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# PUERTO RICAN BAR ASSOCIATION, INC.

*Eliz: You & Steve need to decide how to handle.*

September 20, 1996

*CLR*

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**Student Liaison**  
Melba Feliberty

Dear Ms. Rasco:

The Puerto Rican Bar Association is presently lobbying the United States Senate Judiciary Committee against passage of H.R. 123, which seeks to impose an English-only mandate at the federal level and to eradicate the bilingual voting and access requirements of the Voting Rights Act of 1965.

We include for your review (i) the P.R.B.A.'s Position Statement to the Senate Judiciary Committee; (ii) a four page summary of our Position Statement; and (iii) a bullet-point summary, all of which have been forwarded to the members of the United States Senate Judiciary Committee and to the attached distribution list.

We would like to set up a meeting at your earliest convenience to discuss your support of our efforts to defeat H.R. 123. We also urge you to write to the Senate Judiciary Committee in support of our Position Statement. Please contact me at (212) 969-3383 to further discuss this issue of great concern to our membership and our community at your earliest convenience.

PUERTO RICAN BAR ASSOCIATION

By: *Xavier Romeu*  
Xavier Romeu, Chair  
Legislative Committee

Writer's direct address:

1585 Broadway, Room 2178  
New York, New York 10036-8299



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Executive Office of the President  
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Washington, D.C. 20500

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## **SUMMARY OF THE PUERTO RICAN BAR ASSOCIATION'S POSITION STATEMENT**

The Puerto Rican Bar Association ("P.R.B.A.") opposes, in the strongest terms possible, H.R. 123's violation of the constitutional rights of the numerous and distinct national linguistic communities throughout the United States and its careless eradication of necessary provisions of the Voting Rights Act guaranteeing the meaningful and equal access of such communities to the ballot-box.

As outlined below, H.R. 123 runs counter to our centuries-old socio-historical, political and constitutional tradition of linguistic neutrality and represents nothing but the latest cynical resurgence of nativist sentiments against our nation's linguistic communities. Under the guise of linguistic harmony and purportedly to avert the onset of a non-existent national fragmentation, H.R. 123 seeks to exclude our nation's federally elected officials, employees and citizens from full participation in the political process and from meaningful access to the ballot-box.

H.R. 123's repressive violation of well-established rights is accomplished by specifically targeting our nation's communities along linguistic and ethnic lines. Furthermore, H.R. 123 turns a willful blind eye to well-established statistical evidence -- both historical and contemporary -- of language integration by all language communities, evidence that even the forces behind H.R. 123's adoption concede. Moreover, the bill's self-serving boast of fairness, efficiency and savings is belied, on its face, by the conclusion of the Congressional Budget Office that H.R. 123 will result in no savings to the federal government and that, indeed, it is likely to increase transactional costs. The net effect of H.R. 123 is only to exacerbate divisions along linguistic and racial lines and to encourage and instigate potentially endless litigation and numerous constitutional legal challenges.

Equally important, H.R. 123 is a violation of and a wholesale retreat from our nation's commitment to basic constitutional guarantees of freedom of expression, due process, equal protection under the

law, the right to full participation in our political process and the right to meaningful exercise of the right to vote. The bill violates the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments to our Federal Constitution by specifically imposing a coercive English-only mandate on citizens of our linguistic and ethnic communities and by repealing the bilingual voting requirements of the Voting Rights Act of 1965. The bill also eradicates our First Amendment right to freedom of speech by imposing a blanket restriction on written and most oral communications of all federally elected officials, federal employees, administrators and agents. Its few stated exceptions only further highlight the bill's egregious constitutional infirmities.

The practical and immediate effects of H.R. 123 are as clear as they are disturbing: (i) denial of freedom of speech rights to all federally elected officials, employees, their agents and all who seek to communicate with them; (ii) denial of equal protection and due process of law; (iii) denial of meaningful access to the ballot-box; (iv) increased frivolous

litigation; and (v) social and political disenfranchisement of numerous and distinct language and ethnic communities.

To state that the bill serves no compelling government interest and that it is not narrowly tailored to achieve its goal is to have a penchant for the obvious. Simply stated, H.R. 123 is nothing but a misguided attempt at language regulation and voter disenfranchisement by means of an unconstitutional federal mandate on citizens of the United States.

The P.R.B.A. will not countenance this direct attack on our nation's language communities and on the constitutional rights of its citizens. Accordingly, the P.R.B.A. will seek, by all available means, to inform communities and organizations throughout the United States of any action that furthers the adoption of H.R. 123. Its proponents and supporters will be held accountable at the very same ballot-box H.R. 123 seeks to deny.

The P.R.B.A. therefore respectfully calls on the United States Senate Judiciary Committee and on

Puerto Rican Bar Association, Inc.  
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President Clinton not to yield to this dangerous attempt at imposing an unconstitutional and un-American language mandate on our communities. In the strongest terms possible, the P.R.B.A. calls for the defeat of this bill or, alternatively, for President Clinton's veto.



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# PUERTO RICAN BAR ASSOCIATION, INC.

## **SUMMARY OF THE PUERTO RICAN BAR ASSOCIATION'S POSITION STATEMENT TO THE UNITED STATES SENATE JUDICIARY COMMITTEE OPPOSING PASSAGE OF H.R. 123 - THE ENGLISH LANGUAGE EMPOWERMENT ACT**

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H.R. 123 violates our constitutional rights by designating English as the sole "official language of the Federal Government" and by repealing Section 4(f)(2) of the Voting Rights Act, which guarantees meaningful access to the ballot-box by providing citizens with bilingual ballots and voting assistance in languages other than English.

H.R.'s 123 violation of constitutional rights and careless eradication of key provisions of the Voting Rights Act must be rejected for the following reasons:

- **H.R. 123, violates our constitutional right to freedom of speech.**

H.R. 123 imposes an affirmative mandate on all federally elected officials, employees and agents to "conduct all official business in English" to the exclusion of all other languages. Under threat of civil penalties, all federal officials and employees are barred from conducting business or engaging in any government action unless the same is conducted in English only. This blanket prohibition runs counter to the well-established constitutional requirement that curtailment of speech further a compelling state interest either unrelated to speech or narrowly tailored to implementation of such governmental interest. See Yniquez v. Arizonans for Official English, 69 F. 3d 920 (9th Cir. 1995) (en banc) cert. granted 116 S. Ct. 1316 (1996)

- **H.R. 123 eliminates equal access to the ballot, effectively disenfranchising non-English speakers and speakers whose first language is not English.**

By calling for the repeal of bilingual voting requirements as provided for by the Voting Rights Act of 1965, H.R. 123 eviscerates on our most basic right to meaningful participation in the electoral process. The repeal of these requirements directly contradicts Congressional findings justifying the need for language assistance in voting. Additionally, H.R. 123

willfully ignores opinion by courts across the nation that view such assistance as necessary to guarantee participation by our linguistic communities in the political process and which hold that the imposition of additional burdens on readily identifiable minorities violates the Equal Protection Clause of the Fourteenth Amendment.

- **H.R. 123 is unnecessary.**

H.R. 123 purports to provide immigrants with the encouragement that is "necessary" for them to learn English. Studies and statistics, however, consistently find that today's linguistic communities and new immigrant groups learn English as fast as if not faster than, the immigrant groups of the past; that 97% of Americans already speak English; and that English as a Second Language classes across the nation are overcrowded and underfunded. Simply stated, the "problem" H.R. 123 hopes to rectify is non-existent.

- **H.R. 123 will result in inefficiency, added costs and increased frivolous litigation within the Federal Government, ultimately costing tax payers more money.**

A cost estimate for H.R. 123 submitted by the Congressional Budget Office stated that H.R. 123 would not save the government any money and might actually increase certain costs. The report stated that only about .06% of federal documents are in languages other than English which means the bill would have little effect on savings by the federal government. Moreover, H.R. 123 creates a private right of action against the federal government in civil court for persons harmed due to a violation of the bill's prohibitions. The bill's extreme prohibitions and ambiguities will lead to prolonged litigation that

will ultimately cost taxpayers millions of dollars to defend and have a chilling effect on our freedom of speech

- **H.R. 123 infringes upon equal access to education.**

H.R. 123 has the potential to jeopardize bilingual education programs by denying teachers of federally funded bilingual programs the opportunity to communicate orally and in writing with students and parents who are not yet proficient in English. Such a result increases the likelihood that children will fail in school and will later be denied job opportunities. Consequently, H.R. 123 reinforces rather than eliminates barriers to equal opportunity in our nation.

- **H.R. 123 will lead to fragmentation within our society along racial and ethnic lines.**

Language is inextricably linked to ethnicity and race. Statements in H.R. 123 that "by learning the english language, immigrants will ... become responsible citizens and productive workers in the United States," imply that ethnic and racial minorities are currently of little or of no value to our society. This statement is insulting to the 5 million citizens of Puerto Rican descent that reside in the United States and Puerto Rico. Exclusion of our linguistic communities from full and equal participation in government and the ballot-box, will only further divide our country - the very same outcome H.R. 123 is purportedly designed to prevent.

- **H.R. 123 prevents effective participation in government and restricts access to information concerning vital government services.**

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Government representatives of linguistic communities routinely inform their constituencies of vital government services in their language of choice. H.R. 123 would deny federal representatives, including elected officials, the right to inform non-English proficient citizens of such government services. Consequently, linguistic communities would be denied equal access to government services solely on the basis of their lack of language proficiency.

• **The philosophy of H.R. 123 is counter to our American tradition of linguistic neutrality -- a tradition that is based on principles of democracy.**

As early as the Continental Congress, our nation's founders recognized that language mandates were contrary to the best interests of our republic. In fact, the Continental Congress issued official publications in both German and French as well as in English. Throughout our history, we have found it consistent with our notions of freedom and tolerance not to mandate the language spoken by our citizens. This course of action has only strengthened our diversity while simultaneously strengthening our continued use of English as our common language -- not by means of coercion and divisive mandates but by choice.

• **H.R. 123 rejects rather than embraces the competitive edge of the United States in a global economy.**

The majority of nations around the world foster and encourage bilingualism and multilingualism through their educational programs and policies. Aside from having a more culturally aware body of citizens, foreign countries produce professionals that have been able to take full advantage of

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alliances such as NAFTA and GATT. In today's marketplace, our country must utilize, not hide or discard, its multilingual and cross-cultural capabilities. Instead, H.R. 123 attempts to suppress our competitive edge and sends a message to the world that we are ashamed of our multi-cultural and multi-lingual capabilities.

**H.R. 123 must therefore be rejected.**

THE PUERTO RICAN BAR ASSOCIATION'S POSITION STATEMENT  
TO THE UNITED STATES SENATE JUDICIARY COMMITTEE  
OPPOSING PASSAGE OF H.R. 123

THE PUERTO RICAN BAR ASSOCIATION

LEGISLATIVE COMMITTEE:

Xavier Romeu, Chair  
David Matta  
Laura Quintano  
John Quiñonez

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I. **H.R. 123 IS CONTRARY TO OUR NATION'S HISTORY OF LINGUISTIC NEUTRALITY AND REPRESENTS NOTHING BUT THE LATEST RESURGENCE OF A NATIVIST BACKLASH AGAINST OUR MOST RECENT WAVE OF IMMIGRANTS**

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A. **HISTORY OF LANGUAGE POLICY IN THE UNITED STATES**

1. Background

Declaring English the official language of government states the obvious while serving no purpose other than to reject all other languages which have given this nation its open character and identity.

The United States is a nation where cultures and languages other than English have flourished side by side with the English language and our national culture. As established by even the most cursory look at the culture of our nation, diverse languages and cultures will continue to flourish without in any way negating English as our common language of political, social and economic discourse. Hence, H.R. 123 is only a baseless and misguided attempt at language regulation via national mandate.

Approximately 31.8 million people in the United States identify a language other than English as a primary language.<sup>1</sup> Notwithstanding, the commitment of our linguistic communities to English as our common language of choice is patent.

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1. See U.S. Bureau of the Census, Statistical Abstract of the United States 1994 53 (1994).

Researchers consistently find that English language acquisition follows the classic three generation model for a majority of immigrant groups. These studies show a rapid shift from non-English mono-lingualism in the first generation of immigrants to bilingualism in more than 90% of second generation immigrants. By the third generation, 95% are English-proficient, half of them being monolingual English speakers.<sup>2</sup> Recent studies indicate that Latinos in particular are learning English at a faster rate than past immigrant groups.<sup>3</sup>

Recognizing that English is the language of economic prosperity in the United States, tens of thousands of Latinos, Asians and members of other linguistic communities are continuously placed on waiting lists or are turned away from overcrowded adult English classes in cities such as Los Angeles and New York.<sup>4</sup> A survey conducted in 1986 found that 98% of

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2. See Kevin F. McCarthy & R. Burciaga Valdez, Current and Future Effects of Mexican Immigration in California 56 (1986).

3. See Siobhan Nicolau & Rafael Valdivieso, Spanish Language Shift: Educational Implications, reprinted in, Language Loyalties: A Source Book on the Official English Controversy 318 (James Crawford, Ed., 1992) [hereinafter Language Loyalties]; see also James Crawford, Official English isn't as Good as it Sounds, reprinted in English: Our Official Language? 52, 56 (Bee Gallegos ed., 1994) ("Hispanic newcomers are approaching a two-generation model of 'Anglicization,' or shift to English dominance, as compared with the three-generation pattern of previous immigrants.") (citing a study by demographer Calvin Veltman).

4. See John Trasvina, National Education Association, Official English/English Only: More than Meets the Eye 7 (1988). In New York alone, 53,662 immigrants were in English as a Second  
(continued...)

Latinos thought it was essential that their children read and write English perfectly.<sup>5</sup> Coexistent with the desire to become proficient in English, however, most immigrant groups work hard to ensure the survival of their native language. This desire -- a desire reflective of almost every linguistic community in our nation -- is largely due to our nation's continued recognition of personal and linguistic community language liberty. H.R. 123 runs counter to this historical and present language acquisition pattern and serves only isolate and disenfranchise non-English speakers by affirmatively eliminating their voices from the political and electoral arenas. Moreover, as language is inextricably tied to culture and identity,<sup>6</sup> legislating language imposition is not a facially neutral, non-discriminatory act. Rather, it is a direct discriminatory attack on the languages and nationalities of our linguistic communities and new immigrant groups. In this regard, while claiming to unify our nation, H.R.

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4. (...continued)

Language classes in 1994, with a waiting list of 30,000 to get into such classes. See Rob Polner, Latina Sues City, Seeks More Classes in Literacy, Newsday, Dec. 21, 1994, at A49.

5. Trasvina, supra note 4.

6. See Bill Piatt, Only English? 155-161 (1990) (citing the various emerging fields in linguistics which study the inseparable interrelatedness of language and culture and the importance of language in forming ethnic identity); see also Hernandez v. New York, 500 U.S. 352, 370-371, 111 S. Ct. 1859, 1872 (1991) ("Language permits an individual to express both a personal identity and membership in a community .... [F]or certain ethnic groups and in some communities, ... proficiency in a particular language, like skin color, should be treated as a surrogate for race ....").

123 only creates increased divisiveness and exacerbates racial and ethnic tensions.

## 2. Linguistic Neutrality of Our Nation

H.R. 123 also runs counter to the centuries-old historical, political and constitutional tradition of linguistic neutrality in the United States. Our linguistic neutrality recognizes that while English is our common language by choice, as a nation we have opposed and will continue to oppose all intrusive attempts by government at institutional imposition of a language by national mandate.

Linguistic neutrality is as old as our Republic. The federal government of the United States has never recognized English as the "official language," either under the Constitution or federal law.<sup>7</sup> As early as the Continental Congress, our nation's Founders recognized that language mandates were contrary to the best interests of our Republic. Indeed, the Continental Congress issued official publications in both German and French as well as English, thus refusing to afford any special recognition to English notwithstanding its common usage.<sup>8</sup>

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7. See Yniguez v. Arizonans for Official English, 69 F.3d 920, 927 n. 10 (9th Cir. 1995) (en banc) ("Yniguez") cert. granted, 116 S. Ct. 1316 (1996).

8. Yniguez, 69 F. 3d at 927 n.10 (citing, An Essay on American Languages, Cultural Pluralism and Official English, 77 Minn. L. Rev. 269, 271-81 (1992); Heath, Language and Politics in the United States, in Linguistics and Anthropology 267, 270 (1977)).

Tellingly, our Founding Fathers did not deem it necessary to impose a language requirement in our Constitution or the Bill of Rights.

To be sure each successive wave of immigrants has often kindled misinformed and often times xenophobic reactions from small but vocal nativist sectors of our society. At their peak, these sentiments have lead to the characterization of each new wave of immigrants as, alternatively, dangerous, intellectually, physically and morally inferior and/or generally unfit to be part of American society. Empirical analysis and common sense have time and again exposed these characterizations as nothing short of paranoia. Each wave of immigrants has contributed its culture and language to the mosaic that is today our American Culture without, in any way, detracting from or threatening our national character.<sup>9</sup>

Our culture and socio-political structure have only been strengthened by our conscious decision not to impede the continuing renewal of our American mosaic. Specifically, we have collectively found it consistent with our notions of freedom not to visit federal or constitutional mandates on the language spoken by our citizens or by specific linguistic communities. This course of action has only strengthened our diversity while simultaneously strengthening our continued use of English as our

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9. For an exhaustive treatment of the subject, see Bill Piatt Only English?, supra. note 6.

common language -- not by means of coercive and divisive mandates but by choice. Our continued respect and appreciation of other cultures and languages has enriched, not detracted from, our worth as a society. As noted by our Supreme Court, pride and use of diverse languages has not been "a sign of weakness but of strength."<sup>10</sup>

Today, as in the past, there are a few -- but vocal -- purists who believe every new culture and linguistic wave to be a new threat to our national unity. Their imaginary fears are belied by history and empirical analysis as well as common sense. These "purists" represent nothing but the cyclical resurgence of uncritical, a-historical pre-judgments lacking any factual support. Their forbearers -- immigrants themselves who were subjected to these same unfounded fears -- would be shocked to hear their own offspring characterize new immigrants as divisive and culturally and linguistically suspect, if not inferior. Indeed, their forbearers would likely recognize and identify these nativists as proponents of the same sentiments that they in fact faced and disproved in the past.

Incredibly, proponents of the English-only movement contend that the use of languages other than English somehow -- though inexplicably -- is evidence of an increasing risk to our

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10. Yniguez, 69 F.3d at 935 (quoting Cohen v. California, 403 U.S. 15, 25, 91 S. Ct. 1780, 1788 (1971)).

national unity.<sup>11</sup> They claim, without foundation, that the existence of many languages in this nation has created and fostered divisiveness.<sup>12</sup> Its proponents believe that by formally declaring English the official language of our nation, or at least of the federal government, and by imposing a mandate that our citizens communicate only in English, national unity and cohesion -- not disintegration and divisiveness -- will follow.<sup>13</sup> That nothing could be further from the truth is established by the most cursory review of our failed, and often rejected, history of language and ethnic abuse.

3. Language Mandates As A Proxy For Patriotism  
And Xenophobia

Historically, H.R. 123 does not represent a first isolated attempt at language imposition via mandate on our citizenry. Rather, our nation has often struggled with language and culture and, more recently, with a misguided English-only movement responsible for a rash of state and federal English-only proposals and laws.

Appeals to patriotism and "Americanism" under the guise of an official language mandate are not new to our nation and,

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11. See H.R. Rep. No. 723, 104th Cong., 2d Sess. (1996) (written statement of Jim Boulet, Jr., Executive Director of English First); see also U.S. English, Towards a United America (n.d.).

12. Id.

13. Id.

indeed, appear to proliferate during periods of xenophobia when, against all logic, patriotism is equated with proficiency in the English language.<sup>14</sup> These appeals to language regulation and "unity" only mask a deeper fear of the growth and presence of linguistic communities and immigrants.<sup>15</sup>

The net effect of these appeals is the irrational targeting of new linguistic communities, closely followed by efforts to restrict language use.<sup>16</sup> In an era where diversity and multiculturalism are supposedly cherished, today's efforts to restrict language usage only facilitate efforts to oppress and disenfranchise our diverse communities.

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14. Elliot L. Judd, The Federal English Language Amendment: Prospects and Perils, in Not Only English: Affirming America's Multilingual Heritage 37, 37 (Harvey A. Daniels ed., 1990) (hereinafter Not Only English).

15. See Lawrence Auster, Massive Immigration will Destroy America, Insight on the News, Oct. 3, 1994, at 18 (arguing that Official English laws are useless without restrictions on immigration because the "erosion" of English is a direct outcome of the growing size and power of the non-English-speaking population).

16. See generally Jean Molesky, Understanding the American Linguistic Mosaic: A Historical Overview of Language Maintenance and Language Shift, in Language Diversity: Problem or Resource? 29-68 (Sandra Lee McKay and Sau-ling Cynthia Wong, ed. 1988) (discussing how shifts in language use and maintenance result from policies intended to control immigration and oppress disfavored groups of people).

a. Native American Language Policy In The Nineteenth Century

The effects of a selective language policy in our nation is nowhere as dramatic and as tragic as its oppressive application to Native Americans in the nineteenth century. Language policy directed at Native Americans was an integral part of a policy of conquest and dislocation of their population.<sup>17</sup> The Indian Peace Commission of 1868 was empaneled to investigate why Native Americans were not assimilating and resisting Manifest Destiny.<sup>18</sup> The Commission concluded that most of the problem stemmed from the "barbarous dialects" of the Native Americans which should be substituted with English.<sup>19</sup> Thus began the "civilization," i.e. cultural genocide, of the Native Americans. As a result of federal boarding-school policies which removed children from their tribes and banned all Native language instruction, Native American languages and cultures were severely eroded by the end of the nineteenth century.

Ironically, only a generation earlier, Oklahoma Cherokees were more literate in English than their white

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17. Id. at 37.

18. James Crawford, Hold Your Tongue 43 (1992).

19. See J.D.C. Atkins, Barbarous Dialects Should be Blotted Out, reprinted in Language Loyalties, supra note 3, at 47, 48 ("[B]y educating the children of these tribes in the English language [the] differences [between the white and the Indian] would have disappeared, and civilization [for the Indian] would have followed at once.")

neighbors in Texas and Arkansas.<sup>20</sup> By contrast, the result of the federally sanctioned English-only schools imposed on Native American students can be seen a century later when, in 1969, a Congressional investigation found that 40% of Oklahoma Cherokees were not literate in any language whatsoever.<sup>21</sup>

Only recently has our government taken steps to rectify its disastrous language policy on Native American cultures. The Native American Language Act<sup>22</sup> states, in relevant part, that "the status of the cultures and languages of Native Americans is unique and the United States has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages." Additionally, in the past two decades, many Native American tribes have taken advantage of Title VII funds for bilingual education in an effort to reassert the right to their own cultures and languages.<sup>23</sup>

Sadly enough, our recognition that past restrictionist language policies have retarded rather than advanced language, economic and social integration, has not prevented us from cyclically embracing similarly misguided policies.

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20. Crawford, supra note 18, at 44.

21. Id.

22. 25 U.S.C. § 2901 (1994).

23. Jon Reyhner, Policies toward American Indian Languages: A Historical Sketch, in Language Loyalties, supra note 3, at 41, 46.

b. Immigration and Language Policy: The Eighteenth, Nineteenth and Twentieth Centuries

The Germans who immigrated during the early eighteenth century and settled in Pennsylvania were not highly regarded and were often considered outcasts from their home country. Recognizing, however, that German communities would be necessary allies in case of a revolution, the Founding Fathers advocated pluralism rather than language and ethnic repression. As a result, the German language flourished in Pennsylvania and numerous state and federal documents were published in German.<sup>24</sup>

By the end of the eighteenth century, Germans were very well-received in the United States. In fact, in 1795, a proposal to print all federal laws in German and English failed passage by only one vote in Congress.<sup>25</sup> Indeed, in 1807, Pennsylvania, began printing its laws in German.<sup>26</sup> Several publicly funded schools throughout the nation were either bilingual German-English or exclusively German. Hence, German remained the semi-

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24. See Juan F. Perea, Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English, Minn. L. Rev. 269, 314-15 (1992).

25. Victor Villanueva, Jr., Solamenta Ingles and Hispanics, in Not Only English, supra note 13, at 77, 80.

26. Perea, supra note 24, 310-11 (1992).

official second language of the United States until the early part of this century.<sup>27</sup>

The German language enjoyed its preferred status in the United States only as long as the Germans retained their position as one of the "racially" and culturally preferred communities. Tolerance and acceptance of German ended with the outbreak of World War I. The war brought with it an aversion to Germans, a general distrust of multilingualism, and suspicion of all "foreigners." Several states imposed fines for speaking German in public places, including on the streets.<sup>28</sup> Books in German were pulled from shelves in public libraries and school boards throughout the nation abolished the study of German as a foreign language.<sup>29</sup> Such language policy virtually destroyed yet another rich segment of American culture and history.

The increased concerns with language as a proxy for nationality intensified in the early part of this century and reflected a major shift in the quantity and geographical provenance of immigration into our nation. During this time, a growing number of eastern and southern European immigrants

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27. Other languages have also enjoyed a semi-official status in various states throughout the United States. See id. at 309-28 (describing the histories of official bilingualism in Pennsylvania (German/English), California and New Mexico (Spanish/English), and Louisiana (French/English)).

28. Crawford, supra note 18, at 57.

29. Id. at 57-58.

migrated to the United States. They were darker-skinned than past immigrant groups and they settled in mostly urban areas. Remarkably reflective of some of the socio-political discourse today, the arrival of these new immigrants was linked to the growth of slums and ghettos and the high incidence of crime, disease, and even insanity.<sup>30</sup> Nativist sentiments resurfaced and language regulation was, once again, identified as a vehicle by which the "American standard of life" would be saved from this threatening group of new arrivals.

In 1906, an English requirement for naturalization was instituted requiring petitioners for citizenship to be able to sign their name in English and to speak English<sup>31</sup> because "no man is a desirable citizen of the United States who does not know the English language."<sup>32</sup> In 1917, literacy tests were implemented as a precondition for admission to the United States and as a way to exclude certain "undesirable" immigrants.<sup>33</sup>

By the mid-1900's, however, American attitudes towards certain foreign languages changed. Knowledge of a second language became an asset rather than a liability and affirmative

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30. Id. at 50.

31. Naturalization Act of 1906, ch. 3592, 34 Stat. 596.

32. Commission on Naturalization, Report to the President (Nov. 8, 1905), reprinted in H.R. Doc. No. 46, 59th Cong., 1st Sess. 11 (1905).

33. The Immigration Act of 1917, ch. 29, 39 Stat. 874, 877 (repealed 1952).

efforts were made to help people learn English while language mandates and prohibitions were discarded as useless. The Bilingual Education Act<sup>34</sup> was passed in 1968 to assist students in making the transition from their native language to English as smooth as possible. In 1973, Dade County, Florida declared itself bilingual and bicultural.<sup>35</sup> In 1974, the Supreme Court in Lau v. Nichols,<sup>36</sup> held that limited English proficient students had a right to special help in overcoming language barriers and that "sink or swim" instruction was a violation of their civil rights. In 1979, the President's Commission on Foreign Language and International Studies released a report condemning the "scandalous" lack of foreign language ability among Americans and noted that no states had foreign language requirements for high school graduations.<sup>37</sup> As the effects of earlier nativism began to diminish, the 1970's brought with it an

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34. 20 U.S.C. § 3281.

35. In 1980, Dade County voters approved a measure reinstating English as the sole official language. In 1993, the 1980 ordinance was abolished, returning Dade to multilingualism. See generally Max J. Castro, On the Curious Question of Language in Miami, in Language Loyalties, supra note 3 (discussing the history of Miami as the birthplace of the contemporary English Only movement).

36. 414 U.S. 563, 94 S. Ct. 786 (1974).

37. Jamie B. Draper & Martha Jimenez, A Chronology of the Official English Movement, in Language Loyalties, supra 3 note, at 89.

ethnic revival movement in which knowledge of a language other than English was actually praised.<sup>38</sup>

A cyclical resurgence of nativist attitudes took place, yet again, in the 1980's with the arrival of a new immigrants from the "Third World." The current English-only movement and H.R. 123 have selected our linguistic communities and our new immigrants as the new targets for attack. While the English-only movement has studiously toned down its rhetoric with self-serving calls for unity against national disintegration, fairness and efficiency, it is based on -- and it suffers from -- the same ultimately xenophobic and un-American beliefs and perceptions of past language movements and policies.

#### B. THE MODERN ENGLISH-ONLY LANGUAGE MOVEMENT

##### 1. The Reemergence of English-Only: The 1980's And Its Racist Overtones

The 1980's brought language issues to a level of controversy and debate never before witnessed in the United States. Over the past two decades, red-herring concerns have been raised about the impact of immigration in the United States as a result of the large influx of immigrants from Latin America and Asia. The status of English as the dominant language of the United States has become a major element of these concerns as illustrated by increasing attacks on linguistic communities such

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38. Crawford, supra note 18, at 122.

as H.R. 123's eradication of the right to voting ballots in languages other than English, attacks against bilingual education,<sup>39</sup> and criticism of business signs and advertisements printed in foreign languages.<sup>40</sup>

In 1981, the first legislation proposing that English be made the official language of the United States through an amendment to the U.S. Constitution was introduced into Congress. The English Language Amendment of 1981<sup>41</sup> introduced by Senator S.I. Hayakawa (R-Calif.) died without Congressional action. Senator Hayakawa continued his efforts by becoming the co-founder of U.S. English along with Dr. John Tanton. U.S. English became the major lobbying force at the state and federal level for the officializing of English-only laws. As a result of its misguided but sometimes successful efforts, some form of English-only legislation has been introduced in almost every Congress since

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39. See, e.g., The National Language Act of 1995, H.R. 1005, introduced by Pete King (Rep-NY), aimed to end all federal programs that promote bilingualism, including the elimination of bilingual ballots and the abolition of the federal Bilingual Education Office. See 141 Cong. Rec. H 1910 (1995) (statement of Pete King).

40. See, e.g., Bert Eljera, City to Suggest, Instead of Require, English on Signs, L.A. Times, Jan. 5, 1995, at B3. The city councilman of Garden Grove proposed that English be the primary language on signs and advertisements of Korean businesses in the community because non-Korean-speaking residents felt uncomfortable and "invaded" by the strong Korean presence. Id.; see also Tim Shannon, Signs of the Times, Atlanta J. & Const., September 5, 1993, at H5 (requiring businesses to have at least half of their sign space in English).

41. See S.J. Res. 72 (1981).

1981.<sup>42</sup> Indeed, as discussed below, U.S. English is presently the primary force behind the organizations leading the attack on the decision by the Ninth Circuit in Yniquez v. Arizonans for Official English<sup>43</sup> (presently before the Supreme Court of the United States) which declared Arizona's English-only law unconstitutional under the First Amendment of the United States Constitution.

By the end of the 1980's, much of the federal legislation spawned by the English-only movement had received little attention as the overtly racist motives which served as its impetus were exposed. A memorandum written by Dr. Tanton was published and read, in relevant part, that:

To govern is to populate." ...Will the present majority peaceably hand over its political power to a group that is simply more fertile? Can homo contraceptives [sic] compete with homo progentitiva [sic] if borders aren't controlled? Or is advice to limit one's family simply advice to move over and let someone else with greater reproductive powers occupy the space? ...Perhaps this is the first instance in which those with their pants up are going to get caught by those with their pants down!<sup>44</sup>

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42. See S.J. Res. 167 (1983); S.J. Res. 20 (1986); H.J. Res. 13, 33, 60, 83 (1987); S.J. Res. 13 (1987); H.J. Res. 23, 48, 79, 81 (1989); H.R. 4424, S. 3179 (1990); H.J. Res. 81, H.R. 123, S. 434 (1991); H.J. Res. 171, H.R. 123, S. 426 (1993); H.R. 739, 123, S. 356, H.Con. Res. 13 (1994); H.R. 123, S. 356 (1995).

43. Id., 69 F.3d 920 (1995) (en banc), cert. granted 116 S.Ct. 1316 (1996).

44. John Tanton, Memorandum to WITAN IV, reprinted in Mary Carol Combs and Lynn M. Lynch, Disillusionment with Official English and the Search for Alternatives, in Not Only English, at 99, 100.

The true impetus driving the English-only movement was suddenly exposed as no different than virulent forms of past xenophobic language movements in our nation. Leaders of the modern English-only movement reexamined the basis of their support and decided they would no longer "favor legislation that could even remotely be interpreted to restrict the civil rights or the educational opportunities of our minority population."<sup>45</sup>

Even as recent as the fall of 1995, hearings before the Committee on Early Childhood, Youth and Families regarding English-only concluded that the movement and its proffered basis were, at best, inconclusive, with both Democrats and Republicans raising concerns as to the need or justification for such proposals.<sup>46</sup>

Unfortunately, these valid concerns have been conveniently ignored and the politics of division have again gained momentum with the shameful approval of H.R. 123 by the House of Representatives in July of 1996

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45. Zita Arocha, Dispute Fuels Campaign Against "Official English;" Foes Say Memo Show Racism's Behind Plan, Wash. Post, November 6, 1988, at A20 (statement of Walter Cronkite who resigned from the advisory board of U.S. English). Additionally, Linda Chavez, the former president of U.S. English, resigned in 1988 to protest what she called "anti-Catholic" and "anti-Hispanic" comments made by her boss, the founder of U.S. English, Dr. John Tanton. Id.

46. H.R. Rep. No. 723, 104th Cong., 2nd Sess. (1995).

## II. H.R. 123: VIOLATION OF OUR BASIC CONSTITUTIONAL RIGHTS

As noted, recent attempts to question our tradition of linguistic neutrality and national diversity at the federal level have repeatedly failed to become law.<sup>47</sup> Significantly, our courts -- including our Supreme Court -- recognize that while forming common bonds in our society is an important goal, said goal cannot be achieved by impermissible, highly intrusive and suspect means, particularly where the means run counter to our tradition of personal liberty, linguistic neutrality and basic constitutional rights.

The federal mandate imposed by H.R. 123 is a frontal attack on some of our most basic and cherished constitutional rights: the right to liberty of expression, the right to communicate ideas, the right to receive information, the right to equal protection under the law, the right to due process and the right to vote -- all rights guaranteed by the First, Fifth, Ninth and Fourteenth Amendments of our Constitution. In this regard, our courts recognize "the critical difference between encouraging the use of English" through permissible, non-repressive means that positively foster participation in our society and impermissible attempts by nativist groups to "repress the use of

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47. See e.g., H.R.J. Res. 81, 101st Cong., 1st Sess. (1989); S.J. Res. 13, 100th Cong., 1st Sess. (1987).

other languages" by highly divisive, un-American and unconstitutional means.<sup>48</sup>

**A. H.R. 123 VIOLATES OUR FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH, FREEDOM OF COMMUNICATION AND FREEDOM TO RECEIVE INFORMATION**

That H.R. 123 violates our First Amendment constitutional rights is patent from the face of the bill. Its broad prohibition against the use of non-English languages in "all branches of the national Government and all employees and officials of the national Government while performing official business"<sup>49</sup> prevents all federally elected officials and federal government employees from exercising their rights to freedom of expression and communication of ideas and information -- both written and oral -- on political, social, religious and personal issues.

The bill's unwarranted and unjustifiable blanket regulation of speech represents an unveiled attack on our First Amendment rights and, as such, is unconstitutional. H.R. 123 declares that "[t]he official language of the federal government is English"<sup>50</sup> and places an affirmative duty on "all employees

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48. Yniguez, 69 F.3d 920 (1995); see also Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625 (1923).

49. H.R. Section 169(1).

50. Section 161.

and officials" in "all branches of the "National Government"<sup>51</sup> to "conduct its official business in English."<sup>52</sup> Under threat of civil penalties, all federal officials, elected or otherwise, and all federal employees are barred from conducting official business or engaging in any government action, unless the same are conducted in English only.<sup>53</sup>

H.R. 123's far reaching proscriptions of our most basic right are further underscored by its ambiguous and broad attempt to proscribe all written and oral communication, with the sole exception of single, one-on-one oral communication with another person. Compare § 169(2) ("official business" means governmental actions, documents or policies") with § 167(1) (members of Congress, employees or other officials not precluded from "communicating orally with another person in a language other than English.") (emphasis added). All other communications, written or oral, are barred. That this is so is further underscored by the bill's statutory exceptions -- exceptions that provide safe-havens only for a select, limited number of situations.<sup>54</sup> Certainly, if the bill's intention is to allow for free unimpeded exercise of our freedom of speech,

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51. Section 169(1).

52. Section 163(a).

53. Section 169(1).

54. See, e.g., Section 169(2) (C) ("actions or documents that facilitate the activities of the Bureau of Census in compiling any census of populations"); see also § 169(2) (C), (E)-(H).

its exceptions -- outlined in subsections (C) through (H) -- are unnecessary. The intention of the bill is transparent: (i) a blanket prohibition of non-English speech, (ii) a wholesale proscription of any action other than in the English language; and (iii) a prohibition on official documents other than in the English language.

H.R. 123's broad intrusions on constitutionally protected speech -- both oral and written -- are prohibited by well-settled First Amendment jurisprudence.<sup>55</sup> Where, as here, the Government presents no compelling state interest in its blanket curtailment of free expression -- other than conclusory pronouncements unsupported by any empirical, historical or even common sense justification -- its actions are clearly unconstitutional.<sup>56</sup>

The bill's prior restraint on content-based speech affecting matters of public concern falls short of the exacting constitutional requirement that it be narrowly tailored to further a compelling government interest.<sup>57</sup>

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55. See Barnes v. Glen Theater, Inc., 501 U.S. 560, 576, 111 S. Ct. 2456, 2465, (1991) ("The first amendment explicitly protects . . . oral and written speech . . .").

56. See Ebel v. City of Corona, 698 F.2d 390, 393 (9th Cir. 1983); Rosen v. Port of Portland, 641 F.2d 1243, 1246 (9th Cir. 1981).

57. Barnes, 501 U.S. at 567, 111 S. Ct. at 2461 (1991); Boos v. Berry, 485 U.S. 312, 321, 108 S. Ct. 1157, 1163-4 (1988); Goodling v. Wilson, 405 U.S. 518, 521-22, 92 S. Ct. 1103, 1105 (continued...)

1. H.R. 123 Is Not Narrowly Tailored  
In Its Scope

To state that H.R. 123 is not narrowly tailored is to have a penchant for the obvious. On its face, H.R. 123 prohibits oral and written communication in languages other than English in all but the most limited circumstances by all officials and employees of the federal government. That individuals affected by H.R. 123 are comprised of all federally elected officials, agency administrators, employees and agents of the federal government does not render the bill any more constitutional nor does it confer less constitutional protection to those whose rights it directly violates.<sup>58</sup>

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57. (...continued)  
(1972); Pickering v. Board of Educ., 391 U.S. 563, 572-74, 88 S. Ct. 1731, 1736-7 (1968); New York Times v. Sullivan, 376 U.S. 254, 270-71, 84 S. Ct. 710, 720-1 (1964); see also Asian American Bus. Group v. Pomona, 716 F.Supp. 1328, 1330 (C.D.Cal. 1989) (holding that regulation of language is, per se, regulation of content).

58. Connick v. Meyers, 461 U.S. 138, 142, 103 S. Ct. 1684, 1688 (1983) ("holding that government cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of speech"); see also, Rankin v. McPherson, 483 U.S. 378, 107 S. Ct. 2891 (1987) (stating that employee's stated hope for a successful presidential assassination was protected speech as there was no evidence that it interfered with functioning of the office); Givhan v. Western Line Consol. School Dist., 439 U.S. 410, 99 S. Ct. 693 (1979) (protecting employee-supervisor communication under First Amendment); Perry v. Sinderman, 408 U.S. 593, 597, 92 S. Ct. 2694, 2697 (1972); Piesco v. Koch, 12 F.3d 332, 342 (2d Cir. 1993) (protecting employee speech during legislative meeting).

H.R. 123's mandate applies, with very limited exceptions, to all government business and activity, that is, it applies to verbal speech, written words and physical movement. Elected officials and government agents, administrators and employees are effectively precluded from communicating with constituents; from engaging in a broad array of official governmental actions; from creating and sending documents; and from enacting policies in any language other than English. Indeed, as written, the statute precludes all non-English communication involving more than one person, particularly where at least one English-speaking person is present.

The bill's broad sweep also prohibits elected officials and government employees from communicating with constituents in languages other than English about official legislation or proposed legislative action. This proscription applies to a potentially endless myriad of official contexts such as town meetings, formal and informal gatherings, meetings with lobbyists or even meetings with one or more constituents. As such, the bill's broad sweep runs afoul of the First Amendment right to communicate effectively with recipients of governmental communication.<sup>59</sup>

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59. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 756, 96 S. Ct. 1817, 1822 (1976) (holding that First Amendment protection "is afforded . . . to the communication, to its source and to its recipient"); Pickering, 391 U.S. at 572-74, 88 S. Ct. at 1736-7 (1968) (holding that the First Amendment protects employee speech  
(continued...))

2. H.R. 123 Serves No Compelling Government Interest And Is Nothing But A Straw-Man For The Denial Of Constitutional Rights

H.R. 123's pervasive regulation of oral and written speech is also unconstitutional because it abjectly fails to identify a compelling government interest. For all its fanfare about diversity, unity, fairness and efficiency, H.R. 123 fails to identify a single basis for its unsupported and, indeed, insupportable conclusion that English-only laws are needed either to foster the economic and cultural integration of non-English speakers or to protect the rights of English speakers. The fostering of economic and cultural integration is certainly not furthered by encouraging national, linguistic and race-conscious divisions or by the enshrinement of preferential status according to language.

As discussed above, the reasons advanced in support of H.R. 123 are nothing but a red-herring and a slap in the face of

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59. (...continued)  
addressed to matters of public concern); see, e.g., Bond v. Floyd, 385 U.S. 116, 136-37, 87 S. Ct. 339, 349-50, (1966) (characterizing legislator's communications with constituents as "core speech" under the First Amendment); Board of Educ. v. Pico, 457 U.S. 853, 867, 102 S. Ct. 2799, 2808 (1982) ("[t]he right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom."); Board of Educ., 457 U.S. at 866-68, 102 S. Ct. at 2807-09 (1974) (citations omitted); see also Yniguez, 69 F.3d at 943 (holding that English-only mandates violate the right to freedom of speech of public officials and the right to receive political information); Reeves v. McConn, 631 F.2d 377, 382 (5th Cir. 1980) ("The right to communicate inherently comprehends the right to communicate effectively." (emphasis added)).

the non-English constituents of our nation. They are simply the latest reincarnation of a centuries-old prejudice against linguistic communities and new immigrants which has been repeatedly and conclusively disproved and soundly rejected by our Supreme Court almost 75 years ago in Meyer v. Nebraska<sup>60</sup> and Nebraska Dist. of Evangelical Lutheran Synod v. McKelvie.<sup>61</sup>

Meyer's reasoning and holding are dispositive of H.R. 123's unconstitutionality and instructive of the baselessness of the English-only movement.<sup>62</sup> In Meyer, the Supreme Court reversed the conviction of a teacher for teaching German to a child who had not attained an eighth grade education.<sup>63</sup> The Court recognized that the professed intent of the Nebraska statute at issue, as with H.R. 123, was to compel children to learn English and to "acquire american ideals,"<sup>64</sup> or as more recently recognized by Eppeson v. Arkansas,<sup>65</sup> to "promote civic cohesiveness by encouraging the learning of English." Despite

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60. 262 U.S. 390, 43 S. Ct. 625 (1923).

61. 262 U.S. 404, 411, 43 S. Ct. 628, 630 (1923).

62. As noted by the Ninth Circuit in Yniquez, the fact that Meyer was decided on due process grounds "does not lessen [its] relevance" to First Amendment analysis as "[s]ubstantive due process was the doctrine of choice for the protection of fundamental rights during the first part of this century, although it has now largely been replaced by other constitutional doctrines." 69 F.3d 920, 946 n. 29.

63. Meyer, 262 U.S. at 396-97, 43 S. Ct. at 626.

64. Id. at 401.

65. 393 U.S. 97, 105, 89 S.Ct. 266, 271 (1968).

these self-professed goals, the Court found that the English-only statute infringed on "the liberty guaranteed by the Fourteenth Amendment"<sup>66</sup> and held that such liberty "may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose without the competency of the State to effect."<sup>67</sup>

In language that resonates with particular acuity in considering the constitutionality of H.R. 123, the Court in Meyer concluded:

That the State may do much, go very far indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on their 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.<sup>68</sup>

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66. The protections afforded to state citizens under the Fourteenth Amendment are extended to the federal government by the Fifth Amendment to our Constitution.

67. Meyer, 262 U.S. at 399-400, 43 S. Ct. at 626-7.

68. Meyer, 262 U.S. at 401; see also Roberts v. United States Jaycees, 468 U.S. 609, 618, 104 S. Ct. 3244, 3249-50 (1984) (citing Meyer with approval in the context of right to association); Runyon v. McCrary, 427 U.S. 160, 177, 96 S. Ct. 2586, 2597 (1976) (citing Meyer with approval in the Court's discussion of parental rights); United States v. Carolene Products Co., 304 U.S. 144, 152-53 n.4, 58 S. Ct. 778, 783-4 (1938) (exacting judicial scrutiny necessary where law is

(continued...)

These principles were recently restated in Yniguez v. Arizonans for Official English.<sup>69</sup> Yniguez, an employee of the State of Arizona, brought an action against the State of Arizona and other public officials seeking an injunction against the enforcement of a then recently enacted English-only mandate, making English the official language of the State of Arizona and precluding, with limited exceptions, the use of other non-English languages. The district court found the mandate over-broad and, as such, unconstitutional. A Ninth Circuit panel affirmed in relevant part and, on rehearing en banc, re-affirmed the district court's holding that the English-only mandate was an over-broad restriction on freedom of speech.<sup>70</sup>

Yniguez held that an English-only mandate regulating speech of public employees, government officials and executive, legislative and judicial officers was over-broad; constitute a prior restraint on freedom of expression and is, as such,

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68. (...continued)  
directed to racial or national minority groups); Yu Cong v. Trinidad, 271 U.S. 500, 526, 46 S. Ct. 619, 626 (1926) (citing Meyer in holding unconstitutional under the Due Process and Equal Protection clauses of the Fourteenth Amendment a statute requiring that commercial bookkeeping be kept in English, Spanish or local Filipino dialect).

69. 69 F.3d. 920 (9th Cir. 1995) (en banc) cert. granted 116 S. Ct. 1316 (1996).

70. Id.

unconstitutional under the First and Fourteenth Amendments of our Federal Constitution:

Article XXVIII is not a valid regulation of 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 they serve. The article similarly burdens the First Amendment rights of state and local officials and officers in the executive, legislative, and judicial branches.<sup>71</sup>

In language clearly dispositive of H.R. 123 and of the not-so-laudable intentions of the English-only movement, Yniquez explains why attempts to prescribe English-only orthodoxy by means of English-only mandates violates our right to freedom of speech guaranteed by the First Amendment:

As we have learned time and time again in our history, the state cannot achieve unity by prescribing orthodoxy. Notwithstanding this lesson, the provision at issue here 'promotes' English only by means of proscribing other languages and is, thus, wholly coercive. Moreover, the goals of protecting democracy and encouraging unity and stability are at most indirectly related to the repressive means selected to achieve them. Next, the measure inhibits rather than advances the state's interest in the efficient and effective performance of its duties. Finally, the direct effect of the provision is not only to restrict the rights of all state and local government servants in Arizona, but also to severely impair the free speech interests of a portion of the populace they serve.<sup>72</sup>

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71. Id. at 947.

72. Id., 69 F.3d at 946, 947-49 (citations omitted).

Like the English-only statute in Yniguez, H.R. 123 creates and embraces nationality, culture and language-based distinctions without furthering a compelling government interest. It creates a vehicle for divisiveness and fosters wholesale litigation by the less tolerant sectors of our society.<sup>73</sup> It imposes a "wholesale deterrent to a broad category of expression by a massive number of potential speakers."<sup>74</sup> Moreover, it authorizes civil action against a countless number of potential speakers -- an action that will likely result in a slew of uncontrolled litigation and a concurrent severe curtailment of First Amendment speech.<sup>75</sup>

In the name of assimilation, of taking full advantage of economic and occupational capacities and of promoting fairness and efficiency, federal officials and their employees are subjected to liability for a myriad of baseless and unnecessary claims. Contrary to its professed -- but ultimately nativist and xenophobic intent -- H.R. 123 fosters only nationality, language and racial divisiveness rather than unity in diversity and litigiousness rather than economic opportunity.

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73. See § H.R. 164 ("A person injured by a violation of this chapter may in a civil action (including an action under chapter 151 of title 28) obtain appropriate relief.").

74. Yniguez, 69 F.3d at 944, citing United States v. National Treasury Employees Union, \_\_\_ U.S. \_\_\_, \_\_\_, 115 S.Ct. 1003, 1013 (1995).

75. Board of Airport Comm'rs v. Jews for Jesus, Inc., 482 U.S. 569, 107 S. Ct. 2568 (1987) (stating that numerous and conflicting adjudications chills First Amendment rights).

Perhaps the best indication of the constitution-ally impermissible scope and intent of H.R. 123 is its mean-spirited decision to eradicate, with one fell swoop, the protections afforded by the Voting Rights Act to countless minorities whose primary language is not yet English.<sup>76</sup> As further discussed below, this shameful denial of equal access to the ballot-box on the basis of nationality violates our right to vote and to participate, on an equal footing, with all other segments of our society.<sup>77</sup>

At best, H.R. 123 represents a misguided view of language, immigration and economic progress -- one that is lacking an empirical, historical or political basis. At worst, it represents the latest re-emergence of ethnic and language-based distinctions -- all of which are contrary to our constitutional right to freedom of expression and our right to vote. As such, H.R. 123 is a far cry from the myriad of means available to foster economic development and societal participation by constituencies whose first language is not yet English.<sup>78</sup>

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76. See H.R. 123 §§ 201-202.

77. Washington v. Seattle School Distr. No. 1, 458 U.S. 457, 102 S. Ct. 3187 (1982) (guaranteeing the fundamental right to participate on equal footing in the political process); see also Yniguez, 69 F.3d at 947 (and cases cited therein).

78. See Rosen v. Port of Portland, 641 F.2d 1243, 1246 (9th Cir. 1981).

In sum, at every turn, H.R. 123 runs afoul of the constitutional requirement that its curtailment of First Amendment rights further a compelling government interest either unrelated to suppression of free speech or, if related, narrowly tailored to the implementation of such governmental interest. It neither satisfies the "narrowly tailored" constitutional requirement nor does it protect a "compelling" state interest. As the Framers of our Constitution realized and as history has established, promotion of English as our common language does not require and has never required wholesale prohibition of non-English languages. It is self-evident that English can and has been promoted for over 200 years without the need to prohibit non-English languages at any level. H.R. 123 is therefore as baseless as it is unconstitutional.<sup>79</sup>

**B. H.R. 123'S REPEAL OF KEY SECTIONS OF THE VOTING RIGHTS ACT VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENT<sup>80</sup>**

H.R. 123 violates the Equal Protection Clause of the Fourteenth Amendment by purposively and without any reason targeting voting protections long afforded by the Voting Rights Act. By calling for the repeal of bilingual voting requirements

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79. See United States v. O'Brien, 391 U.S. 374, 377, 88 S. Ct. 1673, 1679 (1968).

80. Applicable to the federal government under the Fifth Amendment.

as provided by the Voting Rights Act of 1965, aa-1a, (b)(f), H.R. 123 eviscerates on our most basic right to meaningful participation in the electoral process.<sup>83</sup>

The Voting Rights Act of 1965 ("VRA" or the "Act") was enacted to eradicate discriminatory practices that inhibited full participation by minority citizens of the United States in the electoral process. These practices, which continue today, include: (i) inadequate numbers of minority registration personnel; (ii) uncooperative registrars; (iii) lack of bilingual materials; (iv) under-representation of minorities as poll workers; and (v) outright exclusion, intimidation and economic reprisals.<sup>84</sup>

Section 203 of the VRA requires that states and political subdivisions with more than 10,000 citizens of voting age who are of limited English proficiency must provide voters with materials in languages other than English. VRA Section 4(f)<sup>85</sup> prohibits the imposition of voting prerequisites or qualifications that effectively deny or abridge meaningful and effective exercise of the right to vote of those that do not speak English.<sup>86</sup>

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83. See §§ 201-202.

84. See S. Report No. 295, 102d Cong., 1st Sess. 25, 26 (1975), reprinted in 1975 U.S.C.C.A.N. 774, 790.

85. 42 U.S.C. 1973b.

86. 42 U.S.C. 1973b.

Political obstacles faced by linguistic communities have been so severe that in 1975 Congress amended the Act to call for affirmative steps to ensure participation by linguistic communities in the electoral process:

The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope.... The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.<sup>87</sup>

In 1982 section 4(f) was amended yet again to require provisions for oral instruction and assistance to non-English speakers. The Senate subcommittee studying the VRA concluded:

It is clear from the subcommittee record that the practice of conducting registration and voting only in English does impede the political participation of voters whose usual language is not English. The failure of states and local jurisdictions to provide adequate bilingual registration and election materials and assistance undermines the voting rights of non-English-speaking citizens and effectively excludes otherwise qualified voters from participating in elections.<sup>88</sup>

Language and ethnic discrimination limiting access to the ballot-box continues, however, to plague our language communities. As recently as 1992, after finding voting discrimination a persistent malady, Congress yet again amended

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87. 42 U.S.C. § 1973b(f)(1) (1975).

88. S. Report No. 295 at 30.

the Act and extended its provisions for an additional 15 years.<sup>89</sup> The House Committee concluded that "without a federal mandate, much needed bilingual assistance in the voting process, meant to ensure the guarantees of the Fourteenth and Fifteenth Amendments, may disappear,"<sup>90</sup> and reaffirmed the right of all our citizens to cast a meaningful and effective vote: "the inability of members of language minorities to comprehend the ballot and voting related material provided solely in English prevented and continues to prevent them from casting an effective vote."<sup>91</sup>

H.R. 123's repeal of these provisions directly contradicts Congressional findings justifying the need for language assistance in voting. Equally important, the bill's provisions willfully ignore opinions by courts across the nation which view such assistance as necessary to guarantee participation by our linguistic communities in the political process and which hold that the imposition of additional burdens on readily identifiable minorities violates the Equal Protection guarantee of equal participation in the political process.<sup>92</sup>

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89. Voting Rights Language Assistance Act of 1992; H.R. Rep. No. 655, 102d Cong., 2d Sess. 4 (1992), reprinted in 1992 U.S.C.C.A.N. 766, 767.

90. S. Report No. 295 at 30.

91. *Id.* at 6.

92. Washington v. Seattle School Distr. No. 1, 458 U.S. 457, 102 S. Ct. 3187 (1982) (guaranteeing the fundamental right to  
(continued...)

In Katzenbach v. Morgan, the Supreme Court laid the legal foundations for the rejection of voting devices that exclude non-English speakers. In Morgan, the Supreme Court upheld the constitutionality of section 4(e) of the VRA and found unconstitutional New York's requirement that voters be able to read and write English as a condition of voting.<sup>93</sup>

Specifically, Morgan held that New York election laws denied the right to vote to large segments of the Puerto Rican community.

Examining the legislative intent of the VRA, the Court noted that "Congress might have also questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise."<sup>94</sup> The Court then held that New York's English literacy requirement constituted "invidious discrimination in violation of the Equal Protection Clause."<sup>95</sup>

The Supreme Court's decision in Morgan follows a well-established line of Supreme Court cases holding that the right to

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92. (...continued)  
participate on equal footing in the political process); see also Yniguez, 69 F.3d at 947 (and cases cited therein), Katzenbach v. Morgan, 384 U.S. 641, 86 S. Ct. 1717 (1966) (recognizing that multilingual voting assistance is needed in order to guard effective exercise of our right to vote.).

93. Id. at 644.

94. Id. at 654.

95. Id. at 656.

vote is a fundamental political right that is "preservative of all rights."<sup>96</sup> As stated in Wesberry v. Sanders<sup>97</sup>:

[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which ... we must live. Other rights ... are illusory if the right to vote is undermined.<sup>98</sup>

In keeping with Morgan, other courts have recognized that proactive affirmative measures are necessary to guarantee our citizens' rights to full and meaningful exercise of our right to vote. In so doing, courts have specifically recognized that "the right to vote" means more than providing physical access to a voting booth and casting a ballot.<sup>99</sup> Hence, disenfranchisement transcends physical exclusion and includes denial of language assistance to our linguistic communities.<sup>100</sup>

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96. Yick Wo v. Hopkins, 118 U.S. 356, 370, 6 S. Ct. 1064, 1070 (1886).

97. 376 U.S. 1, 84 S. Ct. 526 (1964).

98. *Id.* at 17.

99. See Reynolds v. Sims, 377 U.S. 533, 555, 84 S. Ct. 1362, 1378 (1964) ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.") *Id.*; Castro v. State of California, 466 P.2d 244 (1970) (holding an English literacy requirement in violation of Spanish-speakers' right to equal protection of the laws because it deprives them of the fundamental right to vote).

100. See Sandra Guerra, Voting Rights and the Constitution: The Disenfranchisement of Non-English Speaking Citizens, 97 Yale L.J. 1419, 1429 (1988) (citing Clements v. Fashing, 457 U.S. 957, 963, 102 S. Ct. 2836, 2843 (1982); Lubin v. Panish, 415 U.S. 709, 716, 94 S. Ct. 1315, 1320 (1974); Memorial Hosp. v. Maricopa County, 415 U.S. 250, 257, 94 S. Ct. 1076, 1081 (1974)).

By callously calling for the repeal of the VRA's bilingual voting requirements, H.R. 123 violates the equal protection rights of our non-English speaking communities by denying them voting assistance in a language they can understand and by taking away their ability to meaningfully exercise their right to vote.

As recognized by the Seventh Circuit in Puerto Rican Organization for Political Action (PROPA) v. Kusper "the right to vote' encompasses the right to an effective vote."<sup>101</sup> After affirming the issuance of an injunction mandating assistance for voters who were unable to read or understand English, Kusper held that "[i]f a person who cannot read English is entitled to oral assistance, if a Negro is entitled to correction of erroneous instructions, so a Spanish-speaking Puerto Rican is entitled to assistance in the language he can read or understand."<sup>102</sup>

Other federal district courts similarly have held that the right to vote implicates the need for multilingual voting

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101. 490 F.2d 575 (7th Cir. 1973).

102. Id. at 580; see also Garza v. Smith, 320 F. Supp. 131, 136 (W.D. Tex. 1970), vacated and remanded, 401 U.S. 1006, 91 S. Ct. 1257, appeal dismissed, 450 F.2d 790 (5th Cir. 1971) (rejecting a narrow definition of "the right to vote" and holding that said right includes "the right to be informed as to which mark on the ballot, or lever on the voting machine, will effectuate the voter's political choice."); United States v. Louisiana, 265 F. Supp. 703 (E.D.La. 1966), aff'd without opinion, 386 U.S. 270, 87 S. Ct. 1023 (1967) (holding that a state statute denying voting assistance to illiterate voters was illegal in light of the ban on literacy tests provided by the Voting Rights Act of 1965); United States v. Mississippi, 256 F. Supp. 344 (S.D.Miss. 1966) (interpreting the Voting Rights Act as requiring States to provide assistance to illiterate voters).

assistance. In Torres v. Sachs,<sup>103</sup> the court held that the "right to vote" presumed the right to cast an effective vote. The court therefore ordered the New York City Board of Elections to provide bilingual ballots.<sup>104</sup> It noted that "[i]t is simply fundamental that voting instructions and ballots ... must be in Spanish as well as English, if the vote of Spanish-speaking citizens is not to be seriously impaired."<sup>105</sup>

The bilingual provisions of the VRA are fundamental to the effective and meaningful exercise of the right to vote by our linguistic communities. As the caselaw illustrates, without such basic assistance, the right to cast an effective vote -- a right guaranteed by our Federal Constitution -- is meaningless. Whatever policy reason lurks behind the bill's attempt to impose English-only elections, it can hardly be "so compelling that it justifies denying the vote to a group of United States citizens who already face similar problems of discrimination and exclusion in other areas and need a political voice if they are to have any realistic hope of ameliorating the conditions in which they

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103. 381 F. Supp. 309 (S.D.N.Y. 1974).

104. *Id.* at 312.

105. *Id.* at 312; see also Arroyo v. Tucker, 372 F. Supp. 764, 767 (E.D.Pa. 1974) (declaring Philadelphia's English-only election materials a "device 'conditioning the right to vote' on plaintiff's ability to 'read, write, understand, or interpret any matter in the English language'" and, as such, violative of the Voting Rights Act).

live."<sup>106</sup> H.R. 123's attack on the VRA must therefore be rejected as violative of due process, equal protection of the law and of our right to effectively and meaningfully exercise our right to vote.

### III. SUMMARY OF THE EGREGIOUS IMPLICATIONS OF THE PASSAGE OF H.R. 123

By federally mandating English-only, H.R. 123 will accomplish everything it claims to be avoiding. Millions in our linguistic communities throughout the United States will, overnight, be disenfranchised. Divisiveness along ethnic lines will increase exponentially. Effectiveness and fairness will be H.R. 123's first casualties. English as the language of choice of our citizens will suffer a severe set-back. Finally, numerous attempts to enforce H.R. 123 and numerous challenges to its constitutionality will spawn substantial, protracted and costly litigation. Under the guise of forced national unity, ethnic distrust and division will be the order of the day with our linguistic communities bearing the brunt of a brutal and senseless attack.

The most serious and immediate implications of H.R. 123 will be (i) curtailment of elected officials' ability effectively to communicate with their constituencies; (ii) infringement on the freedom of speech of all federally elected officials, federal

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106. Castro, 466 F.2d at 266.

employees, administrators and agents; (iii) denial of equal access to education; (iv) inefficiency, added costs and an increase in frivolous litigation; (v) the disenfranchisement of entire segments of our linguistic communities; (vi) divisiveness along language and ethnic lines; and (vii) suppression of our competitive edge in a global marketplace.

**A. PUBLIC HEALTH AND SAFETY ISSUES**

Notwithstanding its token exclusion of public health and safety issues, H.R. 123 would still restrict our citizens' access to information on a myriad of quality of life services. For example, under H.R. 123, our linguistic communities would be denied information regarding services such as Head Start and Social Security and information on topics such as criminal victims rights, the Americans with Disability Act, prevention of child abuse, child support collection, teen pregnancy and other preventive programs -- just to name a few.

**B. EFFECTIVE COMMUNICATION BY FEDERALLY ELECTED OFFICIALS, AGENTS AND EMPLOYEES WITH THEIR RESPECTIVE CONSTITUENCIES**

Most non-English speaking citizens and immigrants learn about important government services through written publications of government agencies and/or elected officials. This is particularly true of older Americans or disabled Americans who cannot easily leave their homes. Through the written media, government representatives effectively reach out and inform

linguistic communities of both available government services and the procedures that must be followed in order to qualify for such services. H.R. 123 would deny federal representatives, including elected officials, the right to inform non-English proficient citizens of such government services. Consequently, linguistic communities would be denied equal access to government services solely on the basis of their lack of language proficiency.

#### C. DENIAL OF EQUAL ACCESS TO EDUCATION

Passage of H.R. 123 will eventually lead to the demise of bilingual education. Bilingual education is an effective means of helping students make the transition to instruction in English. Specifically, H.R. 123 could jeopardize bilingual education programs by denying teachers in federally funded schools the opportunity to communicate orally and in writing, with students and parents whose language is not yet English. Students would be denied the ability to continue their education while they learn English. Parents not proficient in English would be alienated from full participation in their children's education. H.R. 123 would consequently increase the likelihood that children from our linguistic communities would fail in school. Failure in school would lead, in turn, to severe curtailment of job opportunities. As a step towards future denial of bilingual education, H.R. 123 reinforces rather than eliminates barriers to equal opportunity in our nation.

#### **D. LACK OF EDUCATIONAL RESOURCES**

Both sides of the debate are in agreement that learning English is important for the development of citizens in our nation. Declaring English the language of government will do nothing to ensure the continued vitality of English as our common language by choice.

The real problem facing our nation is the lack of resources needed to meet the demands for English as a Second Language classes. According to estimates, only 13% of the demand for these classes is currently being met.<sup>107</sup> To assist this cause, the task seems obvious. Funding should be provided for additional English language classes so that more people will have the opportunity to learn the English language. As a former supporter of the English-only movement came to realize, "[n]ot until we provide educational facilities for all who are now standing in line waiting to take lessons in English should we presume to pass judgment on the non-English-speaking people in our midst."<sup>108</sup>

#### **E. INEFFICIENCY, ADDED COSTS AND INCREASES IN FRIVOLOUS LITIGATION**

H.R. 123 states that "[t]he use of a single common language in conducting official business of the Federal

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107. Bad Law in Any Language, L.A. Times, August 2, 1996, at B8.

108. Combs & Lynch, supra note 41.

Government will promote efficiency" and that "[a]ny monetary savings derived from the enactment ... should be used for the teaching of the English language to non-english speaking immigrants." Assuming, for the sake of argument, that this assumption is valid, it is not enough to ensure that all non-English speakers have the opportunity to learn English. A cost estimate for H.R. 123 submitted by the Congressional Budget Office stated that H.R. 123 would not save the government any money and might actually increase certain costs.<sup>109</sup> The report stated that only about .06% of federal documents are in languages other than English which means that the bill would have little effect on savings by federal government. Costs could increase, however, if the requirement of English-only forms resulted in agencies substituting more expensive oral translation services for information in writing.<sup>110</sup> The government cannot therefore rely on "savings" that will result from H.R. 123 to promote educational facilities for non-English speakers since these savings will never be realized. Proactive measures must be taken to ensure that the availability of English language classes meets the currently overwhelming demand.

H.R. 123 creates a private right of action against the federal government in civil court for dissemination of

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109. H.R. Rep. No. 723, supra note 43, (written statement of June E. O'Neill, Director of the Congressional Budget Office).

110. Id.

information by elected officials, federal employees, administrators and agents in a language other than English. Such litigation will cost taxpayers millions of dollars to defend and, as outlined above, will have a severe chilling effect on our First Amendment right to communicate and to receive information in languages other than English.

**F. DISENFRANCHISEMENT OF LANGUAGE AND ETHNIC MINORITIES**

H.R. 123 would have a disparate impact on older American and linguistic communities at the ballot-box. Older Americans who are not proficient in English are less likely to learn English. As a result of our citizens' failure to understand complex ballots and voting instructions, voter registration and turnout would diminish dramatically. Studies conducted by the Mexican American Legal Defense and Education Fund show that 70% of Spanish speaking citizens would be less likely to register if information was not available in Spanish and 72% would be less likely to vote.<sup>111</sup> Passage of H.R. 123 would therefore effectively disenfranchise a large number of language and ethnic communities.

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111. R. Brischetto, *Bilingual Elections at Work in the Southwest* (1982).

**G. DIVISIVENESS ALONG LANGUAGE AND ETHNIC LINES**

1. The Preservation of Unity?

H.R. 123 proposes that the federal government mandate and enforce English-only at the federal level "[i]n order to preserve unity in diversity, and to prevent division along linguistic lines."<sup>112</sup> Incredibly, the rationale offered for this notion is that our nation, due to language differences, is politically unstable and that the separatist movements and political fragmentation in countries such as Canada and Sri Lanka will ensue if we do not adopt and enforce a coercive language policy of our own.<sup>113</sup>

To state the rationale of H.R. 123 is to refute it in the same breath. Clearly, comparisons with foreign governments are nothing but red-herrings. Even proponents of H.R. 123 realize, language has never been the cause of social divisions or political instability. Instead, language issues are nothing but

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112. H.R. 123 § 101(4) (1996).

113. H.R. Rep. No. 723, *supra* note 43; see also Quebec Divided by Language Issue, U.S. English Update (U.S. English, Washington, D.S.), Winter 1995, at 5 (warning that the language strife in Quebec can occur in the United States without the adoption of Official English).

the late-stage manifestations of unequal status within a political or economic system.<sup>114</sup>

Problems arise only when language is used as an instrument of linguistic and ethnic dominance and as a means of political control.<sup>115</sup> Under H.R. 123, our language communities will be barred from full and equal participation in the federal political arena and at the ballot-box. The resulting marginalization will only lead to increased divisiveness, inefficiency and exacerbated ethnic tensions -- the very same outcome H.R. 123 is purportedly designed to prevent.<sup>116</sup>

## 2. Helping Immigrants Better Assimilate?

H.R. 123 claims that its purpose is to "help immigrants better assimilate and take full advantage of economic and occupational opportunities in the United States" so that they

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114. For example, the language conflict in Canada reflects a history of second-class citizenship for French speakers where language was a tool for political and economic discrimination. Crawford, *supra* note 17, at 52, 56. See also Joan Carson & Joyce Neu, Keep Georgia Multilingual, Atlanta J. & Const., Feb. 2, 1995, at A13 ("When conflict arises among language groups in multilingual countries, it is usually because a particular ethnic group has been deprived of access to social, economic, or political resources.")

115. *Id.*

116. See Jack Citrin, Language Politics and American Identity, reprinted in English: Our Official Language, at 30,42 (opining that while our common language strengthens our national identity, English-only legislation must not be pursued because "in the absence of a genuine threat to the status of English, the formal subordination of other languages is mainly divisive.") *Id.*

will become "responsible citizens and productive workers."<sup>117</sup> The presumption is that such assistance is necessary because "the public policy that has been in place over the last 25 years ... has discouraged immigrants from learning English."<sup>118</sup> As previously noted, studies and statistics consistently find that today's linguistic communities and new immigrant groups learn English as fast as, if not faster than, the immigrant groups of the past; that 97% of Americans already speak English;<sup>119</sup> and that English as a Second Language classes across the nation are overcrowded and underfunded. Commentators consistently agree that most immigrants learn English rather quickly not because they are forced to but because they realize that success and prosperity come with knowing English, this being all the incentive and encouragement they need.<sup>120</sup> Tellingly, no evidence has ever been brought forth to dispute these facts, and supporters of Official English legislation have even acknowledged

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117. H.R. 123 § 101(6), (7).

118. H.R. Rep. No. 723, supra note 43 (Explanation of the Bill and Committee Views).

119. Id. (Minority Views).

120. See James C. Stalker, Official English or English Only, reprinted in English: Our Official Language?, supra note 3, at 44, 51 ("The very fact that English speakers ... are economically and politically more powerful than non-English speakers is a better argument for learning English than an argument based on the fact that English is the official or only language of the United States."); see also, Wendy Olson, The Shame of Spanish: Cultural Bias in English First Legislation, 11 Chicano-Latino L. Rev. 1 (1991).

the lack of foundation for their position.<sup>121</sup> As stated by one lobbyist for Official English legislation, "Every statistic shows that immigrants in numbers [of] 90 to 95% [want to learn English]; every poll done by every organization and every polling firm show that."<sup>122</sup>

Simply stated, the "problem" H.R. 123 hopes to rectify is non-existent. The bill does nothing but isolate and disenfranchise large segments of our linguistic communities. Specifically, non-English speakers would be unable to communicate effectively with their elected officials and government employees. Our communities would be denied fair and equal access to fundamental services such as voting assistance, education, social security, and police protection.<sup>123</sup> Said denials undoubtedly would prevent our communities from "tak[ing] full advantage of economic and occupational opportunities in the United States" -- all contrary to the purported goal of H.R. 123. As one commentator has noted:

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121. In 1986, Norman Cousins resigned from the advisory board of U.S. English due to the unsupported assumption propounded that Latinos did not want to learn English. When Proposition 63 was passed in California (a constitutional amendment establishing English as the state's official language), 40,000 people were on waiting lists for English language instruction in Los Angeles alone. This discrepancy led Cousins to resign as he noticed the potential for racial discrimination that the proposition would bring.

122. CNN, Sonya Live, July 5, 1993 (Transcript #331) (statement by Chris Doss).

123. H.R. Rep. No. 723 (Minority Views).

How convenient, in the name of offering them a chance of assimilation, to actually prevent it. [Official English laws that eliminate bilingual services prevent] new immigrants [from] assert[ing] political power [as they] will lack the ability to defend themselves against those groups or laws that would oppress them. They will be unable to compete in the market place; thus they will always be a ready pool of laborers for the dead-end, risky, low-paying jobs that "true" Americans do not want. ...If these individuals or groups cannot communicate in the "official" language of the land, they legally will not be able to communicate at all because "officially" they will have said nothing no matter what they say, or how they say it.<sup>124</sup>

The negative effect of H.R. 123 on those Americans who are in the process of learning English through ESL classes; who are on wait-lists to learn English; or who are teaching themselves English due to work or family-related time constraints will be socially, economically and personally devastating. H.R. 123 will only fan the flames of resentment felt by a large segment of citizen currently embarking on their trip to prosperity and full participation in our society.<sup>125</sup>

3. The English-Only Movement: Prelude to Ethnic-Based Divisiveness

The divisiveness and increased ineffectiveness that will occur by the passage of H.R. 123 will not be circumscribed to our language communities but will likely engulf our English-

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124. Vivian I. Davis, Paranoia in Language Politics, in Not Only English, supra note 13, at 71, 72.

125. See English as Official Language: Hearings on S. 356 Before the Senate Comm. on Governmental Affairs, 1996 WL 98917 (F.D.C.H.) (statement of Congressman Robert A. Underwood).

only speaking citizens who are not privy to the facts and bases lurking behind the facade of the bill.

Instances of misguided hostility and retribution on the basis of language already abound. An accountant for an insurance company in Los Angeles received a memo threatening probation or termination if he spoke Chinese on the job.<sup>126</sup> In Elizabeth, New Jersey, a complaint was filed against the mayor after City Hall employees were told to speak English-only, even during private conversations, while on the job.<sup>127</sup> In New York City, a warehouse worker was fired, and later reinstated, when his supervisor overheard him speaking in Spanish about ordering a pizza.<sup>128</sup> Three bank tellers in Virginia were forbidden to speak anything but English to each other and were ordered to go out of the building to speak Spanish among themselves.<sup>129</sup> In Connecticut, a manager of a Carvel Ice Cream store was suspended for telling a customer, "This is America, English Only" and refusing to write "Happy Birthday" in Spanish on a cake.<sup>130</sup> In

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126. USA Doesn't Need "Official" Language, USA Today, October 15, 1990, at 6A.

127. Order for Only English Leads to a Complaint, N.Y. Times, July 22, 1983, at B2.

128. Richard Roeper, "English Only" Trend isn't the American Way, Chi. Sun-Times, August 31, 1992, at 11.

129. Carlos Sanchez & Robert F. Howe, 3 Employees Allege Bias on Language; Bank Said to have Issued Ban on Speaking Spanish, Wash. Post, February 23, 1993, at B1.

130. Carolyn Moreau, "English Only" Comment Draws Suspension, The Hartford Courant, April 28, 1995, at A3.

Union Gap, Washington, three men who were conversing in Spanish while playing pool in a bar were asked to speak English and were eventually kicked out of the establishment for not complying.<sup>131</sup> In Sacramento, an insurance company settled a class-action suit prompted by its policy to only sell insurance to customers who understood English.<sup>132</sup> Facing numerous complaints and a threatened lawsuit, America Online ("AOL") discontinued its practice of deleting messages in its sports forum that were written in Spanish.<sup>133</sup> AOL now "encourages members to post multilingual messages." In the past two decades, the government has cited evidence of a "recent upsurge" in English-only rules in the workplace. In 1994, the EEOC had approximately 120 cases in its docket in which 67 different employers had been charged with unfairly imposing English-only work rules.<sup>134</sup> Despite its stated purposes, a law that officializes the use of English over all other languages sends a message of intolerance,<sup>135</sup> whether

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131. Aviva L. Brandt, Tavern Sued Over English-Only Policy, L.A. Times, January 21, 1996, at A24.

132. Life Insurer Changes English-Only Practice, Rocky Mountain News, August 7, 1996, at 5B.

133. Art Kramer, AOL Retreats on English-Only Plan in Sports Forums, Atlanta J. & Const., July 30, 1996, at 3E.

134. Administration Urges Supreme Court to Rule on Legality of English-Only Rules, BNA Daily Rep. for Executives, June 6, 1994.

135. See English as Official Language: Hearings on S. 356 Before the Senate Comm. on Governmental Affairs, 1996 WL 107202 (F.D.C.H.) (written testimony of Karen Narasaki, Executive Director, National Asian Pacific American Legal Consortium).

intentional or not -- and this does threaten the unity of the nation.

The false premise that non-English speaking citizens are not "true Americans" and that English may lose its dominance in our nation because linguistic communities and new immigrants are failing to learn English are not only false but they are racist and are specifically targeted at ethnic minorities. Most language minorities today are ethnic minorities. The premise that if you do not speak English, you are not American, per force, targets ethnic minorities and fails to recognize the contributions of these citizens, including over three million Spanish speaking United States citizens that reside in the Commonwealth of Puerto Rico. Making such egregious distinctions among our citizens and denying them the right to information about government services and the right full and meaningful access to the ballot is contrary to the principles of our nation's democracy and history of tolerance. Our founding fathers refused to recognize an official language despite the widespread use of German at the time the United States Constitution was drafted because our nation was founded upon the premise of inclusion, not exclusion.

The following statements in H.R. 123 run counter to our nation's commitment to inclusion:

- o Throughout the history of the United States, the common thread binding individuals of differing backgrounds has been a common language.<sup>136</sup>
- o By learning the English language, immigrants will ... become responsible citizens and productive workers in the United States.<sup>137</sup>

These statements are irresponsible because they imply that citizens whose primary language is not English are not (i) responsible citizens; (ii) productive workers; or (iii) full citizens. Such implications are a direct insult to our linguistic communities and particularly to Puerto Ricans who have bravely fought for and died for our nation.

**H. CURTAILMENT OF ACCESS OF PUERTO RICANS TO  
ESSENTIAL INFORMATION AND SERVICES**

Adoption of English as the official language of the federal government would also have a severe effect on Puerto Rico's ability to participate in the political and electoral process. H.R. 123 would prevent the Resident Commissioner of Puerto Rico from effective communication, both oral and written, with other elected officials and with his constituents in Puerto Rico, not to mention with his own employees in Washington, D.C. Similarly, Puerto Ricans whose primary language is Spanish would be barred from communicating with the Resident Commissioner.

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136. H.R. 101(3).

137. H.R. 101(7).

Additionally, H.R. 123 would effectively deprive three million United States citizens in Puerto Rico access to a wide range of federal programs, benefits and rights such as Social Security, SSI and Head Start. Moreover, H.R. 123 would bring to a stand-still the ability of Puerto Ricans effectively to communicate and receive information from all federal agencies in Puerto Rico and would prevent Puerto Ricans from conducting business with federal agencies, banks and other financial services. Finally, H.R. 123 would severely, if not totally, curtail the ability of the federal government to conduct business with Puerto Rico.

**I. SUPPRESSION OF OUR COMPETITIVE EDGE IN A GLOBAL ECONOMY**

Establishing English as the official language of our government would serve no end aside from alienating further people who already may be on the fringes of society while offering them no real language assistance. The effect of H.R. 123's English-only mandate will not be limited to a marked increase in ethnic and racial tensions and a potential backlash against our common language. Our ability to compete successfully in the world market will be seriously compromised as well. English-only legislation sends a message to our existing linguistic communities and to foreign nations alike that we do not value or recognize diverse languages and cultures -- regardless of the self-serving language to the contrary in H.R.

123.<sup>138</sup> In today's fast-growing global economy, this message places our nation at a severe disadvantage.

The majority of nations around the world foster and encourage bilingualism and multilingualism through their educational programs and policies. Knowledge of multiple languages as well as cultures is considered desirable.<sup>139</sup> Aside from having a more culturally aware body of citizens, foreign countries produce professionals that have been able to take full advantage of alliances such as NAFTA and GATT. Our professionals, on the other hand, have been seriously challenged in gaining access to foreign markets due to their lack of expertise in foreign languages as well as their lack of cross-cultural competence.<sup>140</sup>

In today's marketplace, our nation must exploit --not hide or discard -- its multilingual and cross-cultural capabilities. Instead, legislation such as H.R. 123 attempts to suppress our competitive edge and sends a message to the world

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138. See Making English the Official U.S. Language, 1995: Hearings Before the Subcomm. on Early Childhood, Youth, and Families of the House Economic and Educational Opportunities Committee, 1995 WL 612504 (F.D.C.H.) (statement of Congressperson Jose Serrano).

139. See English as Official Language, 1996: Hearings on S. 356 Before the Senate Comm. on Government Affairs, 1996 WL 107197 (F.D.C.H.) (statement on behalf of Teachers of English to Speakers of Other Languages, Inc. (TESOL) by Dr. G. Richard Tucker, Professor and Head of Department of Modern Languages, Carnegie Mellon University).

140. Id.

that we are ashamed of multilingualism. This myopic approach isolates our own citizens and hinders our progress in global business. Skill in English as well as another language or two is a desirable social and economic goal that should be promoted through educational and social policies and programs.<sup>141</sup>

#### CONCLUSION

The belief that America will become anything less than a predominately English-speaking nation because linguistic communities and recent immigrant groups are not learning English is unsupported by the facts and is merely the latest manifestation of a centuries-old attempt at oppression of linguistic communities and control of immigration through fear and paranoia.

As previously shown, use of minority languages has always been marginal in our nation. Indeed, research shows that Latinos, who now constitute the nation's largest minority-language group, are adopting English in the second and third generation in the same way that speakers of German, Italian, Yiddish, Russian, Polish, Chinese or Japanese have done in the past without the need for legislation. Results from a 1976 study indicate that of the 2.5 million people who spoke Spanish as their native language, 1.6 million adopted English as their

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141. Id.

principle language. Another study by the RAND Corporation found that "more than 95% of first-generation Mexican Americans born in the United States are proficient in English and that more than half the second generation speaks no Spanish at all."<sup>142</sup> The same is true of other Latino immigrant groups. The facts therefore do not support the premise that our linguistic communities are not learning English or that imposing an English mandate through coercive legislation promotes English fluency.

As we have conclusively established, our linguistic communities have and will continue to learn English because it is economically beneficial to do so and not because our federal government deems it appropriate to force them to do so. H.R. 123 therefore fails to promote any of its self-serving goals and promotes only unnecessary and divisive language and ethnic-based distinctions in our society.

In sum, H.R. 123 (i) violates our right and the right of our elected officials to freedom of speech; (ii) deprives us of due process and equal protection under the law; (iii) prevents effective political participation in our government; (iv) restricts access to information about vital governmental services; (v) denies access to education; (vi) effectively deprives linguistic communities of their right to meaningful participation in the electoral process; (vii) results in

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142. Stalker, James C., *English Journal* 77:18-23 (1988).

inefficiency, added costs and frivolous litigation; and (viii) hurts our global competitive edge.

As its only accomplishments, H.R. 123 divides our nation along linguistic and ethnic lines; ignores the democratic principles that bind our nation together; and sends a clear message of language, ethnic and racial intolerance.

For these reasons, H.R. 123 must be rejected.