

# OCLA fax

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U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
OFFICE OF COMMUNICATIONS AND LEGISLATIVE AFFAIRS  
1801 L STREET, N.W.  
WASHINGTON, D. C. 20507  
FAX: (202) 663-4912

DATE: 2/14/96 TIME: 3:45 p.m.

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To: Steve Warnath

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FAX NUMBER: (202) 456-7028

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SENDER: Claire Gonzales

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SENDER'S TELEPHONE NUMBER: (202) 663-4915

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DOCUMENT: Comments on S.356 Language of Gov't. Act

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NUMBER OF PAGES TRANSMITTED (INCLUDING COVER): 6

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SPECIAL INSTRUCTIONS:

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**RESPONSE TO  
LEGISLATIVE REFERRAL  
MEMORANDUM**

LRM NO: 3463

FILE NO: 1841

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

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- (2) sending us a memo or letter

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

TO: M. Jill GIBBONS 395-7593  
Office of Management and Budget  
Fax Number: 395-3109

FROM: 2/14/96 (Date)  
Claire Gonzales (Name)  
EEOC (Agency)  
663-4908 (Telephone)

SUBJECT: OMB Request for Views RE: 8358, Language of Government Act of 1995

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

- Concur
- No Objection
- No Comment
- See proposed edits on pages \_\_\_\_\_

Other: \_\_\_\_\_

FAX RETURN of 4 pages, attached to this response sheet



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Washington, D.C. 20507

February 14, 1996

Mr. James Jukes  
Assistant Director  
for Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Jukes:

This is in response to the Office of Management and Budget's request for the Equal Employment Opportunity Commission's (EEOC) views on S. 356, the Language of Government Act of 1995.

As requested, EEOC has reviewed S. 356 to determine its implications for enforcement of Title VII of the Civil Rights Act of 1964, as amended (Title VII), and Commission operations. As a symbolic matter, the bill seems intended to broadly prohibit the use of languages other than English in a broad range of government activities. Such a prohibition would conflict with Title VII jurisprudence on national origin discrimination, and affect the Commission's own enforcement operations, in ways set forth below. On the other hand, much of the language of the bill is so ambiguous that its practical impact on Title VII interpretations and Commission operations may be negligible. That very ambiguity is troubling, however, because it will generate confusion and potential overreaction both in and outside of the government.

Discussion

Under Commission policy, speak-English-only rules are presumed to have an adverse impact based on national origin, and therefore violate Title VII unless they are shown to be job related and consistent with business necessity. The Commission presumes that prohibiting employees from speaking their primary language, or the language they speak most comfortably, can create a discriminatory working environment. 29 C.F.R. section 1606.7 (1995).<sup>1</sup>

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<sup>1</sup> Note that the Ninth Circuit has rejected the Commission's position that adverse impact from speak-English-only rules can be presumed. See Garcia v. Spun Steak Co., 998 F.2d 1480 (9th Cir. 1993), cert. denied, 114 S.Ct. 2726 (1994). In the Ninth Circuit, a plaintiff must prove that a group has been adversely affected by a speak-English-only rule before the employer will be required to justify it.

Mr. James Jukes  
Page Two

Thus, under Title VII, any rule limiting employees' rights to speak their native language must be narrowly drawn and necessary to accomplish a legitimate business purpose. It will be almost impossible for an employer to justify, under Title VII, a rule that requires employees to speak English at all times, including on breaks and at lunch time. In contrast, an employer generally will be able to justify requiring employees to speak only English at times necessary to perform the business function -- when close coordination among coworkers is required (for example, in performing surgery or on construction sites where accidents are likely to occur) or when communicating with English-speaking customers.

As noted above, the tone of the Language in Government Act conflicts with the Commission's interpretation of Title VII in that the bill seems intended to discourage the use of languages other than English. However, its prohibitions are vaguely worded and it is unclear whether, by whom, or how it would be enforced.

First, we note that, as to communications between employees, the bill's impact appears to be limited to federal employees. It requires English as the official language only for federal government operations and apparently does not directly affect private sector or state and local employers.

Second, it is not clear whether or not the bill conflicts with Title VII. It specifies that it is not intended to "restrict the rights of any individual in the United States," and does not repeal existing laws except where such laws "directly contravene" the language of the Act. Section 2(b). It is not at all clear whether the Title VII "right" to speak languages other than English -- absent business necessity -- "directly contravene" this bill. If so, Title VII would presumably be superseded at least as to the "official business" for which the Act requires the use of English.

On the other hand, the bill specifies that it is "not intended to discourage or prevent the use of languages other than English in any nonofficial capacity." Section 2(b)(2). This statutory language may be intended to preserve the Title VII prohibition on speak-English-only rules that apply to all employee communications at all times on the job. Because the term "nonofficial" is not defined, however, it is unclear what activities are authorized by the bill to be conducted in languages other than English. It is unclear, for example, whether the bill would treat private conversations among employees about matters on which they are working as "nonofficial," or whether, alternatively, any interaction among

Mr. James Jukes  
Page Three

employees during "official" working hours would be defined as "official business" that must be conducted in English. Similarly, the bill provides that the Government is obliged to "encourage greater opportunities for individuals to learn the English language." Section 3(a). This might be construed to mean that an English-only rule whose stated purpose is to promote learning English is consistent with "business necessity" within the meaning of Title VII<sup>2</sup> and/or that the Commission is not permitted to challenge such a rule.<sup>3</sup>

Third, it is unclear exactly what governmental actions the bill prohibits. S. 356 specifies only that the federal government shall conduct its "official business" in English and that people cannot be denied service because they communicate only in English. "Official business" is defined as "those governmental actions, documents, or policies which are enforceable with the full weight and authority of the Government," Section 3(a). (emphasis added). The bill then sets forth a number of exceptions that are not "official business," including teaching foreign languages, actions to protect the public health, or actions that protect victims of crime or criminal defendants. Id.

The EEOC currently publishes numerous documents, including informational brochures and EEO posters, in multiple languages. The Commission also uses languages other than English when communicating with non-English speaking charging parties, including in intake interviews and in issuing right-to-sue letters. Because such actions ensure protection of the rights of non-English speakers, they are necessary for the full enforcement of Title VII's prohibitions on national origin discrimination.

The intent of this bill may be to prohibit the government from publishing or conveying any information in any language other than English, except as to the enumerated exceptions. However, it is not evident that governmental issuances that

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<sup>2</sup> Note, however, that in a recent challenge to an English-only rule, the Commission introduced evidence that prohibiting employees from using their native language actually inhibits the English learning process. See EEOC v. Wynell, Inc., No. H-92-3938 (S.D.Tex.) (decided March 29, 1995).

<sup>3</sup> In EEOC v. Wynell, Inc., the Commission challenged a day care center's rule that employees must speak English-only at all times. It argued, among other things, that prohibiting non-English speaking employees from speaking Spanish denied them an equal opportunity to express themselves and to learn new skills, damaged their self esteem, and created an environment of intimidation.

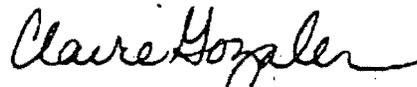
Mr. James Jukes  
Page Four

explain existing laws or government operations constitute "enforceable" governmental action or documents.

Finally, the enforcement mechanism created by the bill for any violation of its terms is incoherent. The bill specifies that government services cannot be denied solely because the person speaks only English. Since the EEOC conducts its business in English and makes all advice or guidance available in English, as well as in other languages, it is difficult to see how any person could allege that Commission actions violated the bill or caused injury. It is unclear how any individual could have standing to challenge government action that is communicated both in English and in other languages. Moreover, such dual communication does not violate the right to receive information in English, and would not appear to impose "injury" on English speakers in any event. See Section 3(a) (granting standing to "any person alleging injury arising from a violation" of the Act).

As noted above, the EEOC is extremely troubled by this bill. With respect to this agency's operations, the bill has the potential to leave some of the most vulnerable employees uninformed about their rights and thus unprotected. Moreover, it seems likely to prompt an argument that the Commission cannot challenge English-only rules. While the Commission believes that such an argument would ultimately fail, it is virtually certain that a great deal of time and taxpayer dollars will be spent attempting to resolve those disputes.

Sincerely,



Claire Gonzales  
Director of Communications  
and Legislative Affairs

cc: Gilbert F. Casellas  
Chairman

a significant employee orientation or training period is involved.

4. Privacy Concerns

There is no limitation in Section 112 which would limit usage and access of such information solely for the pilot purpose of work authorization.

5. No number limits

Also there are no limits on the number of employers or locations for these pilots. In effect, the pilot could become a defacto national program without any limitations. These are the very same criticisms this Administration used against the original Simpson bill.

**RESPONSE TO  
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**TO: M. Jill GIBBONS 395-7593**  
Office of Management and Budget  
Fax Number: 395-3109

**FROM:** \_\_\_\_\_ (Date)  
\_\_\_\_\_ (Name)  
\_\_\_\_\_ (Agency)  
\_\_\_\_\_ (Telephone)

**SUBJECT: OMB Request for Views RE: S356, Language of Government Act of 1995**

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

\_\_\_\_\_ Concur

\_\_\_\_\_ No Objection

\_\_\_\_\_ No Comment

\_\_\_\_\_ See proposed edits on pages \_\_\_\_\_

\_\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_ FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet

104TH CONGRESS  
1ST SESSION

# S. 356

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

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 30), 1995

Mr. SHELBY (for himself and Mr. COVERDELL) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Language of Govern-  
5 ment Act of 1995".

6 **SEC. 2. FINDINGS AND CONSTRUCTION.**

7 (a) FINDINGS.—The Congress finds and declares  
8 that—

1 (1) the United States is comprised of individ-  
2 uals and groups from diverse ethnic, cultural, and  
3 linguistic backgrounds;

4 (2) the United States has benefited and contin-  
5 ues to benefit from this rich diversity;

6 (3) throughout the history of the Nation, the  
7 common thread binding those of differing back-  
8 grounds has been a common language;

9 (4) in order to preserve unity in diversity, and  
10 to prevent division along linguistic lines, the United  
11 States should maintain a language common to all  
12 people;

13 (5) English has historically been the common  
14 language and the language of opportunity in the  
15 United States;

16 (6) the purpose of this Act is to help immi-  
17 grants better assimilate and take full advantage of  
18 economic and occupational opportunities in the Unit-  
19 ed States;

20 (7) by learning the English language, immi-  
21 grants will be empowered with the language skills  
22 and literacy necessary to become responsible citizens  
23 and productive workers in the United States;

24 (8) the use of a single common language in the  
25 conduct of the Federal Government's official busi-

1       ness will promote efficiency and fairness to all peo-  
2       ple;

3           (9) English should be recognized in law as the  
4       language of official business of the Federal Govern-  
5       ment; and

6           (10) any monetary savings derived by the Fed-  
7       eral Government from the enactment of this Act  
8       should be used for the teaching of non-English  
9       speaking immigrants the English language.

10       (b) CONSTRUCTION.—The amendments made by sec-  
11       tion 3—

12           (1) are not intended in any way to discriminate  
13       against or restrict the rights of any individual in the  
14       United States;

15           (2) are not intended to discourage or prevent  
16       the use of languages other than English in any  
17       nonofficial capacity; and

18           (3) except where an existing law of the United  
19       States directly contravenes the amendments made by  
20       section 3 (such as by requiring the use of a language  
21       other than English for official business of the Gov-  
22       ernment of the United States), are not intended to  
23       repeal existing laws of the United States.

1 **SEC. 3. ENGLISH AS THE OFFICIAL LANGUAGE OF GOVERN-**  
 2 **MENT.**

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

5 **“CHAPTER 6—LANGUAGE OF THE**  
 6 **GOVERNMENT**

“Sec.

“161. Declaration of official language of Government.

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

“163. Official Government activities in English.

“164. Standing.

“165. Definitions.

7 **“§ 161. Declaration of official language of Govern-**  
 8 **ment**

9 “The official language of the Government of the  
 10 United States is English.

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

13 “The Government shall have an affirmative obligation  
 14 to preserve and enhance the role of English as the official  
 15 language of the United States Government. Such obliga-  
 16 tion shall include encouraging greater opportunities for in-  
 17 dividuals to learn the English language.

18 **“§ 163. Official Government activities in English**

19 “(a) **CONDUCT OF BUSINESS.**—The Government  
 20 shall conduct its official business in English.

21 “(b) **DENIAL OF SERVICES.**—No person shall be de-  
 22 nied services, assistance, or facilities, directly or indirectly

1 provided by the Government solely because the person  
2 communicates in English.

3       “(c) ENTITLEMENT.—Every person in the United  
4 States is entitled to—

5               “(1) communicate with the Government in Eng-  
6       lish;

7               “(2) receive information from or contribute in-  
8       formation to the Government in English; and

9               “(3) be informed of or be subject to official or-  
10       ders in English.

11 **“§ 164. Standing**

12       “Any person alleging injury arising from a violation  
13 of this chapter shall have standing to sue in the courts  
14 of the United States under sections 2201 and 2202 of title  
15 28, United States Code, and for such other relief as may  
16 be considered appropriate by the courts.

17 **“§ 165. Definitions**

18       “For purposes of this chapter:

19               “(1) GOVERNMENT.—The term ‘Government’  
20       means all branches of the Government of the United  
21       States and all employees and officials of the Govern-  
22       ment of the United States while performing official  
23       business.

24               “(2) OFFICIAL BUSINESS.—The term ‘official  
25       business’ means those governmental actions, docu-

1 ments, or policies which are enforceable with the full  
2 weight and authority of the Government, but does  
3 not include—

4 “(A) teaching of foreign languages;

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

7 “(C) actions, documents, or policies nec-  
8 essary for international relations, trade, or com-  
9 merce;

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

12 “(E) actions that protect the rights of vic-  
13 tims of crimes or criminal defendants; and

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

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

“6. Language of the Government ..... 161”.

19 **SEC. 4. PREEMPTION.**

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

22 **SEC. 5. EFFECTIVE DATE.**

23 The amendments made by section 3 shall take effect  
24 upon the date of enactment of this Act, except that no

- 1 suit may be commenced to enforce or determine rights
- 2 under the amendments until January 1, 1996.

○

THE WHITE HOUSE  
OFFICE OF DOMESTIC POLICY

CAROL H. RASCO  
Assistant to the President for Domestic Policy

To: Wannath

Draft response for POTUS  
and forward to CHR by: \_\_\_\_\_

Draft response for CHR by: \_\_\_\_\_

Please reply directly to the writer  
(copy to CHR) by: \_\_\_\_\_

Please advise by: \_\_\_\_\_

Let's discuss: \_\_\_\_\_

For your information:  \_\_\_\_\_

Reply using form code: \_\_\_\_\_

File: \_\_\_\_\_

Send copy to (original to CHR): \_\_\_\_\_

Schedule ? :  Accept  Pending  Regret

Designee to attend: \_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

FEB 15 1996

**FACSIMILE**

**CONGRESSIONAL HISPANIC CAUCUS**

**223 CANNON HOB  
(202) 225-4065 FAX (202) 225-1655**

**DATE:** 2/11/1996

**TO:** Card Canal

**Number:** 456-2878

**FROM:** ✓ **CONGRESSMAN ED PASTOR, CHAIRMAN  
ESTHER AGUILERA, EXECUTIVE DIRECTOR**

**PAGE(S)** 3 (including fax cover sheet)

**NOTE:** FYI

## **CONGRESSIONAL HISPANIC CAUCUS STATEMENT ON "ENGLISH-ONLY" MEASURES**

The Congressional Hispanic Caucus (CHC) advocates the promotion of greater cross-cultural understanding between different racial and ethnic groups in the United States. Our cultural and linguistic richness should be conserved and developed. Multilingualism is vital to American interests and individual rights.

The CHC strongly opposes "English-only" and similar language restrictionist measures. Numerous bills have been introduced in the 104th Congress that propose to make English "the official language of the government of the United States." These proposals are dangerous, unnecessary and short-sighted.

- **English-only is unnecessary:** No one is contending that English cease to be our primary language. According to the Census, over 97 percent of Americans speak English. Furthermore, only 0.06 percent of federal documents are in languages other than English, according to the General Accounting Office (GAO). Newcomers to our country are learning English faster than ever before.
- **English-only undermines America's global competitiveness:** In an era in which four of five jobs are created through exports, the suppression of other languages makes it more difficult to do business with other nations.
- **English-only measures are unconstitutional:** The Arizona "English-only" initiative has been found to be unconstitutional by the Ninth Circuit Court in *Yñiguez v. Arizonans for Official English*. According to the Courts, it violates the First Amendment right to free speech.
- **English-only makes government inefficient and ineffective:** In Arizona, the court found that employees' knowledge of diverse languages made government more efficient and less costly. The Arizona law and legislation pending in Congress would outlaw communication between elected officials and their constituents in any language but English.
- **English-only restricts access to services and government:** Millions of tax-paying citizens and residents would be unable to access and communicate with their government. That would include residents of Puerto Rico, Native American reservations and U.S. territories in the Pacific, whose right to communicate in a native language is protected by treaty or custom.

**CHC "English-Only" Statement**

- **English-only measures undermine our diplomatic ties with other countries:** English-only provisions would ban the use of other languages in developing relations with other countries. In addition, multilingualism assists in national security efforts through the development of coded communications and the collection of sensitive intelligence information.
- **English-only threatens public health and safety:** Health and immunization policies will be harder to implement if the government cannot successfully communicate with non-English-speakers. In addition, police will be hindered when gathering information and interviewing non-English-speaking witnesses.
- **English-only does not equal better education:** English-only has nothing to do with improving education or educational opportunities. Instead of facilitating learning and communication, proponents of English-only focus on prohibiting the use of other languages. Bilingual education, on the other hand, teaches children English and facilitates their learning of math, science and other areas of challenging content at the same time.
- **English-only measures are intrusive and divisive:** English-only measures would tell Americans how to talk for the first time in 219 years of our history. English-only measures are divisive and encourage discrimination against Americans whose first language is not English.

The CHC-sponsored legislation, The English Plus Resolution (H. Con. Res. 83) introduced on July 13, 1995, would have the United States Government pursue policies that encourage all Americans to learn or maintain skills in a language other than English and become fully proficient in English by expanding educational opportunities. The Resolution also supports policies that provide services in languages other than English as needed to facilitate access to essential functions of government and protect fundamental rights.

*Issued February 2, 1996*

D  
J

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

**DRAFT**

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

Dear Mr. Chairman:

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

**1. Effect of the Bill**

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

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

**PHOTOCOPY  
PRESERVATION**

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

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

Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Free Speech

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

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

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

scrutiny under the Equal Protection Clause is required." ).<sup>3</sup>

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

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

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

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

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

Id. at 941 (citation omitted.)

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

#### **B. Equal Protection**

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

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

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

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

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

### C. Due Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Administrations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14

Sincerely,

Andrew Fois  
Assistant Attorney General

TESTIMONY BY REP. LINCOLN DIAZ-BALART (FL-21)  
BEFORE THE CONSTITUTION SUBCOMMITTEE  
OF THE HOUSE JUDICIARY COMMITTEE  
ON BILINGUAL VOTING REQUIREMENTS  
APRIL 18, 1996

I WOULD LIKE TO THANK CHAIRMAN CANADY FOR HOLDING TODAY'S HEARING ON THE IMPORTANT ISSUE OF BILINGUAL VOTING ASSISTANCE. I APPRECIATE THE OPPORTUNITY TO TESTIFY.

**I STRONGLY OPPOSE ALL ATTEMPTS TO PROSCRIBE THE USE OF BILINGUAL VOTING ASSISTANCE.**

I BELIEVE THAT BILINGUAL ASSISTANCE WITH THE VOTING PROCESS IS A VALUABLE TOOL IN HELPING ALL AMERICANS PARTICIPATE AS FULL CITIZENS. SURPRISINGLY, MOST NON-ENGLISH SPEAKING CITIZENS ARE NATIVE-BORN, ACCORDING TO U.S. CENSUS BUREAU FIGURES. AS A NATIVE AMERICAN, IN NO INSTANCE DOES A CITIZEN HAVE TO PASS AN ENGLISH PROFICIENCY TEST, NOR A LITERACY TEST, IN ORDER TO EXERCISE HIS CONSTITUTIONALLY GUARANTEED RIGHT TO VOTE.

FOR EXAMPLE, PUERTO RICANS, WHO ARE U.S. CITIZENS, MAY REGISTER TO VOTE IN ELECTIONS FOR ALL LEVELS OF GOVERNMENT IF THEY RESIDE IN THE CONTINENTAL U.S. AND THEY ARE OBVIOUSLY NOT REQUIRED TO LEARN ENGLISH.

FOR CERTAIN ELDERLY NATURALIZED CITIZENS, IT IS NOT REQUIRED THAT THEIR CITIZENSHIP TEST BE TAKEN IN ENGLISH. PERMANENT RESIDENTS WHO ARE AT LEAST 65 YEARS OLD AND HAVE BEEN IN THE UNITED STATES FOR AT LEAST 20 YEARS ARE EXEMPT FROM THE ENGLISH LANGUAGE REQUIREMENTS, AND THOSE OVER THE AGE OF 55 WHO HAVE LIVED IN THE UNITED STATES AT LEAST 15 YEARS MAY OPT FOR A MORE VIGOROUS TEST IN A LANGUAGE OTHER THAN ENGLISH.

THE GOAL OF THE VOTING RIGHTS ACT OF 1965 WAS TO REMOVE BARRIERS, SUCH AS THE LITERACY TEST, WHICH EFFECTIVELY PREVENTED CERTAIN GROUPS FROM VOTING (SPECIFICALLY BLACKS IN PARTS OF THE SOUTHERN UNITED STATES). IT WOULD BE IMPROPER TO CREATE NEW BARRIERS BY MAKING THE ELECTORAL PROCESS MORE DIFFICULT FOR NATURALIZED CITIZENS OR FOR NATURAL-BORN AMERICANS WHO DO NOT SPEAK ENGLISH.

TECHNICAL INSTRUCTIONS AND BALLOT INITIATIVES ARE OFTEN CONFUSING EVEN FOR NATIVE ENGLISH-SPEAKERS. FOR INSTANCE, I WOULD LIKE TO INCLUDE FOR THE RECORD AN EXAMPLE OF THE UNCLEAR WORDING OF A RECENT DADE COUNTY, FLORIDA BALLOT INITIATIVE THAT WAS VERY DIFFICULT TO UNDERSTAND FOR MANY VOTERS--THE RECENT "STRONG MAYOR" CHARTER REFORMS. ALTHOUGH MANY OF THESE QUESTIONS WERE VAGUE, I WOULD LIKE TO CALL TO YOUR ATTENTION THE "COUNTY CHARTER AMENDMENT RELATING TO RECALL"--"SHALL THE COUNTY ADOPT THE STATE LAW RECALL PROVISIONS, THEREBY DELETING THE EXISTING RECALL PROVISIONS, TO PROVIDE AMONG OTHER THINGS: AN INCREASED NUMBER OF SIGNATURES; A STATEMENT OF THE SPECIFIC GROUNDS FOR

RECALL; AN OPPORTUNITY TO PRESENT DEFENSES; AND A TWO-PETITION PROCESS?" OBVIOUSLY, BALLOT QUESTIONS SUCH AS THIS ARE EXTREMELY DIFFICULT TO UNDERSTAND.

FINALLY, I WOULD LIKE TO ADDRESS THE ARGUMENT THAT BILINGUAL VOTING ASSISTANCE CONSTITUTES AN ADDED FINANCIAL BURDEN. THE COST FOR DADE COUNTY HAS BEEN MINOR. WRITTEN MATERIALS ESSENTIALLY SHOULD COST NOTHING MORE THAN THE INK AND PAPER THEY ARE WRITTEN ON; TRANSLATIONS ARE DONE IN-HOUSE.

IN CONCLUSION, I STRONGLY SUPPORT THE VOTING RIGHTS ACT, WHICH ENABLES ALL CITIZENS TO PARTICIPATE FULLY IN THE ELECTORAL PROCESS, AND I STRONGLY OPPOSE ALL ATTEMPTS TO PROHIBIT BILINGUAL BALLOTS.

I THANK YOU FOR YOUR TIME.

**COUNTY QUESTIONS / PROPUESTAS DEL CONDADO**

**COUNTY CHARTER AMENDMENT  
RELATING TO ROLE OF COUNTY  
COMMISSION'S PRESIDING OFFICER**

To further separate executive and legislative powers, shall the Charter be amended to provide that commencing with the mayoral election in 1996:

- The Commission's presiding officer shall no longer be the Mayor, but shall be a Commissioner selected by the County Commission;
- The presiding officer of the Commission, not the Mayor, shall appoint committee members and chairpersons?

**ENMIENDA A LA CARTA CONSTITUCIONAL DEL CONDADO  
SOBRE EL PAPEL DEL FUNCIONARIO QUE PRESIDEN  
LA JUNTA DE COMISIONADOS DEL CONDADO**

Con el fin de diferenciar aún más el poder ejecutivo del legislativo, ¿deberá enmendarse la Carta Constitucional de modo que, a partir de las elecciones para alcalde del 1996, se disponga que:

- el funcionario que presidirá la Junta de Comisionados no será un Alcalde sino un Comisionado seleccionado por la Junta de Comisionados del Condado;
- los integrantes y presidentes de los comités no serán nombrados por un Alcalde sino por el funcionario que preside la Junta de Comisionados?

YES / SI	91
NO / NO	92

**COUNTY CHARTER AMENDMENT  
RELATING TO VETO POWER OF THE MAYOR**

To further separate executive and legislative powers, shall the Charter be amended to provide that commencing with the mayoral election in 1996, the Mayor's veto could be overridden by a vote of a majority plus one of the Commissioners present, rather than by a 2/3 vote of the Commissioners present?

**ENMIENDA A LA CARTA CONSTITUCIONAL DEL CONDADO  
SOBRE LA FACULTAD DE VETO DEL ALCALDE**

Con el fin de diferenciar aún más el poder ejecutivo del legislativo, ¿deberá enmendarse la Carta Constitucional de modo que se disponga que, a partir de las elecciones para alcalde del 1996, los vetos del Alcalde se podrán anular no mediante la votación de las dos terceras partes de los Comisionados presentes sino mediante la de la mayoría simple de éstos?

YES / SI	102
NO / NO	103

**COUNTY CHARTER AMENDMENT  
RELATING TO MAYOR'S POWER  
TO APPOINT COUNTY MANAGER**

Commencing with the mayoral election in 1996, shall the Charter be amended to provide that whenever one person succeeds another in the position of Mayor, the successor shall have the right to appoint the County Manager, subject only to the approval of a majority of Commissioners then in office?

**ENMIENDA A LA CARTA CONSTITUCIONAL DEL CONDADO  
SOBRE LA FACULTAD DEL ALCALDE  
PARA DESIGNAR AL ADMINISTRADOR DEL CONDADO**

De las elecciones para alcalde del 1996 en adelante, ¿deberá enmendarse la Carta Constitucional de modo que se disponga que cada vez que una persona sucede a otra en el cargo de Alcalde, el sucesor, sujeto únicamente a la aprobación de la mayoría de los Comisionados en funciones entonces, tendrá el derecho de designar al Administrador del Condado?

YES / SI	113
NO / NO	114

**COUNTY CHARTER AMENDMENT  
RELATING TO REMOVAL OF COUNTY MANAGER**

Commencing with the 1996 mayoral election, shall:

- the Mayor's right to remove the Manager be subject to Commission override by a vote of a majority plus one, instead of a 2/3 vote, of the Commissioners then in office;
- the Commission be able to remove the Manager by a vote of a majority plus one, instead of a 2/3 vote, of the Commissioners then in office?

**ENMIENDA A LA CARTA CONSTITUCIONAL DEL CONDADO  
SOBRE LA DESTITUCIÓN DEL ADMINISTRADOR DEL CONDADO**

De las elecciones para alcalde del 1996 en adelante, ¿deberá

- el derecho del Alcalde de destituir al Administrador estar sujeto a anulación no mediante la votación de las dos terceras partes de los Comisionados en funciones entonces sino mediante la de la mayoría simple de éstos;
- poder destituir la Junta de Comisionados al Administrador no mediante la votación de las dos terceras partes de los Comisionados en funciones entonces sino mediante la de la mayoría simple de éstos?

YES / SI	128
NO / NO	129

Post-it® Fax Note	7871	Date	4/17/96	# of pages	3
To	ANNA	From	MARIE FURAN		
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Phone #	477-8359	Phone #	375-4918		
Fax #	477-8575	Fax #	375-2525		

**COUNTY CHARTER AMENDMENT  
RELATING TO RECALL**

Shall the County adopt the state law recall provisions, thereby deleting the existing recall provisions, to provide among other things: an increased number of signatures; a statement of the specific grounds for recall; an opportunity to present defenses; and a two-petition process?

**ENMIENDA A LA CARTA CONSTITUCIONAL DEL CONDADO  
SOBRE LA DESTITUCIÓN DE FUNCIONARIOS**

*¿Deberá anular el Condado las disposiciones en vigor sobre la destitución de funcionarios y adoptar las disposiciones de la ley estatal sobre la destitución de funcionarios de modo que, entre otras cosas, se disponga lo siguiente: un mayor número de firmas; una declaración de los motivos específicos de la destitución; la oportunidad de presentar defensas; y un proceso de dos peticiones?*

YES / SI	137
NO / NO	138

**COUNTY CHARTER AMENDMENT  
ESTABLISHING INDEPENDENT COMMISSION  
ON ETHICS AND PUBLIC TRUST**

Shall the Citizens' Bill of Rights of the County Charter be amended to create an independent Commission on Ethics and Public Trust to be implemented by ordinance and comprised of five members who shall have the authority to review, interpret, render advisory opinions, and enforce the County and municipal:

- Code of Ethics ordinances;
- conflict of interest ordinances;
- lobbyist registration and reporting ordinances;
- ethical campaign practices ordinances, when enacted;
- Citizens' Bill of Rights?

**ENMIENDA A LA CARTA CONSTITUCIONAL DEL CONDADO  
PARA ESTABLECER UNA COMISIÓN INDEPENDIENTE  
SOBRE LA ÉTICA E INTEGRIDAD PÚBLICA**

*¿Deberá enmendarse la Carta de Derechos de los Ciudadanos de la Carta Constitucional del Condado de modo que se cree por ordenanza una comisión independiente sobre ética e integridad pública compuesta de cinco integrantes con la facultad para analizar, interpretar, asesorar y poner en vigor:*

- ordenanzas sobre el Código de Ética;
- ordenanzas sobre los conflictos de intereses;
- ordenanzas sobre la inscripción y rendición de cuentas de los cabilderos;
- ordenanzas, cuando se promulguen, sobre la ética de las prácticas de las campañas políticas;
- la Carta de los Derechos de los Ciudadanos

del Condado o municipales?

YES / SI	154
NO / NO	155



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

Legislative Reference Division  
Economic, Science, and General Government Branch

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Adrien Silas

From: Jill Gibbons  
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Date: 7/29 Number of Pages: 2

Comments: Another suggestion for the SAP on HR123. We  
plan on adding this bullet unless you object.  
Please let me know. Thanks

DRAFT - NOT FOR RELEASE

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

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

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

.....

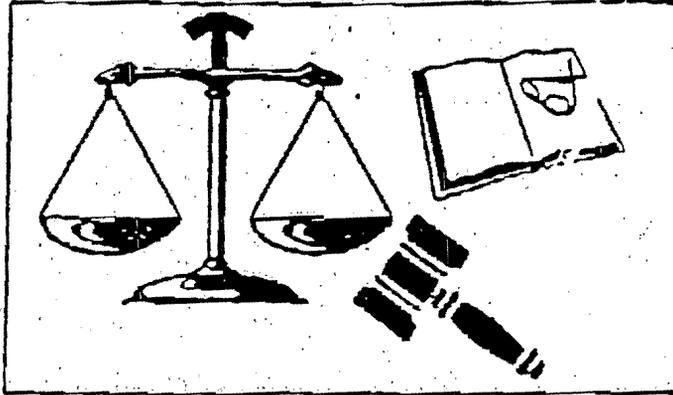
\* NOTE TO JUSTICE Please advise if this item should be deleted as a result of the adoption of ~~any~~ ~~the~~ amendments by attached.

- Make it impossible for the Federal Government to communicate and otherwise conduct required official business with the millions of U.S. citizens in Puerto Rico ~~and the~~ who do not speak English.

# U.S. DEPARTMENT OF JUSTICE

## OFFICE OF LEGISLATIVE AFFAIRS

### FACSIMILE COVER SHEET



TO:

Steve Warrick

FAX NO.:

456-7028

FROM:

ADRIEN SILAS

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202/514-7276

DATE:

7/25/96

NO. OF PAGES:

1

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COMMENTS:

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## U. S. Department of Justice

## Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 23, 1996

The Honorable William F. Goodling  
Chairman  
Committee on Economic and  
Educational Opportunities  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request for the Administration's views on H.R. 123, "The Language of Government Act of 1995." This bill would halt Federal government activities conducted in languages other than English. It also would impose various restrictions on the use of other languages for official Federal government activities. For the reasons set out in the attached memorandum, the Administration strongly opposes H.R. 123.

The attached memorandum sets forth our concerns about H.R. 123 in detail, and I would like to address a few of them here. English is universally acknowledged as the common language of the United States. But our language alone has not made us a nation. We are united as Americans by the principles enumerated in the Constitution and the Bill of Rights: freedom of speech, representative democracy, respect for due process, and equality of protection under the law.

Language barriers are among the greatest obstacles to effective law enforcement in immigrant communities. H.R. 123 would increase these obstacles, particularly in matters involving the Drug Enforcement Administration and the Immigration and Naturalization Service, including the Border Patrol.

H.R. 123 would decrease administrative efficiency and exclude Americans who are not fully proficient in English from education, employment, voting and equal participation in our society. It effectively would repeal the minority language provisions of the Voting Rights Act and is inconsistent with the longstanding principle of government-to-government relations with Indian tribes. Furthermore, H.R. 123 would create an unnecessary private right of action, inviting frivolous litigation against the Government.

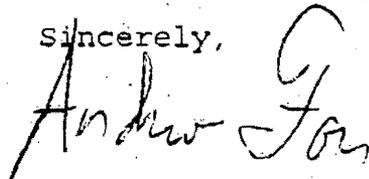


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I should also note that the bill is subject to various constitutional attacks. For example, H.R. 123, if it applies to the legislative franchise of Members of Congress, violates the Speech or Debate Clause, U.S. Const., Art. I, section 6. If H.R. 123 were enacted, Members of Congress and their staffs would be hampered in communicating effectively with constituents and members of the public who are not fully proficient in English in press releases, newsletters, responses to complaints or requests for information, or speeches delivered outside the Congress. The bill is subject to attack upon the ground that its stated purposes are pretexts for invidious ethnic or national-origin discrimination. Under the Equal Protection Clause, "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one [group] than another." Washington v. Davis, 426 U.S. 229, 242 (1976). The bill also is subject to attack on the ground that it violates the due process rights of non-English speakers who are parties to civil and administrative proceedings involving the Government.

Thank you for requesting the Administration's views on H.R. 123, the Language of Government Act. The Office of Management and Budget has advised that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,



Andrew Fois  
Assistant Attorney General

Attachment

cc: Honorable William Clay  
Ranking Minority Member  
Committee on Economic and Educational Opportunities

Justice Department Views on H.R. 123,  
the Language of Government Act

1. Effect of the Bill

H.R. 123 would eliminate all governmental actions that are conducted in languages other than English, except those actions falling within enumerated exceptions. H.R. 123 declares English the official language of the Government. See H.R. 123, §3(a).<sup>1</sup> It also provides that "[t]he Government shall conduct its official business in English." Id. H.R. 123 defines "official business" generally as "those governmental actions, documents, or policies which are enforceable with the full weight and authority of the Government," but makes clear that certain governmental actions which otherwise qualify as "official business" are not subject to the general ban on the use of languages other than English. Id. Governmental actions which do not constitute "official business" for purposes of H.R. 123, and which therefore could be taken or conducted in languages other than English, include:

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

Id.

H.R. 123 would repeal all existing Federal laws that "directly" contravene its provisions banning Government communication in languages other than English, "such as [laws that require] the use of a language other than English for official business of the Government of the United States." Id. at

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<sup>1</sup> H.R. 123 defines "Government" as "all branches of the Government of the United States and all employees and officials of the Government of the United States while performing official business." Id. at §3(a).

§2(b).<sup>2</sup> In sum, H.R. 123 would eliminate all governmental actions conducted in a language other than English, except those actions expressly exempted from the bill's definition of "official business."

H.R. 123 states that it would not directly discriminate against or restrict the rights under existing laws of any individual already in the United States. But it is difficult to see how this bill would "promote efficiency and fairness to all people" and not "discriminate against or restrict the rights of" individuals in the United States who speak a language other than English and have limited English proficiency (LEP).

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

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

H.R. 123 proposes to declare English the official language of the United States for all Federal government business. This declaration is unnecessary. The overwhelming majority of the Federal Government's official business is conducted in English and over 99.9 percent of Federal government documents are in English.<sup>3</sup> According to a recent GAO study, only 0.06 percent of Federal government documents or forms are in a language other than English, and these are mere translations of English documents. These non-English documents, such as income tax forms, voting assistance information, some decennial census forms, and information relating to access to medical care and to

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<sup>2</sup> H.R. 123 appears to eliminate only Federal laws which mandate Government communication in languages other than English. The bill provides that "[the] Act (and the amendments made by, [the] Act) shall not preempt any law of any State." Id. at §4.

<sup>3</sup> "Federal Foreign Language Documents," GAO Rep. No. D-95-253R (Prepared at the request of Sen. Richard C. Shelby, sponsor of S. 356, the Senate companion to H.R. 123).

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

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

In very few instances, languages other than English are used in official Government business. In these instances, the usage may promote vital interests, such as national security; law enforcement; border enforcement; civil rights; communicating with witnesses, aliens, prisoners or parolees; and educational outreach to inform people of their legal rights and responsibilities or to assure access to Government services, such as police protection, public safety, health care and voting. In all of these areas, H.R. 123 would limit the effectiveness of Government operations by preventing adequate and appropriate communications between Government officials or employees and the public.

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

Furthermore, H.R. 123 would prohibit the use of interpreters and the use of another language by Government lawyers and employees while interviewing complainants or witnesses or reviewing witness statements or foreign documents. Also, the prohibition of interpreters in judicial and administrative proceedings, especially in civil, immigration, and some criminal matters, would raise serious due process concerns, as discussed below. A requirement that Federal government employees use only English would dramatically hamper attorneys' abilities to perform their duties effectively.

### 3. H.R. 123 Would Generate Frivolous Litigation and Chill Legitimate Government Action

H.R. 123 would create a private cause of action for anyone who believed that he or she had been injured by the Federal government's communication in a language other than English. The bill would permit a complaining individual to sue the Government in Federal court for damages, equitable relief and attorney fees.

It is unclear what harm H.R. 123 is intended to prevent or what rights the cause of action would protect. Virtually all of the Federal government's official business is conducted in English. Therefore, actual injury to an individual due to a failure to conduct all activities in English is highly conjectural. This provision is clearly unnecessary.

Moreover, the language in H.R. 123 creating this cause of action is vague and would encourage lawsuits against the Government by "any person alleging injury arising from a violation" of these proposed laws. The potential for recovering attorney fees would invite frivolous litigation against the Government and further clog our Federal court system. More importantly, it would have a chilling effect upon Federal agencies and employees and deter them from performing vital tasks and delivering important informational services in languages other than English.

### 4. H.R. 123 is Subject to Serious Constitutional Challenge.

A. Although it is difficult to predict how the Supreme Court ultimately would resolve arguments that H.R. 123 violates constitutional protections,<sup>3</sup> a case raising constitutional challenges to a similar State statute is now pending before the Court.

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

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

cert. granted, 64 U.S.L.W. 3635, 3639 (U.S. Mar. 25, 1996) (No. 95-974), a divided court declared that English-only requirements in the Arizona constitution were facially overbroad in violation of the free speech rights of State government employees. The pertinent provision of the Arizona constitution provides that English is the official language of the State of Arizona. It also requires that, with certain exceptions, the State and its political subdivisions, including all government officials and employees performing government business, communicate only in English. See id. at 928. The Ninth Circuit majority determined that the Arizona provision constituted a prohibited means of promoting the English language, stating that "[t]he speech rights of all of Arizona's state and local employees, officials, and officers are . . . adversely affected in a potentially unconstitutional manner by the breadth of [the provision's] ban on non-English governmental speech." Id. at 932.

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

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

Id. at 941 (citation omitted.)

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

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

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

Second, if the bill applies to the legislative franchise of Members of Congress, it violates the Speech or Debate Clause, U.S. Const., Art. I, section 6. Moreover, if H.R. 123 were enacted, Members of Congress and their staffs would be hampered in communicating effectively with constituents and members of the public who are not fully proficient in English, for example, in press releases, newsletters, responses to complaints or requests for information, or speeches delivered outside the Congress. A court well could conclude that an application of H.R. 123 that prevented a Federal legislator from communicating effectively with the persons he or she represented interfered with a core element of the process of representative government established by the Constitution. Similar concerns would be raised by any effort to apply H.R. 123 to communications by the President and other Executive branch officials in their dealings with constituents.

B. H.R. 123 also might be subject to challenge on various equal protection grounds. The Constitution prohibits discrimination on the basis of ethnicity or national origin. See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). Several ethnic and national origin minority groups in this country include large numbers of persons who do not speak English proficiently. Where a statutory classification expressly utilizes a suspect criterion, or does so in effect by a transparent surrogate, the Supreme Court has subjected the classification to strict scrutiny without requiring a demonstration that the legislature's purpose was invidious. See Shaw v. Reno, \_\_\_ U.S. \_\_\_, 113 S.Ct. 2816, 2824 (1993).

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

H.R. 123 also is subject to attack upon the ground that its stated purposes are pretexts for invidious ethnic or national-origin discrimination. If enacted, the language restrictions contained in H.R. 123 presumptively would have a

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

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

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

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

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<sup>5</sup>Our comments in this letter do not address the question of how the language requirements of H.R. 123, if enacted, should be implemented in light of the serious constitutional concerns that we have identified.

#### 5. H.R. 123 Would Impair Relations with Native Americans.

The broad language of H.R. 123 is at odds with the longstanding principle of government-to-government relations between the Federal government and Indian tribes. From its earliest days, the United States has recognized that Indian tribes possess attributes of sovereignty. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831). In addition, in early Indian treaties, the United States pledged to "protect" Indian tribes, thereby establishing one of the bases for the Federal responsibility in our government-to-government relations with Indian tribes. See Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942). These principles -- the sovereign powers of Indian tribes to engage in self-government and the Federal trust responsibility to Indian tribes -- continue to guide our national policy toward Indian tribes.

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

If broadly construed, H.R. 123 could conflict with the specific mandates found in the Native American Languages Act and related statutes. These laws would be repealed if H.R. 123 were enacted. This would impede severely Federal government relations with Native Americans.

#### 6. H.R. 123 Could Be Read to Limit Bilingual Education, Causing LEP Students to Fall Behind in School.

H.R. 123 would repeal all laws which conflict with its purpose of limiting all official Government business to the English language. The impact could be devastating to LEP children in this country.

For example, H.R. 123 might be read to conflict with and therefore repeal Title VII of the Bilingual Education Act, which assists school districts in meeting their obligations under the Civil Rights Act of 1964, and with the Supreme Court ruling in Lau v. Nichols, 414 U.S. 563 (1974). Both established that school districts have a responsibility to provide equal educational opportunity to LEP students. Hence, Title VII provides direct Federal funds to implement programs targeted toward assisting linguistically diverse students. These programs assist LEP students master English and achieve in all academic areas.

The Bilingual Education Act already stresses the need to promote a child's rapid learning of English. As President Clinton recently commented on bilingual education, "[t]he issue is whether children who come here, [or whose "cradle tongue" is not English] while they are learning English, should also be able to learn other things... The issue is whether or not we're going to value the culture, the traditions of everybody and also recognize that we have a solemn obligation every day in every way to let these children live up to the fullest of their God-given capacities."<sup>6</sup> Bilingual education helps ensure that LEP children learn English while remaining current in other subjects. Otherwise, language minority children who are unable to keep up with their English-speaking classmates fall behind in course work and are more likely than other children to drop out of school.

**7. H.R. 123 Would Repeal Minority Language Provisions of the Voting Rights Act, Limiting Meaningful Electoral Participation by Language Minority Populations.**

In addition, H.R. 123 would effectively repeal the minority language provisions of the Voting Rights Act (VRA) because they are in conflict. Where H.R. 123 requires the use of only English, the VRA requires the use of a language other than English in enforcement efforts. The VRA has two provisions, Section 203 and Section 4(f), that protect United States citizens who are not fully proficient in English. These provisions require covered jurisdictions to provide the same information, materials, and assistance provided to English speaking citizens to minority language citizens in a language they can better understand, to enable them to participate in the electoral process as effectively as English-speaking voters.

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

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<sup>6</sup>President William J. Clinton's address to the Hispanic Caucus Institute Board and Members, Washington, D.C., September 27, 1995.

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

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

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

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

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

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

Rates of both voter registration and actual participation in elections by minority language individuals have increased since Section 203 was enacted. We are convinced that providing bilingual materials, instruction, and assistance makes a real difference at the polls for minority language citizens with limited English language abilities. The effect of enacting H.R. 123 and thereby rescinding Section 203 and the other minority language protections of the VRA would be to disenfranchise an American minority community that only recently has had the opportunity to engage meaningfully in participatory democracy. Those who still would vote, without the benefit of the same information English-speaking citizens receive but in a language they better understand, would be less informed and more dependent upon others to cast their votes.

#### 8. H.R. 123 Would Make Government Programs Less Efficient.

The language of H.R. 123 claims that the "use of a single common language in the conduct of the Government's official business will promote efficiency and fairness to all people". Again, it is unclear how this would occur. To the contrary, H.R. 123 would promote administrative inefficiency and the exclusion of LEP persons from access to the Government and its services. H.R. 123's mandate for "English only" in Government would emasculate Government agencies and other governmental bodies. It would prevent them from making particularized judgments about the need to utilize languages in addition to English in appropriate circumstances. It is in the best interest of the Government -- as well as its customers -- for the public to understand clearly Government services, processes and their rights.

The Government should not be barred from choosing in specific circumstances to communicate with its LEP citizenry in languages comprehensible to these persons. H.R. 123 would hinder the implementation of law enforcement and other governmental programs, such as tax collection; water and resource conservation; decennial census data collection; and promoting compliance with the law, e.g., by providing bilingual investigators and providing translations of compliance, public, or informational bulletins issued by Federal agencies.

#### 9. H.R. 123 Is Inconsistent With Our Pluralistic Society.

Finally, H.R. 123 would promote division and discrimination rather than foster unity in America. We fear that passage of H.R. 123 would exacerbate national origin discrimination and intolerance against ethnic minorities who look or sound "foreign" and may not be English proficient. It would erect barriers to full access to and participation in the democratic government

established by the Constitution for all of the Nation's people.

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

### Conclusion

English is universally acknowledged as the common language of the United States. The passage of H.R. 123 would decrease administrative efficiency and exclude Americans who are not fully proficient in English from education, employment, voting and equal participation in our society. In these fiscally difficult times, Government efficiency and economy would better promoted by allowing Government agencies to continue their limited use of other languages to execute their duties effectively. Moreover, for the reasons stated earlier, H.R. 123 would be subject to serious constitutional challenge.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

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Date: 7/23/94 Number of Pages: 18

Comments: HR 123 - English Only  
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## U. S. Department of Justice

## Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable William F. Goodling  
 Chairman  
 Committee on Economic and  
 Educational Opportunities  
 United States House of Representatives  
 Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request for the Administration's views on H.R. 123, "The Language of Government Act of 1995." This bill would halt Federal government activities conducted in languages other than English. It also would impose various restrictions on the use of other languages for official Federal government activities. For the reasons set out in the attached memorandum, the Administration strongly opposes H.R. 123.

The attached memorandum sets forth our concerns about H.R. 123 in detail, and I would like to address a few of them here. English is universally acknowledged as the common language of the United States. But our language alone has not made us a nation. We are united as Americans by the principles enumerated in the Constitution and the Bill of Rights: freedom of speech, representative democracy, respect for due process, and equality of protection under the law.

Language barriers are among the greatest obstacles to effective law enforcement in immigrant communities. H.R. 123 would increase these obstacles, particularly in matters involving the Drug Enforcement Administration and the Immigration and Naturalization Service, including the Border Patrol.

H.R. 123 would decrease administrative efficiency and exclude Americans who are not fully proficient in English from education, employment, voting and equal participation in our society. It effectively would repeal the minority language provisions of the Voting Rights Act and is inconsistent with the longstanding principle of government-to-government relations with Indian tribes. Furthermore, H.R. 123 would create an unnecessary private right of action, inviting frivolous litigation against the Government.

*Paragraph on  
 Stillness  
 amendment  
 deleted*

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I should also note that the bill is subject to various constitutional attacks. For example, H.R. 123, if it applies to the legislative franchise of Members of Congress, violates the Speech or Debate Clause, U.S. Const., Art. I, section 6. If H.R. 123 were enacted, Members of Congress and their staffs would be hampered in communicating effectively with constituents and members of the public who are not fully proficient in English in press releases, newsletters, responses to complaints or requests for information, or speeches delivered outside the Congress. The bill is subject to attack upon the ground that its stated purposes are pretexts for invidious ethnic or national-origin discrimination. Under the Equal Protection Clause, "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one [group] than another." Washington v. Davis, 426 U.S. 229, 242 (1976). The bill also is subject to attack on the ground that it violates the due process rights of non-English speakers who are parties to civil and administrative proceedings involving the Government.

Thank you for requesting the Administration's views on H.R. 123, the Language of Government Act. The Office of Management and Budget has advised that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

Andrew Fois  
Assistant Attorney General

Attachment

cc: Honorable William Clay  
Ranking Minority Member  
Committee on Economic and Educational Opportunities

Justice Department Views on H.R. 123,  
the Language of Government Act

1. Effect of the Bill

H.R. 123 would eliminate all governmental actions that are conducted in languages other than English, except those actions falling within enumerated exceptions. H.R. 123 declares English the official language of the Government. See H.R. 123, §3(a). It also provides that "[t]he Government shall conduct its official business in English." Id. H.R. 123 defines "official business" generally as "those governmental actions, documents, or policies which are enforceable with the full weight and authority of the Government," but makes clear that certain governmental actions which otherwise qualify as "official business" are not subject to the general ban on the use of languages other than English. Id. Governmental actions which do not constitute "official business" for purposes of H.R. 123, and which therefore could be taken or conducted in languages other than English, include:

(A) teaching of foreign languages;

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

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

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

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

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

Id.

H.R. 123 would repeal all existing Federal laws that "directly" contravene its provisions banning Government communication in languages other than English, "such as [laws that require] the use of a language other than English for official business of the Government of the United States." Id. at

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H.R. 123 defines "Government" as "all branches of the Government of the United States and all employees and officials of the Government of the United States while performing official business." Id. at §3(a).

§2(b).<sup>2</sup> In sum, H.R. 123 would eliminate all governmental actions conducted in a language other than English, except those actions expressly exempted from the bill's definition of "official business."

H.R. 123 states that it would not directly discriminate against or restrict the rights under existing laws of any individual already in the United States. But it is difficult to see how this bill would "promote efficiency and fairness to all people" and not "discriminate against or restrict the rights of" individuals in the United States who speak a language other than English and have limited English proficiency (LEP).

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

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

H.R. 123 proposes to declare English the official language of the United States for all Federal government business. This declaration is unnecessary. The overwhelming majority of the Federal Government's official business is conducted in English and over 99.9 percent of Federal government documents are in English.<sup>3</sup> According to a recent GAO study, only 0.06 percent of Federal government documents or forms are in a language other than English, and these are mere translations of English documents. These non-English documents, such as income tax forms, voting assistance information, some decennial census forms, and information relating to access to medical care and to

<sup>2</sup> H.R. 123 appears to eliminate only Federal laws which mandate Government communication in languages other than English. The bill provides that "[the] Act (and the amendments made by [the] Act) shall not preempt any law of any State." Id. at §4.

<sup>3</sup> "Federal Foreign Language Documents," GAO Rep. No. D-95-253R (Prepared at the request of Sen. Richard C. Shelby, sponsor of S. 356, the Senate companion to H.R. 123).

added

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

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

In very few instances, languages other than English are used in official Government business. In these instances, the usage may promote vital interests, such as national security; law enforcement; border enforcement; civil rights; communicating with witnesses, aliens, prisoners or parolees; and educational outreach to inform people of their legal rights and responsibilities or to assure access to Government services, such as police protection, public safety, health care and voting. In all of these areas, H.R. 123 would limit the effectiveness of Government operations by preventing adequate and appropriate communications between Government officials or employees and the public.

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

Furthermore, H.R. 123 would prohibit the use of ~~interpreters~~ <sup>added</sup> and the use of another language by Government lawyers and employees while interviewing complainants or witnesses or reviewing witness statements or foreign documents. Also, the prohibition of interpreters in judicial and administrative proceedings, especially in civil, immigration, and some criminal matters, would raise serious due process concerns, as discussed below. A requirement that Federal government employees use only English would dramatically hamper attorneys' abilities to perform their duties effectively.

### 3. H.R. 123 Would Generate Frivolous Litigation and Chill Legitimate Government Action

H.R. 123 would create a private cause of action for anyone who believed that he or she had been injured by the Federal government's communication in a language other than English. The bill would permit a complaining individual to sue the Government in federal court for damages, equitable relief and attorney fees.

It is unclear what harm H.R. 123 is intended to prevent or what rights the cause of action would protect. Virtually all of the Federal government's official business is conducted in English. Therefore, actual injury to an individual due to a failure to conduct all activities in English is highly conjectural. This provision is clearly unnecessary.

Moreover, the language in H.R. 123 creating this cause of action is vague and would encourage lawsuits against the Government by "any person alleging injury arising from a violation" of these proposed laws. The potential for recovering attorney fees would invite frivolous litigation against the Government and further clog our Federal court system. More importantly, it would have a chilling effect upon Federal agencies and employees and deter them from performing vital tasks and delivering important informational services in languages other than English.

### 4. H.R. 123 is Subject to Serious Constitutional Challenge.

A. Although it is difficult to predict how the Supreme Court ultimately would resolve arguments that H.R. 123 violates constitutional protections,<sup>3</sup> a case raising constitutional challenges to a similar State statute is now pending before the Court.

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

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

cert. granted, 64 U.S.L.W. 3635, 3639 (U.S. Mar. 25, 1996) (No. 95-974), a divided court declared that English-only requirements in the Arizona constitution were facially overbroad in violation of the free speech rights of State government employees. The pertinent provision of the Arizona constitution provides that English is the official language of the State of Arizona. It also requires that, with certain exceptions, the State and its political subdivisions, including all government officials and employees performing government business, communicate only in English. See id. at 928. The Ninth Circuit majority determined that the Arizona provision constituted a prohibited means of promoting the English language, stating that "[t]he speech rights of all of Arizona's state and local employees, officials, and officers are . . . adversely affected in a potentially unconstitutional manner by the breadth of [the provision's] ban on non-English governmental speech." Id. at 932.

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

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

Id. at 941 (citation omitted.)

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

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

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

Second, if the bill applies to the legislative franchise of Members of Congress, it violates the Speech or Debate Clause, U.S. Const., Art. I, section 6. Moreover, if H.R. 123 were enacted, Members of Congress and their staffs would be hampered in communicating effectively with constituents and members of the public who are not fully proficient in English, for example, in press releases, newsletters, responses to complaints or requests for information, or speeches delivered outside the Congress. A court well could conclude that an application of H.R. 123 that prevented a Federal legislator from communicating effectively with the persons he or she represented interfered with a core element of the process of representative government established by the Constitution. Similar concerns would be raised by any effort to apply H.R. 123 to communications by the President and other Executive branch officials in their dealings with constituents.

B. H.R. 123 also might be subject to challenge on various equal protection grounds. The Constitution prohibits discrimination on the basis of ethnicity or national origin. See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). Several ethnic and national origin minority groups in this country include large numbers of persons who do not speak English proficiently. Where a statutory classification expressly utilizes a suspect criterion, or does so in effect by a transparent surrogate, the Supreme Court has subjected the classification to strict scrutiny without requiring a demonstration that the legislature's purpose was invidious. See Shaw v. Reno, \_\_\_ U.S. \_\_\_, 113 S.Ct. 2816, 2824 (1993).

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

H.R. 123 also is subject to attack upon the ground that its stated purposes are pretexts for invidious ethnic or national-origin discrimination. If enacted, the language restrictions contained in H.R. 123 presumptively would have a

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

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

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

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

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<sup>5</sup>Our comments in this letter do not address the question of how the language requirements of H.R. 123, if enacted, should be implemented in light of the serious constitutional concerns that we have identified.

5. **H.R. 123 Would Impair Relations with Native Americans.**

The broad language of H.R. 123 is at odds with the longstanding principle of government-to-government relations between the Federal government and Indian tribes. From its earliest days, the United States has recognized that Indian tribes possess attributes of sovereignty. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831). In addition, in early Indian treaties, the United States pledged to "protect" Indian tribes, thereby establishing one of the bases for the Federal responsibility in our government-to-government relations with Indian tribes. See Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942). These principles -- the sovereign powers of Indian tribes to engage in self-government and the Federal trust responsibility to Indian tribes -- continue to guide our national policy toward Indian tribes.

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

If broadly construed, H.R. 123 could conflict with the specific mandates found in the Native American Languages Act and related statutes. These laws would be repealed if H.R. 123 were enacted. This would impede severely Federal government relations with Native Americans.

6. **H.R. 123 Could Be Read to Limit Bilingual Education, Causing LEP Students to Fall Behind in School.**

H.R. 123 would repeal all laws which conflict with its purpose of limiting all official Government business to the English language. The impact could be devastating to LEP children in this country.

For example, H.R. 123 might be read to conflict with and therefore repeal Title VII of the Bilingual Education Act, which assists school districts in meeting their obligations under the Civil Rights Act of 1964, and with the Supreme Court ruling in Lau v. Nichols, 414 U.S. 563 (1974). Both established that school districts have a responsibility to provide equal educational opportunity to LEP students. Hence, Title VII provides direct Federal funds to implement programs targeted toward assisting linguistically diverse students. These programs assist LEP students master English and achieve in all academic areas.

The Bilingual Education Act already stresses the need to promote a child's rapid learning of English. As President Clinton recently commented on bilingual education, "[t]he issue is whether children who come here, [or whose "cradle tongue" is not English] while they are learning English, should also be able to learn other things... The issue is whether or not we're going to value the culture, the traditions of everybody and also recognize that we have a solemn obligation every day in every way to let these children live up to the fullest of their God-given capacities."<sup>6</sup> Bilingual education helps ensure that LEP children learn English while remaining current in other subjects. Otherwise, language minority children who are unable to keep up with their English-speaking classmates fall behind in course work and are more likely than other children to drop out of school.

**7. H.R. 123 Would Repeal Minority Language Provisions of the Voting Rights Act, Limiting Meaningful Electoral Participation by Language Minority Populations.**

In addition, H.R. 123 would effectively repeal the minority language provisions of the Voting Rights Act (VRA) because they are in conflict. Where H.R. 123 requires the use of only English, the VRA requires the use of a language other than English in enforcement efforts. The VRA has two provisions, Section 203 and Section 4(f), that protect United States citizens who are not fully proficient in English. These provisions require covered jurisdictions to provide the same information, materials, and assistance provided to English speaking citizens to minority language citizens in a language they can better understand, to enable them to participate in the electoral process as effectively as English-speaking voters.

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

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<sup>6</sup>President William J. Clinton's address to the Hispanic Caucus Institute Board and Members, Washington, D.C., September 27, 1995.

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

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

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

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

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

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

Rates of both voter registration and actual participation in elections by minority language individuals have increased since Section 203 was enacted. We are convinced that providing bilingual materials, instruction, and assistance makes a real difference at the polls for minority language citizens with limited English language abilities. The effect of enacting H.R. 123 and thereby rescinding Section 203 and the other minority language protections of the VRA would be to disenfranchise an American minority community that only recently has had the opportunity to engage meaningfully in participatory democracy. Those who still would vote, without the benefit of the same information English-speaking citizens receive but in a language they better understand, would be less informed and more dependent upon others to cast their votes.

**8. H.R. 123 Would Make Government Programs Less Efficient.**

The language of H.R. 123 claims that the "use of a single common language in the conduct of the Government's official business will promote efficiency and fairness to all people". Again, it is unclear how this would occur. To the contrary, H.R. 123 would promote administrative inefficiency and the exclusion of LEP persons from access to the Government and its services. H.R. 123's mandate for "English only" in Government would emasculate Government agencies and other governmental bodies. It would prevent them from making particularized judgments about the need to utilize languages in addition to English in appropriate circumstances. It is in the best interest of the Government -- as well as its customers -- for the public to understand clearly Government services, processes and their rights.

The Government should not be barred from choosing in specific circumstances to communicate with its LEP citizenry in languages comprehensible to these persons. H.R. 123 would hinder the implementation of law enforcement and other governmental programs, such as tax collection; water and resource conservation; decennial census data collection; and promoting compliance with the law, e.g., by providing bilingual investigators and providing translations of compliance, public, or informational bulletins issued by Federal agencies.

**9. H.R. 123 Is Inconsistent With Our Pluralistic Society.**

Finally, H.R. 123 would promote division and discrimination rather than foster unity in America. We fear that passage of H.R. 123 would exacerbate national origin discrimination and intolerance against ethnic minorities who look or sound "foreign" and may not be English proficient. It would erect barriers to full access to and participation in the democratic government

EXECUTIVE OFFICE OF THE PRESIDENT

25-Jul-1996 10:25am

TO: Stephen C. Warnath

FROM: M. Jill Gibbons  
Office of Mgmt and Budget, LRD

SUBJECT: English Language

H.R.----, the "English as a Common Language of Government Act", is tentatively on the House floor schedule for next week. Do you have any information/bill text on this bill? Also, we need to prepare a SAP. Do you have any thoughts on what it would say. I assume the punchline would be strongly oppose, at minimum. Please let me know. Thanks