly amended to disenfranchise Chinese voters who were seen as a threat to the "purity of the ballot box."

World War I gave rise to intense anti-German sentiment. A number of states, previously tolerant of bilingual schools, enacted extreme English-only laws. For instance, Nebraska and Ohio passed laws in 1919 and 1923 prohibiting the teaching of any language other than English until the student passed the eighth grade. The Supreme Court ultimately held the Nebraska statute unconstitutional as violative of due process in *Meyer v. Nebraska*.

Native Americans were also subject to federal English-only policies in the late 1800's and early 1900's. Native American children were separated from their families and forced to attend English language boarding schools where they were punished for speaking their native language.

Now, as then, the arguments of those advocating English-only laws are based on false stereotypes about the immigrant groups being targeted.

**-14-
How do other
countries handle
the question of
official languages?**

Approximately one third of 161 national constitutions surveyed contain a declaration of one or more official languages. Slightly less than a third of the national constitutions, including most of those declaring an official language, contain provisions upholding the rights of linguistic minorities and banning discrimination on the basis of language. Virtually none of the national constitutions bars the government from using non-official languages in providing services to or communicating with its citizenry.

The United Nation's Universal Declaration of Human Rights adopted by the U.N. General Assembly in 1948 bans

discrimination on the basis of language as well as race, sex, religion and other status. The International Covenant on Economic, Social, and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination likewise ban discrimination on the basis of language and culture. These protections were adopted in recognition that language discrimination and policies imposing linguistic homogeneity have commonly been used in the subjugation of minority groups.

**-15-
Why are
English-only laws
a civil liberties
issue?**

First, these laws may result in the termination of the rights of non-English speakers to important and essential services, such as an effective and meaningful education, the right to vote, access to the courts, and medical and social services essential to survival. "Official English" laws may abridge certain constitutional rights, such as the right of businesses to free speech, the right of a defendant to a translator, and the right of minority groups to vote and to have equal access to the political process. Ironically, these laws do nothing positive to increase English proficiency. They do not provide for needed educational resources in teaching English.

Second, even if "Official English" laws were only symbolic, they presume the need to "protect" the English language from immigrants who refuse to learn English or who advocate "ethnic separatism". Such a presumption perpetuates false stereotypes and

contributes to bigotry and intolerance even by those who may be well intended. As for less benevolent English-only advocates, language politics are easily manipulated as a convenient surrogate for racial politics; for some, the real problem is not the language but the people who speak the language.

Finally, "Official English" laws, particularly those embodied in a constitution, subvert the central mission of the Constitution and the Bill of Rights — a charter of liberties and individual freedom. "Official English" laws transform the Constitution into a bill of restrictions, limiting rather than protecting individual rights. These laws are particularly inconsistent with the spirit of the First Amendment and Equal Protection Clause which protect societal diversity and prohibit discrimination against unpopular and vulnerable minorities.

YES, I want to join the National Coalition for Language Freedom. I enclose as my annual membership dues:

- \$ 10.00 [student/low income]
- \$ 25.00 [individual membership]
- \$ 100.00 [organizational membership]
- \$ 250.00 [sustainer]
- \$ 500.00 [patron]

Name

Organization

Address

City State Zip

Telephone

PLEASE MAIL TO:

National Coalition for Language Freedom
 530 12th Street
 Sacramento, CA 95814

Telephone (916) 447-4884

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET**
Washington, D.C. 20503-0001

LRM NO: 5189

FILE NO: 1841

7/26/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): _____

TO: Legislative Liaison Officer - See Distribution below:

FROM: James JUKES *Ji* (for) Assistant Director for Legislative Reference

OMB CONTACT: M. Jill GIBBONS 395-7503 Legislative Assistant's Line: 395-3454
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gibbons_m@a1.eop.gov

SUBJECT: Proposed Statement of Administration Policy RE: HR123, Language of Government Act of 1995

DEADLINE: 11:00 Monday, July 29, 1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS:

LEGISLATIVE REFERRAL MEMORANDUM

Distribution List

LRM NO: 5199

FILE NO: 1841

SUBJECT: Proposed Statement of Administration Policy RE: HR123, Language of Government Act of 1995

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- Art Stigile

**RESPONSE TO
LEGISLATIVE REFERRAL MEMORANDUM**

**LRM NO: 5189
FILE NO: 1841**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.
If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

TO: M. Jill GIBBONS 395-7593
 Office of Management and Budget
 Fax Number: 395-3109
 Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

SUBJECT: Proposed Statement of Administration Policy RE: HR123, Language of Government Act of 1995

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT - NOT FOR RELEASE

July 26, 1996
(House)H.R. 123 - Language of Government Act of 1995
(Emerson (R) MO and 37 cosponsors)

The Administration strongly opposes H.R. 123 because it would:

- Effectively exclude Americans who are not fully proficient in English from education, employment, voting and equal participation in our society.
- [Be subject to serious constitutional challenge on the grounds that it violates the First Amendment, the Equal Protection Clause, and the Speech or Debate Clause, as well as due process rights of non-English speakers who are parties to civil or administrative proceedings involving the Government.] *
- Effectively repeal the minority language provisions of the Voting Rights Act, limiting meaningful electoral participation by minority language populations..
- Significantly increase barriers to effective law enforcement in immigrant communities.
- Create an unnecessary private right of action, inviting frivolous litigation against the Government.

* NOTE TO JUSTICE: Please advise if this item should be deleted as a result of the adoption of ~~Amendment~~ Amendment #4, attached.

#1

AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 123

OFFERED BY

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "English Language
3 Empowerment Act of 1996".

4 SEC. 2. FINDINGS.

5 The Congress finds and declares the following:

6 (1) The United States is comprised of individ-
7 uals and groups from diverse ethnic, cultural, and
8 linguistic backgrounds.

9 (2) The United States has benefited and contin-
10 ues to benefit from this rich diversity.

11 (3) Throughout the history of the United
12 States, the common thread binding individuals of
13 differing backgrounds has been a common language.

14 (4) In order to preserve unity in diversity, and
15 to prevent division along linguistic lines, the Federal
16 Government should maintain a language common to
17 all people.

FAM41CUNNIN: CUNNIN 085

H.L.C.

2

1 (5) English has historically been the common
2 language and the language of opportunity in the
3 United States.

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

8 (7) By learning the English language, immi-
9 grants will be empowered with the language skills
10 and literacy necessary to become responsible citizens
11 and productive workers in the United States.

12 (8) The use of a single common language in
13 conducting official business of the Federal Govern-
14 ment will promote efficiency and fairness to all peo-
15 ple.

16 (9) English should be recognized in law as the
17 language of official business of the Federal Govern-
18 ment.

19 (10) Any monetary savings derived from the en-
20 actment of this Act should be used for the teaching
21 of non-English speaking immigrants the English
22 language.

F:\M4\CUNNIN\CUNNIN.085

H.L.C.

3

1 SEC. 3. ENGLISH AS THE OFFICIAL LANGUAGE OF FEDERAL
2 GOVERNMENT.

3 (a) IN GENERAL.—Title 4, United States Code, is
4 amended by adding at the end the following new chapter:

5 "CHAPTER 6—LANGUAGE OF THE
6 FEDERAL GOVERNMENT

"Sec.

"161. Declaration of official language of Federal Government.

"162. Preserving and enhancing the role of the official language.

"163. Official Federal Government activities in English.

"164. Standing.

"165. Reform of naturalization requirements.

"166. Application.

"167. Rule of construction.

"168. Definitions.

7 "§ 161. Declaration of official language of Federal
8 Government

9 "The official language of the Federal Government is
10 English.

11 "§ 162. Preserving and enhancing the role of the offi-
12 cial language

13 "Representatives of the Federal Government shall
14 have an affirmative obligation to preserve and enhance the
15 role of English as the official language of the Federal Gov-
16 ernment. Such obligation shall include encouraging great-
17 er opportunities for individuals to learn the English lan-
18 guage.

1 **"§ 163. Official Federal Government activities in Eng-**
2 **lish**

3 **"(a) CONDUCT OF BUSINESS.** Representatives of
4 the Federal Government shall conduct its official business
5 in English.

6 **"(b) DENIAL OF SERVICES.—**No person shall be de-
7 nied services, assistance, or facilities, directly or indirectly
8 provided by the Federal Government solely because the
9 person communicates in English.

10 **"(c) ENTITLEMENT.—**Every person in the United
11 States is entitled

12 **"(1) to communicate with representatives of the**
13 **Federal Government in English;**

14 **"(2) to receive information from or contribute**
15 **information to the Federal Government in English;**
16 **and**

17 **"(3) to be informed of or be subject to official**
18 **orders in English.**

19 **"§ 164. Standing**

20 **"A person injured by a violation of this chapter may**
21 **in a civil action (including an action under chapter 151**
22 **of title 28) obtain appropriate relief.**

23 **"§ 165. Reform of naturalization requirements**

24 **"(a) FLUENCY.—**It has been the longstanding na-
25 tional belief that full citizenship in the United States re-
26 quires fluency in English. English is the language of op-

1 opportunity for all immigrants to take their rightful place
2 in society in the United States.

3 “(b) CEREMONIES.—All authorized officials shall
4 conduct all naturalization ceremonies entirely in English.

5 “§ 166. Application

6 “Except as otherwise provided in this chapter, the
7 provisions of this chapter shall supersede any existing
8 Federal law that contravenes such provisions (such as by
9 requiring the use of a language other than English for
10 official business of the Federal Government).

11 “§ 167. Rule of construction

12 “Nothing in this chapter shall be construed—

13 “(1) to prohibit a Member of Congress, an em-
14 ployee or official of the Federal Government, while
15 performing official business, from communicating
16 orally with another person in a language other than
17 English.

18 “(2) to discriminate against or restrict the
19 rights of any individual in the country; and

20 “(3) to discourage or prevent the use of lan-
21 guages other than English in any nonofficial capac-
22 ity.

23 “§ 168. Definitions

24 “For purposes of this chapter:

1 “(1) FEDERAL GOVERNMENT.—The term ‘Fed-
 2 eral Government’ means all branches of the national
 3 Government and all employees and officials of the
 4 national Government while performing official busi-
 5 ness.

6 “(2) OFFICIAL BUSINESS.—The term ‘official
 7 business’ means governmental actions, documents,
 8 or policies which are enforceable with the full weight
 9 and authority of the Federal Government, but does
 10 not include—

11 “(A) teaching of languages;

12 “(B) actions, documents, or policies nec-
 13 essary for—

14 “(i) national security issues; or

15 “(ii) international relations, trade, or
 16 commerce;

17 “(C) actions or documents that protect the
 18 public health and safety;

19 “(D) actions, documents, or policies that
 20 are not enforceable in the United States;

21 “(E) actions that protect the rights of vic-
 22 tims of crimes or criminal defendants;

23 “(F) actions in which the United States
 24 has initiated a civil lawsuit; or

1 “(G) documents that utilize terms of art or
2 phrases from languages other than English.

3 “(3) UNITED STATES.—The term “United
4 States” means the several States and the District of
5 Columbia.”.

6 (b) CONFORMING AMENDMENT.—The table of chap-
7 ters for title 4, United States Code, is amended by adding
8 at the end the following new item:

 “6. Language of the Federal Government 161”.

9 SEC. 4. PREEMPTION.

10 This Act (and the amendments made by this Act)
11 shall not preempt any law of any State.

12 SEC. 5. EFFECTIVE DATE.

13 The amendments made by section 3 shall take effect
14 on the date that is 180 days after the date of enactment
15 of this Act.

#3
accepted
18-16

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 123
OFFERED BY MR. GRAHAM**

Page 6, line 9, after the comma, insert "and includes
publications, income tax forms, and informational materials,".

#4

AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 128
OFFERED BY MRS. MINK

Page 5, after line 22, insert the following (and re-designate any subsequent sections accordingly):

1 "§167. Affirmation of Constitutional Protections

2 "Nothing in this chapter shall be construed to require
3 any employee or official of the Federal Government to take
4 any action (including the enactment of any law) that—

5 "(1) abridges any person's freedom of speech;

6 "(2) denies any person due process of law;

7 "(3) denies any person the equal protection of
8 the laws; or

9 "(4) abridges or denies any person any other
10 constitutional right or protection.

accepted
as
amended
(4a)
by
voice
vote

F:\RG\EDUCATIO\H128.016

H.L.O.

AMENDMENT OFFERED BY MR. GRAHAM
TO THE AMENDMENT OFFERED BY MRS. MINK
TO H.R. 123

#4a

accepted

18-17

Page 1, line 2, strike "require" and all that follows
and insert "be inconsistent with the Constitution of the
United States."

#6

AMENDMENT
TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 123
OFFERED BY MR. MARTINEZ

accepted as amended
(part F only)
voice vote

Page 6, line 19, insert

~~strike~~

~~"(D) actions or documents that inform residents of their Social Security benefits;~~

~~"(E) actions or documents that inform residents of their rights and responsibilities under the Internal Revenue Code;~~

~~"(F) actions or documents that facilitate the activities of the Census;"~~

~~and designate subsequent subparagraphs accordingly.~~

D
J

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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

DRAFT

Dear Mr. Chairman:

This letter is in response to your request for the Administration's views on S. 356, "The Language of Government Act of 1995." This bill would halt Federal government activities conducted in languages other than English. It also would impose various restrictions on the use of other languages for official Federal government activities. For the reasons set out below, the Administration cannot support the bill. If the Congress passed this legislation, we would recommend to the President that he veto it.

1. Effect of the Bill

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

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

"official business" for purposes of S. 356, and which therefore could be taken or conducted in languages other than English, include:

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

Id.

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

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

The bill would have a direct, adverse impact on Federal efforts to ensure equal access to education, access to federally funded Government services, and participation in the electoral process. It would further segregate LEP communities from the political and social mainstreams by cutting off Government dialogue with persons having limited English proficiency, by

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

prohibiting language assistance by Federal government employees, and by limiting the delivery of Government services to many taxpaying Americans not proficient in English who otherwise might not be aware of available services. Clearly, efforts to integrate these political communities would be more effective through full governmental support of English language instruction.

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

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

As the President has stated, there has never been a dispute that English is the common and primary language of the United States. According to the 1990 Census, 95 percent of all residents speak English. The 1990 Census also reports that although 13.8 percent of residents speak languages other than English at home, 97 percent of these residents above the age of four speak English "well" to "very well". These figures demonstrate that there is no resistance to English among language minorities. In fact, there is an overwhelming demand for English as a Second Language (ESL) classes in communities with large language minority populations. For example, in Los Angeles, the demand for ESL classes is so great that some schools operate 24 hours per day and 50,000 students are on the waiting lists city-wide. In New York City, an individual can wait up to 18 months for ESL classes.

In very few instances, languages other than English are used in official Government business. In these instances, the usage may promote vital interests, such as national security; law enforcement; border enforcement; communicating with witnesses, aliens, prisoners or parolees about their rights; and educational outreach to inform people of their rights or to assure access to

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

Government services, such as police protection, public safety, health care and voting. In all of these areas, S. 356 would limit the effectiveness of Government operations by preventing adequate and appropriate communications between Government officials or employees and the public.

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

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

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

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

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

The language in S. 356 creating this cause of action is vague and would encourage lawsuits against the Government by "any person alleging injury arising from a violation" of these proposed laws. This language not only would waive the sovereign immunity of the Federal government, but also would allow attorney fees for prevailing plaintiffs. This measure would invite frivolous litigation against the Government and further clog our

Federal court system. More importantly, it would have a chilling effect upon Federal agencies and employees and deter them from performing vital tasks and delivering important informational services in languages other than English.

4. S. 356 is subject to serious constitutional challenge.

A. Free Speech

Although it is difficult to predict how the Supreme Court ultimately would resolve arguments that S. 356 violates constitutional free speech protections, the bill reasonably could be challenged on at least two theories: 1) the bill's language restrictions are inconsistent with Meyer v. Nebraska, 262 U.S. 390 (1923) and its progeny; and 2) the bill's language restrictions are facially overbroad in violation of Federal employees' free speech rights and of LEP residents' rights to communicate with government.

First, in a series of decisions rendered by the Supreme Court, the Court invalidated somewhat similar State and local statutes requiring the use of English in various public and other settings. See e.g., Meyer, supra (statute forbidding instruction before high school except in English). In Meyer, the Court opined that by enacting English-only restrictions, the Nebraska legislature had "attempted materially to interfere . . . with the opportunities of pupils to acquire knowledge." Id. The Court concluded that the English-only requirements before it violated the Constitution: "The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue." Id.

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

scrutiny under the Equal Protection Clause is required.").³

Moreover, late last year, the United States Court of Appeals for the Ninth Circuit relied upon the First Amendment to invalidate an English-only provision. In an en banc decision, Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995), petition for cert. filed, 64 U.S.L.W. 3439 (U.S. Dec. 20, 1995) (No. 95-974), a divided court declared that English-only requirements in the Arizona constitution were facially overbroad in violation of the free speech rights of State government employees. The pertinent provision of the Arizona constitution provides that English is the official language of the State of Arizona. It also requires that, with certain exceptions, the State and its political subdivisions, including all government officials and employees performing government business, communicate only in English. See id. at 928. The Ninth Circuit majority concluded that the Arizona provision constituted a prohibited means of promoting the English language, concluding that "[t]he speech rights of all of Arizona's state and local employees, officials, and officers are . . . adversely affected in a potentially unconstitutional manner by the breadth of [the provision's] ban on non-English governmental speech." Id. at 932.

Second, the bill is subject to attack on the ground that it impairs free communication between Government officials and LEP residents. For example, the bill could be attacked as violative of the free speech rights of Members of Congress under the Speech or Debate Clause, U.S. Const., Art. I, §6. If S. 356 were enacted, Members of Congress and their staffs would be hampered in communicating effectively with constituents and members of the public who are LEP, for example, in press releases, newsletters, responses to complaints or requests for information, or speeches delivered outside the Congress. A court well could conclude that an application of S. 356 that prevented a Federal legislator from communicating effectively with the persons he or she represented interfered with a core element of the process of representative government established by the Constitution.

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

The bill also implicates the First Amendment rights of LEP residents to receive vital information and petition the Government for redress of grievances in a language which they can comprehend. The Ninth Circuit majority suggested that the First Amendment rights of Arizona residents to receive information are implicated by the ban, stating that:

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

Id. at 941 (citation omitted.)

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

B. Equal Protection

S. 356 also is subject to challenge on various equal protection grounds. The Constitution prohibits discrimination on the basis of ethnicity or national origin. See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). Several ethnic and national origin minority groups in this country include large numbers of persons who do not speak English proficiently. One could argue that the restrictions in S. 356 discriminate on their face against members of these groups by denying them fair and equal access to government. Where a statutory classification expressly utilizes a suspect criterion, or does so in effect by a transparent surrogate, the Supreme Court has subjected the classification to strict scrutiny without requiring a demonstration that the legislature's purpose was invidious. See Shaw v. Reno, ___ U.S. ___, 113 S.Ct. 2816, 2824 (1993). A court could conclude that S. 356 discriminates on the basis of national or ethnic origin, and as such is subject to strict scrutiny.

In his opinion for the Court in Hernandez v. New York, 500 U.S. 352 (1991), Justice Kennedy discussed the link between race, ethnicity, and language. In that case, the Court rejected the petitioner's claim that a prosecutor had unlawfully discriminated, where the prosecutor exercised a peremptory challenge to exclude a juror on the ground that the juror might have difficulty accepting a translator's rendition of Spanish-language testimony. Justice Kennedy wrote, "It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a

surrogate for race under an equal protection analysis." Id. at 371 (plurality opinion). Additionally, in its equal protection analysis, the Court has acknowledged that an individual's primary language skill often flows from his or her national origin. See Yu Cong Eng v. Trinidad, 271 U.S. 500, 513 (1926); see also Meyer, 262 U.S. at 401 (recognizing the differential effect of English-only legislation).

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

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

C. Due Process

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

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

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

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

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

S. 356 conflicts with the specific manifestations found in the Native American Languages Act and related statutes. These laws would be repealed if S. 356 were enacted. This would impede severely Federal government relations with Native Americans.

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

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

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

The Bilingual Education Act already stresses the need to promote a child's rapid learning of English. As President Clinton recently commented on bilingual education, "[t]he issue is whether children who come here, [or whose "cradle tongue" is not English] while they are learning English, should also be able to learn other things...The issue is whether or not we're going to value the culture, the traditions of everybody and also recognize that we have a solemn obligation every day in every way to let these children live up to the fullest of their God-given capacities."⁴ Bilingual education helps ensure that LEP children learn English while remaining current in other subjects. Otherwise, language minority children who are unable to keep up with their English-speaking classmates fall behind in coursework and are more likely than other children to drop out of school. Denying LEP children a meaningful education in a language comprehensible to them during the period in which they are learning English -- the basic purpose of bilingual education -- denies them an equal educational opportunity. Lau v. Nichols, 414 U.S. 563 (1974).

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

In addition, S. 356 would effectively repeal the minority language provisions of the Voting Rights Act (VRA) because they are in conflict. Where S. 356 requires the use of only English, the VRA requires the use of a language other than English in enforcement efforts. The VRA has two provisions, Section 203 and Section 4(f)(4), that protect minority language voters. These provisions apply to States and counties and require that they

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

provide minority language information, materials, and assistance to enable minority language citizens to participate in the electoral process as effectively as English-speaking voters.

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

The VRA helps many Native Americans and some other language minority citizens, especially older individuals, who continue to speak their traditional languages and live in isolation from English-speaking society. In addition, Puerto Ricans, who make up a significant percentage of the Hispanic population in the United States, are citizens by birth. Many Puerto Ricans have Spanish as their native tongue, and they may require some language assistance in casting an informed ballot. Also, many Hispanic citizens who attended school in the Southwest and in many other parts of this country as late as the 1950's were educated in segregated schools. Some of these citizens still need language assistance.

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

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

Administrations.

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

Rates of both voter registration and actual participation in elections by minority language individuals have increased since Section 203 was enacted. We are convinced that providing bilingual materials, instruction, and assistance makes a real difference at the polls for minority language citizens with limited English language abilities. The effect of enacting S. 356 and thereby rescinding Section 203 and the other minority language protections of the VRA would be to disenfranchise an American minority community that only recently has had the opportunity to engage meaningfully in participatory democracy.

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

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

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

The Ninth Circuit Court of Appeals recently agreed with this reasoning in striking down the State of Arizona's official English law. Yniguez, supra. The court found that the State government's use of languages other than English in communicating with LEP persons, increased efficiency rather than harmed it, and

the court held that an English-only law prohibiting the use of different languages by government served no significant governmental interest. Id. at 942-43.

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

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

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

We must publicly and privately recognize, respect and celebrate the linguistic diversity of our society as part of its cultural diversity. S. 356 would erect barriers to full access to and participation in the democratic government established by the Constitution for all of the Nation's people.

English is universally acknowledged as the common language of the United States. But the passage of S. 356 would increase administration inefficiency and exclude LEP Americans from education, employment, voting and equal participation in our society. In these fiscally difficult times, Government efficiency and economy would be better promoted by allowing Government agencies to continue their limited use of other languages to execute their duties effectively. Moreover, for the reasons stated earlier, S. 356 would be subject to serious constitutional challenge.

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

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

14

Sincerely,

Andrew Fois
Assistant Attorney General