

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The top bulb has a dark blue cap, and the bottom bulb has a light blue cap.

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Congressional Research Service

Report 97-383

*Legal Analysis of Proposals to Make English the Official  
Language of the United States Government*

Charles V. Dale and Mark Gurevitz, American Law Division

March 14, 1997

**Abstract.** This report analyzes various proposals in the 105th Congress to declare English the official language of the United States government and to place restrictions upon other linguistic usage in formal communications between federal officials and the nation's citizens.

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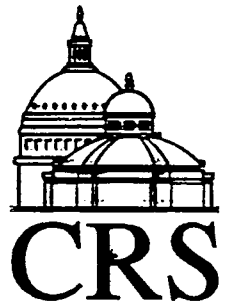
# CRS Report for Congress

## Legal Analysis of Proposals to Make English the Official Language of the United States Government

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March 14, 1997



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# **LEGAL ANALYSIS OF PROPOSALS TO MAKE ENGLISH THE OFFICIAL LANGUAGE OF THE UNITED STATES GOVERNMENT**

## **SUMMARY**

A contemporary political movement to install English as the official language of the United States has continued to gather momentum since Congress in the mid-1980's first held hearings on various proposals to amend the Federal Constitution to achieve that end. Although federal efforts to date have fallen short of their goal, greater success has been achieved in promoting official English laws at the state level. Presently, twenty-one states have laws declaring English to be the official state language. These state laws have usually been enacted by direct popular votes on referenda by substantial margins. In response, renewed congressional efforts to codify English as the official language of the Federal Government by statute have displaced the constitutional amendment approach of earlier years. This trend continued in the 104th Congress when the House passed H.R. 123, declaring English the official language of the United States Government and restricting other linguistic usage in the conduct of "official" governmental business. The measure died in the Senate but has been reintroduced in the current Congress along with other House and Senate proposals.

H.R. 123 and S. 323, the principal measures before the current Congress, require that all "official business" of the Federal Government--including any "enforceable" domestic "governmental actions, documents, or policies"--be conducted in English. These bills would also create a private "entitlement" to "communicate with" and "receive information from" the Federal Government in English and an "affirmative obligation" on the part of governmental representatives "to preserve and enhance the role of English." A third bill, H.R. 622, would commit the Federal Government to "promote and support" English usage "among United State citizens" and to "enforce" naturalization requirements of English proficiency. It would also repeal federal bilingual education and voting requirements.

The Bill Emerson Language Empowerment Act of 1997, as carried forward from the substitute version of H.R. 123 which passed the House last year, differs considerably in scope and exceptions to coverage from its Senate counterpart. Thus, H.R. 123 specifically covers "publications, income tax forms, and informational materials" while it may be questioned whether all such documents would be "official" government business under the general definition in S. 323. Similarly, the House bill adopts a "rule of construction" permitting oral communications by federal "representatives"--meaning federal officers, employees, and Members of Congress--in languages other than English. Consequently, only governmental information in written or documentary form would be subject to the House bill's official English requirements while the status of oral communications under the S. 323 is less clearcut. Exceptions written into both bills, however, would permit linguistic diversity in governmental communications concerned with teaching of foreign languages; national security and international relations, trade, or commerce; compilation of census information; public health and safety matters; and the conduct of criminal proceedings.

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# LEGAL ANALYSIS OF PROPOSALS TO MAKE ENGLISH THE OFFICIAL LANGUAGE OF THE UNITED STATES GOVERNMENT

## INTRODUCTION

A contemporary political movement to install English as the official language of the United States has continued to gather momentum since Congress in the mid-1980's first held hearings on various proposals to amend the Federal Constitution to achieve that end.<sup>1</sup> Although federal efforts to date have fallen short of their goal, greater success has been achieved in promoting official English laws at the state level. Presently, twenty-one states have laws declaring English to be the official state language.<sup>2</sup> These state laws have usually been enacted by direct popular votes on referenda by substantial margins.<sup>3</sup> In response, renewed congressional efforts to codify English as the official language of the Federal Government by statute have largely displaced the constitutional amendment approach of earlier years.<sup>4</sup> This trend continued in the 104th Congress when the House passed H.R. 123, declaring English the official language of the United States Government and restricting other linguistic usage in the conduct of "official" governmental business. The measure died in the Senate but has been reintroduced in the current Congress along with other House and Senate proposals discussed below.

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<sup>1</sup> See *The English Language Amendment: Hearings on S.J. Res. 167 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 98th Cong., 2d Sess. (1984); Hearings on H.J.R. 13, H.J.R. 33, H.J.R. 60 & H.J.R. 33 before the Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary, 100th Cong., 2d Sess. (1988).*

<sup>2</sup> See list and accompanying text of these state laws in Part II of the report, *supra* p. 12.

<sup>3</sup> See Note, *English-only laws and Direct Legislation: The Battle in the States over Language Minority Rights*, 7 J.L. & Pol. 325, 342-43 & n.120 (1991).

<sup>4</sup> As of the date of this report, one proposal in the House would amend the U.S. Constitution to make English the official language of the United States. As introduced by Mr. Doolittle on February 4, 1997, H.J. Res. 37 would require that English be used "for all public acts including every order, resolution, vote or election, and for all records and judicial proceedings" of the federal and state governments.



## FEDERAL LEGISLATION TO MAKE ENGLISH THE OFFICIAL LANGUAGE OF GOVERNMENT

Standing alone, a legislative declaration of English as "[t]he official language of the Government of the United States" would be a largely symbolic act of negligible legal effect. Although an affirmation by the Congress of the central place of English in our national life and culture, such a pronouncement would not, of its own force, require or prohibit any particular action or policy by the government or private persons. Nor would it, without more, imply the repeal or modification of existing federal or state laws and regulations sanctioning the use of non-English for various purposes. As in previous years, however, official English proposals before the 105th Congress would give varying force to this declaration by requiring adherence to English in the official affairs of all branches of the Federal Government--executive, judicial, and legislative.

H.R. 123 and S. 323, the principal measures presently before the Congress, require that all "official business" of the Federal Government--including any "enforceable" domestic "governmental actions, documents, or policies"--be conducted in English. An "affirmative obligation" would be imposed on the government "to preserve and enhance the role of English" and to "encourag[e] greater opportunities to learn the English language." Denial of any federal benefit or service "solely because the person communicates in English" would be prohibited and a private "entitlement" to "communicate with" or to receive "information" and "official orders" from the Federal Government in English would be created. These rights and restrictions would be judicially enforceable in private civil actions for "appropriate" relief. Exceptions written into both bills, however, would permit linguistic diversity in governmental communications concerned with teaching of foreign languages; international relations, trade, or commerce; compilation of census information; public health and safety matters; and the conduct of criminal proceedings. In addition, H.R. 123, would allow use of other languages under the Individuals with Disabilities Act, for national security purposes, and in the compilation of census information.

A third bill, H.R. 622, would commit the Federal Government to "promote and support" English usage "among United StateS citizens" and to "enforce" naturalization requirements of English proficiency. It would also repeal federal bilingual education and voting requirements. The Bilingual Education Act provides funds to assist "language minority and limited English proficient students" gain proficiency in English "through the development and implementation of exemplary bilingual education programs and special alternative instruction programs."<sup>5</sup> Similarly, the 1975 Voting Rights Act

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<sup>5</sup> 20 U.S.C. §§ 7401 *et seq.* The Act includes a series of congressional findings to the effect *inter alia* that "the use of a child or youth's native language and culture in classroom instruction can. . .contribute to academic achievement" of language minorities, "benefit English-proficient children and youth," and contribute to global competitiveness by "develop[ing] our Nation's national language resources. . ." *Id.* § 7402(a)(14).

amendments, as extended in 1982 and again in 1992, mandate use of bilingual voting materials in States or political subdivisions when certain conditions are met.<sup>6</sup> Both H.R. 123 and H.R. 622 specifically call for renewed enforcement of English proficiency standards for citizenship and the "conduct [of] all naturalization ceremonies entirely in English."

The Bill Emerson Language Empowerment Act of 1997, identical to the substitute version of H.R. 123 which passed the House last year, differs considerably in its scope and exemptions from its Senate counterpart. A "rule of construction" included in H.R. 123 would permit oral communications by federal "representatives"--meaning federal officers, employees, and Members of Congress--in languages other than English. Consequently, only governmental information in written or documentary form would be subject to the House bill's official English requirements as opposed to S. 323 which provides no explicit exception for oral communications. Secondly, all "publications, income tax forms, and informational materials" are specifically covered by H.R. 123. However, the extent to which informational materials or administrative forms are "official business,"-- *i.e.* are "enforceable with the full weight and authority of government"--under S. 323 may be open to question.

The Federal Government obviously makes available to the public a wide array of instructional guides, pamphlets, directories, and other informational resources. Some, like the U.S. Code, Statutes at Large, and the Federal Register, are authoritative and "enforceable" statements of positive law which S. 323 would presumably require to be promulgated in English. However, the Government also provides a wealth of strictly educational materials and services to the public, such as "how to" guides, scientific and historical information, and "hands on" agricultural extension and other practical pointers which are unrelated to its formal policymaking, law enforcement, or regulatory functions. Unless subject to a specified exception, H.R. 123 would apparently requires all such documents to be printed in English while the official or unofficial status of purely informational materials, federal forms, and the like cannot conclusively be determined from the wording of S. 323.

Other legal issues may surround the scope and application of the current federal proposals. Although both the House and Senate bills require that official federal governmental business be conducted in English, neither proposal specifically bans the government from also providing services or materials, as needed, in other languages for non-English speaking constituents. That is, they do not provide that the government conduct its official business "exclusively" or "only" in English. Supplemental use of foreign language translation in regard

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<sup>6</sup> 42 U.S.C. § 1973b(f)(3). The Voting Rights Legal Assistance Act of 1992, P.L. 102-344, 106 Stat. 921 (1992), adjusted the triggering mechanism of § 203 of the Act so that if 1) a jurisdiction has 10,000 or more limited-English proficient voting age citizens of a single covered language minority *or* 2) a reservation has five percent or more American Indian or Alaska Native limited-English proficient voting-age citizens *and* 3) the single language minorities meet the remaining § 203 requirements, the jurisdiction must provide language assistance.

to matters beyond those specifically exempted by the bills, however, may contravene both the legislative intent of Congress and the "affirmative obligation" imposed upon the government "to promote and enhance the role of English."

Whether the official English mandate pertains only to the form of speech or linguistic medium used by the federal government, or its employees, to communicate with the public or is also intended to reach the content or subject matter of governmental speech may be another issue. If narrowly interpreted by the courts, as reaching only the formal aspect of federal governmental documents, rather than their substance, H.R. 123 and S. 323 could have marginal impact on federally mandated standards in regard to the education of language minorities, bilingual election requirements, or private employer English-only workplace rules. The House bill, in particular, specifically provides that it is not "intended to discriminate against or restrict" individual rights nor to be construed in a manner "inconsistent with the Constitution of the United States." These disclaimers may have the effect of preserving the *status quo* in regard to federally enforced bilingualism pursuant to the Constitution or federal civil rights statutes. An argument could be made, however, that the governmental duty to "preserve and enhance" the role of official English demands, at a minimum, that a substantive commitment to English be reflected in the content of federal agency rulemaking. Accordingly, the bills could conceivably be read to apply both to the form and substance of federal laws, regulations, orders *etc.* so as to preclude imposition upon state or local authorities, or private parties, of foreign language assistance or bilingual requirements of various sorts.<sup>7</sup> Of course, H.R. 622 eliminates some uncertainty by its express repeal of statutory bilingual education and language minority voting requirements.

As noted, both the House and Senate proposals would confer standing upon private individuals to bring declaratory judgment actions in federal court to

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<sup>7</sup> For example, Federal law presently requires that interpreters be used in the physical and mental examination of alien immigrants seeking entry into the United States (8 U.S.C. § 1224); that the Director of the Administrative Office of the U.S. Courts establish a program for the use of foreign language interpreters in federal civil and criminal proceedings for parties whose primary language is other than English (28 U.S.C. § 1827); that service of judicial process by the United States and State courts on a foreign state, its political subdivision, agencies, or instrumentalities be accompanied by a translation "into the official language of the foreign state" (28 U.S.C. § 1608); that foreign language personnel be used in connection with federally funded migrant and community health centers (42 U.S.C. § 254b(f)(3)(J), 254c), in grant program for certain health services for the homeless (42 U.S.C. § 256) and public housing residents (42 U.S.C. § 256a), and in alcohol abuse and treatment programs (42 U.S.C. § 4577(b)), which serve a substantial number of non-English speaking persons; and that notices "in language that is easily understandable by reader" under various Social Security Act programs (42 U.S.C. §§ 405, 1383). *See also* 7 U.S.C. § 2242b (permits the use of Department of Agriculture fund for translation of publications into foreign languages); 42 U.S.C. § 2991b-3 (grant program to ensure survival and continuing vitality of Native American languages); and 42 U.S.C. § 3030d (grants for supportive services under Older Americans Act include language translation services).

enforce the various statutory requirements and prohibitions and to seek "appropriate" relief orders. Thus, for example, any alleged denial of governmental "services, assistance, or facilities" because the claimant "communicates in English," or of the right to "receive information from or contribute information to the Government in English," would be actionable pursuant to H.R. 123 and S. 323. The ramifications of this private right of action are difficult to predict. One possibility may involve bilingual services by frequently employed by the schools to educate non-English speaking students. Prompted by the Supreme Court ruling in *Lau v. Nichols*,<sup>8</sup> the federal courts in several cases have held that the failure to provide supplemental instruction to these students may be a violation of Title VI of the 1964 Civil Rights Act<sup>9</sup> and related statutes. The ultimate federal sanction for Title VI violations, if unremedied, is the termination of federal funding to the affected school or school district. Under the current proposals, however, cutoff of funds for failure by a school or school district to provide bilingual or other supplemental language services could be actionable as a "direct or indirect" denial of assistance prohibited by the bill. In effect, private civil actions permitted by the bills to enforce the government's "affirmative obligation" to promote English and other bill "entitlements" could make the linguistic policy implications of virtually any "official" action or inaction by the federal government fair game for judicial inquiry.

### C. CONSTITUTIONAL LAW IMPLICATIONS OF OFFICIAL ENGLISH

Judicial decisions involving the constitutional implications of government language policies have arisen in a variety of legal contexts. One series of cases has involved non-English speaking plaintiffs who have unsuccessfully sought to require the government to provide them with services in their own language. In *Soberal-Perez v. Heckler*,<sup>10</sup> for example, the Second Circuit rejected an action on behalf of Hispanic individuals of limited English proficiency who claimed that the equal protection and due process clauses of the Constitution required the Secretary of Health and Human Services to provide them with Social Security forms and instructions in Spanish. The appeals court could find no basis for the constitutional and related statutory claims since the Secretary's action bore a rational relationship to a legitimate governmental purpose:

We need only glance at the role of English in our national affairs to conclude that the Secretary's actions are not irrational. Congress conducts its affairs in English, the executive and judicial branches of government do likewise. In addition, those who wish to become naturalized citizens must learn to read English. . . . Given these factors, it is not

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<sup>8</sup> 414 U.S. 563 (1974).

<sup>9</sup> 42 U.S.C. § 2000d *et seq.*

<sup>10</sup> 717 F.2d 36 (2d Cir. 1983), *cert. denied*, 466 U.S. 929 (1984).

irrational for the Secretary to choose English as the one language in which to conduct her official affairs.<sup>11</sup>

The federal courts have similarly found no constitutional duty on the part of government to provide certain other forms of official notice or services to individuals in their native tongue.<sup>12</sup> These cases, however, hold only that in the circumstances involved, non-English speakers have no affirmative right to compel government to provide information in a language that they can comprehend. They do not address the converse issue of legislative power to restrict official speech in languages other than English as a matter of state or national policy.

Another body of judicial authority has found that certain state law restrictions on linguistic diversity may act as a "proxy" for national origin discrimination or infringe upon First Amendment free speech rights. In *Meyer v. Nebraska*,<sup>13</sup> for example, the Supreme Court found that a state law prohibiting modern foreign language instruction in any school, public or private, before the ninth grade violated Fourteenth Amendment due process because it infringed upon the liberty of parents to make educational choices for their children. The *Meyer* Court wrote that

[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution--a desirable end cannot be promoted by prohibited means.<sup>14</sup>

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<sup>11</sup> *Id.* at 43-44.

<sup>12</sup> See e.g. *Carmona v. Sheffield*, 475 F.2d 738 (9th Cir. 1973)(no right to employment notices in Spanish); *Toure v. United States*, 24 F.3d 444 (2d Cir. 1994)(no right to notice of administrative seizure in French); *Frontera v. Sindell*, 522 F.2d 1215, 1219-20 (6th Cir. 1975)(English-only civil service exams do not violate Hispanic individuals equal protection rights since "[l]anguage, by itself, does not identify members of a suspect class"); *Guadalupe Organization, Inc. v. Tempe Elementary School District No. 3*, 587 F.2d 1022, 1027 (9th Cir. 1978)(no right to bilingual education); *Vialez v. New York City Housing Authority*, 783 F.2d 109 (S.D. N.Y. 1991)(Housing Authority's failure to provide documents in Spanish does not violate the Title VI or the Fair Housing Act since "it reflects, at most, a preference for English over all other languages" rather than racial or ethnic discrimination); and *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993), *cert. denied* 62 U.S.L.W. 3843 (S.Ct. 6-20-94)(employer's English-only workplace rules do not violate Title VII of the 1964 Civil Rights Act).

<sup>13</sup> 262 U.S. 390 (1923).

<sup>14</sup> *Id.* at 401.

*Meyer* was applied by the Court in *Farrington v. Tokushiga*<sup>15</sup> to invalidate a Hawaii statute that singled out "foreign language schools," such as those in which Japanese was taught, for stringent government control. The state's purpose for regulating language instruction in *Tokushiga* was "in order that Americanism of the students may be promoted."<sup>16</sup> Similarly, the governmental interests asserted in defense of the *Meyer* statute were "to create an enlightened American citizenship in sympathy with the principles and ideals of this country,"<sup>17</sup> "to promote civic development,"<sup>18</sup> and to prevent inculcation in children of "ideas and sentiments foreign to the best interests of the country."<sup>19</sup> Despite a judicial acknowledgement of the validity of such goals, the Court found them insufficient to warrant state interference with foreign language usage in the schools.

*Yu Cong Eng v. Trinidad*<sup>20</sup> considered the constitutionality of a Philippine law forbidding Chinese merchants from keeping their business account books in Chinese, the only language they knew. Finding that enforcement of the law "would seriously embarrass all of [the Chinese merchants] and would drive out of business a great number,"<sup>21</sup> the Court held that the law denied the merchants due process and equal protection under the Constitution. Although based on the substantive due process doctrine of an earlier period, reverberations of *Yu Cong Eng* and *Meyer* may be found in rulings of more recent vintage. *Hernandez v. New York*<sup>22</sup> determined that peremptory challenges directed at Latino jurors because of their bilingualism and demeanor were not unconstitutional because the factors motivating the prosecutor's action in that case did not function as a proxy for race. Writing for the plurality, however, Justice Kennedy stated that:

[w]e would face a quite different case if the prosecutor had justified his peremptory challenges with the explanation that he did not want Spanish-speaking jurors. It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should

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<sup>15</sup> 273 U.S. 284 (1927).

<sup>16</sup> 273 U.S. at 293.

<sup>17</sup> *Id.* at 393.

<sup>18</sup> *Id.* at 390.

<sup>19</sup> *Id.* at 398.

<sup>20</sup> 271 U.S. 500 (1926).

<sup>21</sup> *Id.* at 514.

<sup>22</sup> 111 S. Ct 1859 (1991).

be treated as a surrogate for race under an equal protection analysis.<sup>23</sup>

The plurality also recognized a link between language, ethnicity, and personal identity.

The U.S. Supreme Court in *Arizonans for Official English v. Arizona*<sup>24</sup> recently side-stepped constitutional controversy when it vacated for procedural irregularities a ruling by the Ninth Circuit voiding Arizona's official English law. In 1988, Arizona voters had approved by referendum a state constitutional amendment providing *inter alia* that English is the official language of the State of Arizona and that the state and its political subdivisions--including "all governmental officials and employees during the performance of government business"--must "act" only in English. A former insurance claims manager for the state who spoke both English and Spanish in her daily service to the public argued that the law had a silencing and chilling effect on constitutionally protected speech of bilingual, monolingual, and Spanish-speaking public employees and their clients. Despite assertions by Arizona's Attorney General that communications "to facilitate delivery of governmental services" were not "official acts" covered by the law, the Ninth Circuit held that the "plain wording" of the law defied such limitation and was an overly broad restriction on free speech rights of state employees and the public they served.<sup>25</sup>

The First Amendment analysis applied by the 6-5 *en banc* majority of the Ninth Circuit required balancing the right of public employees to speak on matters of "public import" against the government's legitimate interest as an employer "in achieving its goals as effectively and efficiently as possible." Although the government may generally regulate public employee speech concerned simply with "matters of personal or internal interest," the Arizona law "significantly interfere[d]" with "communications by or with government employees" related to "the provision of government services and information," a form of public discourse entitled to greater constitutional protection.<sup>26</sup>

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<sup>23</sup> *Id.* at 1872-73. Similarly, Justice Stevens, in dissent, asserted that "an explanation [for striking prospective jurors] that is 'race-neutral' on its face is nonetheless unacceptable if it is merely a proxy for a discriminatory practice." *Id.* at 1877.

<sup>24</sup> (No. 95-974, 1997 U.S. Lexis 1455).

<sup>25</sup> *Yniquez v. Arizonans for Official English*, 69 F.3d 920 (1995).

<sup>26</sup> In this regard, the court's opinion observed:

The practical effects of Article XXVIII's de facto bar on communications by or with government employees are numerous and varied. For example, monolingual Spanish-speaking residents of Arizona cannot, consistent with the article, communicate effectively with employees of a state or local housing office about a landlord's wrongful retention of a rental deposit, nor can they learn

Moreover, the efficiency and effectiveness considerations constituting fundamental governmental interests in the usual "public concern" case--and that provide the justification against which the employee's First Amendment interests must be weighed--were found totally lacking by the Ninth Circuit. Indeed, the appeals court determined that government efficiency would actually be promoted rather than hindered by permitting public employee speech in languages other than English. Nor was the state's asserted interest in forging "unity and political stability" by "encouraging a common language" sufficient to warrant restrictions on foreign language usage.

The Supreme Court vacated and remanded the case, in effect leaving the Arizona law intact for the time being. Speaking for a unanimous Court, Justice Ginsburg declared the case moot since the plaintiff had resigned from state employment prior to appeal and had never sought to have the case certified a class action. In addition, the Justices had "grave doubts" whether Arizonans for Official English, original sponsors of the ballot initiative, had standing to appeal the case as a party after the Arizona Governor declined to do so. Finally, the federal district and appeals courts had erred by failing to certify unsettled state-law questions regarding the scope of the English-only amendment to the Arizona Supreme Court for "authoritative construction" before proceeding with the case. The Supreme Court thus left a constitutional ruling on the Arizona Official English law for another day. That day may not be far off. Another constitutional challenge to the Arizona law, *Ruiz v. Symington*,<sup>27</sup> is presently before the state courts and may reach the Supreme Court once state appellate review has been completed.

The official language proposals before Congress may raise, but to a lesser degree, many of the same constitutional issues left unresolved by the Supreme Court in the Arizona case. Any "chilling" effects on the speech of government employees or clients are mitigated in the case of H.R. 123, however, by the specific exemption permitting use of spoken foreign language by federal employees in the delivery of services to the public. In addition, because official English is mandated only for speech-related activities "enforceable with the full weight and authority of the Government," both the House and Senate measure may be more amenable to analysis under the "sovereign act" doctrine which the Ninth Circuit refused to apply to the plain wording of the Arizona amendment. Nonetheless, the likelihood of constitutional challenge to federal official English requirements as applied in specific cases remains given the definitional

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from clerks of the state court about how and where to file small claims court complaints. They cannot obtain information regarding a variety of state and local social services, or adequately inform the service-givers that the governmental employees involved are not performing their duties properly or that the government itself is not operating effectively or honestly. Those with a limited command of English will face commensurate difficulties in obtaining or providing such information. *Id.* at 941.

<sup>27</sup> No. 1 CA-CV 94-0235, 1996 WL 209512 (Ariz. App. 1996).



ambiguities noted above and the broad coverage of the legislation across all branches of the Federal Government. Of course, constitutional law on the subject was unsettled by the Supreme Court's most recent action so that any firm conclusion must await further judicial developments in the Arizona case, or similar controversies that may arise elsewhere.

**PART II: STATES DESIGNATING ENGLISH AS THE OFFICIAL LANGUAGE**

Twenty-one states --- Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, and Virginia have expressly designated English as their official language. The language which follows is taken verbatim from the cited sources.

**ALABAMA**

**CONSTITUTION OF ALABAMA OF 1901, AMENDMENT 509**

**English as Official Language of State:**

English is the official language of the state of Alabama. The legislature shall enforce this amendment by appropriate legislation. The legislature and officials of the state of Alabama shall take all steps necessary to insure that the role of English as the common language of the state of Alabama is preserved and enhanced. The legislature shall make no law which diminishes or ignores the role of English as the common language of the state of Alabama.

Any person who is a resident of or doing business in the state of Alabama shall have standing to sue the state of Alabama to enforce this amendment, and the courts of record of the state of Alabama shall have jurisdiction to hear cases brought to enforce this provision. The legislature may provide reasonable and appropriate limitations on the time and manner of suits brought under this amendment.

**ARIZONA**

**SECTION 1. ARTICLE XXXVIII OF THE ARIZONA CONSTITUTION**

**1. English as the Official Language: Applicability.**

**Section 1:**

- (1) The English language is the official language of the State of Arizona.
- (2) As the official language of this State, the English language is the language of the ballot, the public schools, and all government functions and actions.
- (3) (a) This Article applies to:
  - (i) the Legislative, Executive and Judicial branches of government,
  - (ii) all political subdivisions, departments, agencies, organizations, and instrumentalities of this State, including local governments and municipalities,
  - (iii) all statutes, ordinances, rules, orders, programs and policies.

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

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

**2. REQUIRING THIS STATE TO PRESERVE, PROTECT, AND ENHANCE ENGLISH.**

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

**3. PROHIBITING THIS STATE FROM USING OR REQUIRING THE USE OF LANGUAGES OTHER THAN ENGLISH; EXCEPTIONS.**

**Section 3:**

(1) Except as provided in Subsection (2):

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

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

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

(2) This State and all political subdivisions of this State may act in a language other than English under any of the following circumstances:

(a) to assist students who are not proficient in the English language, to the extent necessary to comply with federal law, by giving educational instruction in a language other than English to provide as rapid as possible a transition to English.

(b) to comply with other federal laws.

(c) to teach a student a foreign language as part of a required or voluntary educational curriculum.

(d) to protect public health or safety.

- (e) to protect the rights of criminal defendants or victims of crimes.

**4. ENFORCEMENT; STANDING.**

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

**ARKANSAS**

***ARKANSAS CODE ANNOTATED, THROUGH 1993 SUPPLEMENT***

**Section 1-4-117: Official Language**

- (a) The English language shall be the official language of the state of Arkansas.
- (b) This section shall not prohibit the public schools from performing their duty to provide equal educational opportunities to all children.

**CALIFORNIA**

**STATE CONSTITUTION, ARTICLE III, SECTION 6.**

**Section 1:**

**(a) *Purpose.***

English is the common language of the people of the United States of America and the State of California. This section is intended to preserve, protect, and strengthen the English language, and not to supersede any of the rights guaranteed to the people by this Constitution.

**(b) *English as the Official Language of California.***

English is the official language of the State of California.

**(c) *Enforcement.***

The Legislature shall enforce this section by appropriate legislation. The Legislature and officials of the State of California shall take all steps necessary to insure that the role of English as the common language of the State of California is preserved and enhanced. The

Legislature shall make no law which diminishes or ignores the role of English as the common language of the State of California.

**(d) *Personal Right of Action and Jurisdiction of Courts***

Any person who is a resident of or doing business in the State of California shall have standing to sue the State of California to enforce this section, and the Courts of record of the State of California shall have jurisdiction to hear cases brought to enforce this section. The Legislature may provide reasonable and appropriate limitation on the time and manner of suits brought under this section.

**Section 2: Severability.**

If any provision of this section, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this section to the extent it can be given effect shall not be affected thereby, and to this end, the provisions of this section are severable.

**COLORADO**

**ARTICLE II, SECTION 30 OF THE COLORADO CONSTITUTION:**

The English language is the official language of the State of Colorado.

This section is self-executing; however, the General Assembly may enact laws to implement this section.

**FLORIDA**

**ARTICLE II, SECTION 9 OF THE FLORIDA CONSTITUTION:**

- (a) English is the official language of the state of Florida.
- (b) The Legislature shall have the power to enforce this section by appropriate legislation.

**GEORGIA**

***GEORGIA LAWS 1986 SESSION***

Law Number 70 (House Resolution 717) --- Designating the English language as the official language of the State of Georgia.

**HAWAII**

**STATE CONSTITUTION ARTICLE XV, SECTION 4, OFFICIAL LANGUAGES.**

English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.

**ILLINOIS**

***SMITH-HURD ILLINOIS COMPILED STATUTES, ANNOTATED THROUGH 1994 SUPPLEMENT***

**Chapter 5 Section 460/20 -- Official Language.**

The official language of the State of Illinois is English.

**INDIANA**

***BURNS INDIANA STATUTES ANNOTATED, THROUGH 1994 SUPPLEMENT***

**Section 1-2-10-1 -- State Language**

The English language is adopted as the official language of the state of Indiana.

**KENTUCKY**

***KENTUCKY REVISED STATUTES, THROUGH 1993 SUPPLEMENT***

**Section 2.013 -- State Language**

English is designated as the official state language of Kentucky.

**MISSISSIPPI**

***MISSISSIPPI CODE ANNOTATED, THROUGH 1994 SUPPLEMENT***

**Section 3-3-31 State Language**

The English language is the official language of the state of Mississippi.

**MONTANA**

**Montana Advance Legislative Service 1995 Act 319**

Section 1. English as official and primary language of state and local governments.

(1) English is the official and primary language of:

(a) the state and local governments;

(b) government officers and employees acting in the course and scope of their employment; and

(c) government documents and records.

(2) A state statute, local government ordinance, or state or local government policy may not require a specific foreign language to be used by government officers and employees acting in the course and scope of their employment or for government documents and records or require a specific foreign language to be taught in a school as a student's primary language.

(3) This section is not intended to violate the federal or state constitutional right to freedom of speech of government officers and employees acting in the course and scope of their employment. This section does not prohibit a government officer or employee acting in the course and scope of employment from using a language other than English, including use in a government document or record, if the employee choose, or prohibit the teaching of other languages in a school for general educational purposes or as secondary languages.

**NEBRASKA**

**State Constitution Article I Section 27 -- English Language to be Official**

The English Language is hereby declared to be the official language of this State, and all official proceedings, records and publications shall be in such language, and the common school branches shall be taught in said language in public, private, denominational, and parochial schools.

**NEW HAMPSHIRE**

**NEW HAMPSHIRE REVISED STATUTES ANNOTATED**

**CHAPTER 3-C**

**OFFICIAL STATE LANGUAGE**

**3-C:1 OFFICIAL STATE LANGUAGE**

I. The official language of the state of New Hampshire shall be **English**. English is designated as the language of all official public documents and records, and of all public proceedings and nonpublic sessions.

II. For the purposes of this chapter, "official public documents and records" are all documents officially compiled, published, or recorded by the state.

III. For the purposes of this chapter, "public proceedings and nonpublic sessions" mean those proceedings and sessions as defined in RSA 91-A, and includes the information recorded at such proceedings and sessions.

3-C:2 Exceptions. The provisions of this chapter shall not apply:

I. To all public proceedings between the state of New Hampshire and the province of Quebec when, in the opinion of the state administrator involved in such proceedings, it may be necessary to conduct such proceedings between Quebec and New Hampshire wholly or partially in French, and to use official public documents and records during the public proceedings, which are written wholly or partially in French.

II. To instruction in foreign language courses, or other requirements of the state university system.

III. To instruction designed to and students with limited English in a timely transition and integration into the general education system.

IV. To the promotion of international commerce, tourism, and sporting events.

V. When deemed to interfere with needs of the justice system.

VI. When the public good, public safety, health, or emergency services require the use of other languages.

VII. When expert testimony or witnesses may require a language other than English; provided, however, that for purposes of deliberation, decision making,



or recordkeeping, the official version of such testimony or commentary shall be the officially translated English-language version.

**3-C:3 Employment.** No person shall be denied employment with the state or with any political subdivision of the state based solely upon the person's lack of facility in a foreign language, except when related to bona fide job needs reflected in the exceptions listed in RSA 3-C:2.

**3-C:4 Construction.** This chapter shall not be construed in any way to infringe on the rights of citizens under the state constitution or the constitution of the United States in the use of language in activities or functions conducted in the private sector. No agency or officer of the state shall place any restrictions or requirements regarding language usage for businesses operating in the private sector other than in official documents, forms, submissions, or other communications directed to governmental agencies and officers, which communications shall be in English as recognized in this chapter.

## **NORTH CAROLINA**

### ***GENERAL STATUTES OF NORTH CAROLINA, THROUGH 1992 SUPPLEMENT***

#### **§ 145-12. State Language.**

- (a) Purpose. -- English is the common language of the people of the United States of America and the State of North Carolina. This section is intended to preserve, protect, and strengthen the English language, and not to supersede any of the rights guaranteed to the people by the Constitution of the United States or the Constitution of North Carolina.
- (b) English as the Official Language of North Carolina. -- English is the official language of the State of North Carolina.

## **NORTH DAKOTA**

### ***North Dakota Century Code, through 1993 Supplement***

#### **54-02-13 -- English As Official Language.**

The English language is the official language of the state of North Dakota.

**SOUTH CAROLINA**

***CODE OF LAWS OF SOUTH CAROLINA ANNOTATED, THROUGH 1993  
SUPPLEMENT***

**§ 1-1-696. Official State Language.**

The English language is the official language of the State of South Carolina.

**§ 1-1-697. Use of Language Other Than English Prohibited.**

Neither this State nor any political subdivision thereof shall require, by law, ordinance, regulation, order, decree, program, or policy, the use of any language other than English; provided, however, that nothing in §§ 1-1-696 through 1-1-698 shall prohibit a state agency or a political subdivision of the State from requiring an applicant to have certain degrees of knowledge of a foreign language as a condition of employment where appropriate.

**§ 1-1-698. Exceptions to Prohibition Against Use of Language Other Than English.**

Sections 1-1-696 through 1-1-698 do not prohibit any law, ordinance, regulation, order, decree, program, or policy requiring educational instruction in a language other than English for the purpose of making students who use a language other than English proficient in English or making students proficient in a language in addition to English.

**SOUTH DAKOTA**

**SOUTH DAKOTA CODIFIED LAWS THROUGH 1995**

**1-27-20 English as common language -- Use in public records and public meetings.** The common language of the state is English. The common language is designated as the language of any official public document or record and any official public meeting.

**1-27-21. Public document or record defined -- Public meetings.** For the purposes of §§ 1-27-20 to 1-27-26, inclusive, do not apply:

- (1) To instruction in foreign language courses.
- (2) To instruction designed to aid students with limited English proficiency in a timely transition and integration into the general education system;
- (3) To the conduct of international commerce, tourism, and sporting events.
- (4) When deemed to interfere with need of the justice system;

(5) When the public safety, health, or emergency services require the use of other languages. However, any such authorization for the use of a language other than the common language in printing informational materials or publications for general distribution must be approved in an open public meeting pursuant to chapter 1-25 by the governing board or authority of the relevant state or municipal entity and the decision shall be recorded in publicly available minutes;

(6) When expert testimony, witnesses, or speakers require a language other than the common language. However, for purpose of deliberation, decision making, or record keeping, the official version of such testimony or commentary shall be the officially translated English language version.

**1-27-23. Costs of publication in other languages as separate budget line item.** Pursuant to the exemptions outlined in § 1-27-22, all costs related to the preparation, translation, printing, and recording of documents, records brochures, pamphlets, flyers, or other informational materials in languages other than the common language shall be delineated as a separate budget line item in the agency, departmental, or office budget.

**1-27-24. Effect of common language requirement on state employment.** No person may be denied employment with the state or any political subdivision of the state based solely upon that person's lack of facility in a foreign language, except where related to bona fide job needs reflected in the exemptions in § 1-27-22,

**1-27-25. Common language requirements not applicable to private activities.** Sections 1-27-20 to 1-27-26, inclusive, may not be construed in any way to infringe upon the rights of citizens under the state constitution or the Constitution of the United States in the use of language in any private activity. No agency or officer of the state nor any political subdivision of the state may place any restrictions or requirements regarding language usage in any business operating in the private sector other than official documents, forms, submissions, or other communications directed to government agencies and officers, which communications shall be in the common language as recognized in §§ 1-27-20 to 1-27-26 inclusive.

**1-27-26. Enforcement of common language requirements.** Any citizen of the state has standing to bring an action against the state to enforce §§ 1-27-20 title 1-27-26, inclusive. The circuit court has jurisdiction to hear and decide any such action brought pursuant to §§ 1-27-20 to 1-27-26, inclusive.

**TENNESSEE**

***TENNESSEE CODE ANNOTATED, THROUGH 1993 SUPPLEMENT***

**Section 4-1-404 -- English and Legal Language**

English is hereby established as the official and legal language of Tennessee. All communications and publications, including ballots, produced by governmental entities in Tennessee shall be in English, and instruction in public schools and colleges of Tennessee shall be conducted in English unless the nature of the course would require otherwise.

**VIRGINIA**

***CODE OF VIRGINIA 1950 THROUGH 1994 SUPPLEMENT***

**Section 22.1-212.1 -- English as Official Language**

English shall be designated as the Official Language of the Commonwealth of Virginia. School boards shall have no obligation to teach the standard curriculum, except courses in foreign languages, in a language other than English. School boards shall endeavor to provide instruction in the English language which shall be designed to promote the education of students for whom English is a second language.