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ENGLISH LANGUAGE UNITY ACT OF 2011

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

H.R. 997

AUGUST 2, 2012

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CONTENTS

AUGUST 2, 2012

Page

THE BILL

H.R. 997, the "English Language Unity Act of 2011" 3

OPENING STATEMENTS

The Honorable Trent Franks, a Representative in Congress from the State of Arizona, and Chairman, Subcommittee on the Constitution 1
The Honorable Jerrold Nadler, a Representative in Congress from the State of New York, and Ranking Member, Subcommittee on the Constitution 10
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 12

WITNESSES

The Honorable Steve King, a Representative in Congress from the State of Iowa
Oral Testimony 16
Prepared Statement 19
The Honorable Charles A. Gonzalez, a Representative in Congress from the State of Texas
Oral Testimony 20
Rosalie Pedalino Porter, Ed.D., Chairwoman of the Board of Directors, ProEnglish
Oral Testimony 32
Prepared Statement 34
The Honorable Rene Garcia, Florida State Senator, District 40
Oral Testimony 42
Prepared Statement 45
Mauro E. Mujica, Chairman and CEO, U.S. English, Inc.
Oral Testimony 60
Prepared Statement 62

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

English language translation of the opening statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 13
Material submitted by the Honorable Jerrold Nadler, a Representative in Congress from the State of New York, and Ranking Member, Subcommittee on the Constitution 68

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Jerrold Nadler, a Representative in Congress from the State of New York, and Ranking Member, Subcommittee on the Constitution 126
Spanish language version of the Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 129

Page

Prepared Statement of the Honorable Charles A. Gonzalez, a Representative in Congress from the State of Texas 132

Prepared Statement of the American Civil Liberties Union (ACLU), submitted by the Honorable Jerrold Nadler, a Representative in Congress from the State of New York, and Ranking Member, Subcommittee on the Constitution 134

ENGLISH LANGUAGE UNITY ACT OF 2011

THURSDAY, AUGUST 2, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:40 a.m., in room 2141, Rayburn Office Building, the Honorable Trent Franks (Chairman of the Subcommittee) presiding.

Present: Representatives Franks, Chabot, Forbes, King, Jordan, Nadler, Conyers, and Scott.

Staff present: (Majority) Paul Taylor, Subcommittee Chief Counsel; Sarah Vance, Clerk; (Minority) David Lachmann, Subcommittee Staff Director; and Veronica Eligan, Professional Staff Member.

Mr. FRANKS. Pursuant to notice, the Subcommittee on the Constitution meets today to consider H.R. 997, the "English Language Unity Act of 2011."

Let me first thank Subcommittee Member Steve King for introducing H.R. 997. This legislation currently has 121 bipartisan cosponsors.

The great observer of America, Alexis de Tocqueville, wrote that, "The tie of language is perhaps the strongest and most durable that can unite mankind." Indeed, only through a common language can a diverse people come to understand one another and solve problems together. A common language facilitates friendships, commerce, and community.

Yet today, more and more Americans do not share a common language. And without a common language, they cannot share fully in the American community.

In 1900, 85 percent of the immigrant community was fluent in English, but 100 years later that fluency rate dropped to 68 percent despite great advancements in communications technology.

The Census Bureau has predicted that by 2044, a majority of people residing in the United States will speak a language other than English. When a country has more and more immigrants who do not share a common language, more and more members of those non-English speaking communities tend to keep to themselves because they can. They interact less with the English-speaking community and form insular communities within communities. As a result, they are exposed to fewer and fewer social, educational, and business opportunities. And our whole Nation suffers.

H.R. 997 requires that government functions be carried out in English with common sense exceptions for communications required by concerns related to health and public safety, trade, and national security.

Making English the official language, as a good majority of the States have done, would provide the encouragement needed to incentivize more immigrants to embrace a common language once again.

English policies are widely popular. According to a May 2010 Rasmussen Report survey, 87 percent of Americans believe English should be our official language. A more recent Harris Interactive poll released on July 9, 2012, found that 88 percent of respondents agree that English should be the official language of the United States, including 96 percent of Republicans, 83 percent of Democrats, and 89 percent of Independents. The results showed 89 percent of males, 87 percent of females, and 83 percent of Hispanics agree that English should be America's official language.

Making English our official language is also widely supported among immigrants. A Zogby poll showed that more than three in four immigrants to the United States favored legislation making English the official language, as did nearly 60 percent of first generation and 79 percent of second generation Americans.

As it happens, my own wife is an example of an immigrant who feels this way. She came to this country as a teenager, from the Philippines. She speaks the better part of four languages. But she has said unequivocally that her entire family's commitment to learning English as their primary language remains the primary reason for the family's success in America. In her native country, the population speaks an estimated 175 languages. How many languages are used on the Philippine election ballots? One. Which language is used? English.

There is a reason for this. Having one unifying language that is the most common to all groups is the most efficient way to carry out government functions. So many things do, in fact, get lost in translation, and this is a risky enterprise when dealing with something as basic as the franchise to vote.

To take a risk of having numerous slight variations for a ballot initiative risks the integrity of the initiative. This is just one of the many examples why a single language is critical; I believe the time has come for America to join the other 56 countries who have made English their official language. I look forward so much to hearing from our witnesses here today.

And I now yield to the Ranking Member for 5 minutes.

[The bill, H.R. 997, follows:]

I

112TH CONGRESS
1ST SESSION

H. R. 997

To declare English as the official language of the United States, to establish a uniform English language rule for naturalization, and to avoid misconstructions of the English language texts of the laws of the United States, pursuant to Congress' powers to provide for the general welfare of the United States and to establish a uniform rule of naturalization under article I, section 8, of the Constitution.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2011

Mr. KING of Iowa (for himself, Mr. GOHMERT, Mr. JONES, Mr. TURNER, Mr. ROSS of Florida, Mr. WESTMORELAND, Mrs. BACHMANN, Mr. POSEY, Mr. BROUN of Georgia, Mr. LATOURETTE, Mr. WITTMAN, Mr. ROE of Tennessee, Mr. BURTON of Indiana, Mr. ROKITA, Mr. BARTON of Texas, Mrs. BLACKBURN, Mr. LONG, Mr. SCHOCK, Mr. COFFMAN of Colorado, Mr. BUCHANAN, Mr. MCCAUL, Mr. SAM JOHNSON of Texas, Mr. ROHRABACHER, Mr. LATTA, Mr. NEUGEBAUER, Mr. JORDAN, Mrs. EMERSON, Mr. GARY G. MILLER of California, Mr. HERGER, Mr. CAMPBELL, Mrs. ADAMS, Mr. WILSON of South Carolina, Mr. BARTLETT, Mr. DREIER, Mr. SULLIVAN, Mr. LAMBORN, Mr. DAVIS of Kentucky, Mr. BACHUS, Mr. ROGERS of Michigan, Mr. PAUL, Mr. DUNCAN of Tennessee, Mr. MCCOTTER, Mr. GINGREY of Georgia, Mrs. MCMORRIS RODGERS, Ms. FOXX, Mr. SIMPSON, Mr. MCCLINTOCK, Mr. MILLER of Florida, Mr. TIBERI, Mr. SCALISE, Mr. FRANKS of Arizona, Mr. SMITH of Nebraska, Mr. GOODLATTE, Mr. FLEMING, Mrs. MYRICK, Mr. RIGELL, Mr. HARRIS, Mr. JOHNSON of Ohio, Mr. WEST, Mr. WALBERG, and Mr. CHABOT) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To declare English as the official language of the United

States, to establish a uniform English language rule for naturalization, and to avoid misconstructions of the English language texts of the laws of the United States, pursuant to Congress' powers to provide for the general welfare of the United States and to establish a uniform rule of naturalization under article I, section 8, of the Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "English Language Unity Act of 2011".

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) The United States is comprised of individuals from diverse ethnic, cultural, and linguistic backgrounds, and continues to benefit from this rich diversity.

(2) Throughout the history of the United States, the common thread binding individuals of differing backgrounds has been the English language.

(3) Among the powers reserved to the States respectively is the power to establish the English language as the official language of the respective States, and otherwise to promote the English language within the respective States, subject to the

prohibitions enumerated in the Constitution of the United States and in laws of the respective States.

SEC. 3. ENGLISH AS OFFICIAL LANGUAGE OF THE UNITED STATES.

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

"CHAPTER 6—OFFICIAL LANGUAGE

"§ 161. Official language of the United States

"The official language of the United States is English.

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

"Representatives of the Federal Government shall have an affirmative obligation to preserve and enhance the role of English as the official language of the Federal Government. Such obligation shall include encouraging greater opportunities for individuals to learn the English language.

"§ 163. Official functions of Government to be conducted in English

"(a) OFFICIAL FUNCTIONS.—The official functions of the Government of the United States shall be conducted in English.

"(b) SCOPE.—For the purposes of this section, the term 'United States' means the several States and the

1 District of Columbia, and the term 'official' refers to any
2 function that (i) binds the Government, (ii) is required
3 by law, or (iii) is otherwise subject to scrutiny by either
4 the press or the public.

5 "(c) PRACTICAL EFFECT.—This section shall apply
6 to all laws, public proceedings, regulations, publications,
7 orders, actions, programs, and policies, but does not apply
8 to—

9 "(1) teaching of languages;

10 "(2) requirements under the Individuals with
11 Disabilities Education Act;

12 "(3) actions, documents, or policies necessary
13 for national security, international relations, trade,
14 tourism, or commerce;

15 "(4) actions or documents that protect the pub-
16 lic health and safety;

17 "(5) actions or documents that facilitate the ac-
18 tivities of the Bureau of the Census in compiling any
19 census of population;

20 "(6) actions that protect the rights of victims of
21 crimes or criminal defendants; or

22 "(7) using terms of art or phrases from lan-
23 guages other than English.

"§ 164. Uniform English language rule for naturalization

"(a) UNIFORM LANGUAGE TESTING STANDARD.—All citizens should be able to read and understand generally the English language text of the Declaration of Independence, the Constitution, and the laws of the United States made in pursuance of the Constitution.

"(b) CEREMONIES.—All naturalization ceremonies shall be conducted in English.

"§ 165. Rules of construction

"Nothing in this chapter shall be construed—

"(1) to prohibit a Member of Congress or any officer or agent of the Federal Government, while performing official functions, from communicating unofficially through any medium with another person in a language other than English (as long as official functions are performed in English);

"(2) to limit the preservation or use of Native Alaskan or Native American languages (as defined in the Native American Languages Act);

"(3) to disparage any language or to discourage any person from learning or using a language; or

"(4) to be inconsistent with the Constitution of the United States.

"§ 166. Standing

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

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of title 4, United States Code, is amended by inserting after the item relating to chapter 5 the following new item:

"CHAPTER 6. OFFICIAL LANGUAGE".

SEC. 4. GENERAL RULES OF CONSTRUCTION FOR ENGLISH LANGUAGE TEXTS OF THE LAWS OF THE UNITED STATES.

(a) IN GENERAL.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following new section:

"§ 9. General rules of construction for laws of the United States

"(a) English language requirements and workplace policies, whether in the public or private sector, shall be presumptively consistent with the Laws of the United States; and

"(b) Any ambiguity in the English language text of the Laws of the United States shall be resolved, in accordance with the last two articles of the Bill of Rights, not to deny or disparage rights retained by the people, and

to reserve powers to the States respectively, or to the people.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 1, is amended by inserting after the item relating to section 8 the following new item:

"9. General Rules of Construction for Laws of the United States.".

SEC. 5. IMPLEMENTING REGULATIONS.

The Secretary of Homeland Security shall, within 180 days after the date of enactment of this Act, issue for public notice and comment a proposed rule for uniform testing English language ability of candidates for naturalization, based upon the principles that—

(1) all citizens should be able to read and understand generally the English language text of the Declaration of Independence, the Constitution, and the laws of the United States which are made in pursuance thereof; and

(2) any exceptions to this standard should be limited to extraordinary circumstances, such as asylum.

SEC. 6. EFFECTIVE DATE.

The amendments made by sections 3 and 4 shall take effect on the date that is 180 days after the date of the enactment of this Act.

○

Mr. NADLER. Thank you, Mr. Chairman. Having already spent an extraordinary amount of Committee time and resources in an effort to roll back the civil rights of women, persons with disabilities, gay and lesbian Americans, and other minorities, our majority colleagues are now taking their last opportunity to highlight a bill that would place at risk the 24 and a half million people in the United States who need language assistance from their government in some situations.

H.R. 997 does nothing to help these individuals learn English and to assure that, in the meantime, they are brought into the mainstream of American life.

English is universally acknowledged as the common language of the United States. Government proceedings and publications are always performed or provided in English, though in some instances augmented by other languages when necessary for effective communication with the constituents that we serve.

These additional means of communication do not threaten us as a people or a Nation. On the contrary, they prove that beyond our common language, what truly unifies us is a shared commitment to the principles upon which this Nation was founded and flourishes—freedom of speech, equal protection of laws, and representative democracy.

That shared commitment is unquestionably tested at times. Efforts to use the force of law to prohibit the use of languages other than English are not new, nor is the fact that these restrictions often have been put in place because of anxiety and distrust of new immigration populations

In the aftermath of World War I, for example, when anti-German sentiment was running high and large numbers of European, including many German immigrants, were coming to this country, some States passed laws prohibiting the teaching of any language other than English in their schools.

My colleagues on this Subcommittee should be familiar with the Supreme Court case which struck that law down, *Meyer v. Nebraska*, because it is one of the leading cases establishing the fundamental right of parents to guide the upbringing of their children, the subject of a recent Subcommittee hearing, and a proposed constitutional amendment introduced by our distinguished Chairman.

As the Supreme Court admonished in *Meyer*, the desire to assure that immigrants to this country learn and speak English, a claimed purpose both of the law in *Meyer* and of the bill that we are considering today, "cannot be coerced by methods which conflict with the Constitution. A desirable end cannot be promoted by prohibited means."

The Alaska Supreme Court cited this passage from *Meyer* in *Alaskans for Common Language v. Kritz*, finding that Alaska's requirement that English be used for all government functions and acts violates the 1st Amendment. That law, as would H.R. 997, deprived government officials, agents, and employees of the ability to communicate with the public. It also prevented individuals from accessing vital information and services from the government, prevented effective communication with the government, and infringed on the constitutional right to petition the government for redress of grievances.

As the Alaska Supreme Court noted, if the purpose of the law truly is to promote, preserve, and strengthen the use of English, then creating and funding programs promoting English as a second language is a far less restrictive means of achieving that goal. This is what our Constitution requires, and it is what we as elected officials should demand.

Laws like H.R. 997, which provide no affirmative support for those with limited English proficiency, but as the Alaska Supreme Court put it, "merely create an incentive to learn English by making it more difficult for people to interact with their government," have no place in our constitutional scheme.

These laws also should trouble us because, while proponents claim that their purpose is to unite the Nation, these proposals divide us by sending a clear message that no one is welcome here until and unless they are fluent in English. But this cannot possibly be true. All of us represent multilingual communities. The district I represent is home to people who speak Spanish, Yiddish, Creole, Russian, Arabic, Hebrew, Chinese, Vietnamese, French, Korean, Portuguese, Wolof, Ukranian, Italian, and German, to name just a few.

Our communities work because we have mutual respect for each other, our different religions, traditions, cultures, and languages, as well as shared values and a common belief in the American Dream.

Unfortunately, there is reason to suspect that proponents of English only laws are not interested in ensuring inclusion in this American Dream, but instead seek to bar our newest immigrants from its achievement. We need look no further than experience in Iowa to confirm that this fear is not unfounded. Representative King championed legislation in Iowa that is nearly identical to H.R. 997 while a member of the State legislature. While campaigning for passage of his law in Iowa, Representative King said the law would not prohibit government usage of other languages, and to illustrate this claim, explained that "If the Storm Lake policy chief wanted to post signs in 5 languages, he would be allowed to do as long as one of the languages included English." Once the law was passed, however, Representative King sued the Secretary of State for providing online registration forms in other languages in addition to forms provided in English.

H.R. 997 unquestionably poses the same threat to the protections for language minorities in the Voting Rights Act, particularly given Representative King's efforts to remove those protections during our most recent reauthorization of the VRA. Perhaps in his testimony, Representative King can clarify exactly how H.R. 997 will impact voting rights, and whether his provision granting standing for anyone claiming injury the law is intended to allow him to sue government officials for the usage of language other than English.

I would also like to hear why Representative King did not include in H.R. 997 a provision from his Iowa bill that allowed "any language usage required by or necessary to secure the rights guaranteed by the Constitution and laws of the United States of America, or the Constitution of the State of Iowa."

As we consider this bill, let us not forget that we are a Nation of immigrants and that this has made us stronger, not weaker. As

we will hear from our colleague from Texas, Representative Charlie Gonzalez, and from Florida State Senator Rene Garcia, those who are new to American embrace English and learn it as fast and as well as they can. They do so because English is the unquestionable gateway to opportunity, but also because it allows them to become part of the fabric of this great Nation. There simply is no legitimate need for official English or English only bills like H.R. 997.

With that, I yield back the balance of my time.

Mr. FRANKS. I thank the gentleman. And I now yield to the distinguished Member of the full Committee, Mr. Conyers, for his opening statement.

Mr. CONYERS. Gracias, Senor Presidente. Bueno, estamos aqui otra vez, en este ultimo dia del periodo de sesiones antes de regresar a nuestros distritos para mas de un mes, considerando legislacion divisiva sobre un problema social que—desafortunadamente—no tiene posibilidad de convertirse en ley.

La legislacion que estamos considerando hoy, la "Ley de la Unidad de Idioma Ingles del dos mil y once" es a la vez mal llamada y, yo creo, hara mucho dano a esta nacion.

H.R. 997 no promovera la unidad, como lo sugiere el titulo.

Limitando nuestra vida publica a un solo idioma no nos haceremos mas unidos. Lo que nos une no es una lengua, pero los ideales compartidos que hace los Estados Unidos el pais grande y unico que es.

H.R. 997 excluira a muchas personas de la ciudadania plena, haciendo mas dificil la participacion en transacciones simples, como conseguir una licencia de conducir o inscriber a sus hijos para la escuela, o acceder a otros servicios.

Excluyera a personas de nuestra democracia, trayendo de vuelta las desacreditada—e ilegal—pruebas que una vez mantuvo a los pobres, las minorias y los inmigrantes fuera de las urnas.

Esta legislaction esta en contradiccion con nuestra historia.

Somos una nacion de inmigrantes y somos una nacion de personas que llegaron aqui hablando muchas diferentes idiomas. Lo que mantiene a esta nacion junta son los valores compartidos y la creencia compartida en los valores Americanos de libertad, democracia e igualdad de oportunidades.

Hoy en dia, los inmigrantes de Asia o America Latina son los objetivos de la demonizacion y la discriminacion. Un dia, nuestro pais mirara hacia atras a este periodo con verguenza y arrepentimiento.

Esta legislacion no reconoce que somos, y siempre hemos sido, una nacion multilingue.

Puedo ver ningun efecto—sea cual sea la intencion—ademas de excluir a personas de su plena participacion en el sueno Americano. Peor aun, la legislacion envia un mensaje de que estas personas no son bienvenidos, que son ciudadanos de segunda clase.

Quiero dar la bienvenida a neustros testigos, y espero con interes escuchar su testimonio.

[The English language translation of the opening statement of Mr. Conyers follows:]

Statement of the Honorable John Conyers, Jr.
Hearing on H.R. 997, the English Language Unity Act"

Subcommittee on the Constitution
Thursday, August 2, 2012

Thank you, Mr. Chairman.

Well, we're back again, on this last day of our session before we go home to our districts for more than a month, taking up divisive social issue legislation that – thankfully – has no chance of becoming law.

The bill we are considering today, the "English Language Unity Act of 2011" is both misnamed and will, I believe, do this nation a terrible disservice.

H.R. 997 will not promote unity as the title suggests.

Limiting our public life to a single language will bring us all closer together. What unites us is not a language, but shared ideals that make America the great and unique country it is.

It will exclude many people from full citizenship, making it harder

for them to engage in simple transactions like getting a drivers' license or registering their children for school, or accessing other services.

It will exclude people from our democracy, bringing back the long discredited – and illegal – literacy tests that once kept the poor, minorities, and immigrants out of the polls.

This bill is at odds with our history.

We are a nation of immigrants, and we are a nation of people who arrived here speaking many different languages. What holds this nation together are shared values, and a shared belief in the American values of freedom, democracy, and equal opportunity.

Today, immigrants from Asia or Latin America are the targets of demonization and discrimination. One day, our nation will again look back on this period with shame and regret.

This bill fails to recognize that we are, and always have been, a multi-lingual nation.

I can see no effect – whatever the intent – other than to exclude

people from full participation in the American Dream. Worse still, it sends a message that these people are not welcome, that they are somehow second-class Americans.

I want to welcome our witnesses, and I look forward to hearing their testimony.

Mr. FRANKS. The gentleman's time has expired, and I——

Mr. SCOTT. I want to make sure that the court reporter got all that down. [Laughter.]

Mr. FRANKS. I want to thank the gentleman. My wife certainly would have understood his statement. As it happens, I do not. But I would ask the gentleman in the interest of fairness and certainly

to Mr. Nadler's district, would you repeat that in Yiddish, and Vietnamese, and French as well? [Laughter.]

Mr. CONYERS. When is the next hearing, sir?

Mr. FRANKS. I suppose——

Mr. CONYERS. I would be delighted to accommodate your request.

Mr. FRANKS. Nothing would make the point better if we conducted all of our debates in different languages. And, I suppose that makes the case for this bill better than anything else. I certainly appreciate the gentleman's gesture, but it does indicate why it would be even more confusing in this place than ever if all of us spoke a different language.

So with that, I would yield to Mr. Forbes. I understand that you do not have an opening statement. So I guess we will move forward.

So I will recognize then myself for 5 minutes for questions. No, I am sorry. I am sorry. See, I am quite confused. Again, the point is made once again.

So I will now turn to our witnesses. Here we go. All right.

Let me now introduce the witnesses on our first panel. Steve King has represented the Fifth District of Iowa since 2002. He is also a Member of the Constitution Subcommittee. Mr. King is the chief sponsor of H.R. 997, the English Unity Act.

Charles Gonzalez has represented the 20th District in Texas since 1998. He serves currently on the House Committees on Energy and Commerce and House Administration. I want to thank you both so much for appearing before us today.

Each of the witnesses' written statements will be entered into the record in its entirety. I would ask that witness summarize his testimony in 5 minutes or less. And to help you stay within that time. there is a timing light on your table. When the light switches from green to yellow, you will have 1 minute to conclude your testimony. When the light turns red, it signals that the witnesses' 5 minutes have expired.

Before I recognize the witnesses, it is the tradition of this Committee that they be sworn. So if you would please stand.

[Witnesses sworn.]

Mr. FRANKS. Please be seated. And I will now recognize our first witness for 5 minutes, Mr. King. Would you turn that microphone on? We are always missing that, sir.

TESTIMONY OF THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. KING. Thank you, Mr. Chairman. It has been an interesting introduction here with the statements of the Members. I was going to start out with a Tower of Babel discussion, but I think I will pass that. Mr. Conyers perhaps has made my point on that for me.

I would take this back to the narrative from when I got interested in official language issues. And that was, as I heard the story from my father, who my grandmother, Freda Katrina Yohanna Harm King, came over from Germany with her family, they were a German-speaking household. And my father grew up in a German-speaking household.

He went to school on his first day of kindergarten speaking German, and kindergarten, of course, is a German word, so they

should not have been very shocked at heading off to kindergarten. But it was a whole new experience for him in that classroom that was in English. And when he came home, he walked into the door of the house, and he said hello to his mother in German. She turned to him and said, speaking German in this household is for you, from now on, verboten. I came here to become an American, and that means learning and speaking English. And you will go to school and learn English, and bring it home, and teach it to me.

My father was the last of seven children to actually speak any German. The rest of them learned English. And their family converted to English because the kids went to school, brought it home, and taught it to their mother. The father did speak English, but he was working quite a lot.

So I got interested in it that way. I gave a speech on October 10th of 1996 as a candidate for the State Senate, and I just happened to mention that I thought English should be the official language of the State of Iowa. About 150 people there erupted in applause, and it surprised me that it went that deep into the nerve center.

A reporter began to attack me for my position, which I began to defend. I ended up in the Iowa Senate as the chief sponsor and author of English as the official language of the State of Iowa. It took 6 years. We wrote the bill and refined it. But it is important to say English is the official language.

If you look around the world and you think how the city-states merged into nation-states, why did they, especially in western Europe and eastern Europe? Primarily around the lines of language, because language, a common language, is the most powerful unifying force known throughout history, throughout all humanity, and all time.

It is stronger than the forces of tribe, or race, or ethnicity, or common experience, or common history. It is stronger even than religion. If people can communicate with each other, they are bound together. If they cannot communicate, they are bound to separate. The lesson of the Tower of Babel tells that. How did God scatter the people to the four winds? Because He scrambled their language.

We saw an example of that this morning. As much as we are amused, we still stopped listening. We need to bind our country together.

When I sat in testimony before the Small Business Committee with George Bush's second-in-command on the Department of Labor, and I asked the question, I understand why you cannot hire people and train them to run a punch press or a lathe because they do not understand English. But are you having a second generation problem there? They said, yes. Not only that, third generation problem.

We have language enclaves all over this country, and I know that we are going to bring in immigrants. I welcome them. But, they expect to arrive in a country that has an official language. And if you look around the world at the numbers of countries there are conflicting analyses of that.

I did one where I opened up an almanac, and I took every country that had a flag. I looked it up—and at this time the World Book

Encyclopedia—every other country had an official language according to that research. There are a couple, three exceptions out there in the world otherwise.

Some have more than one official language. Singapore has English as an official language. It is pretty interesting that other countries saw the wisdom in this, and here in the United States we have not been able to get there.

Noah Webster wrote the American English Dictionary for the purpose of uniting the American people. He saw that among the colonies where he traveled, that there were colloquialisms that were arising, and new languages were emerging because people did not travel and interact with each other enough. So, he wrote the American English Dictionary for the purpose of binding the American people together.

Thank God English is the common language in this country. It has bound us together. We need to make it the official language because there are efforts in this country to fracture this and divide it. Going clear back to 245 B.C., the first emperor of China, whom I pronounce Qin Shi Huang, and the Chinese always correct me on that pronunciation. He identified that the Chinese spoke different languages, at least 300 different dialects all over the landscape where they are today as one China.

He hired scribes to write the Chinese language for the purposes of binding the Chinese people together for, "the next 10,000 years." Well, it is has worked pretty good for the next 2,500 years. There is no sign of that fracturing that I can see.

We are a Nation that should be able to look across history, humanity, culture, economics, and know that we are blessed to have English as our common language. We need to make it our official language. It is the official language of the maritime industry, the air traffic controllers, and something that I have enjoyed sitting at the round table at the EU as the official language of the European Union, although sometimes you hear it with a French accent.

Thank you, Mr. Chairman, and I yield back.

[The prepared statement of Mr. King follows:]

Prepared Statement of the Honorable Steve King, a Representative in Congress from the State of Iowa

Mr. Chairman, Ranking Member Nadler, Members of the Judiciary Subcommittee on the Constitution,

Thank you for inviting me to appear today in support of my bill, H.R. 997, the English Language Unity Act, which will enshrine English as the official language of the United States. More than 122 Members of Congress have signed on as cosponsors.

More than 22 centuries ago, China was populated by scores of warring tribes and competing sub-cultures. They wore similar clothing, ate similar foods, and had similar ways of life. But they spoke different languages. Qin Shi Huang, the first emperor of China, had a vision to create a unified China that would last for the next ten thousand years. Qin Shi Huang standardized units of measure, currency, wheel spacing of carts, and commanded scribes to create an official written Chinese language. All of China then communicated in the same language.

A common language is the most powerful unifying force the world has ever known. It is more powerful than race, color, religion, sex or national origin. The unifying official language does not have to be English, yet we are fortunate the common language of the United States of America is English. English is the international language of commerce, politics, maritime, and of air traffic control. English is an incredible unifying force uniting America, knocking down ethnic, religious, and cultural barriers to make us one and is the modern *lingua franca* of the world. Today as we rally for unity and patriotism, our common form of communications currency binds us together and propels us toward our destiny.

Noah Webster had a vision 2,000 years after Qin Shi Huang. Webster realized the language of former colonists was degenerating into colloquialism on its way to dialects that would become incomprehensible to all but the locals. Webster wrote the American English Dictionary because he feared the fracturing of American along the lines of language. Webster's goal was the same as Qin Shi Huang's - but to unify the United States of America for all time through a common language.

I've always admired my grandmother who sent my father to school as a German-speaking son of an immigrant. Upon his return home from the first day of kindergarten, my father's first words to his mother were in German. She said to him in the sharpest of terms, "speaking German in this household is for you, from now on, verboten. I came here to become an American. You will go to school to learn English and bring it home and to teach it to me."

In 2002, as a state senator, I authored and led the the successful effort to pass official English legislation into Iowa law. Each session, since being elected to the U. S. Congress, I've introduced the "English Language Unity Act" (H.R. 997). In a survey conducted by the Rasmussen Group in 2010, 87 percent of Americans expressed their support for making English the official language of the United States. Other polls taken on a state-by-state basis have indicated similar support and to date, thirty-one states have passed similar English-language statutes.

My grandmother realized that learning English enabled generations of Americans to achieve the American dream through opportunity and liberty. Multiple studies continue to prove those who learn

English have better jobs, better pay, and are better served by others than those who are English challenged. Learning English decreases reliance on government and increases personal freedom.

The need for English as the official language appears in our newspapers every day – injuries in the workplace, mistranslations at hospitals, people who are unable to support themselves and their families – all because they could not speak English. Additionally, government spends billions for multilingual translations, printing costs, and miscommunications. Language enclaves are actually encouraged even though they are the very antithesis of assimilation.

Hebrew, as a conversational language, was dead for two thousand years until a century ago when the Jewish people restored Hebrew for the specific purpose of unifying Jews to form a nation. What model did they use? America! Because we were so successful in assimilating diverse people. Israel was recognized as a nation in 1948, just half a century after the effort began. The Hebrew language ties Israelis to their heritage, to their faith, and their nation.

There is no unifying force more powerful - not race, not color, not religion, not sex, not national origin - that binds people together more effectively than a common language. I encourage my colleagues to join me in supporting the English Language Unity Act.

3

Mr. FRANKS. And I thank the gentleman. And I now recognize Congressman Gonzalez for 5 minutes. Thanks for being here, sir.

TESTIMONY OF THE HONORABLE CHARLES A. GONZALEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GONZALEZ. Mr. Chairman, Ranking Member Nadler, Hermano Conyers, and Members of the Subcommittee. I am grateful for this opportunity to testify before you today.

I have never understood the motivations of those who believe either our country or our language needs to be "protected" by a law like H.R. 997.

Let us leave aside for now the questionable use of the word English in the bill's title instead of what H.L. Mencken called the "American language." Maybe it is because I had such good teachers as a child that I learned the power and majesty of English. And so I have no fear that the language of Shakespeare and Twain needs a Federal law to protect it.

Maybe it is because I have known Americans for whom English was not their first language, and seen firsthand their burning desire to learn to speak the language in which our Constitution and our laws are written.

The French have a government agency to protect their language because our language so dominates their world, from commerce to culture, that they feel threatened. I have never had such worries about our commerce and our culture. This bill would certainly change our American culture.

For most of our history, this country has welcomed immigrants. They have made us stronger, economically and otherwise, and their very desire to come to this country is a recognition of our national strength.

Now there have been vocal minorities who did not share faith in the strength of our American culture. Even Benjamin Franklin, as reported in an essay by Dennis Baron, and out of the essay I will quote, "considered the Pennsylvania Germans to be a 'swarthy' racial group, distinct from the English majority in the colony. In 1751 he complained, "Why should the Palatine Boors be suffered to swarm into our settlements, and by herding together establish their language and manners to the exclusion of ours? Why should Pennsylvania, founded by the English, become a colony of aliens who will shortly be so numerous as to Germanize us instead of our Anglifying them, and will never adopt our Language and Customs any more than they can acquire our Complexion.'"

In the mid-19th century, they called themselves the American Party and bragged that they were defending from the imminent destruction that would be wrought by criminal immigrants—Catholics from Ireland and Germany. Most Americans called them Know-Nothings, and their ignorant bigotry is justly condemned.

In the later 19th century, we heard of our imminent demise at the hands of the "Yellow horde" of Chinese immigrants. And it is not yet 2 months since the House expressed our regret for that lengthy fit of unjustifiable bigotry.

These cries of our imminent demise by assorted alarmists were wrong then and they are wrong now. Do we really want to return to the mindset of a century ago when a man could testify to Congress about immigrant laborers and say, "These workers don't suffer—they don't even speak English."

We are a country, and a strong country, when and because we act as one, when, "We the People," "establish Justice, insure domestic Tranquility, provide for the common defence, [and] promote the general Welfare." We the people speak with accents from Texas and New York. Anyone who has listened to the Chairman and Ranking Member of the Financial Services Committee when they

converse might wonder if they were indeed speaking the same language.

We speak English and Inuit. We are one because we will it so. The United States is about what we do, not how we describe it. That is why back in 1787 the Constitution was translated and printed in German so that the non-English speaking minority in Franklin's Pennsylvania, which would become the second State to ratify our Constitution, could fully participate in the ratification debate.

What that means, Mr. Chairman, and Members of the Subcommittee, is that our founding document, under and from which we derive all our authority as a Congress, is the result of the opinions and votes of men who did not even speak the language.

While the tradition of printing some public documents in German continued well into the 20th century, it died out because, then as now, everyone living here, especially American citizens, finds life easier if they speak and learn English. We do not need to go out of our way to punish non-English speakers. The opportunity to enjoy all of the attributes of this great country is more than enough of an incentive. There is no need for H.R. 997 as is evidenced by the 97 percent of Americans who speak English.

Again, thank you very much, Mr. Chairman, and Members of the Subcommittee.

Mr. FRANKS. I thank the gentleman. The votes have been called, but we are going to go ahead and try to get started, and we will be returning right after votes. I thank you both for your testimony, and I will begin the questioning by recognizing myself for 5 minutes.

Mr. King, is there anything you heard from the opposing witness that you would like the opportunity to respond or to clarify?

Mr. KING. I heard some of the language about the Know-Nothings, and I am thinking about some of the bias and prejudice against the Irish. That has all gone on. But, I am also thinking about third generation Americans today that do not speak English well enough to be trained to work in a factory. It is a disadvantage for them. This is an economic opportunity to encourage people to learn English.

And I do not know that there are third generation Germans in Pennsylvania that did not get a handle on the English language.

I would also make the point that this bill does not, and no one alleged otherwise, but this bill does not go in and amend any components of the Voting Rights Act or other provisions that are there in statute. But what it does do, and I did not put this into my testimony, it does address Bill Clinton's Executive Order 13166. Not specifically, but the general language I believe does nullify President Clinton's executive order which essentially says we are going to promote multiple languages and utilize that, and provide interpreters. This goes the opposite way.

The Constitution that Mr. Gonzalez talked about being interpreted into German, well, it just would not be official. It would be a German version, an unofficial version. The official version would

be in English. That is common form of communications currency, and language is just like the euro.

Mr. FRANKS. Well, Mr. King, your English bill became law in Iowa. What has been your perspective of the impact?

Mr. KING. Well, at first there was a defiance of it on the part of then Secretary of State, as he was campaigning for governor, Chet Culver, the most recent Democratic governor that we have had. He as Secretary of State printed voter registration documents and absentee ballot requests in multiple languages. I sent a letter to him and asked him to withdraw those because it directly violated. They are official documents after all that directly violated Iowa statute.

He did not. I do not recall if he actually answered. Quite often they just do not. And as so, I had to take him to court, and the court enjoined that activity that he was carrying on. He was subsequently elected governor, but the Secretary of State has been bound by the law from this point.

That is the only thing. Otherwise, there was an intense opposition to it from a very small percentage of people that mounted a very energized effort. And once we just dealt with that argument, it went away. And there has not been an issue in Iowa since then other than the case that I mentioned.

Mr. FRANKS. Mr. King, why do you think over 90 percent of all Nations have designated at least one official language for day-to-day government operations and official communications? Are they discriminating?

Mr. KING. Well, that was kind of an interesting piece of it, too, the allegation of discrimination. And it must be to the rest of the world. They understand that you cannot operate in multiple languages.

If you think in terms of, for me I spent in the contracting business. If you have a contract, you write that contract, and if it is in English, fine, we agree to that definition. But if you had a contract that was in, say, Chinese and in French, how do we resolve that issue here? That is a private sector issue, I understand. But within the government, you need to have a common form. You have got to have something you can go back to and say this is it. This is the official document, and we argue off it. We litigate off it. We debate off it. We provide services off of it.

And so I think it is just the simplest common sense to understand that this is unifying. It is not dividing. It is not an insult to anyone. In fact, the immigrants that come here expect that we have English as the official language because they are primarily, almost exclusively coming from a Nation that has an official language.

Mr. FRANKS. Mr. King, would a Federal official English language law affect how State and local governments operate and implement their own English official language laws, or affect how they administer and offer multilingual services, such as translating documents or taxpayer funded interpreters?

Mr. KING. Well, I do not have the number on what it actually costs us to print in multiple languages as we do. But the interpreters is another cost of this, and I expect we may have some witnesses that will address that as a specific dollar value is concerned.

But the responsibility shifts over from what has been given to the government by Bill Clinton's 13166 Executive Order to the people. And, you know, up until that time, we had always managed, no matter what we had for different languages, people found a way to do business with the government in English up until such time as Bill Clinton introduced that executive order. So, I think that is one of the driving forces on why we need to do this.

The effort on the part of the Federal Government is to, with that directive of Clinton's executive order, promote multilingualism within government. That does not bind us together. You know, I have traveled in foreign countries, and in this country, too. When you see a foreign language on a sign or multiple languages on a sign, like in an airport, I have tried to train myself to be able to read the foreign language, and you just cannot. You do not do that. You revert to the language you are familiar with, and you move on.

So, the more multiple languages we offer as a government, the less likely people are to learn English because they will use the language they are comfortable with.

Mr. FRANKS. Well, thank you, Mr. King. And I would yield to Mr. Nadler for questions. We have 6 minutes, 33 seconds on the clock. Do you want to—I think perhaps he is right. We are going to go ahead and recess the Committee, and we will come back right after votes.

And I apologize. You know how leadership forgot to check with me this morning. [Laughter.]

And so we will return. We are recessed.

[Recess.]

Mr. FRANKS. This hearing will come to order, and we will now resume with questioning. And I will yield to Mr. Conyers for questions for 5 minutes. I am sorry, I am skipping right over the gentleman. I will yield to Mr. Nadler for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. Congressman King, you stated in answer to one of Chairman Franks' questions that your bill would not impact the Voting Rights Act. Yet Section 203 of that law specifically requires certain jurisdictions to provide all voting materials that they provide in English also in the language of a language of a minority, be that Spanish, or German, or Yiddish. This includes voter registration forms.

You sued the Iowa Secretary of State with respect to a nearly identical law. So how can you say that this would not impact the Voting Rights Act, that this would not impact Section 203?

Mr. KING. Well, first I can see that the gentleman has made a point that is worthy of discussion here. And when I brought the suit against the Secretary of State in the State of Iowa, it was on State law as opposed to Federal law.

The Voting Rights Act contains with it covered districts. Those covered districts, I believe, are a different legal question than they are in the broader component of this. Like a lot of legislation, there may be differing opinions on how this would be resolved if it needed. It is hopeful that we come together on a common language and do not have that problem.

Mr. NADLER. Hold on. The covered jurisdictions of Section 5 has nothing to do with this. Section 203 covers the entire country and says that where you have a sufficient foreign language population

as a percentage of the voters, you have to issue all voting materials in English and in some foreign languages. Would your bill change that?

Mr. KING. Well, the Voting Rights Act puts the obligations on the States, and this bill applies to and binds the Federal Government. That is a distinction that is part of this with regard to the Iowa piece. As I interpret——

Mr. NADLER. Are you saying it would not impact that?

Mr. KING. I want to go back and read that section in light of the point that you have raised. And this is Congress——

Mr. NADLER. Is your intent not to affect that?

Mr. KING. It is my wish one day to affect that. I have done so by bringing an amendment to the Voting Rights Act when it was reauthorized on the floor——

Mr. NADLER. Is your intent in this bill to affect that?

Mr. KING. It is not my specific intent to target that particular component. I think that is an unresolved disagreement that we may have.

Mr. NADLER. Well, would you put a provision in the bill to make it clear that that does not affect that?

Mr. KING. I will take a look at the proposal and work with the gentleman from New York if we can come to an agreement.

Mr. NADLER. Okay. Now your Iowa bill has an exception, Iowa Code Section 1.184(h) for "any language usage required by or necessary to secure the rights guaranteed by the Constitution and the laws of the United States or the Constitution of the State of Iowa." You did not include similar language to provide that exemption in H.R. 997. Was there a specific reason why that language is not included?

Mr. KING. In response, I would look at Section 165 and sub (4). It says in the bill, "Nothing in this chapter shall be construed to be inconsistent with the Constitution of the United States." I believe we do not need to address the Constitution of the State of Iowa in this bill.

Mr. NADLER. So in your interpretation, it would have the same effect as that language, that it would not affect any language usage required by or necessary to secure the rights guaranteed by the Constitution of the United States? Would that be the same effect?

Mr. KING. Yes. And that is the intent.

Mr. NADLER. Okay.

Mr. KING. And really, I think we would agree in this Constitution Subcommittee that it is a bit redundant to even have this language in here that I have addressed that could be inconsistent with the Constitution of the United States, because we are the Constitution Subcommittee and it ought to be constitutional when it comes out of here.

Mr. NADLER. Thank you. Chairman Franks asked what impact H.R. 997 would have on State laws. Specifically, would this override States laws, particularly those State laws that might allow or require the use of languages other than English? Would it restrict States government officials or employees, or is this only for Federal laws and Federal Government employees?

Mr. KING. It addresses Federal functions and activities, not State functions and activities.

Mr. NADLER. So if the State law requires usage of foreign languages in certain situations, it would not affect that.

Mr. KING. Provided that it is not a Federal function, yes, an official Federal function.

Mr. NADLER. And what about State—well, given the fact that the bill defines the Federal Government as including State and local governments, I do not know that a court would interpret the law that way.

Mr. KING. We address the official functions of government, the official business of the Federal Government. If it is the official business of a State government, we are not addressing that. But it says any function that binds the government is required by law——

Mr. NADLER. But not to question——

Mr. KING [continuing]. To scrutiny.

Mr. NADLER. Not the question of the official function. I asked about would it affect State laws. And the bill says, "For the purposes of this section, the term 'United States' means the several States and the District of Columbia." So in other words, as I read the bill, whenever it refers to the United States, you are also referring to the States, so it would bind the States and would—and not only for Federal functions. In other words, it would, as I read it, say that the States could not use foreign language materials period. Now if that is not your intent, which you stated it is not, you might want to clarify that.

Mr. FRANKS. The gentleman's time has expired, but the witness can go ahead and answer the question.

Mr. KING. I thank the Chairman. We have language in the bill that reserves the rights back to the States for the 9th and 10th Amendment that addresses that, I believe, Mr. Nadler. So I think we are comfortable this addresses only the Federal Government and does not direct the States in their functions.

Mr. FRANKS. Thank you. I would now recognize the gentleman from Virginia, Mr. Forbes, for 5 minutes.

Mr. FORBES. Mr. Chairman, I want to thank you, and I want to thank you for holding this hearing. I want to particularly thank Mr. King and Mr. Gonzalez for their willingness to come here and talk about this issue.

I think if we step back a moment, one of the things we realize is overwhelmingly a majority of American people want the concept that is embraced in this bill. And I appreciate us having a dialogue. I appreciate Mr. Gonazalez's thoughts and Mr. King's thoughts because all too often when someone brings a concept like this, we are so quick instead of talking about the issues, to try to vilify one another, or to try to mock one another.

And as I was listening to the Ranking Member as he gave his speech, I looked through the audience, and I saw a lot of smiles and even thumbs up in doing that. And I understood that. And the reason I understand it is because when I go to Europe and to have NATO meetings, and someone comes in and they sing a song in English, or they try to speak in English, I want to give them a thumbs up. And I want to smile because I embrace that.

But then what happens is we go in to try to meet, and we have to put on earphones, and we have to have interpreters because some of them are speaking German, and some of them are speak-

ing French, and some of them are speaking Chinese, and some of them are speaking other languages, just like the Chairman said. And when you step back and look at that, it is so difficult to get any kind commonality of understanding to move forward.

And, Mr. Gonzalez, when you mentioned that Mr. King was doing this to protect the English language, I hope you understand, he is not doing this to protect the English language. He does not think the English language is in threat of being abolished.

What it is when sit down as a country, there are folks on this Committee who do not believe we should have any commonality of values. They fight to make sure we do not have those commonality of values. They fight on any kind of commonality of faith. Some of them do not even support the Pledge of Allegiance to the Flag. When we tried to put it in the visitor's center, 6 Members, many of them from this Committee, voted no. Do not even put the Pledge of Allegiance in there because that is too disruptive. It brings us together in a way that we should not.

And what Mr. King's bill tries to do is not protect the English language, but to encourage us to have some basic commonality of communication so that we can find common ground to build a Nation upon and to move forward with solutions that help this Nation. And language is the fundamental aspect of that.

And we would all sit back and we would think how absurd it was if we said we were going to go on the floor in just a few moments for the next bill and debate it and have to put those earphones on, and have all those interpreters. But then when we look at doing the same thing in our warehouses or our manufacturing plants, somehow we think the absurdity of that. And it is not absurd at all.

I think it is a principle that Mr. King has grasped that is something we need to encourage and we need to push forward. And whether it is this bill or whether it is something else, it is not a matter of saying we are going to take language away from folks who speak German, or folks who speak Spanish, or French, or Chinese, or Vietnamese. It is a matter of saying in this country there need to be some things that are common among all of us that we aspire to, and we push them, whether that is through incentives, or whether that is through a piece of legislation, I think it is vitally important to our success as a Nation.

So I commend both of you for coming in here and having this dialogue, and, Mr. King, for bringing forth this particularly piece of legislation. And I hope that we will continue to have this discussion to see how we can move forward on this concept that I think is embraced by a vast majority of people in this country.

And with that, Mr. Chairman, I yield back the balance of my time.

Mr. FRANKS. And I thank the gentleman and associate myself with his comments.

I would now recognize Mr. Scott for 5 minutes.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman.

Mr. King, I was not sure of your answer on the Voting Rights Act. Is this intended to override Section 203 of the Voting Rights Act?

Mr. KING. I am sorry, Mr. Scott, I could not hear your question.

Mr. SCOTT. Is this legislation designed to override the language provisions of the Voting Rights Act?

Mr. KING. As I responded to Mr. Nadler, I want to go back and read that section in light of this. I cannot tell you today that it is designed to override it, but I can tell you that it is——

Mr. SCOTT. Is it intended to override?

Mr. KING. I cannot tell you today that it is intended to override it.

Mr. SCOTT. I am sorry, it is?

Mr. KING. I said I would like to go back and read that section.

Mr. SCOTT. Okay, it is?

Mr. KING. That analysis was done several years ago, and I need to go back and revisit that.

Mr. SCOTT. I am sorry, I did not hear you. Did you say it is or is not intended?

Mr. KING. I said I cannot tell you today that it is designed to override it.

Mr. SCOTT. Okay.

Mr. KING. That analysis was done several years ago, and I would like to go back and reread Section 203.

Mr. SCOTT. Is Medicaid an official function of the United States government?

Mr. KING. It is federally funded, and when it happens within a Federal office, then it is an official function.

Mr. SCOTT. Okay. Now if people want to learn English, they have to take English language classes. Mr. Gonzalez, is it not a fact that most English language courses have waiting lists?

Mr. GONZALEZ. Absolutely, that is one thing that we have encountered. In my district, it is about 62 percent Latino, and depending on the generation, obviously we do attempt to locate the services, and—definitely underserved.

Mr. SCOTT. Is there anything in this legislation that would increase funding so that those who already want to learn how to speak English or learn how to speak English better, is there anything in this legislation that will help them?

Mr. GONZALEZ. I do not see anything. I actually think that this actually will mitigate against those that will assimilate more quickly, learn the English language. I think this sets up a situation for discriminatory practices. I do not believe that if you have someone—and, Mr. Scott, you know, I am not sure if the author and supporters of this bill understand the impact on certain communities that this would have. You know, you have somebody that is an American citizen, has worked, paid their taxes, made their contribution, and have a problem with Social Security or Medicare, or maybe even a widow of an American veteran that may not be English proficient. My understanding is that a government official would not be allowed to conduct business in any other language.

So, I mean, those are just the practical problems that come up, but there is no need for the legislation.21Mr. SCOTT. Well, we have had comments that people should learn English through—you say you have a significant portion of your district that is Latino. Do you find people are unaware that learning English will help them advance in society?

Mr. GONZALEZ. It is the aim of every Latino family in my district to become English proficient. It is something that we always tout and encourage. Mr. Scott——

Mr. SCOTT. Well, will this legislation not alert them to what they do not know?

Mr. GONZALEZ. I think it really is something that is not a positive development in the lives of those that are here learning English. I will speak to a Latino population, and the immigrant. They are no different than any other preceding immigration group that came to the United States. It is generational in nature. That first generation will have a difficult time with English proficiency. By the second, you have made tremendous inroads. By the third, you do not even have a bilingual offspring at that point. You have someone that speaks primarily English.

Mr. SCOTT. And are you suggesting that they do not need this legislation to alert them to the fact that English is a good thing to learn?

Mr. GONZALEZ. And to your point, you are exactly right. This does nothing. And as far as Mr. Forbes about this communal concept, it already exists in this country. This is totally unnecessary. It is the mischief in the unintended or intended consequences of the law that concern me.

Mr. SCOTT. You have language in here that says that all citizens should be able to read and understand generally the English language text of the Declaration of Independence, Constitution, laws of the United States, made pursuant to the Constitution. Last time I saw language like that was where the intent was to deny African-Americans the right to vote under literacy provisions. Where else can you find that kind of language?

Mr. FRANKS. The gentleman's time has expired, but please feel free to answer the question.

Mr. KING. And if it was directed toward me, which I presume it was.

Mr. SCOTT. Yeah.

Mr. KING. I do not know where that language might exist otherwise. And I would be interested in the narrative from the gentleman from Virginia, if he has seen that language as part of their life's experience.

But as a standard here that we wrote into the bill for the purposes of encouraging the learning and understanding of the Declaration and the Constitution and the laws written from it, for the very purpose of encouraging newly-naturalized citizens to learn and understand deeply the history of this country and the founding documents of this country.

And if you have done naturalization services as I have, and I appreciate the chance to do so, they take it very seriously. And when they have a responsibility to learn our historical documents as part of the naturalization process, this Constitution and Declaration, I think, will be written on their hearts. And that is the reason to have it there.

Mr. FRANKS. And I thank the gentleman. And I now recognize the gentleman from Ohio, Mr. Chabot, for 5 minutes.

Mr. CHABOT. Thank you very much, Mr. Chairman. I would like to start off by perhaps asking each of the two witnesses here to

comment on a particular statement. And the statement would be that the surest path to economic, social, and educational prosperity in this country is to learn English.

In either order that the two gentleman would like to respond, I would just be interested to hear what they might like to say.

Mr. GONZALEZ. I do not think you are going to have a debate that English proficiency is something that I think enables and empowers individuals. This is not the way to do it. What do you do with the people that are on the pathway to English proficiency? Do you just forget about them? Do you not inform them, educate them to be more productive citizens simply because they are not English proficient at that point in their lives in this country? That is the problem with this.

Now I see much more behind this but, you know, I am a Congressman; I see all sorts of motive. But the thing is, you are not contemplating real life experiences whether in the past with other immigration groups or what we have at present in the United States today.

Mr. CHABOT. Thank you. And I would just like to comment that you are going to be greatly missed around this place, Charlie.

Mr. GONZALEZ. I am going to miss you, too, Steve.

Mr. CHABOT. Yeah, because he is a fine gentleman, tremendous Member of Congress. And whereas we may differ on issues here and there, including probably this one, you know, he has done a great job for his constituents and the people of this country. So thank you, Congressman Gonzalez.

Mr. GONZALEZ. I really appreciate that.

Mr. CHABOT. Absolutely. And, Congressman King?

Mr. KING. I might say to my friend Mr. Gonzalez, I did not quite recognize his Texas accent today either. But I appreciate the comments around that. And really this is about unity. There are a couple of different ways to look at society, and one of them is that to accommodate people, and eventually their good intentions will overcome the accommodation, and they will adopt English as the official language.

The other side of that is is that for me, I believe in immersion. If I got to a foreign country, as Mr. Forbes said, and if I were going to live there, I do not really want help in the English language because it does not encourage me to adopt the language that I might be operating within.

So many of us have traveled in that way and learned some words of that language because it is necessary to operate in their society. If you have a sign here that says stay off the grass, let us say, in German and another one that says stay off the grass in English, if your natural ability is to read in German, you are not going to read that other sign. You are not going to learn it. I have tried it with stop signs in foreign countries, and it is an accommodation that is unnecessary. It is better for people to be functioning in a common language.

I think we agree with that. We have moved in that direction at least with this dialogue here. How do we go about doing that? There is also language in the bill that I wanted to point out that says such obligation of the Federal Government to function in English, but the obligation also shall include encouraging greater

opportunities for individuals to learn the English language. So part of the intent here, too, is to encourage the learning of the English language, not to shut people out, to be inclusive and empower people by having a common language that ties us together.

Mr. CHABOT. Okay, thank you. Before coming to Congress, I was a schoolteacher. And I would be interested to hear, Steve, your take on how your legislation, or at least what the goal would be as far as children who perhaps do not have English skills, and how they would have a better outcome ultimately in education if they got it quicker and had to learn English more quickly than perhaps some school systems do nowadays. What would your legislation do relative to that, and what is your intention with respect to that?

Mr. KING. Well, if it is an official function of the Federal Government, then it directs those functions to be in English. But it also has exemptions, exceptions, for the teaching of languages and the requirements under the Disabilities Education Act. Those two things are exceptions.

So I do not know that it changes education much within our educational system, except our young people would be educated that English is the official language, if this bill passes, of the United States of America. And it raises the expectation that as an American and American citizen, you have a stronger and broader obligation to learn English that binds us together.

You did not likely hear my opening statement where I told the narrative of my father coming home from his first day in kindergarten speaking only German. As he said hello to his mother in German, she pointed to him and said, speaking German in this household is for you from now verboten. I came here to become an American. That means I have to learn English, and you are going to learn it in school and bring it home and teach it to me.

These things penetrate through the culture, and they are very positive things. There is nothing that discourages the learning of other languages, and, in fact, that is something that we want this country to do. But we want to bind ourselves all together with the common language. It is the most powerful unifying force known throughout all time and humanity.

Mr. CHABOT. Thank you very much.

Mr. FRANKS. I want to thank both of you for coming. And I appreciate the sponsor. Also, Mr. Gonzalez, I express my own very best wishes to you, sir. And we will look to see what is wonderful and great that comes next in your life. Thank you both very much.

Mr. GONZALEZ. Thank you, Mr. Chairman.

Mr. KING. Thank you, Chairman.

Mr. FRANKS. And if the second panel then would be seated.

Well, I want to thank you all for being here. And I would like to introduce the witnesses on our second and final panel.

Our first witness on the second panel is Dr. Rosalie Porter. Dr. Porter is an accomplished author and scholar and current chairwoman of the Board for ProEnglish. She is a consultant for school districts across the country and the executive director of the Institute for Research in English Acquisition and Development.

Dr. Porter arrived in the U.S. at age 6 not knowing a word of English. My wife came at 11 knowing yes, no, and what is your name.

Our second witness is Rene Garcia. Mr. Garcia served in the—am I pronouncing that properly, sir?

Mr. GARCIA. Rene.

Mr. FRANKS. Rene, okay. Mr. Garcia served in the Florida House for 8 years before being elected to the Florida State Senate where he currently serves. He serves as the chair of the Florida Senate Health Regulation Committee and holds several other committee positions.

Our third and final witness is Mauro E. Mujica. Mr. Mujica has been chairman of the board and CEO of U.S. English, Inc., since 1993. Mr. Mujica immigrated to the United States from his native Chile and has firsthand understanding of the obstacles facing non-English speakers upon their arrival in this country. He succeeded the late Senator Hayakawa, who founded the organization in 1983.

Welcome to all of you. And each of the witnesses' written statements are going to be written in their entirety. But for now I will now recognize Dr. Porter for 5 minutes.

TESTIMONY OF ROSALIE PEDALINO PORTER, Ed.D., CHAIRWOMAN OF THE BOARD OF DIRECTORS, PROENGLISH

Ms. PORTER. Thank you for the opportunity to testify today in favor of H.R. 997, legislation that will make English the official language of the United States.

My name is Rosalie Pedalino Porter, and I am chairman of the board of ProEnglish, a national advocacy organization.

When I immigrated to the United States from Italy as a 6-year-old child, no one in my family spoke a word of English. I was fortunate to grow up at a time when Americans felt confident about their national culture. And immigrants were encouraged to learn the English language and assimilate. The public schools taught me English, opening the door for me to a wonderful education up to the graduate level at the University of Massachusetts.

I am committed to protecting English as our common language because it is so essential to immigrant success.

My professional career of 4 decades has been dedicated to improving the education of non-English speaking children in our schools. I have advised school districts and testified in court cases in Arizona, California, Florida, Massachusetts, Texas, and Washington. From 1985 to 1988, I served on the National Advisory Council on Bilingual Education that advised the U.S. Congress on education policy.

The organization that I chair, ProEnglish was founded in 1993 to preserve English as the common unifying language of our Nation by making it the official language at all levels of government—local, State, and Federal. As you have heard everyone say this morning, the English language is one of the strongest and most durable ties that unite us as Americans. The founders of our Nation recognized this, and this is why President George Washington signed a law passed by Congress in 1795 requiring all existing and future Federal statutes of the United States to be published exclusively in English.

Having one official language of record for government operations and communications makes government more efficient and less costly. It eliminates the demands for taxpayer funded services or

documents in any other language, with exceptions under H.R. 997 for instances that service the public interest, as in protecting public health and safety. It does not mean English only. Nor does it force anyone to speak English in their personal daily lives or limit the study of foreign languages. Official English means that for the government to act officially and with legal authority, it must communicate in the English language.

Ninety percent of the world's Nations have at least one official language, including 47 countries that have English. Thirty-one of our 50 States have already adopted English as their official language in statewide elections, with voter approval margins as high as 9 to 1. No harmful effect has yet been reported from these laws.

Here are three urgent reasons why Congress should act now. First, it is time to end the Federal Government's policy of trying to force all government agencies and Federal fund recipients to provide multilingual services. This policy relies on an incorrect interpretation of civil rights law.

Second, we need to avoid the kind of divisiveness, inefficiency, and waste that we see today in places like the European Union that is struggling to cope with 23 official languages.

Third, as our country grows more diverse, thanks to our immigration, with 303 languages now present in our population, it is even more important to stress what unites us as Americans a common language.

Mr. Chairman, I respectfully urge the passage of H.R. 997. It is essential to the unity and wellbeing of our country. It will promote the successful integration of immigrants and their children into American life and will save millions of taxpayer dollars. Perhaps those dollars could be used for English teaching classes.

It will reinforce a melting pot ideal that has helped to make our country the most successful country in the world.

Thank you. I will be happy to answer any questions, Mr. Chairman, from you or your colleagues.

[The prepared statement of Ms. Porter follows:]

TESTIMONY OF

DR. ROSALIE PEDALINO PORTER, Ed.D
CHAIRWOMAN OF THE BOARD OF DIRECTORS
PROENGLISH

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
THE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION

REGARDING

H.R. 997, THE "ENGLISH LANGUAGE UNITY ACT"

Hearing on
Thursday, August 2, 2012
2141 Rayburn House Office Building

*"A country has to have only **one** official language, if men are to understand one another…"*
-Ayn Rand

"This multicultural approach has failed, utterly failed."
Angela Merkel, German Chancellor, October 17, 2010

Thank you, Mr. Chairman, for the opportunity to testify today in favor of H.R. 997, legislation that will make English the official language of the United States.

My name is Rosalie Pedalino Porter and I am the Chairman of the Board of ProEnglish, a national grassroots advocacy organization based in Arlington, VA. ProEnglish was founded in 1993 with the mission to preserve English as the common, unifying language of our nation by making it the official language of all levels of government—local, state and federal. I am here today to affirm the need for having one official language for the U.S. federal government, an urgent and long overdue national priority.

My professional career of four decades has focused entirely on the improvement of educational achievement for non-English speaking children in U.S. public schools. I have advised school districts and testified in court cases in Arizona, California, Florida, Massachusetts, Texas, and Washington. From 1985 to 1988, I served on the National Advisory and Coordinating Council on Bilingual Education that advised the U.S. Congress on education policy.

When I was brought to the United States from Italy as a 6-year old child, no one in my family knew a word of English. Immediately upon enrolling in the public schools of Newark, New Jersey, I was taught the English language, a skill that enabled me to quickly learn school subjects in English and become integrated in the life of school and community. The knowledge of English improved my chances of taking advantage of educational opportunities up to the level of undergraduate and graduate degrees from the University of Massachusetts at Amherst.

The English language is one of the strongest and most durable ties that unite us as Americans. The Founders of our nation recognized this fact, which is why President George Washington, in 1795, signed a law passed by Congress requiring existing and future federal statutes of the United States to be published solely in English. It is why President James Madison signed the Louisiana Enabling Act in 1811. The Act granted statehood to the largely French-speaking territory under the condition that the new state agree to conduct its official business in English. In 1906, Congress passed legislation—the Naturalization Act of 1906, which became law and was signed by President Theodore Roosevelt—that required people who want to become naturalized U.S. citizens to demonstrate English proficiency.

There is even a long history of Congress requiring English to be the language of government and schools for territories seeking to be admitted to the Union, e.g. Arizona, New Mexico, Oklahoma.[1] In all of these territories that had large non-English speaking populations, Congress announced before the territories voted on the question of statehood that a change in language policy would be a prerequisite for admission.

[1] Oklahoma Enabling Act, Sec. 5. Provision for Public School (1906), Arizona, New Mexico Enabling Acts, c. 310, 36 U.S. Stat. 557, 568-579 (1910).

I. Majority of the States Have Adopted Official English

More recently, state and municipal governments around the country have taken the initiative to pass laws and ordinances recognizing English as their official language. Thirty-one states—a large majority (62%)—have adopted laws making English the official language of government.[2] Oklahoma became the 31st state to approve an official English law last November, when an overwhelming 76% of Oklahoma voters approved a ballot referendum which amended the state constitution and made English the state's official language.

In 2008, Missouri became the 30th state to make English its official language of government when voters approved an amendment to the state constitution with over 86% of voters' support. In fact, every time official English has appeared on a statewide ballot, voters of all backgrounds and political affiliations have approved it overwhelmingly, by margins as high as 9 to 1.

II. Public Support for Official English Laws

As recently as May 2010, a Rasmussen Reports poll found that 87 percent of likely voters support making English the official language of the United States.[3] That survey also found that support for official English remains high across all demographic groups and that voters reject by sizeable margins the idea that such a move is racist or a violation of free speech. Over 80% of whites, blacks and those of other racial and ethnic backgrounds agree that requiring people to speak English is not a form of racism or bigotry.

In August 2010, Rasmussen Reports found that 83% of likely voters wanted a higher priority to be placed on encouraging immigrants to speak English as their primary language. Rasmussen also conducted a poll shortly after then-Senator and presidential nominee Barack Obama stated during a 2008 campaign stump: "instead of worrying about whether immigrants can learn English," Americans "need to make sure their child can speak Spanish." Poll numbers found that voters strongly disagreed with President Obama and felt that government documents should be printed exclusively in English.[4] Broken down along party lines, 79% of Republicans and 59% of Democrats rejected the idea that all Americans should know multiple languages. Among unaffiliated voters, 68% say their fellow citizens do not need to know a language other than English.[5]

Three surveys conducted since 2005 all found that supermajorities of Americans support making English the official language. An April 2006 FOX News poll found 78 percent favored it, while the 2005 Zogby poll showed 79% for such a measure. More than two-thirds of Democrats in the Zogby poll and 79 percent of Democrats in a 2006 Rasmussen poll approved of the measure.

A 2005 poll conducted by the polling firm Zogby International found that support for making English the official language was even higher among first- and second-generation immigrants than among native-born

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[2] The 50 States and Official English at a Glance: http://www.proenglish.org/official-english/state-profiles.html

[3] Rasmussen: 87% Say English Should Be U.S. Official Language, May 2010 http://www.rasmussenreports.com/public_content/politics/general_politics/may_2010/87_say_english_should_be_u_s_official_language

[4] Rasmussen: 58% Want English-Only Ballots, June 2011 http://www.rasmussenreports.com/public_content/politics/general_politics/june_2011/58_want_english_only_ballots

[5] Rasmussen: Voters Reject Obama's Call for Bilingualism, July 2008 http://www.rasmussenreports.com/public_content/politics/elections/election_2008/2008_presidential_election/voters_reject_obama_s_call_for_bilingualism

U.S. citizens. An April 2007 McLaughlin & Associates poll found strong support for proposals in favor of immigrants learning and using the English language. Requiring that all students in public schools who cannot read English be enrolled in English immersion classes so that they can be taught to read and write in English at their grade level as soon as possible received 88% support among voters and Latino voters. Similarly, making English the official language of the U.S. was supported by 80% of voters and 62% of Latino voters.

In 2006, the people of Arizona took to the polls to vote on Proposition 106 to amend the state constitution to make English the official language. It passed by 74% of the vote, with 47% of Hispanics supporting the measure.

It is also clear that the U.S. Congress recognizes the American people's strong desire for a federal official English law. In 2007, the U.S. Senate overwhelmingly passed Senator Jim Inhofe's official English amendment to then-President George W. Bush's immigration reform bill by a vote of 64 to 33. That vote included 17 Democrats voting YEA (*Roll Call 198, S. Amdt. No 1151 to S. 1348, the Comprehensive Immigration Reform Act of 2007*).

III. What Official English Means

Official English legislation often presents many questions about its effects and consequences. Making English the official language simply makes it the standard language of government operations and communications. Contrary to what opponents claim, official English does not mean "English only," nor does it force anyone to speak English in their personal, daily lives. Establishing English as the official language of the United States means that for the federal government to act officially (or with legal authority), it must communicate in English. It means that the language of record is the English language and that no one has a right to demand taxpayer-funded services or documents in any other language. It also means that unless the government has a compelling public interest for using another language, it will use the official language alone. For example, if the CDC wishes to publish multilingual informational materials warning Americans about how to prevent diseases like HIV/AIDS, this is an excepted area for translation under this official English law.

Also, Official English laws also do not dissuade foreign companies from doing business in certain states or within nations with official languages. Corporations do not base multi-billion dollar investment decisions on whether state or federal governments publish documents and websites in one common language. Instead, they are motivated by things like access to markets, tax rates, incentives, transportation infrastructure, and the availability of a skilled and (English) literate workforce. English is the international language of business and foreign executives who relocate to the U.S. usually speak fluent English before they get here.

H.R. 997 also does not target any one group of people. It would apply to *all* residents of the United States, whether they are U.S. citizens, legal residents, or living there illegally. If someone is going to be communicating with the local government, it will have to be done in the English language, no matter what their legal status is. Remember, official English only applies to government, so private employers are free to use any language they'd like.

The law has really two main objectives which are: 1) restoring the incentives for immigrants to assimilate and learn English, and 2) increasing savings in federal expenditures by discontinuing automatic taxpayer-funded interpreters, translated documents, websites, etc. There are no immigration enforcement provisions in this legislation.

Quite simply, the main purpose of official English laws is to preserve English as the common, unifying language of the nation, the states, and of the individual counties, by codifying it into law.

IV. Official English is Legal and Constitutional

The courts have held that official English laws are valid and constitutional. In 1988, a state employee challenged Arizona's newly enacted Official English initiative, Proposition 106, claiming that she had a First Amendment right to speak any language on the job. A federal judge agreed and overturned it. When the State of Arizona refused to appeal, ProEnglish intervened to defend the constitutionality of the official English initiative in the well-known case *Arizonans for Official English v. Arizona (1997)*. After a long series of appeals over the trial judge's ruling that the initiative violated the First Amendment, Arizonans for Official English prevailed at the U.S. Supreme Court, upholding the right of states to have official English laws. So today, we have 31 states with official English, none of which are facing legal challenges.

A more recent victory for official English took place in 2006 when the American Civil Liberties Union (ACLU) filed a complaint in federal court challenging an official English ordinance adopted by the city of Hazelton, PA. ProEnglish had helped Hazelton Mayor Lou Barletta (now a Member of Congress from PA-11) draft the city's amended English ordinance, which mirrors the language of H.R. 997. Subsequently, we helped the city write its initial brief in response to the ACLU complaint. After reviewing the briefs, the ACLU dropped its complaint against the English ordinance. This victory indicates that similar city ordinances and laws are likely to withstand legal attack.

V. Opposition Arguments

A common tactic used by the opposition to intimidate and threaten voting legislators is to claim that an official English law would violate existing federal civil rights law. This claim, which is routinely made by multiculturalists and opponents of official English laws in every state or locality where such laws are proposed, is false.

When Congress debated and passed the Civil Rights Act of 1964, language (or the impact of English fluency) was never discussed or included in the meaning of "national origin" discrimination, and rightfully so. The law simply states: *"Sec. 601. No person in the United States shall, on the ground of* ***race, color, or national origin,*** *be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."*

Language, unlike national origin, is not an immutable characteristic. It is self-evident that a person can choose to learn a new language, but they can never change their national origin, and as we all know, a person's inability to speak English does not always mean that person was not born in the United States. The courts have held that national origin and language are not the same and cannot be treated as if they are *(Garcia v. Spun Steak 998 F.2d 1480 (1993))*. Except for narrow requirements in education, the Supreme Court in *Sandoval v. Alexander (2001)* rejected attempts to equate the failure to provide services in languages other than English with national origin discrimination.

VI. Why Congress Should Pass H.R. 997

Mr. Chairman, the American people have good reasons to support making English the official language of the federal government.

First, making English the official language of the United States would reaffirm the melting pot ideal and provide a powerful incentive for new immigrants to learn English. Throughout our nation's history, we have expected new immigrants to assimilate into our common, American culture, and the most important pillar in the assimilation process is learning English. This is the American melting pot—generations of immigrants coming to this country to partake in all of the opportunities of American life, all the while making great sacrifices to learn English. President Theodore Roosevelt said, "We have one language here, and that is the English language, and we intend to see that the assimilation crucible turns our people out as Americans."[6]

Government played an important role in encouraging the assimilation of these new immigrants by communicating with them in English. But today, instead of encouraging immigrants and their children to learn English, many government agencies—specifically at the federal level—are making it their policy to communicate with non-English speakers in their native language. These kinds of policies represent a total reversal of the melting pot tradition. H.R. 997 would end the practice of taxpayer-funded, unofficial multilingualism, while allowing for common sense exceptions for things like promoting trade and tourism, engaging in international business or commerce, and where public safety is an issue.

Contrary to what opponents claim, official English laws do not send an "unwelcoming" message to immigrants; rather, they convey the message that there are responsibilities, as well as rewards, that accompany the privilege of immigration to the U.S. Making English the official language of the United States will help to foster the melting-pot principle inherent in the United States' original motto (until 1956) "E Pluribus Unum" (out of many; one) which has helped make the U.S. the most successful multi-ethnic and multi-racial nation on earth.

Making English the primary spoken language has enabled generations of Americans to realize and achieve the American Dream. H.R. 997 will ensure that Americans are being honest with new immigrants by conveying the message that the surest path to economic, social, and educational prosperity in this country is to learn English. English is the undisputed language of success in the United States, and it has been found that the number of English Learner families living in poverty is about *twice* the national rate.[7]

It has also been estimated by the Washington, D.C.-based Lexington Institute that approximately $65 billion a year in missed wages can be attributed to workers', both legal and illegal, lacking proper and sufficient English skills.[8] Lacking fluency in English unfortunately traps non-English speakers in low-skilled, low-wage jobs and keeps them heavily reliant on taxpayer-funded government programs, driving up demands for costly multilingual services.

As Senator Jim Inhofe (R-OK), sponsor of the Senate counterpart to the English Language Unity Act of 2011 in the Senate (S. 503) has said, "The need for official English appears in our newspapers every day—injuries in the workplace, lawsuits over miscalculations in hospitals, people who are unable to support their families—all because they can't speak English."

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[6] TR to Richard Melancthon Hurd, January 3, 1919, ibid., VIII, 1422.

[7] The Value of English Proficiency to the United States Economy. The Lexington Institute. Don Soifer, April 2009.

[8] Improving Federal Adult English Learning Programs, by Don Soifer, Lexington Institute, September 3, 2009.

Over the past decade, the United States has experienced a rapid increase in the number of residents who have reported an inability to speak English. According to the 2010 Census, 59 million U.S. residents reported being able to speak English "less than very well" or not at all. With trends like this, the amount of taxpayer dollars needed to provide translation services for non-English speakers will only increase unless Congress decisively acts to cut off the endless spigot of language dependence and isolation and finally renews the call for English language assimilation.

Second, making English the official language would end the practice of forcing American taxpayers to subsidize unlimited and unnecessary translation and interpreter services. According to the most recent tabulation by the U.S. Census Bureau (American Community Survey, 2007), 303 foreign languages other than English are spoken in U.S. homes.[9] It would be costly, divisive, and impractical for the state to communicate in all of them, but it would also be inherently unfair to operate in only some of them. ProEnglish believes that the *current* system of government-sanctioned multilingualism, where some foreign languages are accommodated and others are not, is discriminatory. The only way to make it non-discriminatory is for state government to communicate in one, unifying language—English—to avoid the all-too-common practice of favouring a select few immigrant languages over others.

The Office of Management and Budget (OMB) estimated in a 2002 report to Congress entitled, *Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency*, that the total national cost of providing language assistance services to LEP individuals could be as high as $1 to $2 billion annually. However, the size of the federal government today is approximately twice as large as it was in 2002 and limited-English proficient (LEP) individuals have increased to approximately 59 million in 2010.

This year, the Fraser Institute released a study that revealed that Canada, a country with roughly *one-tenth* the population of the United States, spent $2.4 billion annually to provide taxpayer-funded government services in just *two* languages, French and English.[10] In the U.S., over 303 languages are spoken, so we can extrapolate our cost to be ten times Canada's. ProEnglish believes that the burden to subsidize immigrants and non-English-speaking Americans who avoid learning English should not fall on American taxpayers.

A recent example of such costly and unnecessary government foreign language communications that would be disallowed under a federal official English law was the discovery by *The Daily Caller* on July 12, 2012 that the U.S. Department of Agriculture (USDA) was funding a 10-part radio advertisement series exclusively in Spanish to promote the Supplemental Nutrition Assistance Program (SNAP), also known as "food stamp," among the Spanish-only speaking population.[11]

ProEnglish criticized the USDA along with the public outcry over this revelation and asked the program be suspended immediately, which it subsequently did. In 2002, OMB estimated translations for the food stamp program to be approximately $1.86 million per year, but these USDA Spanish-language TV ads had been running since 2008, and food stamp enrolment is currently at an all-time high at 22.2 million recipients.

At the very least, American citizens have a fundamental right to know how much of their money is being spent to provide translations and interpreters for people who refuse to learn English. Federal agencies

[9] Language Use in the United States, 2007. American Community Survey Reports. U.S. Census Bureau, http://www.census.gov/prod/2010pubs/acs-12.pdf

[10] Federal and provincial bilingualism requirements cost Canadian taxpayers $2.4 billion annually; provinces spend $900 million to provide dual-language services, January 16, 2012. http://www.fraserinstitute.org/publicationdisplay.aspx?id=2147484098

[11] USDA buckles, removes Spanish food stamp soap operas from website, July 13, 2012, The Daily Caller. http://dailycaller.com/2012/07/13/usda-removes-spanish-food-stamp-soap-operas-from-website/

currently refuse to report how much they spend on these services every year, so they are covering up the true costs of multilingual dependency. An official English law for the federal government will help us correct this and end these unnecessary translation costs.

Third, almost every developed country in the world has an official language of government. According to the Central Intelligence Agency (CIA), in 2012, 199 countries (or sovereignties) have an official language.[12] Forty-seven of those nations have English as their official language. The United States leads the world in the number of immigrants it admits each year—the U.S. welcomes a greater total number of immigrants and refugees every year than all the rest of the countries of the world combined. It is of paramount importance for our country to maintain one language as the central communication vehicle of official government business.

VII. Conclusion

Mr. Chairman, in the midst of a rapidly growing population with diverse languages, ethnicities, religions, and cultures, it is more urgent now than ever before to maintain a central means of communication for the official business of our country. We at ProEnglish value all Americans' ability to acquire and speak different languages freely. Most of our board members are fluent in various languages, including Spanish, Italian, Russian, Turkish, French, and Japanese.

In my view, as an advocate and educator of children and their families who have not yet learned English, promoting a national language is the most effective means of insuring these new members of our society will achieve their highest goals—it is an act of inclusion. Promoting the false notion that each newcomer can maintain his or her native language as their only language at taxpayers' expense is a snare and a delusion, a cruel deception.

Mr. Chairman, I urge the passage of H.R. 997. This legislation is essential to the unity of our country. It will promote the successful integration of immigrants and their children into American life, and it will ultimately save taxpayer dollars.

For these reasons, I respectfully request that the subcommittee bring H.R. 997 to a mark-up and take all necessary steps to allow an up-or-down vote on the House floor before the end of the 112th Congress.

Thank you, Mr. Chairman, for the opportunity to testify before the committee today.

[W]hen men cannot communicate their thoughts to each other, simply because of difference of language, all the similarity of their common human nature is of no avail to unite them in fellowship.

(St. Augustine, in "The City of God," circa 420 AD)

[12] The Central Intelligence Agency, The World Factbook, Languages. https://www.cia.gov/library/publications/the-world-factbook/fields/2098.html

Appendix

(1) Common Myths About Official English: http://www.proenglish.org/data/myths.html

Myth: In 1776, German came within one vote of becoming America's official language instead of English.	Fact: Congress never voted on a proposal to make German the official language. On January 13, 1795, Congress considered a proposal to print the federal laws in German as well as English. This proposal was not to give German official status. During the debate, a motion to adjourn failed by 1 vote. There was never a vote on an actual bill.
Myth: Official English is merely symbolic and has no effect.	Fact: Official English affects all government documents, proceedings, and actions. Official English gives no person the right to demand government services in a language other than English and more importantly, if there is a conflict between an English version of a document and the same document in another language; the English version controls.
Myth: Official English would deny criminal defendants of their right to an interpreter.	Fact: Any official English bill promoted by ProEnglish would provide a specific exception for "actions that protect the rights of ... criminal defendants."
Myth: An informational form regarding the outbreak of the bird flu or another disease would violate official English.	Fact: Any official English bill promoted by ProEnglish would provide a specific exemption for "actions ... that protect the public health."
Myth: Official English would prohibit the teaching of foreign languages in schools.	Fact: The enactment of official English would not affect the teaching of foreign languages. ProEnglish encourages the teaching of foreign languages in the education system. All official English legislation that ProEnglish promotes provides an exception for the teaching of languages.
Myth: Official English would prohibit the speaking of languages other than English in homes and religious settings.	Fact: Official English refers only to government actions and not the language spoken in the home or in places of worship. The Constitution guarantees free speech and religious freedom. That would not be affected by official English.
Myth: Most nations have not declared an official language.	Fact: Ninety-two percent of the world's countries have at least one official language.
Myth: Most immigrants oppose official English legislation.	Fact: 91% of foreign-born Latino immigrants agree that learning English is essential to succeed in the U.S. and more than 2/3 of Hispanics favor making English the official language of the U.S.
Myth: At the Constitutional Convention, the Founding Fathers debated and decided against making English the official language.	Fact: The Founding Fathers did not enact English as the official language because they didn't need to. All 55 delegates to the Convention spoke English and an overwhelming majority of the American population did as well. They just took it for granted that English was the official language and saw no need for legislation.

(2) You can find Dr. Porter's complete *Curriculum Vitae* here:
http://proenglish.org/images/stories/sources/rpresume.pdf

8

Mr. FRANKS. And thank you, Dr. Porter.

Senator Garcia, I will now recognize you, sir, for 5 minutes.

TESTIMONY OF THE HONORABLE RENE GARCIA, FLORIDA STATE SENATOR, DISTRICT 40

Mr. GARCIA. Thank you, Mr. Chairman, and Ranking Member, and Committee Members. It truly is an honor and a pleasure to be here. It is really different to be on the other side of the Panel.

But really, I am here pretty much to give you my experiences in Miami-Dade County and how it relates to this bill and English as

the official language. And may I start off by saying that Florida does have an official language, which is English, and it is really a statement of principle and still allows us to conduct business in different languages. But that is because Florida chooses to do it that way.

Now the reason that I have some concerns with this language, and especially Section 163 of the bill, which addresses the different jurisdiction as the States and its territories and so forth that English will be the official language, is that how then am I going to be able to communicate with my constituency?

You see, in South Florida, and Miami-Dade County, and our public school system, on a daily basis, almost 150 languages are spoken in our school system. Ten of those languages are as bilingual education. Federal funds are received for that bilingual education in our school system. Why do we teach our children in multiple languages? Why? To prepare them for the global marketplace, to make sure that they have an advantage when they go and compete in this global economy that we all hear so much that we belong to.

By restricting that ability, I think we are doing a disservice to our children and to our country. You see, when you travel to most European countries, and I remember when I was in elementary school, a friend came from, I think it was Israel. He came from Israel. When he came over to the United States, he spoke English, Spanish, French, and Arabic. And that was impressive, and this was in sixth grade. Later on this gentleman, he is now a principal of one our local schools, and he has been successful, and he is one that really pushes for this type of education forward.

Now when we address the issue of communicating with our constituency, in Miami-Dade County, our ballots are translated from English to Spanish to Creole. Why? Because we want more inclusion. We want more people to participate in a democratic process ensuring that they have a voice.

We have seen that numbers have increased in the participation of Hispanics and Haitian-Americans because of the translation of these ballots. If we are not going to allow these ballots to be translated, then we are excluding them from the process.

I understand the intent of the bill. We want people to speak English. When people come over from foreign countries, we want to make sure whether they are immigrants or exiles, we want to make sure that the first thing they do is learn English. And why do we not put the resources behind that and educate people?

When people come to my office, the first thing I tell them is you need to learn English. That is the first thing you need to do. We all understand that English is the common language of this Nation. Yes, it is binding. Yes, it does bring us together. I am not saying that it does not. It does. But when you tell me that I cannot communicate or conduct official business with my constituency and allow them to know what is going on at our State level, then I do have some concerns.

This country is about inclusion, not exclusion. That is why I am here to assure you that in Miami-Dade County, it is working. In Miami-Dade County, we have a lot more participation because of the ability to translate our official documents.

So I encourage you all, if we can address the issues of Section 163 and not make it binding where it will be illegal for me to communicate in an official capacity with my constituency, I would encourage you to fix that or vote this bill down.

And it works. Let us not throw the American Dream out the door telling folks that they cannot be part of the process just because they do not speak the language. You know, we should encourage them to learn and get educated.

I think that is the intent of the bill, but the practicality of the bill is that it will exclude a lot of my constituency.

[The prepared statement of Mr. Garcia follows:]

Written Testimony

By

The Honorable Rene Garcia

Florida State Senator, District 40

Before

The United States House of Representatives Committee on the Judiciary
Subcommittee on the Constitution

At a Hearing Concerning H.R. 997,
The English Language Unity Act of 2011

Washington, D.C.

August 2, 2012

Chairman Franks, Ranking Member Nadler, and members of the Subcommittee: thank you for the opportunity to submit this testimony in opposition to H.R. 997, the English Language Unity Act. I am pleased to be able to speak to the critical importance of English, Spanish, and Creole communications to the community I represent. I believe that multilingual communications are equally essential to the millions of Americans around the country who speak languages other than English – many of whom are the constituents of members of this Committee.

My name is Rene Garcia. I currently serve as Florida State Senator for the state's District 40, which is located in northern Miami-Dade County. If there is any part of the country or group of people that stands to be affected by the negative implications of the English Language Unity Act, it is my District and constituents, who have widely variant language access needs and abilities, but who are, as a community, fundamentally multilingual. My District is home to a population that speaks multiple languages in everyday life. Almost 45% of the U.S. citizens living in District 40 were born in another country and naturalized. According to the American Community Survey, 90% of my constituents – more than 345,000 people – speak a language other than English at home, and among these individuals, about 45% also speak English very well.[1]

Like my Congressional colleagues on the first panel and my policy colleagues on this second panel, I strongly believe that the English language is a critical component of American identity, and one of the unifying factors that has made this country a successful melting pot that incorporates newcomers from around the world. I believe it is critical that those who are not yet

[1] U.S. Census Bureau, *State Senate District 40, Florida – Population and Housing Narrative Profile: 2005 – 2009, available at* http://www.flsenate.gov/UserContent/Senators/Districts/CensusData/District40.pdf.

fluent English speakers make proactive efforts to learn the language, and I see the same desire and belief among my many constituents who are still learning the language.

More English instruction for people who are not yet fluent is needed. I urge members of this Committee to support discretionary funding for English education - for example, for discretionary funding for USCIS's Citizenship and Integration Grants Program. When we prioritize expanding opportunities to learn English, we strengthen our democracy by helping individuals become better informed and more active participants in civic and political affairs.

I am also a strong proponent of inclusionary measures that integrate communities into the fabric of this great country. This is why I find it dismaying that Congress would attempt to advance English fluency by enacting legislation that would paradoxically inhibit inclusion and civic participation at this difficult time, when our country needs engaged and active citizens more than ever. Our strength as a nation and as the world's premier democracy and economy come from our diversity of experiences and abilities, and from the principles we hold dearest: equality, opportunity, and a vote and voice in our collective governance for each American. The English Language Unity Act would betray these principles by denying as many as millions of citizens a vote; by inhibiting the democratic process; by reducing the number of legal permanent residents who are able to fulfill their dream of becoming Americans; and by curtailing numerous other chances for concerned individuals to take part in the revitalization of our civic institutions and our economy.

Impact on the Voting Rights Act

Congress included language assistance mandates in the Voting Rights Act to end exclusionary practices in the voting booth, such as English-only ballot provisions. The scope of the need among citizens who are not yet fully proficient in English remains great. In my home state of Florida, there are nearly 680,000 Latino voters alone who need assistance in Spanish to cast ballots.[2] In total, there are nearly 9.3 million adult American citizens who speak English less than very well and who are likely to need assistance to vote, a significant number of whom were born in the United States.[3]

We cannot lightly afford to impair the participation of so many Americans – and the evidence is clear that language assistance at the polls empowers citizens who are still learning English to be active participants in the political process. The Leadership Conference on Civil and Human Rights, for example, has documented numerous successes: after the Department of Justice moved to ensure that Harris County, Texas provided Vietnamese language ballots on its electronic voting machines, turnout among Vietnamese-speaking citizens doubled, and the first Vietnamese American candidate was elected to the state's legislature one year later. The voter registration rates of Native Americans and Latinos have increased dramatically – by between 50% and 150% – since the Voting Rights Act's language assistance provisions concerning American Indian languages and Spanish were enacted.[4]

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[2] U.S. Census Bureau, *Voting Rights Determination File, October 13, 2011 Public Use Data, Florida VACLEP (Total citizen voting age population who do not "speak or understand English adequately enough to participate in the electoral process")* (October 13, 2011), *available at* http://www.census.gov/rdo/data/voting_rights_determination_file.html.

[3] U.S. Census Bureau, *American Community Survey 5-year estimates 2006-2010* (Unique query conducted using variables Citizenship Status, Age, and Ability to Speak English), July 30, 2012, *available at* dataferrett.census.gov.

[4] Leadership Conference on Civil and Human Rights, *Fact Sheet – Language Assistance Provisions of Section 203 of the Voting Rights Act* (October 12, 2011), *available at* http://www.civilrights.org/press/2011/203.html.

The provision of language assistance makes a critical difference in opening up elections to all Americans, but it does not dissuade Americans from learning English. The desire to become proficient in English burns as strongly as ever. The Census Bureau has historically re-evaluated need for language assistance pursuant to Section 203 of the Voting Rights Act once every ten years. In 2001, it found that 296 political subdivisions in 30 states met the applicable criteria. By 2011, the numbers had declined to 248 jurisdictions in 26 states.[5] Even as we are constantly improving on efforts to make elections accessible to citizens of all language abilities, the American electorate is increasingly fluent in English.

American democracy would suffer were the English Language Unity Act adopted. The intent and ability of this bill to prohibit language assistance at polling places has been made clear by the results of the implementation of nearly identical legislation in the State of Iowa. The Iowa English Language Reaffirmation Act (IELRA) was enacted in 2002; its key provisions are parallel to those in the English Language Unity Act.[6] After state officials concluded that the law allowed them to provide registration and ballot request forms in languages other than English so long as the materials were also available in English, a group of elected officials and county auditors sued to prevent this action under the IELRA, arguing that providing the election materials was an official action and not covered by any exception to the English-only rule. The Iowa State District Court which presided over the case cautioned that a blanket prohibition on

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[5] Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 63602, 63602-07 (October 13, 2011); Voting Rights Act Amendment of 1992, Determinations Under Section 203, 67 Fed. Reg. 48871, 48872-77 (July 26, 2002).

[6] For example, both Acts require "official functions" of the government to be conducted in English, and define "official" functions as those that bind the government, are required by law, or are subject to scrutiny by the press or public. Both provide for the same exceptions to this rule with the addition of an exception for actions, documents and policies necessary for national security and international relations onto the federal version of the bill. Both state their intention not to limit the preservation of Native American languages, not to discourage individuals from learning languages other than English, and not to run afoul of applicable Constitutions. Iowa Code § 1.18 (2012); English Language Unity Act of 2011, H.R. 997, 112th Cong. (2011).

governmental communications in languages other than English likely would violate the First Amendment, and that the application of the IELRA to prevent publication of bilingual election materials might also violate the Fourteenth Amendment by resulting in unequal treatment of citizens vis-à-vis their fundamental right to vote and take part in the political process. Ultimately, however, the Court agreed with the petitioners that the IELRA could and did reach as far as restricting the publication of certain government documents to English-only.[7] It is likely that the English Language Unity Act would be used to similar tragic effect, to block implementation of the Voting Rights Act provisions that have empowered millions of Americans to exercise their civic duty.

Impact on the Democratic Process

My ability to communicate with my constituents is critical not only to the encouragement of robust civic participation, but ultimately to the success of the work that I was elected to do. Constituents who can engage fully and easily with me in whatever language they are most comfortable using are more likely to take part in elections, as experience under the Voting Rights Act has shown, and to share their ideas and opinions in between elections, so that the representative experiment started over two hundred years ago continues to succeed.

I use languages other than English, including Spanish and Creole, not just to communicate with people not yet fully fluent in English. In my home state of Florida, almost 2.5 million eligible voters speak a language other than English at home[8]; in my District, as I mentioned, the vast

[7] *King v. Mauro*, No. CV 6739, Iowa District Court for Polk County (March 31, 2008).
[8] U.S. Census Bureau, *American Community Survey 5-year estimates 2006-2010* (Unique query conducted using variables Citizenship Status, Age, Language Spoken At Home and State Code=Florida), July 30, 2012, *available at* dataferrett.census.gov.

majority of residents share this characteristic. Your experiences may be similar. Nearly 19 million adult citizens speak English very well, but also speak a language other than English at home.[9] The best way to engage such constituents, including the large percentage which also speaks English, is often to reach them on their own terms, in the language in which they live their daily lives. I believe this is true whether one represents Americans at the state or federal level.

The English Language Unity Act threatens to chill citizen participation in public affairs not only by impairing voting, but also by creating an artificial wall of silence between elected and appointed officials and their constituents who speak languages other than English. The Act's definition of "official" functions is so broadly written, to include all laws, public proceedings, regulations, publications, orders, actions, programs, and policies that may be subject to press or public scrutiny, that it is likely to apply an English-only limitation to everything from a section of a website providing information about legislation in consideration to remarks made to a town hall-style gathering. This result would undermine the purpose and functioning of representative government, and completely exclude citizens, who have fundamental rights to petition and to receive information from their government, from the political process.

The potential impact of the English Language Unity Act in this domain is far-reaching. Had the Act been in force, it likely would have, for instance, prevented Senator Marco Rubio from including brief remarks in Spanish in his address to the conference of the National Association of Latino Elected and Appointed Officials (NALEO), which I recently attended. It would likely

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[9] *Id.* (Unique query conducted using variables Citizenship Status, Age, Ability to Speak English, and Language Spoken At Home).

prevent federal officials who, like me, are multilingual from conducting interviews about legislative and administrative affairs with media outlets in languages other than English. Even campaign advertisements paid for with public funds might be restricted to being aired in English-only, whereas at present we are being inundated with Spanish-language ads in anticipation of the coming election in the battleground state of Florida. Each of these prohibitions sends a clear, shameful message to Americans who speak languages other than English that their participation in civic affairs is not welcomed or encouraged.

Impact on Naturalization

Naturalization is a rigorous process through which immigrants take on the rights and responsibilities of citizenship. The United States has a special interest in and draws unique benefits from naturalization, stemming from the personal commitment naturalized citizens make to the long-term prosperity and security of the nation. The prerequisites for naturalization eligibility are many, and include satisfaction of a period of legal permanent residence and proof of good moral character. Every applicant must demonstrate ability to communicate in English and mastery of American civics, with only very narrow exceptions set out for individuals older than age 50 who have been legal permanent residents (LPRs) for at least 20 years; individuals older than 55 who have been LPRs for at least 15 years; and those who have difficulties with regular testing due to physical or developmental disability or other mental impairment.

The vast majority of immigrants who naturalize already fulfill requirements for English language ability. Typically, fewer than 20% of newly naturalized citizens fall into an age grouping that

may be eligible for an exemption[10], and many of these individuals do not meet tenure-as-LPR requirements to qualify for an exemption.[11] Disability waivers are difficult to obtain, and the particularly tough scrutiny to which they have been subjected by adjudicators has resulted in both lawsuits[12] and requests for more assistance and outreach efforts from advocates to USCIS.[13] In sum, exceptions are just that: exceptions for a very limited number of deserving individuals, and not the rule.

Citizens who have received exemptions from English language requirements include traumatized refugees and asylees, individuals with conditions such as Down Syndrome whose entire families are U.S. citizens and whose entire support structure is rooted in this country, and immigrants who have raised future generations of Americans and find themselves suffering from limited physical and mental ability in older age. Mikhail Kholchanskiy, for example, was profiled by the New York Times when he was 80, in 1999, and seeking a disability waiver.[14] Mr. Kholchanskiy's children and grandchildren were U.S. citizens, and he professed a desire to, "stand up in front of my grandchildren and show them that I am a citizen like them." After suffering a stroke and heart attack, however, Mr. Kholchanskiy found himself unable to retain

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[10] *See* James Lee, Department of Homeland Security, Office of Immigration Statistics, *U.S. Naturalization: 2011* 4, Table 5 (April 2012), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/natz_fr_2011.pdf.
[11] *See id.* at 4, Table 7. In 2011, median length of time as an LPR among people naturalizing was 6 years. Historical records reflect average tenures consistently less than tenure as an LPR required to qualify for a language exemption, meaning that most successful naturalization candidates have been in the United States for less than 15 or 20 years.
[12] *E.g.*, *Campos v. I.N.S.*, No. 98-2231-CV-GOLD (S.D. Fla., Sept. 22, 1998), *litigation documents available at* http://www.clearinghouse.net/detail.php?id=9547.
[13] *E.g.*, Department of Homeland Security, Citizenship and Immigration Services, *USCIS Response to the Citizenship and Immigration Service Ombudsman's 2010 Annual Report* 17-19 (Nov. 9, 2010), *available at* http://www.uscis.gov/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/cisomb-2010-annual-report-response.pdf.
[14] Susan Sachs, *An I.N.S. Hurdle for the Disabled; Promised Exemptions Elude Many Would-Be Citizens*, N.Y. TIMES, Feb. 18, 1999, *available at* http://www.nytimes.com/1999/02/18/nyregion/an-ins-hurdle-for-the-disabled-promised-exemptions-elude-many-would-be-citizens.html?pagewanted=all&src=pm.

knowledge of English for even the length of a day, let alone long enough to use in his naturalization interview.

Many of those who qualify for exemptions based on age and length of residence are like Esther, an 85-year old grandmother of 26.[15] Esther became an LPR in 1989 and had dreamt, since then, of becoming a U.S. citizen. She was too intimidated, though, to begin the process, because of her inability to speak English and the complexity of the paperwork she would need to complete. Esther was referred to Catholic Charities, and with the encouragement and help of staff who spoke her native language, she was finally able to start down the path towards becoming a citizen. Esther qualified for an exemption based on her age and length of residence in the United States, and was allowed to take the civics test in her native language. She passed, and became a citizen on August 24, 2011. She is filled with pride to be an American, and grateful to have had the opportunity to naturalize.

It would be cruel, if not also contrary to the dictates of protective legislation like the Americans with Disabilities Act, for us to require that committed immigrants who are Americans in their hearts, like Mr. Kholchanskiy and Esther, overcome insurmountable hurdles before qualifying to become United States citizens. Thus is the intent of the English Language Unity Act, however: this bill would eliminate the very narrow exemptions available to individuals who wish to naturalize but cannot satisfy English language fluency requirements.

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[15] Client History provided by Laura Burdick, Catholic Legal Immigration Network, Inc., in Washington, DC on July 30, 2012.

The federal government need not pass this legislation to ensure that every immigrant has incentive to learn English and integrate as fully as possible into American society. As just one indicator, individuals who speak English fluently may earn as much as 17% more than those who do not, controlling for other relevant factors such as education and work experience.[16] Instead, we should renew our efforts to fund and to improve the quality of English learning opportunities. United States Citizenship and Immigration Services' Citizenship and Integration Grants Program has been highly successful in ensuring the availability of English and civics instruction to tens of thousands of LPRs since its inception in 2009. For Fiscal Year 2013, a very modest $11.2 million in discretionary appropriations has been requested to support this vital programming. Congress can best demonstrate its commitment to English acquisition by fully funding this and other exemplary programs that make it possible for all Americans to communicate in a common language.

Impact on Public Education and Other Benefits

Multilingualism plays an important role in efficient allocation of public benefits and services, from education to assistance with medical care, food, and housing. Recognition of this fact is one of the central reasons why Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, was promulgated in 2000 and has been embraced by each succeeding Administration. E.O. 13166 and Title VI of the Civil Rights Act of 1964, which it implements, would be effectively superseded and invalidated by passage of the English Language Unity Act.

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[16] *E.g.*, Libertad Gonzalez, *Nonparametric Bounds on the Returns to Language Skills*, Universitat Pompeu Fabra Institute for the Study of Labor Discussion Paper No. 1098 (March 2004), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=527122.

Meaningful access for people not yet fluent in English – many of whom are of Latino or Asian origin – to a wide array of programs would thereby be severely impaired. In this testimony, I will highlight just two of the many available examples of government services that would be negatively affected by the English Language Unity Act.

Public Education

One of the innovations embraced by federal education law has been the enhancement of mandates to local school districts to involve parents more closely and intentionally in monitoring their children's educational progress. Schools that struggle to serve economically and socially challenged students and that receive federal funding are required to develop plans and policies to engage parents, and to annually evaluate the success of these efforts and the existence of barriers to parental involvement.[17] Interactions between school officials and parents are specifically called for around the sharing of testing and evaluation results and detailed plans for changes to curricula, for instance, and around student selection for and design of programming for English language learners.[18] A wealth of studies affirms that parental engagement in education is positively associated with growth and academic success.[19]

Laws governing federal assistance to state and local education systems recognize that parents who are not yet fluent in English must be accommodated if they are to become active partners in their children's education. These laws draw grantee schools' attention to the need to produce information about school and parent programs in languages that parents can understand, for

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[17] *E.g.*, Elementary and Secondary Education Act § 1118, 20 U.S.C. § 6318 (2012)
[18] *Id.; also, e.g.*, 20 U.S.C. § 6312(g).
[19] *E.g.*, Alyssa R. Gonzalez-DeHass, Patricia P. Willems, and Marie F. Doan Holbein, *Examining the Relationship Between Parental Involvement and Student Motivation*, 17 Educational Psychology Review 99, 100 (June 2005), *available at* http://people.uncw.edu/caropresoe/EDN523/examining_the_relationship.pdf.

example, and to produce tailored parental involvement policies for English language learning programs that incorporate parents' input.[20] All such efforts by schools to build partnerships with parents who are not yet fluent in English would be prevented, however, by the English Language Unity Act, to the detriment of the quality of education provided to many of the children who must overcome the greatest obstacles to academic success. The progress of, in particular, students who are still learning English would also suffer as a result of the prohibition the Act would create on transitional bilingual educational programs that help English language learners keep up with their peers by studying subjects such as math, science, and social studies in their native tongues. Ever since the passage of the Elementary and Secondary Education Act of 1965, we have striven, in the states and at the federal level, to eliminate inequities in education so that all children have an equal opportunity to learn and to succeed as adults; the English Language Unity Act threatens to reinforce and reinstitute these very same inequities.

Basic Assistance to Refugees and Asylees

Refugees and asylees often arrive in the United States with little more than their very lives. Many have no family members, friends, or even acquaintances in the United States to rely upon for assistance while they get on their feet. By definition, refugees and asylees have faced trauma, threats and/or violence. These individuals have endured enormous difficulty, in a phrase, and struggle to leave painful experiences behind and to adapt to radically different lives they did not freely choose. In recognition of the hardship refugees face in integrating into American communities and becoming self-sufficient, the law makes unique provisions for assistance to them in the months following their arrival. Refugees and asylees may specially

[20] *E.g.*, 20 U.S.C. § 6311(h)(1)(B)(ii) (2012); 20 U.S.C. § 6316(c)(6) (2012); 20 U.S.C. § 6318(b)(1) (2012); 20 U.S.C. § 6318(e)(5) (2012); 20 U.S.C. § 6812(6) (2012); 20 U.S.C. § 6826(b)(4) (2012).

qualify for benefits including food stamps, Supplemental Security Income, Temporary Assistance to Needy Families and other cash assistance.[21]

It is unlikely that the limited exceptions in this Act would apply to ensure that particularly-vulnerable new immigrants, many of whom are not yet fluent in English, receive comprehensible information about the benefits available to them. We have recently observed the zealous application and narrow interpretation of exceptions enacted in Iowa that are very similar to those in this bill. Instead, agencies' multilingual efforts would be scuttled by the English Language Unity Act. Official communications with individuals desperately in need of resettlement assistance are certainly a matter of decency and humanity, however.

Conclusion

The English Language Unity Act furthers a divisive policy that would severely impair the ability of people who are still learning English to contribute to our civic life and economic and social progress. Excluding these individuals from the political process is simply un-American, and a rejection of our history as a nation of immigrants that has embraced and benefitted from linguistic tolerance. The Act would create stark divisions where none actually exist, prospectively inhibiting exchange between English speakers and learners. It would decrease opportunities for current and aspiring American citizens to become an integral part of our national fabric by voting, sharing ideas and concerns with governmental officials, and learning about individual rights and responsibilities. It would prevent the naturalization of thousands of immigrants who love the United States and are committed to its success, even though, as the

[21] *E.g.*, Personal Responsibility and Work Opportunity Reconciliation Act § 402(a)(2), 8 U.S.C. § 1612(a)(2); § 403(b), 8 U.S.C. § 1613(b); § 412(b)(1), 8 U.S.C. § 1622(b)(1); § 431(b)(2) and (b)(3); 8 U.S.C. § 1641(b)(2) and (b)(3).

House of Representatives recently noted, our nation has "strong interests in supporting a path for legal immigrants to become citizens."[22] Most troublingly, it would make these counterproductive changes without good cause: Americans and immigrants in this country need no further incentive to learn English, and are anxious to do so. Accordingly, shortages of classroom spaces and waiting lists are endemic to affordable English courses around the country.[23]

An English-only policy will not help a single person learn English or integrate. People don't learn languages because of laws, but rather though classes. The English Language Unity Act does not attempt to provide for increased opportunity to learn English, and does nothing to promote the inclusion and partnership across barriers of language, national origin, race, ethnicity, and religion that have made the United States the moral, economic, and social power that it is today. Our future strength lies in sustaining policy that builds unity of purpose while acknowledging the different but complimentary skills, backgrounds, and knowledge we each contribute to our shared success.

[22] H.R. Rep. No. 112-492, at Title IV, User Fee Funded Programs (2012).
[23] *E.g.*, Dr. James Thomas Tucker, NALEO Educational Fund, *The ESL Logjam: Waiting Times for Adult ESL Classes and the Impact on English Learners* (Sept. 2006), *available at* http://www.naleo.org/downloads/ESLReportLoRes.pdf.

Mr. FRANKS. Thank you, Senator Garcia.

And I now recognize Mr. Mujica for 5 minutes for his opening statement.

TESTIMONY OF MAURO E. MUJICA, CHAIRMAN AND CEO, U.S. ENGLISH, INC.

Mr. MUJICA. Good afternoon, and thank you, Mr. Chairman, Ranking Member Nadler, and Members of the Subcommittee for giving me the opportunity to testify in favor of H.R. 997, legislation that would make English the official language of the United States.

My name is Mauro Mujica. I am the chairman of the board and CEO of U.S. English, Inc., the Nation's oldest and largest organization promoting English as the official language of the country.

I was going to give my testimony in Spanish so Mr. Conyers could understand me. But I will continue in English. [Laughter.]

As an immigrant from Chile and a naturalized U.S. citizen, the issues that we are discussing here today are of great personal importance. Before I came to the United States in 1965 to study architecture at Columbia University, I knew very well that I was going to live in an English-speaking country, and I had no doubt in my mind that I had the civic duty to learn the common language of the country. I know firsthand how important it is to know English to succeed in the United States. I have lived this issue, and it is incomprehensible to me that anyone would oppose legislation which codifies the language policy for this country.

Mr. Chairman, language is a powerful factor in human society. Just as it has the power to unite, it also has the power to divide. The job of government is to foster and advance the common good. A country that has an official language policy is certainly preferable to a country divided by linguistic factions. Just look at Belgium. Look at Canada.

H.R. 997 in no way prohibits citizens from speaking or using other languages. The bill establishes an official language policy, and that policy applies only to the government. In effect, this legislation will encourage immigrants to this country to learn the common language and enjoy the benefits that that will provide.

I personally think that it is a great asset for someone to know other languages. I am fluent in 4, and I am learning Russian right now.

This issue must be addressed in a forthright and expeditious manner. This legislation does not threaten the great American tradition of diversity. Ironically, only a common language can preserve that tradition. Only a common tongue can bind together a Nation formed by people from other countries, other races, other languages, and other religions. It allows cross-cultural understanding where there is otherwise all too often misunderstandings, suspicion, and distrust.

As usual, there will be people against this legislation, people that would see all sorts of problems and people that will not even read the text of H.R. 997, and will invent all sorts of things that are not even in the bill. I urge those people to read carefully all the exceptions in it, which make sure that nobody will be punished because they do not speak English well.

According to a Harris Interactive poll that U.S. English commissioned this past June, 88 percent of Americans favor a law to make English our Nation's official language. A large majority of immigrants also support this law. Eighty-three percent of Hispanics sup-

port it. Incidentally, English has already become the global language, and people all over the world are learning it.

I have a slight comment on the side regarding global market. I am an international architect. I have worked in about 40 countries. English is the language of commerce when you are outside of this country. An international conference in Brazil will be in English. It will not be in Portuguese. An international conference in Russia will be in English, not in Russian.

Mr. Chairman and Members of the Subcommittee, I thank you again for the opportunity to appear before you on behalf of the over 1.8 million members of U.S. English who urge you to pass this essential and beneficial legislation. I also thank Congressman Steve King for introducing H.R. 997, and for his continued efforts in promoting our Nation's common language, English.

[The prepared statement of Mr. Mujica follows:]

Testimony of

Mauro E. Mujica
Chairman of the Board / CEO
U.S. English, Inc.

Before the
House Subcommittee on the Constitution

Hearing on "H.R. 997, the English Language Unity Act"

2141 Rayburn House Office Building
Washington, DC

2 August 2012

Thank you, Mr. Chairman, for allowing me the opportunity to testify today in support of H.R. 997, the English Language Unity Act. This is not my first time testifying in favor of this important piece of legislation, and I believe its passage is now long overdue.

My name is Mauro E. Mujica, and since 1993, I have served as the Chairman of the Board of U.S. English, Inc., which was founded in 1983 by former U.S. Senator S.I. Hayakawa. U.S. English is a nonpartisan, nonprofit organization with more than 1.8 million members nationwide. We focus on public policy issues affecting language and national identity, with a special emphasis on laws like H.R. 997 that would make English the official language of the United States government.

For nearly 20 years, I have seen this or similar legislation introduced or passed in both the House and the Senate in various forms. Unfortunately, partisan politics and widely spread misconceptions have prevented it from passing both the House and the Senate and being signed into law. As the language divisions in America continue to grow, I believe there is no better time than now to pass the English Language Unity Act.

When I immigrated to the United States in the 1960s, I knew that English was the language of this country. Therefore, I studied it before I came here, recognizing that it was crucial to my success in America. At that time, many of the multilingual assistance programs that exist today had not yet taken hold. Executive Order 13166, which requires the federal government to provide translation and interpretation services to limited English individuals, was not signed into law until 2000. Yet even so, I and other immigrants knew that learning English was the first step to creating a prosperous life in America.

Senator Hayakawa, himself a linguist, was quoted in the April 27, 1981 Congressional Record saying, "The ability to forge unity from diversity makes our society strong. We need all the elements, Germans, Hispanics, Hellenes, Italians, Chinese, all the cultures that make our nation unique. Unless we have a common basis for communicating and sharing ideas, we all lose." Look at our nation's motto: *E Pluribus Unum*—out of many, one. The United States is a melting pot, and I would never suggest becoming an "English Only" nation. It is important, however, that in our acceptance of foreign languages, we do not allow America to become an "English Optional" nation.

Regardless of background, everyone can recognize that at some point, there has to be a cap on the number of translations the government, schools, hospitals and other places of business are required to provide. With more than 325 languages spoken in the United States, it is unreasonable to provide communications in each of them. H.R. 997 sends the message that in order to live a fully productive life in America, one must become fluent in English. It does not limit the number of languages an American can speak (I, in fact, am fluent in four); nor does it require citizens to speak English in their private conversations. H.R. 997 simply requires that government functions be carried out in English—with common sense exceptions for health and public safety, trade and tourism, national security and more.

As of the 2000 Census, more than 21.3 million Americans were only able to speak English 'less than very well,' meaning that 8.1 percent of Americans had difficulty holding more than a basic conversation in English. By 2010, these numbers had worsened—with 25.2 million, or 8.7 percent, of Americans claiming they could speak English less than very well. In 31 states, legislators have already taken steps to prevent this language crisis from worsening. As far back as 1811, when Louisiana declared English its sole official language, and as recently as 2010, when Oklahoma did the same, states have sent the message that English is the key to a unified America. Unfortunately, the United States Congress has not yet followed suit.

In June, U.S. English hired Harris Interactive to conduct a poll to gauge the support for Official English laws among the American people. This poll found overwhelming support—88 percent of respondents agreed that English should be the official language of the United States. Broken down by political party, this included 96 percent of Republicans, 83 percent of Democrats and 89 percent of Independents. The results showed support for Official English extends to 89 percent of males and 87 percent of females, and even 83 percent of Hispanics agreed that English should be America's official language. These poll results confirm what U.S. English has long declared: the English language is a bond that reaches far beyond political party and demographics. H.R. 997 will serve as a balance – it will allow Americans to continue to speak in whatever language they choose in their daily lives, while also ensuring that we are all bound by a common, shared language.

Mr. Chairman, I thank you again for giving me the opportunity to share my views with the Committee today. The English language is the one factor with the ability to unite us all, and I hope that the Committee takes note of the will of the American people and continues to make strides toward enacting Official English legislation.

3

Mr. FRANKS. Thank you, Mr. Mujica. And thank all of you for your testimony. And I will be now asking questions for 5 minutes.

Let me begin with you, Dr. Porter. One of the things that I hear, a consistent commonality here is that everyone, including my own personal experience, is that when someone comes to this country as an immigrant, that it is clearly to their great benefit to be able to

learn English for their upward mobility, for their ability to socialize, and for their ability to gain economically. This was certainly a very common theme in my wife's family, and this is something I have heard all three of you testify unequivocally to.

So I guess the question occurs, Dr. Porter, do you believe or do you think there is any evidence to the notion that having a bill like this pass would encourage, or incentivize, or increase the number of immigrants who learn English when they come to this country?

Ms. PORTER. I do believe passing a bill like this will encourage, incentivize, motivate more people to concentrate. As long as we and government provides services, documents, translations in many languages. I will compare it to my experience as a bilingual teacher. As long as we have provided instruction in the child's native language and English, the child tended to listen to the native language and ignore the English. It took much longer to teach children a second language when they were being educated in 2 languages. Fortunately, those programs have been overturned in many States, and we are now seeing much greater success for immigrant children in learning English rapidly and in succeeding in school, in achievement, graduating from high school.

So I would say having the impetus of an official language will be a motivator. Most immigrants do want to learn English. They need the opportunity. But, you know, it is easy to fall back on being comfortable in your home language.

Mr. FRANKS. Thank you, Dr. Porter. That certainly seems compelling to me. Mr. Mujica, could I put the same question to you? Do you believe that from your own perspective or experience, is there any evidence to indicate that if we have an official language, whether a State does it or the country does it, that it is an inducement or a motivation, or that it by other means increases the number of the percentage of immigrants that come to this country that do, in fact, learn English?

Mr. MUJICA. Yes, absolutely. I have seen it in other countries. I have worked, as I said, in many, many countries as an architect. I have seen the problems in Belgium, the fights in Belgium. I have seen the almost secession of Quebec in Canada because of language problems. I have seen it in other countries. And it is obvious.

The message that you have to send to the new immigrants like myself. And incidentally, you know, we immigrants do not come to this country because of the weather or the quality of the drinking water. We come here to make money. You can only make more money if you know English.

And knowing English is essential. We cannot send the message to the new immigrants that English is optional. They can come here, live in Miami all their lives, speak Spanish and not bother to learn English. I have seen it firsthand with members of my family that live in Miami. They just do not bother to learn English. They think English is optional.

Mr. FRANKS. Well, thank you, sir. Everything that a person does, you know, there are usually some positives and some negatives. So, the reason I asked that question is because that seems to be a very profound positive on the upside of this legislation. The one thing that we all seem to agree on is that when immigrants do learn

English, that it is better for them and better for the country. So, that seems like a worthwhile pursuit.

And there seems to be some clear consensus here that when we have laws like this, that occurs. I suppose then the only thing we can do is to try to, if we oppose that, find some offset to that overwhelming positive.

Dr. Porter, does an official English law mean that the Federal Government itself is prohibited from using other languages?

Ms. PORTER. I am sorry, Mr. Chairman, I could not hear.

Mr. FRANKS. No, I did not ask the question well. Does a Federal official English law mean that the Federal Government is prohibited from using other languages?

Ms. PORTER. Of course not. The Federal Government in its many operations, for instance, the State Department, the Defense Department, the Naturalization and Immigration Service. There are specific reasons why other languages must be used, and they will be used, and there is no forbidding such activities in this law.

Mr. FRANKS. Mr. Mujica, do you have anything you would add to that?

Mr. MUJICA. No, I think they are all exceptions to learning the foreign languages, things like our dollar bills that say e pluribus unum. That would not have to be changed.

I think certain things are clear. I mean, they are so clear at least to me that it is difficult to figure out what would be wrong with this bill.

Mr. FRANKS. Well, thank you, and I now recognize the Ranking Member, Mr. Nadler, for 5 minutes for questioning.

Mr. NADLER. Thank you very much. Senator Garcia, do you agree that provision of some bilingual education impedes learning of English?

Mr. GARCIA. Of course not. I think bilingual education, and this is where I may have to disagree with Dr. Porter. In Miami-Dade County, we have seen that because of bilingual education, we have seen children assimilate much quicker and learn the English language a lot easier because of that ability.

Mr. NADLER. Not to mention math and other things.

Mr. GARCIA. I am sorry?

Mr. NADLER. Not to mention math and other things.

Mr. GARCIA. Absolutely. Yeah, so that is the key. The problem that I see with this legislation currently is that because there are Federal dollars attached to it, I think that we will have—there will be a problem with us continuing to do those programs that we have in Miami-Dade County.

Mr. NADLER. But that is one of the purposes of the bill.

Mr. GARCIA. Exactly.

Mr. NADLER. Now, Dr. Porter, you testified in your written submission that, "The U.S. Supreme Court upheld the right of States to have official English laws" in *Arizonians for Official English v. Arizona*, 1997.

Ms. PORTER. Yes.

Mr. NADLER. In that case, in fact, the Court actually dismissed the case because the employee challenging the law had voluntarily left her job and made the case moot. Far from ruling that the Arizona law was valid, as you claim, the Court said, "We express no

view on the correct interpretation of Arizona's English only law or on the measure's constitutionality." The *Arizona* Court subsequently ruled in *Ruiz v. Hull* that the law was unconstitutional.

I am submitting the U.S. Supreme Court decision and the Arizona Supreme Court decision for the record as it is important to reflect the fact that the U.S. Supreme Court has not approved English only laws, and that Arizona's highest court struck down the law that you mistakenly claimed the U.S. Supreme Court upheld.

[The information referred to follows:]

Supreme Court of the United States
ARIZONANS FOR OFFICIAL ENGLISH and Robert D. Park, Petitioners
v.
ARIZONA et al.

No. 95-974.
Argued Dec. 4, 1996.
Decided March 3, 1997.

State employee brought action against state, governor, Attorney General, state senator and Department of Administration seeking injunction against enforcement of constitutional amendment making English state's official language. The United States District Court for the District of Arizona, Paul G. Rosenblatt, J., 730 F.Supp. 309, found statute was facially overbroad. Sponsor of amendment intervened and appealed, and employee filed cross-appeal, seeking nominal damages. The Ninth Circuit Court of Appeals, 69 F.3d 920, affirmed in part, reversed in part and remanded. Certiorari was granted. The Supreme Court, Justice Ginsburg, held that: (1) to satisfy constitutional case or controversy requirements, controversy must be extant at all stages of review, and not only when complaint is filed; (2) state government employee's suit became moot when employee resigned; (3) Court of Appeal's affirmance of district court's determination of unconstitutionality would be vacated, even though state Attorney General had effectively acquiesced in decision by not seeking certiorari; and (4) district court decision would be vacated, even though it was entered prior to resignation of employee.

Vacated and remanded with directions.

West Headnotes

[1] Federal Civil Procedure 170A ⚷103.2

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.2 k. In general; injury or interest. Most Cited Cases

To qualify as party with standing to litigate, person must show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent." U.S.C.A. Const. Art. 3, § 2, cl. 1.

[2] Constitutional Law 92 ⚷665

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)1 In General
92k665 k. In general. Most Cited Cases

Federal Civil Procedure 170A ⚷103.4

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.4 k. Rights of third parties or public. Most Cited Cases

Interest shared generally with public at large in proper application of Constitution and laws is insufficient to confer standing upon party to sue, under Article III of Constitution. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[3] Federal Courts 170B ⚷455.1

170B Federal Courts
170BVII Supreme Court
170BVII(B) Review of Decisions of Courts of Appeals
170Bk455 Decisions Reviewable and Grounds for Issuance
170Bk455.1 k. In general. Most Cited Cases

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(Formerly 170Bk452)

Standing to defend in Supreme Court, on appeal in place of original defendant, claim that amendment to State Constitution providing that English was official language of state violated Federal Constitution, required that litigant possess direct stake in outcome, in order to satisfy case or controversy requirement for federal jurisdiction. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[4] Federal Courts 170B ⚷455.1

170B Federal Courts
170BVII Supreme Court
170BVII(B) Review of Decisions of Courts of Appeals
170Bk455 Decisions Reviewable and Grounds for Issuance
170Bk455.1 k. In general. Most Cited Cases
(Formerly 170Bk452)

Supreme Court may consider whether there is case or controversy before determining whether appellants have standing. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[5] Federal Courts 170B ⚷12.1

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk12.1 k. In general. Most Cited Cases

To satisfy constitutional jurisdictional requirements, controversy must be extant at all stages of review, and not only when complaint is filed. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[6] Attorney and Client 45 ⚷32(14)

45 Attorney and Client
45I The Office of Attorney
45I(B) Privileges, Disabilities, and Liabilities
45k32 Regulation of Professional Conduct, in General
45k32(14) k. Candor, and disclosure to opponent or court. Most Cited Cases

It is duty of counsel to bring to federal tribunal's attention, without delay, facts that may raise question of mootness.

[7] Attorney and Client 45 ⚷32(14)

45 Attorney and Client
45I The Office of Attorney
45I(B) Privileges, Disabilities, and Liabilities
45k32 Regulation of Professional Conduct, in General
45k32(14) k. Candor, and disclosure to opponent or court. Most Cited Cases

Change in circumstances bearing on vitality of case is not matter opposing counsel may withhold from federal court based on counsels' agreement that case should proceed to judgment and not be considered moot.

[8] Constitutional Law 92 ⚷977

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)2 Necessity of Determination
92k977 k. Mootness. Most Cited Cases
(Formerly 170Bk13.10)

State government employee's suit against state, challenging state constitutional amendment declaring English to be official language of state, became moot at point employee resigned employment with state and accepted job in private sector, precluding appellate review, even though it was claimed that employee retained entitlement to nominal damages from state under § 1983 and state had waived its Eleventh Amendment right to avoid payment of damages; there was no remedy against state under § 1983, and in any event state had been dismissed from case. U.S.C.A. Const. Art. 3, § 2, cl. 1; Amend. 11; A.R.S. Const. Art. 28, § 1(1, 2); 42 U.S.C.A. § 1983.

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[9] Federal Courts 170B ⚷462

170B Federal Courts
170BVII Supreme Court
170BVII(B) Review of Decisions of Courts of Appeals
170Bk462 k. Determination and disposition of cause. Most Cited Cases

Court of Appeal's determination that state constitutional amendment making English official language of state violated Federal Constitution would be vacated, even though state Attorney General effectively acquiesced in decision by not petitioning Supreme Court for writ of certiorari; private association which had promoted adoption of amendment, and its chairman, had petitioned for certiorari, and even if they were ultimately found to lack standing Supreme Court had duty to inquire into its authority, and that of lower courts, to decide questions presented. U.S.C.A. Const. Art. 3, § 2, cl. 1; Amends. 1, 14; A.R.S. Const. Art. 28, § 1(1, 2).

[10] Federal Courts 170B ⚷462

170B Federal Courts
170BVII Supreme Court
170BVII(B) Review of Decisions of Courts of Appeals
170Bk462 k. Determination and disposition of cause. Most Cited Cases

District court's judgment declaring state constitutional provision making English official language of state unconstitutional would be vacated, on grounds that challenge raised by state employee became moot when employee left state employment, even though departure occurred after district court entered judgment and governor, as sole state employee bound by decision, elected not to appeal; state Attorney General was pursuing right under federal statute to argue for constitutionality of provision when employee resigned. U.S.C.A. Const. Art. 3, § 2, cl. 1; Amends. 1, 14; A.R.S. Const. Art. 28, § 1(1, 2); 28 U.S.C.A. § 2403(b)

[11] Federal Courts 170B ⚷392

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(B) Decisions of State Courts as Authority
170Bk388 Federal Decision Prior to State Decision
170Bk392 k. Withholding decision; certifying questions. Most Cited Cases

Federal courts could certify to state supreme court question of construction of state constitutional amendment making English official language of state, without state being forced to concede as condition precedent that provision would be unconstitutional if construed as proposed by challenger. A.R.S. Const. Art. 28, §§ 1(2), 2.

[12] Federal Courts 170B ⚷392

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(B) Decisions of State Courts as Authority
170Bk388 Federal Decision Prior to State Decision
170Bk392 k. Withholding decision; certifying questions. Most Cited Cases

Presence of novel and unsettled questions of law, rather than unique circumstances, are necessary before federal courts may avail themselves of state procedures allowing for certification of questions to state's highest court.

****1056** *Syllabus* FN*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499 (1906).

***43** Maria-Kelly F. Yniguez, an Arizona state employee at the time, sued the State and its Governor, Attorney General, and Director of the Department of Administration under 42 U.S.C. § 1983

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, alleging that State **1057 Constitution Article XXVIII-key provisions of which declare English "the official language of the State," require the State to "act in English and in no other language," and authorize state residents and businesses "to bring |state-court| suit|s| to enforce th|c| Article"-violated, *inter alia*, the Free Speech Clause of the First Amendment. Yniguez used both English and Spanish in her work and feared that Article XXVIII, if read broadly, would require her to face discharge or other discipline if she did not refrain from speaking Spanish while serving the State. She requested injunctive and declaratory relief, counsel fees, and "all other relief that the Court deems just and proper." During the early phases of the suit, the State Attorney General released an opinion expressing his view that Article XXVIII is constitutional in that, although it requires the expression of "official acts" in English, it allows government employees to use other languages to facilitate the delivery of governmental services. The Federal District Court heard testimony and, among its rulings, determined that only the Governor, in her official capacity, was a proper defendant. The court, at the same time, dismissed the State because of its Eleventh Amendment immunity, the State Attorney General because he had no authority to enforce Article XXVIII against state employees, and the Director because there was no showing that she had undertaken or threatened any action adverse to Yniguez; rejected the Attorney General's interpretation of the Article on the ground that it conflicted with the measure's plain language; declared the Article fatally overbroad after reading it to impose a sweeping ban on the use of any language other than English by all of Arizona officialdom; and declined to allow the Arizona courts the initial opportunity to determine the scope of Article XXVIII. Following the Governor's announcement that she would not appeal, the District Court denied the State Attorney General's request to certify the pivotal state-law question-the Article's correct construction-to the Arizona Supreme Court. The District Court also denied the State Attorney General's*44 motion to intervene on behalf of the State, under 28 U.S.C. § 2403(b), to contest on appeal the court's holding that the Article is unconstitutional. In addition, the court denied the motion of newcomers Arizonans for Official English Committee (AOE) and its Chairman Park, sponsors of the ballot initiative that became Article XXVIII, to intervene to support the Article's constitutionality. The day after AOE, Park, and the State Attorney General filed their notices of appeal, Yniguez resigned from state employment to accept a job in the private sector. The Ninth Circuit then concluded that AOE and Park met standing requirements under Article III of the Federal Constitution and could proceed as party appellants, and that the Attorney General, having successfully obtained dismissal below, could not reenter as a party, but could present an argument, pursuant to § 2403(b), regarding the constitutionality of Article XXVIII. Thereafter, the State Attorney General informed the Ninth Circuit of Yniguez's resignation and suggested that, for lack of a viable plaintiff, the case was moot. The court disagreed, holding that a plea for nominal damages could be read into the complaint's "all other relief" clause to save the case. The en banc Ninth Circuit ultimately affirmed the District Court's ruling that Article XXVIII was unconstitutional, and announced that Yniguez was entitled to nominal damages from the State. Finding the Article's "plain language" dispositive, and noting that the State Attorney General had never conceded that the Article would be unconstitutional if construed as Yniguez asserted it should be, the Court of Appeals also rejected the Attorney General's limiting construction of the Article and declined to certify the matter to the State Supreme Court. Finally, the Ninth Circuit acknowledged a state-court challenge to Article XXVIII's constitutionality, *Ruiz v. State*, but found that litigation no cause to stay the federal proceedings.

Held: Because the case was moot and should not have been retained for adjudication on the merits, the Court vacates the Ninth Circuit's judgment and remands the case with directions that the action be dismissed by the District Court. This Court expresses no view on the correct interpretation of Art-

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icle XXVIII or on the measure's constitutionality. Pp. 1067-1075.

****1058** (a) Grave doubts exist as to the standing of petitioners AOE and Park to pursue appellate review under Article III's case-or-controversy requirement. Standing to defend on appeal in the place of an original defendant demands that the litigant possess "a direct stake in the outcome." *Diamond v. Charles,* 476 U.S. 54, 62, 106 S.Ct. 1697, 1703, 90 L.Ed.2d 48. Petitioners' primary argument-that, as initiative proponents, they have a quasi-legislative ***45** interest in defending the measure they successfully sponsored-is dubious because they are not elected state legislators, authorized by state law to represent the State's interests, see *Karcher v. May,* 484 U.S. 72, 82, 108 S.Ct. 388, 395, 98 L.Ed.2d 327. Furthermore, this Court has never identified initiative proponents as Article-III-qualified defenders. Cf. *Don't Bankrupt Washington Committee v. Continental Ill. Nat. Bank & Trust Co. of Chicago,* 460 U.S. 1077, 103 S.Ct. 1762, 76 L.Ed.2d 338. Their assertion of representational or associational standing is also problematic, absent the concrete injury that would confer standing upon AOE members in their own right, see, *e.g., Food and Commercial Workers v. Brown Group, Inc.,* 517 U.S. 544, 551-553, 116 S.Ct. 1529, 1534, 134 L.Ed.2d 758 (1996), and absent anything in Article XXVIII's state-court citizen-suit provision that could support standing for Arizona residents in general, or AOE in particular, to defend the Article's constitutionality in federal court. Nevertheless, this Court need not definitively resolve the standing of AOE and Park to proceed as they did, but assumes such standing *arguendo* in order to analyze the question of mootness occasioned by originating plaintiff Yniguez's departure from state employment. See, *e.g., Burke v. Barnes,* 479 U.S. 361, 363, 364, 107 S.Ct. 734, 93 L.Ed.2d 732, n. Pp. 1067-1068.

(b) Because Yniguez no longer satisfies the case-or-controversy requirement, this case is moot. To qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed. *E.g., Preiser v. Newkirk,* 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272. Although Yniguez had a viable claim at the outset of this litigation, her resignation from public sector employment to pursue work in the private sector, where her speech was not governed by Article XXVIII, mooted the case stated in her complaint. Cf. *Boyle v. Landry,* 401 U.S. 77, 78, 80-81, 91 S.Ct. 758, 758-759, 759-760. Contrary to the Ninth Circuit's ruling, her implied plea for nominal damages, which the Ninth Circuit approved as against the State of Arizona, could not revive the case, as § 1983 actions do not lie against a State, *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 71, 109 S.Ct. 2304, 2312; Arizona was permitted to participate in the appeal only as an intervenor, through its Attorney General, not as a party subject to an obligation to pay damages; and the State's cooperation with Yniguez in waiving Eleventh Amendment immunity did not recreate a live case or controversy fit for federal-court adjudication, cf., *e.g., United States v. Johnson,* 319 U.S. 302, 304, 63 S.Ct. 1075, 1076. Pp. 1068-1071.

(c) When a civil case becomes moot pending appellate adjudication, the established practice in the federal system is to reverse or vacate the judgment below and remand with a direction to dismiss. *United States v. Munsingwear, Inc.,* 340 U.S. 36, 39, 71 S.Ct. 104, 106-107. This Court is not disarmed from that course by the State Attorney General's failure to petition for certiorari. The Court has an obligation to inquire not only into its own ***46** authority to decide the questions presented, but to consider also the authority of the lower courts to proceed, even though the parties are prepared to concede it. *E.g., Bender v. Williamsport Area School Dist.,* 475 U.S. 534, 541, 106 S.Ct. 1326, 1331. Because the Ninth Circuit refused to stop the adjudication when it learned of the mooting event-Yniguez's departure from public employment-its unwarranted en banc judgment must be set aside. Nor is the District Court's judgment saved by its

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entry before the occurrence of the mooting event or by the Governor's refusal to appeal from it. AOE and Park had an arguable basis for seeking appellate review; moreover, the State Attorney General's renewed certification plea and his motion to intervene in this litigation demonstrate that he was pursuing his § 2403(b) right to defend****1059** Article XXVIII's constitutionality when the mooting event occurred. His disclosure of that event to the Ninth Circuit warranted a mootness disposition, which would have stopped his § 2403(b) endeavor and justified vacation of the District Court's judgment. The extraordinary course of this litigation and the federalism concern next considered lead to the conclusion that vacatur down the line is the equitable solution. Pp. 1071-1072.

(d) Taking into account the novelty of the question of Article XXVIII's meaning, its potential importance to the conduct of Arizona's business, the State Attorney General's views on the subject, and the at-least-partial agreement with those views by the Article's sponsors, more respectful consideration should have been given to the Attorney General's requests to seek, through certification, an authoritative construction of the Article from the State Supreme Court. When anticipatory relief is sought in federal court against a state statute, respect for the place of the States in our federal system calls for close consideration of the question whether conflict is avoidable. Federal courts are not well equipped to rule on a state statute's constitutionality without a controlling interpretation of the statute's meaning and effect by the state courts. See, *e.g., Poe v. Ullman,* 367 U.S. 497, 526, 81 S.Ct. 1752, 1767-1768 (Harlan, J., dissenting). Certification saves time, energy, and resources and helps build a cooperative judicial federalism. See, *e.g., Lehman Brothers v. Schein,* 416 U.S. 386, 391, 94 S.Ct. 1741, 1744. Contrary to the Ninth Circuit's suggestion, this Court's decisions do not require as a condition precedent to certification a concession by the Attorney General that Article XXVIII would be unconstitutional if construed as Yniguez contended it should be. Moreover, that court improperly blended abstention with certification when it found that "unique circumstances," rather than simply a novel or unsettled state-law question, are necessary before federal courts may employ certification. The Arizona Supreme Court has before it, in *Ruiz v. State,* the question: What does Article XXVIII mean? Once that court has spoken, adjudication of any remaining federal constitutional***47** question may be "greatly simplifie[d]." See *Bellotti v. Baird,* 428 U.S. 132, 151, 96 S.Ct. 2857, 2868. Pp. 1073-1075.

69 F.3d 920, vacated and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.
Barnaby W. Zall, Washington, DC, for petitioners.

Robert J. Pohlman, Phoenix, AZ, for respondents.

For U.S. Supreme Court briefs, see:1996 WL 691983(Pet.Brief)1996 WL 272394(Pet.Brief)1996 WL 426410(Resp.Brief)1996 WL 365901(Resp.Brief)1996 WL 491444(Reply.Brief)1996 WL 491440(Reply.Brief)

***48** Justice GINSBURG delivered the opinion of the Court.

Federal courts lack competence to rule definitively on the meaning of state legislation, see, *e.g., Reetz v. Bozanich,* 397 U.S. 82, 86-87, 90 S.Ct. 788, 790, 25 L.Ed.2d 68 (1970), nor may they adjudicate challenges to state measures absent a showing of actual impact on the challenger, see, *e.g., Golden v. Zwickler,* 394 U.S. 103, 110, 89 S.Ct. 956, 960-961, 22 L.Ed.2d 113 (1969). The Ninth Circuit, in the case at hand, lost sight of these limitations. The initiating plaintiff, Maria-Kelly F. Yniguez, sought federal-court resolution of a novel question: the compatibility with the Federal Constitution of a 1988 amendment to Arizona's Constitution declaring English "the official language of the State of Arizona"-"the language of ... all government functions and actions." Ariz. Const., Art. XXVIII, §§ 1(1), 1(2). Participants in the federal litigation, proceeding without benefit of the views

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of the Arizona Supreme Court, expressed diverse opinions on the meaning of the amendment.

Yniguez commenced and maintained her suit as an individual, not as a class representative. A state employee at the time she filed her complaint, Yniguez voluntarily left the State's employ in 1990 and did not allege she would seek to return to a public post. ****1060** Her departure for a position in the private sector made her claim for prospective relief moot. Nevertheless, the Ninth Circuit held that a plea for nominal damages could be read into Yniguez's complaint to save the case, and therefore pressed on to an ultimate decision. A three-judge panel of the Court of Appeals declared Article XXVIII unconstitutional in 1994, and a divided en banc court, in 1995, adhered to the panel's position.

The Ninth Circuit had no warrant to proceed as it did. The case had lost the essential elements of a justiciable controversy and should not have been retained for adjudication on the merits by the Court of Appeals. We therefore ***49** vacate the Ninth Circuit's judgment, and remand the case to that court with directions that the action be dismissed by the District Court. We express no view on the correct interpretation of Article XXVIII or on the measure's constitutionality.

I

A 1988 Arizona ballot initiative established English as the official language of the State. Passed on November 8, 1988, by a margin of one percentage point,[FN1] the measure became effective on December 5 as Arizona State Constitution Article XXVIII. Among key provisions, the Article declares that, with specified exceptions, the State "shall act in English and in no other language." Ariz. Const., Art. XXVIII, § 3(1)(a). The enumerated exceptions concern compliance with federal laws, participation in certain educational programs, protection of the rights of criminal defendants and crime victims, and protection of public health or safety. *Id.,* § 3(2). In a final provision, Article XXVIII grants standing to any person residing or doing business in the State "to bring suit to enforce th[e] Article" in state court, under such "reasonable limitations" as "[t]he Legislature may enact." *Id.,* § 4.[FN2]

FN1. The measure, opposed by the Governor as "sadly misdirected," App. 38, drew the affirmative votes of 50.5% of Arizonans casting ballots in the election, see *Yniguez v. Arizonans for Official English,* 69 F.3d 920, 924 (C.A.9 1995).

FN2. Article XXVIII, titled "English as the Official Language," is set out in full in an appendix to this opinion.

Federal-court litigation challenging the constitutionality of Article XXVIII commenced two days after the ballot initiative passed. On November 10, 1988, Maria-Kelly F. Yniguez, then an insurance claims manager in the Arizona Department of Administration's Risk Management Division, sued the State of Arizona in the United States District Court for the District of Arizona. Yniguez invoked ***50** 42 U.S.C. § 1983 as the basis for her suit.[FN3] Soon after the lawsuit commenced, Yniguez added as defendants, in their individual and official capacities, Arizona Governor Rose Mofford, Arizona Attorney General Robert K. Corbin, and the Director of Arizona's Department of Administration, Catherine Eden. Yniguez brought suit as an individual and never sought designation as a class representative.

FN3. Derived from § 1 of the Civil Rights Act of 1871, Rev. Stat. § 1979, 42 U.S.C. § 1983 provides in relevant part:

"*Civil action for deprivation of rights.*

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ..., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be li-

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> able to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Fluent in English and Spanish, Yniguez was engaged primarily in handling medical malpractice claims against the State. In her daily service to the public, she spoke English to persons who spoke only that language, Spanish to persons who spoke only that language, and a combination of English and Spanish to persons able to communicate in both languages. Record, Doc. No. 62, ¶¶ 8, 13 (Statement of Stipulated Facts, filed Feb. 9, 1989). Yniguez feared that Article XXVIII's instruction to "act in English," § 3(1)(a), if read broadly, would govern her job performance "every time she [did] something." See Record, Doc. No. 62, ¶ 10. She believed she would lose her job or face other sanctions if she did not immediately refrain from speaking Spanish while serving the State. See App. 58, ¶ 19 (Second Amended Complaint).****1061** Yniguez asserted that Article XXVIII violated the First and Fourteenth Amendments to the United States Constitution and Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d. She requested injunctive and declaratory relief, counsel fees, and "all other relief that the ***51** Court deems just and proper under the circumstances." App. 60.

All defendants named in Yniguez's complaint moved to dismiss all claims asserted against them.[FN4] The State of Arizona asserted immunity from suit under the Eleventh Amendment. The individual defendants asserted the absence of a case or controversy because "none of [them] ha[d] threatened [Yniguez] concerning her use of Spanish in the performance of her job duties [or had] ever told her not to use Spanish [at work]." Record, Doc. No. 30, p. 1. The defendants further urged that novel state-law questions concerning the meaning and application of Article XXVIII should be tendered first to the state courts. See *id.*, at 2.[FN5]

> FN4. Under Arizona law, the State Attorney General represents the State in federal court. See Ariz.Rev.Stat. Ann. § 41-193 (A)(3) (1992). Throughout these proceedings, the State and all state officials have been represented by the State Attorney General, or law department members under his supervision. See § 41-192(A).

> FN5. Arizona law permits the State's highest court to "answer questions of law certified to it by the supreme court of the United States, a court of appeals of the United States, a United States district court or a tribal court ... if there are involved in any proceedings before the certifying court questions of [Arizona law] which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court and the intermediate appellate courts of this state." Ariz.Rev.Stat. Ann. § 12-1861 (1994).

Trial on the merits of Yniguez's complaint, the parties agreed, would be combined with the hearing on her motion for a preliminary injunction.[FN6] Before the trial occurred, the State Attorney General, on January 24, 1989, released an opinion, No. I89-009, construing Article XXVIII and explaining why he found the measure constitutional. App. 61-76.

> FN6. The District Court, on December 8, 1988, had denied Yniguez's application for a temporary restraining order, finding no "imminent danger of the imposition of sanctions" against her. Record, Doc. No. 23, p. 1.

***52** In Opinion No. I89-009, the Attorney General said it was his obligation to read Article XXVIII "as a whole," in line "with the other portions of the Arizona Constitution" and "with the United States Constitution and federal laws." App. 61. While Article XXVIII requires the performance of "official acts of government" in English, it was the Attorney General's view that government em-

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ployees remained free to use other languages "to facilitate the delivery of governmental services." *Id.,* at 62. Construction of the word "act," as used in Article XXVIII, to mean more than an "official ac[t] of government," the Attorney General asserted, "would raise serious questions" of compatibility with federal and state equal protection guarantees and federal civil rights legislation. *Id.,* at 65-66.[FN7]

FN7. Specifically addressing "[t]he handling of customer inquiries or complaints involving state or local government services," the Attorney General elaborated:

"All official documents that are governmental acts must be in English, but translation services and accommodating communications are permissible, and may be required if reasonably necessary to the fair and effective delivery of services, or required by specific federal regulation. Communications between elected and other governmental employees with the public at large may be in a language other than English on the same principles." App. 74.

On February 9, 1989, two weeks after release of the Attorney General's opinion, the parties filed a statement of stipulated facts, which reported Governor Mofford's opposition to the ballot initiative, her intention nevertheless "to comply with Article XXVIII," and her expectation that "State service employees [would] comply" with the measure. See Record, Doc. No. 62, ¶¶ 35, 36, 39. The stipulation confirmed the view of all parties that "[t]he efficient operation [and administration] of the State is enhanced by permitting State service employees to communicate with citizens of the State in languages other than English where the citizens are not proficient in English." *Id.,* ¶¶ 16, 17. In particular, the parties recognized that "Yniguez'[s] ****1062** use of a language other ***53** than English in the course of her performing government business contributes to the efficient operation ... and ... administration of the State." *Id.,* ¶ 15. The stipulation referred to the Attorney General's January 24, 1989, opinion, *id.,* ¶ 46, and further recounted that since the passage of Article XXVIII, "none of [Yniguez's] supervisors ha[d] ever told her to change or cease her prior use of Spanish in the performance of her duties," *id.,* ¶ 48.[FN8]

FN8. Supplementing their pleas to dismiss for want of a case or controversy, the defendants urged that Attorney General Opinion No. I89-009 "puts to rest any claim that [Yniguez] will be penalized by the State for using Spanish in her work." Record, Doc. No. 51, p. 4, n. 1.

The District Court heard testimony on two days in February and April 1989, and disposed of the case in an opinion and judgment filed February 6, 1990. *Yniguez v. Mofford,* 730 F.Supp. 309. Prior to that final decision, the court had dismissed the State of Arizona as a defendant, accepting the State's plea of Eleventh Amendment immunity. See *id.,* at 311. Yniguez's second amended complaint, filed February 23, 1989, accordingly named as defendants only the Governor, the Attorney General, and the Director of the Department of Administration. See App. 55.[FN9]

FN9. The second amended complaint added another plaintiff, Arizona State Senator Jaime Gutierrez. Senator Gutierrez alleged that Article XXVIII interfered with his rights to communicate freely with persons, including residents of his Senate district, who spoke languages other than English. App. 58-59. The District Court dismissed Gutierrez's claim on the ground that the defendants, all executive branch officials, lacked authority to take enforcement action against elected legislative branch officials. *Yniguez v. Mofford,* 730 F.Supp. 309, 311 (Ariz.1990). Gutierrez is no longer a participant in these proceedings.

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The District Court determined first that, among the named defendants, only the Governor, in her official capacity, was a proper party. The Attorney General, the District Court found, had no authority under Arizona law to enforce provisions like Article XXVIII against state employees. 730 F.Supp., at 311-312. The Director and the Governor, ***54** on the other hand, did have authority to enforce state laws and rules against state service employees. *Id.*, at 311. But nothing in the record, the District Court said, showed that the Director had undertaken or threatened to undertake any action adverse to Yniguez. *Id.*, at 313. That left Governor Mofford.

The Attorney General "ha[d] formally interpreted Article XXVIII as not imposing any restrictions on Yniguez's continued use of Spanish during the course of her official duties," *id.*, at 312, and indeed all three named defendants-Mofford as well as Corbin and Eden, see *supra*, at 1060-"ha[d] stated on the record that Yniguez may continue to speak Spanish without fear of official retribution." 730 F.Supp., at 312. Governor Mofford therefore reiterated that Yniguez faced no actual or threatened injury attributable to any Arizona executive branch officer, and hence presented no genuine case or controversy. See *ibid.* But the District Court singled out the stipulations that "Governor Mofford intends to comply with Article XXVIII," and "expects State service employees to comply with Article XXVIII." Record, Doc. No. 62, ¶¶ 35, 36; see 730 F.Supp., at 312. If Yniguez proved right and the Governor wrong about the breadth of Article XXVIII, the District Court concluded, then Yniguez would be vulnerable to the Governor's pledge to enforce compliance with the Article. See *ibid.*

Proceeding to the merits, the District Court found Article XXVIII fatally overbroad. The measure, as the District Court read it, was not merely a direction that all official acts be in English, as the Attorney General's opinion maintained; instead, according to the District Court, Article XXVIII imposed a sweeping ban on the use of any language other than English by all of Arizona officialdom, with only limited exceptions. *Id.*, at 314. The District Court adverted to the Attorney General's confining construction, but found it unpersuasive. Opinion No. 189-009, the District Court observed, is "merely ... advisory," not binding on any ***55** court. 730 F.Supp., at 315. "More importantly," the District Court concluded, "the Attorney General's interpretation ... is simply at odds with Article XXVIII's plain language." *Ibid.*

****1063** The view that Article XXVIII's text left no room for a moderate and restrained interpretation led the District Court to decline "to allow the Arizona courts the initial opportunity to determine the scope of Article XXVIII." *Id.*, at 316. The District Court ultimately dismissed all parties save Yniguez and Governor Mofford in her official capacity, then declared Article XXVIII unconstitutional as violative of the First and Fourteenth Amendments, but denied Yniguez's request for an injunction because "she ha[d] not established an enforcement threat sufficient to warrant [such] relief." *Id.*, at 316-317.

Postjudgment motions followed, sparked by Governor Mofford's announcement that she would not pursue an appeal. See App. 98. The Attorney General renewed his request to certify the pivotal state-law question-the correct construction of Article XXVIII-to the Arizona Supreme Court. See Record, Doc. No. 82. He also moved to intervene on behalf of the State, pursuant to 28 U.S.C. § 2403(b) [FN10], in order to contest on appeal the District Court's declaration that a provision of Arizona's Constitution violated the Federal Constitution. Record, Doc. Nos. 92, 93.

FN10. Title 28 U.S.C. § 2403(b) provides:

> "In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact

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> to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality."

***56** Two newcomers also appeared in the District Court after judgment: the Arizonans for Official English Committee (AOE) and Robert D. Park, Chairman of AOE. Invoking Rule 24 of the Federal Rules of Civil Procedure, AOE and Park moved to intervene as defendants in order to urge on appeal the constitutionality of Article XXVIII. App. 94-102. AOE, an unincorporated association, was principal sponsor of the ballot initiative that became Article XXVIII. AOE and Park alleged in support of their intervention motion the interest of AOE members in enforcement of Article XXVIII and Governor Mofford's unwillingness to defend the measure on appeal. Responding to the AOE/Park motion, Governor Mofford confirmed that she did not wish to appeal, but would have no objection to the Attorney General's intervention to pursue an appeal as the State's representative, or to the pursuit of an appeal by any other party. See Record, Doc. No. 94.

Yniguez expressed reservations about proceeding further. "She ha[d] won [her] suit against her employer" and had "obtained her relief," her counsel noted. Record, Doc. No. 114, p. 18 (Tr. of Proceeding on Motion to Intervene and Motion to Alter or Amend Judgment, Mar. 26, 1990). If the litigation "goes forward," Yniguez's counsel told the District Court, "I guess we do, too," but, counsel added, it might be in Yniguez's "best interest ... if we stopped it right here." *Ibid.* The District Court agreed.

In an opinion filed April 3, 1990, the District Court denied all three postjudgment motions. *Yniguez v. Mofford,* 130 F.R.D. 410. Certification was inappropriate, the District Court ruled, in light of the court's prior rejection of the Attorney General's narrow reading of Article XXVIII. See *id.,* at 412. As to the Attorney General's intervention application, the District Court observed that § 2403(b) addresses only actions " 'to which the State or any agency, officer, or employee thereof is not a party.' " See *id.,* at 413 (quoting § 2403(b)). Yniguez's action did not fit the § 2403(b) description,***57** the District Court said, because the State and its officers were the very defendants-the sole defendants-Yniguez's complaint named. Governor Mofford remained a party throughout the District Court proceedings. If the State lost the opportunity to defend the constitutionality of Article XXVIII on appeal, the District Court reasoned, it was "only because Governor Mofford determine[d] that the state's sovereign interests would be best served by foregoing an appeal." *Ibid.*

****1064** Turning to the AOE/Park intervention motion, the District Court observed first that the movants had failed to file a pleading "setting forth the[ir] claim or defense," as required by Rule 24(c). *Ibid.* But that deficiency was not critical, the District Court said. *Ibid.* The insurmountable hurdle was Article III standing. The labor and resources AOE spent to promote the ballot initiative did not suffice to establish standing to sue or defend in a federal tribunal, the District Court held. *Id.,* at 414-415. Nor did Park or any other AOE member qualify for party status, the District Court ruled, for the interests of voters who favored the initiative were too general to meet traditional standing criteria. *Id.,* at 415.

In addition, the District Court was satisfied that AOE and Park could not tenably assert practical impairment of their interests stemming from the precedential force of the decision. As nonparticipants in the federal litigation, they would face no issue preclusion. And a lower federal-court judg-

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ment is not binding on state courts, the District Court noted. Thus, AOE and Park would not be precluded by the federal declaration from pursuing "any future state court proceeding [based on] Article XXVIII." *Id.*, at 415-416.

II

The Ninth Circuit viewed the matter of standing to appeal differently. In an opinion released July 19, 1991, *Yniguez v. Arizona*, 939 F.2d 727, the Court of Appeals reached these ***58** conclusions: AOE and Park met Article III requirements and could proceed as appellants; Arizona's Attorney General, however, having successfully moved in the District Court for his dismissal as a defendant, could not reenter as a party, but would be permitted to present argument regarding the constitutionality of Article XXVIII. *Id.*, at 738-740. The Ninth Circuit reported it would retain jurisdiction over the District Court's decision on the merits, *id.*, at 740, but did not then address the question whether Article XXVIII's meaning should be certified for definitive resolution by the Arizona Supreme Court.

Concerning AOE's standing, the Court of Appeals reasoned that the Arizona Legislature would have standing to defend the constitutionality of a state statute; by analogy, the Ninth Circuit maintained, AOE, as principal sponsor of the ballot initiative, qualified to defend Article XXVIII on appeal. *Id.*, at 732-733; see also *id.*, at 734, n. 5 ("[W]e hold that AOE has standing in the same way that a legislature might."). AOE Chairman Park also had standing to appeal, according to the Ninth Circuit, because Yniguez "could have had a reasonable expectation that Park (and possibly AOE as well) would bring an enforcement action against her" under § 4 of Article XXVIII, which authorizes any person residing in Arizona to sue in state court to enforce the Article. *Id.*, at 734, and n. 5.[FN11]

FN11. In a remarkable passage, the Ninth Circuit addressed Yniguez's argument, opposing intervention by AOE and Park, that the District Court's judgment was no impediment to any state-court proceeding AOE and Park might wish to bring, because that judgment is not a binding precedent on Arizona's judiciary. See 939 F.2d, at 735-736. The Court of Appeals questioned the wisdom of the view expressed "in the academic literature," "by some state courts," and by "several individual justices" that state courts are "coordinate and coequal with the lower federal courts on matters of federal law." *Id.*, at 736 (footnote omitted). The Ninth Circuit acknowledged "there may be valid reasons not to bind the state courts to a decision of a single federal district judge-which is not even binding on the same judge in a subsequent action." *Id.*, at 736-737. However, the appellate panel added, those reasons "are inapplicable to decisions of the federal courts of appeals." *Id.*, at 737. But cf. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617, 109 S.Ct. 2037, 2045, 104 L.Ed.2d 696 (1989) ("state courts ... possess the authority, absent a provision for exclusive federal jurisdiction, to render binding judicial decisions that rest on their own interpretations of federal law"); *Lockhart v. Fretwell*, 506 U.S. 364, 375-376, 113 S.Ct. 838, 845-846, 122 L.Ed.2d 180 (1993) (THOMAS, J., concurring) (Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law).

***59** Having allowed AOE and Park to serve as appellants, the Court of Appeals held Arizona's Attorney General "judicial[ly] estoppe[d]" from again appearing as a party. *Id.*, at 738-739; see also *id.*, at 740 ("[H]aving asked the district court to dismiss him as a party, [the Attorney General] cannot now ****1065** become one again.").[FN12] With Governor Mofford choosing not to seek Court of Appeals review, the appeal became one to which neither "[the] State [n]or any agency, officer, or employee thereof [was] a party," the Ninth Circuit observed, so the State's Attorney General could appear pursuant to

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28 U.S.C. § 2403(b). See 939 F.2d, at 739.[FN13] But, the Ninth Circuit added, § 2403(b) "confers only a *limited* right," a right pendent to the AOE/Park appeal, "to make an argument on the question of [Article XXVIII's] constitutionality." *Id.,* at 739-740.

FN12. Because the Court of Appeals found AOE and Park to be proper appellants, that court did not "address the question whether the Attorney General would have standing to appeal under Article III if no other party were willing and able to appeal." 939 F.2d, at 738. The Court of Appeals assumed, however, that "whenever the constitutionality of a provision of state law is called into question, the state government will have a sufficient interest [to satisfy] Article III." *Id.,* at 733, n. 4. Cf. *Maine v. Taylor,* 477 U.S. 131, 137, 106 S.Ct. 2440, 2446, 91 L.Ed.2d 110 (1986) (intervening State had standing to appeal from judgment holding state law unconstitutional); *Diamond v. Charles,* 476 U.S. 54, 62, 106 S.Ct. 1697, 1703, 90 L.Ed.2d 48 (1986) ("a State has standing to defend the constitutionality of its statute").

FN13. The full text of 28 U.S.C. § 2403(b) is set out *supra,* at 1063, n. 10.

Prior to the Ninth Circuit's July 1991 opinion, indeed the very day after AOE, Park, and the Arizona Attorney General filed their notices of appeal, a development of prime importance occurred. On April 10, 1990, Yniguez resigned from state employment in order to accept another job. Her resignation***60** apparently became effective on April 25, 1990. Arizona's Attorney General so informed the Ninth Circuit in September 1991, "suggest[ing] that this case may lack a viable plaintiff and, hence, may be moot." Suggestion of Mootness in Nos. 90-15546 and 90-15581 (CA9), Affidavit and Exh. A.

One year later, on September 16, 1992, the Ninth Circuit rejected the mootness suggestion. *Yniguez v. Arizona,* 975 F.2d 646. The court's ruling adopted in large part Yniguez's argument opposing a mootness disposition. See App. 194-204 (Appellee Yniguez's Response Regarding Mootness Considerations). "[T]he plaintiff may no longer be affected by the English only provision," the Court of Appeals acknowledged. 975 F.2d, at 647. Nevertheless, the court continued, "[her] constitutional claims may entitle her to an award of nominal damages." *Ibid.* Her complaint did "not expressly request nominal damages," the Ninth Circuit noted, but "it did request 'all other relief that the Court deems just and proper under the circumstances.' " *Id.,* at 647, n. 1; see *supra,* at 1061. Thus, the Court of Appeals reasoned, one could regard the District Court's judgment as including an "implicit denial" of nominal damages. 975 F.2d, at 647, n. 2.

To permit Yniguez and AOE to clarify their positions, the Ninth Circuit determined to return the case to the District Court. There, with the Ninth Circuit's permission, AOE's Chairman Park could file a notice of appeal from the District Court's judgment, following up the Circuit's decision 14 months earlier allowing AOE and Park to intervene. *Id.,* at 647.[FN14] And next, Yniguez could cross-appeal to place before ***61** the Ninth Circuit, explicitly, the issue of nominal damages. *Id.,* at 647, and n. 2.[FN15]

FN14. In their original notice of appeal, filed April 9, 1990, AOE and Park targeted the District Court's denial of their motion to intervene. See App. 150-151. Once granted intervention, their original notice indicated, they would be positioned to file an appeal from the judgment declaring Article XXVIII unconstitutional. See *id.,* at 150.

FN15. The Ninth Circuit made two further suggestions in the event that Yniguez failed to seek nominal damages: A new plaintiff "whose claim against the operation of the English only provision is not

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> moot" might intervene; or Yniguez herself might have standing to remain a suitor if she could show that others had refrained from challenging the English-only provision in reliance on her suit. See 975 F.2d, at 647-648. No state employee later intervened to substitute for Yniguez, nor did Yniguez endeavor to show that others had not sued because they had relied on her suit.

In line with the Ninth Circuit's instructions, the case file was returned to the District Court on November 5, 1992; AOE and Park filed their second notice of appeal on December 3, App. 206-208, and Yniguez ****1066** crossappealed on December 15, App. 209.[FN16] The Ninth Circuit heard argument on the merits on May 3, 1994. After argument, on June 21, 1994, the Ninth Circuit allowed Arizonans Against Constitutional Tampering (AACT) and Thomas Espinosa, Chairman of AACT, to intervene as plaintiffs-appellees. App. 14; *Yniguez v. Arizona,* 42 F.3d 1217, 1223-1224 (1994) (amended Jan. 17, 1995). AACT was the principal opponent of the ballot initiative that became Article XXVIII. *Id.,* at 1224. In permitting this late intervention, the Court of Appeals noted that "it d[id] not rely on [AACT's] standing as a party." *Ibid.* The standing of the preargument participants, in the Ninth Circuit's view, sufficed to support a determination on the merits. See *ibid.*

> FN16. On March 16, 1993, the District Court awarded Yniguez nearly $100,000 in attorney's fees. Record, Doc. No. 127. Governor Mofford and the State filed a notice of appeal from that award on April 8, 1993. Record, Doc. No. 128. Because the Ninth Circuit ultimately affirmed the District Court's judgment on the merits, the appeals court did not reach the state defendants' appeal from the award of fees. 69 F.3d, at 924, n. 2, 927.

In December 1994, the Ninth Circuit panel that had superintended the case since 1990 affirmed the judgment declaring Article XXVIII unconstitutional and remanded the case, directing the District Court to award Yniguez nominal damages.***62** 42 F.3d 1217 (amended Jan. 17, 1995). Despite the Court of Appeals' July 1991 denial of party status to Arizona, the Ninth Circuit apparently viewed the State as the defendant responsible for any damages, for it noted: "The State of Arizona expressly waived its right to assert the Eleventh Amendment as a defense to the award of nominal damages." *Id.,* at 1243. The Ninth Circuit agreed to rehear the case en banc, 53 F.3d 1084 (1995), and in October 1995, by a 6-to-5 vote, the en banc court reinstated the panel opinion with minor alterations. 69 F.3d 920.

Adopting the District Court's construction of Article XXVIII, the en banc court read the provision to prohibit

> " 'the use of any language other than English by all officers and employees of all political subdivisions in Arizona while performing their official duties, save to the extent that they may be allowed to use a foreign language by the limited exceptions contained in § 3(2) of Article XXVIII .' " 69 F.3d, at 928 (quoting 730 F.Supp., at 314).

Because the court found the "plain language" dispositive, 69 F.3d, at 929, it rejected the State Attorney General's limiting construction and declined to certify the matter to the Arizona Supreme Court, *id.,* at 929-931. As an additional reason for its refusal to grant the Attorney General's request for certification, the en banc court stated: "The Attorney General ... never conceded that [Article XXVIII] would be unconstitutional if construed as Yniguez asserts it properly should be." *Id.,* at 931, and n. 14.[FN17] The Ninth Circuit also pointed to a state-court challenge to the constitutionality of ***63** Article XXVIII, *Ruiz v. State,* No. CV92-19603 (Sup.Ct. Maricopa County, Jan. 24, 1994). In *Ruiz,* the Ninth Circuit observed, the state court of first instance "dispos[ed] of [the] First Amendment challenge in three paragraphs" and "d[id] nothing to narrow [the provision]." 69 F.3d, at 931.[FN18]

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FN17. The Court of Appeals contrasted *Virginia v. American Booksellers Assn., Inc.,* 484 U.S. 383, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988), in which this Court certified to the Virginia Supreme Court questions concerning the proper interpretation of a state statute. In *American Booksellers,* the Ninth Circuit noted, "the State Attorney General *conceded* [the statute] would be unconstitutional if construed as the plaintiffs contended it should be." 69 F.3d, at 930.

FN18. The *Ruiz* case included among its several plaintiffs four elected officials and five state employees. After defeat in the court of first instance, the *Ruiz* plaintiffs prevailed in the Arizona Court of Appeals. *Ruiz v. Symington,* No. 1 CA-CV 94-0235, 1996 WL 309512 (Ariz.App., June 11, 1996). That court noted, with evident concern, that "the Ninth Circuit refused to abstain and certify the question of Article [XXVIII]'s proper interpretation to the Arizona Supreme Court, although the issue was pending in our state court system." *Id.,* at *4. "Comity," the Arizona intermediate appellate court observed, "typically applies when a federal court finds that deference to a state court, on an issue of state law, is proper." *Ibid.* Nevertheless, in the interest of uniformity and to discourage forum shopping, the Arizona appeals court decided to defer to the federal litigation, forgoing independent analysis. *Ibid.* The Arizona Supreme Court granted review in *Ruiz* in November 1996, and stayed proceedings pending our decision in this case. App. to Supplemental Brief for Petitioners 1.

****1067** After construing Article XXVIII as sweeping in scope, the en banc Court of Appeals condemned the provision as manifestly overbroad, trenching untenably on speech rights of Arizona officials and public employees. See *id.,* at 931-948. For prevailing in the § 1983 action, the court ultimately announced, Yniguez was "entitled to nominal damages." *Id.,* at 949. On remand, the District Court followed the en banc Court of Appeals' order and, on November 3, 1995, awarded Yniguez $1 in damages. App. 211.

AOE and Park petitioned this Court for a writ of certiorari to the Ninth Circuit.[FN19] They raised two questions: (1) Does Article XXVIII violate the Free Speech Clause of the First ***64** Amendment by "declaring English the official language of the State and requiring English to be used to perform official acts"?; (2) Do public employees have "a Free Speech right to disregard the [State's] official language" and perform official actions in a language other than English? This Court granted the petition and requested the parties to brief as threshold matters (1) the standing of AOE and Park to proceed in this action as defending parties, and (2) Yniguez's continuing satisfaction of the case-or-controversy requirement. 517 U.S. 1102, 116 S.Ct. 1316, 134 L.Ed.2d (1996).

FN19. The State did not oppose the petition and, in its Appearance Form, filed in this Court on January 10, 1996, noted that "if the Court grants the Petition and reverses the lower court's decision ... Arizona will seek reversal of award of attorney's fees against the State." See *supra,* at 1066, n. 16.

III

[1][2][3] Article III, § 2, of the Constitution confines federal courts to the decision of "Cases" or "Controversies." Standing to sue or defend is an aspect of the case-or-controversy requirement. *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville,* 508 U.S. 656, 663-664, 113 S.Ct. 2297, 2301-2302, 124 L.Ed.2d 586 (1993) (standing to sue); *Diamond v. Charles,* 476 U.S. 54, 56, 106 S.Ct. 1697, 1700, 90 L.Ed.2d 48 (1986) (standing to defend on appeal). To qualify as a party with standing to litigate, a person must

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show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and " 'actual or imminent.' " *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992) (quoting *Whitmore v. Arkansas,* 495 U.S. 149, 155, 110 S.Ct. 1717, 1722-1723, 109 L.Ed.2d 135 (1990)). An interest shared generally with the public at large in the proper application of the Constitution and laws will not do. See *Defenders of Wildlife,* 504 U.S., at 573-576, 112 S.Ct., at 2143-2154. Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess "a direct stake in the outcome." *Diamond,* 476 U.S., at 62, 106 S.Ct., at 1703 (quoting *Sierra Club v. Morton,* 405 U.S. 727, 740, 92 S.Ct. 1361, 1369, 31 L.Ed.2d 636 (1972) (internal quotation marks omitted)).

The standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance. *Diamond,* 476 U.S., at 62, 106 S.Ct., at 1703. The decision to seek review "is not to be placed in the ***65** hands of 'concerned bystanders.' " persons who would seize it "as a 'vehicle for the vindication of value interests.' " *Ibid.* (citation omitted). An intervenor cannot step into the shoes of the original party unless the intervenor independently "fulfills the requirements of Article III." *Id.,* at 68, 106 S.Ct., at 1706-1707.

In granting the petition for a writ of certiorari in this case, we called for briefing on the question whether AOE and Park have standing, consonant with Article III of the Federal Constitution, to defend in federal court the constitutionality of Arizona Constitution Article XXVIII. Petitioners argue primarily that, as initiative proponents, they have a quasi-legislative interest in defending the constitutionality of the measure they successfully sponsored. AOE and Park stress the funds and effort they expended to ****1068** achieve adoption of Article XXVIII. We have recognized that state legislators have standing to contest a decision holding a state statute unconstitutional if state law authorizes legislators to represent the State's interests. See *Karcher v. May,* 484 U.S. 72, 82, 108 S.Ct. 388, 395, 98 L.Ed.2d 327 (1987).[FN20] AOE and its members, however, are not elected representatives, and we are aware of no Arizona law appointing initiative sponsors as agents of the people of Arizona to defend, in lieu of public officials, the constitutionality of initiatives made law of the State. Nor has this Court ever identified initiative proponents as Article-III-qualified defenders of the measures they advocated. Cf. *Don't Bankrupt Washington Committee v. Continental Ill. Nat. Bank & Trust Co. of Chicago,* 460 U.S. 1077, 103 S.Ct. 1762, 76 L.Ed.2d 338 (1983) (summarily dismissing, for lack of standing, appeal by an initiative proponent from a decision holding the initiative unconstitutional).

FN20. Cf. *INS v. Chadha,* 462 U.S. 919, 930, n. 5, 939-940, 103 S.Ct. 2764, 2773, 2778-2779, 77 L.Ed.2d 317 (1983) (Immigration and Naturalization Service appealed Court of Appeals ruling to this Court but declined to defend constitutionality of one-House veto provision; Court held Congress a proper party to defend measure's validity where both Houses, by resolution, had authorized intervention in the lawsuit).

AOE also asserts representational or associational standing. An association has standing to sue or defend in such ***66** capacity, however, only if its members would have standing in their own right. See *Food and Commercial Workers v. Brown Group, Inc.,* 517 U.S. 544, 551-553, 116 S.Ct. 1529, 1534; *Hunt v. Washington State Apple Advertising Comm'n,* 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383 (1977). The requisite concrete injury to AOE members is not apparent. As nonparties in the District Court, AOE's members were not bound by the judgment for Yniguez. That judgment had slim precedential effect, see *supra,* at 1064, n. 11,[FN21] and it left AOE entirely free to invoke Article XXVIII, § 4, the citizen suit provi-

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sion, in state court, where AOE could pursue whatever relief state law authorized. Nor do we discern anything flowing from Article XXVIII's citizen suit provision-which authorizes suits to enforce Article XXVIII in state court-that could support standing for Arizona residents in general, or AOE in particular, to defend the Article's constitutionality in federal court.

FN21. As the District Court observed, the *stare decisis* effect of that court's ruling was distinctly limited. The judgment was "not binding on the Arizona state courts [and did] not foreclose any rights of [AOE] or Park in any future state-court proceeding arising out of Article XXVIII." *Yniguez v. Mofford,* 130 F.R.D. 410, 416 (D.Ariz.1990).

[4] We thus have grave doubts whether AOE and Park have standing under Article III to pursue appellate review. Nevertheless, we need not definitively resolve the issue. Rather, we will follow a path we have taken before and inquire, as a primary matter, whether originating plaintiff Yniguez still has a case to pursue. See *Burke v. Barnes,* 479 U.S. 361, 363, 364, 107 S.Ct. 734, 736, 737, 93 L.Ed.2d 732, n. (1987) (leaving unresolved question of congressional standing because Court determined case was moot). For purposes of that inquiry, we will assume, *arguendo,* that AOE and Park had standing to place this case before an appellate tribunal. See *id.,* at 366, 107 S.Ct., at 737 (STEVENS, J., dissenting) (Court properly assumed standing, even though that matter raised a serious question, in order to analyze mootness issue). We may resolve the question whether ***67** there remains a live case or controversy with respect to Yniguez's claim without first determining whether AOE or Park has standing to appeal because the former question, like the latter, goes to the Article III jurisdiction of this Court and the courts below, not to the merits of the case. Cf. *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership,* 513 U.S. 18, 20-22, 115 S.Ct. 386, 389-390, 130 L.Ed.2d 233 (1994).

IV

[5] To qualify as a case fit for federal-court adjudication, "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Preiser v. Newkirk,* 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975) (quoting ****1069***Steffel v. Thompson,* 415 U.S. 452, 459, n. 10, 94 S.Ct. 1209, 1216, n. 10, 39 L.Ed.2d 505 (1974)) (internal quotation marks omitted). As a state employee subject to Article XXVIII, Yniguez had a viable claim at the outset of the litigation in late 1988. We need not consider whether her case lost vitality in January 1989 when the Attorney General released Opinion No. I89-009. That opinion construed Article XXVIII to require the expression of "official acts" in English, but to leave government employees free to use other languages "if reasonably necessary to the fair and effective delivery of services" to the public. See App. 71, 74; *supra,* at 1061-1062; see also *Marston's Inc. v. Roman Catholic Church of Phoenix,* 132 Ariz. 90, 94, 644 P.2d 244, 248 (1982) ("Attorney General opinions are advisory only and are not binding on the court.... This does not mean, however, that citizens may not rely in good faith on Attorney General opinions until the courts have spoken."). Yniguez left her state job in April 1990 to take up employment in the private sector, where her speech was not governed by Article XXVIII. At that point, it became plain that she lacked a still vital claim for prospective relief. Cf. *Boyle v. Landry,* 401 U.S. 77, 78, 80-81, 91 S.Ct. 758, 758-759, 759-760, 27 L.Ed.2d 696 (1971) (prospective relief denied where plaintiffs failed to show challenged measures adversely affected any plaintiff's primary conduct).

[6][7] ***68** The Attorney General suggested mootness,[FN22] but Yniguez resisted, and the Ninth Circuit adopted her proposed method of saving the case. See *supra,* at 1065-1066.[FN23] It was not dispositive, the court said, that Yniguez "may no longer be affected by the English only provision," 975 F.2d. at 647, for Yniguez had raised in response to the mootness suggestion "[t]he possibility that [she] may seek nominal damages," *ibid.;* see

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App. 197-200 (Appellee Yniguez's Response Regarding Mootness Considerations). At that stage of the litigation, however, Yniguez's plea for nominal damages was not the possibility the Ninth Circuit imagined.

FN22. Mootness has been described as " 'the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).' " *United States Parole Comm'n v. Geraghty,* 445 U.S. 388, 397, 100 S.Ct. 1202, 1209, 63 L.Ed.2d 479 (1980) (quoting Monaghan, Constitutional Adjudication: The Who and When, 82 Yale L.J. 1363, 1384 (1973)).

FN23. Yniguez's counsel did not inform the Court of Appeals of Yniguez's departure from government employment, a departure effective April 25, 1990, the day before the appeal was docketed. See App. 7. It was not until September 1991 that the State's Attorney General notified the Ninth Circuit of the plaintiff's changed circumstances. See *id.,* at 187. Yniguez's counsel offered a laconic explanation for this lapse: First, "legal research disclosed that this case was not moot"; second, counsel for the State of Arizona knew of the resignation and "agreed this appeal should proceed." App. 196, n. 2 (Appellee Yniguez's Response Regarding Mootness Considerations). The explanation was unsatisfactory. It is the duty of counsel to bring to the federal tribunal's attention, "*without delay,*" facts that may raise a question of mootness. See *Board of License Comm'rs of Tiverton v. Pastore,* 469 U.S. 238, 240, 105 S.Ct. 685, 686, 83 L.Ed.2d 618 (1985) (*per curiam*). Nor is a change in circumstances bearing on the vitality of a case a matter opposing counsel may withhold from a federal court based on counsels' agreement that the case should proceed to judgment and not be treated as moot. See *United States v. Alaska S.S. Co.,* 253 U.S. 113, 116, 40 S.Ct. 448, 448-449, 64 L.Ed. 808 (1920); R. Stern, E. Gressman, S. Shapiro, & K. Geller, Supreme Court Practice 721-722 (7th ed.1993).

[8] Yniguez's complaint rested on 42 U.S.C. § 1983. See *supra,* at 1060, and n. 3. Although Governor Mofford in her official capacity was the sole defendant against whom the ***69** District Court's February 1990 declaratory judgment ran, see *supra,* at 1062-1063, the Ninth Circuit held the State answerable for the nominal damages Yniguez requested on appeal. See 69 F.3d, at 948-949 (declaring Yniguez "entitled to nominal damages for prevailing in an action under 42 U.S.C. § 1983" and noting that "[t]he State of Arizona expressly waived its right to assert the Eleventh Amendment as a defense to the award of nominal damages"). We have held, however, that § 1983 actions do not lie against a State. *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 71, 109 S.Ct. 2304, 2312, 105 L.Ed.2d 45 (1989). Thus, the claim for relief the Ninth Circuit found sufficient to overcome mootness was nonexistent. The barrier was not, as the ****1070** Ninth Circuit supposed, Eleventh Amendment immunity, which the State could waive. The stopper was that § 1983 creates no remedy against a State.[FN24]

FN24. State officers in their official capacities, like States themselves, are not amenable to suit for damages under § 1983 . See *Will v. Michigan Dept. of State Police,* 491 U.S., at 71, and n. 10, 109 S.Ct., at 2312, and n. 10. State officers are subject to § 1983 liability for damages in their personal capacities, however, even when the conduct in question relates to their official duties. *Hafer v. Melo,* 502 U.S. 21, 25-31, 112 S.Ct. 358, 361-365, 116 L.Ed.2d 301 (1991). At no point after the

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nominal damages solution to mootness surfaced in this case did the Ninth Circuit identify Governor Mofford as a party whose conduct could be the predicate for retrospective relief. That is hardly surprising, for Mofford never participated in any effort to enforce Article XXVIII against Yniguez. Moreover, she opposed the ballot initiative that became Article XXVIII, see *supra,* at 1060, n. 1, associated herself with the Attorney General's restrained interpretation of the provision, see *supra,* at 1061-1062, and was unwilling to appeal from the District Court's judgment declaring the Article unconstitutional, see *supra,* at 1063. In this Court, Yniguez raised the possibility of Governor Mofford's individual liability under the doctrine of *Ex parte Young,* 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). See Brief for Respondent Yniguez 21-22. That doctrine, however, permits only prospective relief, not retrospective monetary awards. See *Edelman v. Jordan,* 415 U.S. 651, 664, 94 S.Ct. 1347, 1356, 39 L.Ed.2d 662 (1974).

Furthermore, under the Ninth Circuit's ruling on intervention, the State of Arizona was permitted to participate in the appeal, but not as a party. 939 F.2d, at 738-740. The Court of Appeals never revised that ruling. To recapitulate, ***70** in July 1991, two months prior to the Attorney General's suggestion of mootness, the Court of Appeals rejected the Attorney General's plea for party status, as representative of the State. *Ibid.* The Ninth Circuit accorded the Attorney General the "right [under 28 U.S.C. § 2403(b)] to argue the constitutionality of Article XXVIII ... contingent upon AOE and Park's bringing the appeal." *Id.,* at 740; see *supra,* at 1065. But see *Maine v. Taylor,* 477 U.S. 131, 136-137, 106 S.Ct. 2440, 2446-2447, 91 L.Ed.2d 110 (1986) (State's § 2403(b) right to urge on appeal the constitutionality of its laws is not contingent on participation of other appellants). AOE and Park, however, were the sole participants recognized by the Ninth Circuit as defendants-appellants. The Attorney General "ha[d] asked the district court to dismiss him as a party," the Court of Appeals noted, hence he "cannot now become one again." 939 F.2d, at 740. While we do not rule on the propriety of the Ninth Circuit's exclusion of the State as a party, we note this lapse in that court's accounting for its decision: The Ninth Circuit did not explain how it arrived at the conclusion that an intervenor the court had designated a nonparty could be subject, nevertheless, to an obligation to pay damages.

True, Yniguez and the Attorney General took the steps the Ninth Circuit prescribed: Yniguez filed a cross-appeal notice, see *supra,* at 1065-1066; the Attorney General waived the State's right to assert the Eleventh Amendment as a defense to an award of nominal damages, see 69 F.3d, at 948-949. But the earlier, emphatic Court of Appeals ruling remained in place: The State's intervention, although proper under § 2403(b), the Ninth Circuit maintained, gave Arizona no status as a party in the lawsuit. See 939 F.2d, at 738-740.[FN25]

FN25. Section 2403(b) by its terms subjects an intervenor "to all liabilities of a party as to *court costs* " required "for a proper presentation of the facts and law relating to the question of constitutionality." 28 U.S.C. § 2403(b) (emphasis added). It does not subject an intervenor to liability for damages available against a party defendant.

***71** In advancing cooperation between Yniguez and the Attorney General regarding the request for and agreement to pay nominal damages, the Ninth Circuit did not home in on the federal courts' lack of authority to act in friendly or feigned proceedings. Cf. *United States v. Johnson,* 319 U.S. 302, 304, 63 S.Ct. 1075, 1076, 87 L.Ed. 1413 (1943) (*per curiam*) (absent "a genuine adversary issue between ... parties," federal court "may not safely proceed to judgment"). It should have been clear to the Court of Appeals that a claim for nominal damages, extracted late in the day from Yniguez's gen-

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eral prayer for relief and asserted solely to avoid otherwise certain mootness, bore close inspection. Cf. ****1071***Fox v. Board of Trustees of State Univ. of N.Y.,* 42 F.3d 135, 141-142 (C.A.2 1994) (rejecting claim for nominal damages proffered to save case from mootness years after litigation began where defendants could have asserted qualified immunity had plaintiffs' complaint specifically requested monetary relief). On such inspection, the Ninth Circuit might have perceived that Yniguez's plea for nominal damages could not genuinely revive the case.[FN26]

FN26. Endeavoring to meet the live case requirement, petitioners AOE and Park posited in this Court several "controversies remaining between the parties." Reply Brief for Petitioners 18-19. Tellingly, none of the asserted controversies involved Yniguez, sole plaintiff and prevailing party in the District Court. See *ibid.* (describing AOE and Park as adverse to intervenor Arizonans Against Constitution Tampering (AACT), see *supra,* at 1065-1066, AACT as adverse to the State, AOE and Park as adverse to the State).

When a civil case becomes moot pending appellate adjudication, "[t]he established practice ... in the federal system ... is to reverse or vacate the judgment below and remand with a direction to dismiss." *United States v. Munsingwear, Inc.,* 340 U.S. 36, 39, 71 S.Ct. 104, 106, 95 L.Ed. 36 (1950). Vacatur "clears the path for future relitigation" by eliminating a judgment the loser was stopped from opposing on direct review. *Id.,* at 40, 71 S.Ct., at 107. Vacatur is in order when mootness occurs through happenstance-circumstances not attributable to the parties-or, ***72** relevant here, the "unilateral action of the party who prevailed in the lower court." *U.S. Bancorp Mortgage Co.,* 513 U.S., at 23, 115 S.Ct., at 390; cf. *id.,* at 29, 115 S.Ct., at 393 ("mootness by reason of settlement [ordinarily] does not justify vacatur of a judgment under review").

[9] As just explained, Yniguez's changed circumstances-her resignation from public sector employment to pursue work in the private sector-mooted the case stated in her complaint.[FN27] We turn next to the effect of that development on the judgments below. Yniguez urges that vacatur ought not occur here. She maintains that the State acquiesced in the Ninth Circuit's judgment and that, in any event, the District Court judgment should not be upset because it was entered before the mooting event occurred and was not properly appealed. See Brief for Respondent Yniguez 23-25.

FN27. It bears repetition that Yniguez did not sue on behalf of a class. See *supra,* at 1060; cf. *Preiser v. Newkirk,* 422 U.S. 395, 404, 95 S.Ct. 2330, 2335, 45 L.Ed.2d 272 (1975) (MARSHALL, J., concurring) (mootness determination unavoidable where plaintiff-respondent's case lost vitality and action was not filed on behalf of a class); *Sosna v. Iowa,* 419 U.S. 393, 397-403, 95 S.Ct. 553, 556-559, 42 L.Ed.2d 532 (1975) (recognizing class action exception to mootness doctrine).

Concerning the Ninth Circuit's judgment, Yniguez argues that the State's Attorney General effectively acquiesced in that court's dispositions when he did not petition for this Court's review. See *id.,* at 24-25; Brief for United States as *Amicus Curiae* 10-11, and n. 4 (citing *Diamond v. Charles,* 476 U.S. 54, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986)).[FN28] We do not agree that this Court is disarmed in the manner suggested.

FN28. Designated a respondent in this Court, the State was not required or specifically invited to file a brief answering the AOE/Park petition. In his appearance form, filed January 10, 1996, Arizona's Attorney General made this much plain: The State-aligned with petitioners AOE and Park in that Arizona defended Article XXVIII's constitutionality-did not oppose certiorari; in the event Yniguez did not

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prevail here, Arizona would seek to recoup the attorney's fees the District Court had ordered the State to pay her. See *supra,* at 1066, n. 16.

***73** We have taken up the case for consideration on the petition for certiorari filed by AOE and Park. Even if we were to rule definitively that AOE and Park lack standing, we would have an obligation essentially to search the pleadings on core matters of federal-court adjudicatory authority-to inquire not only into this Court's authority to decide the questions petitioners present, but to consider, also, the authority of the lower courts to proceed. As explained in *Bender v. Williamsport Area School Dist.,* 475 U.S. 534, 106 S.Ct. 1326, 89 L.Ed.2d 501 (1986):

"[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it. *Mitchell v. Maurer,* 293 U.S. 237, 244 [55 S.Ct. 162, 165, 79 L.Ed. 338] (1934). See ****1072***Juidice v. Vail,* 430 U.S. 327, 331-332 [97 S.Ct. 1211, 1215-1216, 51 L.Ed.2d 376] (1977) (standing). 'And if the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it. [When the lower federal court] lack [s] jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.' *United States v. Corrick,* 298 U.S. 435, 440 [56 S.Ct. 829, 831-832, 80 L.Ed. 1263] (1936) (footnotes omitted)." *Id.,* at 541, 106 S.Ct., at 1331 (brackets in original).

See also *Iron Arrow Honor Soc. v. Heckler,* 464 U.S. 67, 72-73, 104 S.Ct. 373, 375-376, 78 L.Ed.2d 58 (1983) *(per curiam)* (vacating judgment below where Court of Appeals had ruled on the merits although case had become moot). In short, we have authority to "make such disposition of the whole case as justice may require." *U.S. Bancorp Mortgage Co.,* 513 U.S., at 21, 115 S.Ct., at 390 (citation and internal quotation marks omitted). Because the Ninth Circuit refused to stop the adjudication when Yniguez's departure from public employment came to its attention, we set aside the unwarranted en banc Court of Appeals judgment.

[10] ***74** As to the District Court's judgment, Yniguez stresses that the date of the mooting event-her resignation from state employment effective April 25, 1990-was some 2 1/2 months after the February 6, 1990, decision she seeks to preserve. Governor Mofford was the sole defendant bound by the District Court judgment, and Mofford declined to appeal. Therefore, Yniguez contends, the District Court's judgment should remain untouched.

But AOE and Park had an arguable basis for seeking appellate review, and the Attorney General promptly made known his independent interest in defending Article XXVIII against the total demolition declared by the District Court. First, the Attorney General repeated his plea for certification of Article XXVIII to the Arizona Supreme Court. See Record, Doc. No. 82. And if that plea failed, he asked, in his motion to intervene, "to be joined as a defendant so that he may participate in all post-judgment proceedings." Record, Doc. No. 93, p. 2. Although denied party status, the Attorney General had, at a minimum, a right secured by Congress, a right to present argument on appeal "on the question of constitutionality." See 28 U.S.C. § 2403(b). He was in the process of pursuing that right when the mooting event occurred.

We have already recounted the course of proceedings thereafter. First, Yniguez did not tell the Court of Appeals that she had left the State's employ. See *supra,* at 1069, n. 23. When that fact was disclosed to the court by the Attorney General, a dismissal for mootness was suggested, and rejected. A mootness disposition at that point was in order, we have just explained. Such a dismissal would have stopped in midstream the Attorney General's endeavor, premised on § 2403(b), to defend the State's law against a declaration of unconstitution-

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ality, and so would have warranted a path-clearing vacatur decree.

The State urges that its current plea for vacatur is compelling in view of the extraordinary course of this litigation. ***75** See Brief for Respondents State of Arizona et al. 34 ("It would certainly be a strange doctrine that would permit a plaintiff to obtain a favorable judgment, take voluntary action [that] moot[s] the dispute, and then retain the [benefit of the] judgment."). We agree. The "exceptional circumstances" that abound in this case, see *U.S. Bancorp Mortgage Co.,* 513 U.S., at 29, 115 S.Ct., at 393, and the federalism concern we next consider, lead us to conclude that vacatur down the line is the equitable solution.

V

In litigation generally, and in constitutional litigation most prominently, courts in the United States characteristically pause to ask: Is this conflict really necessary? [FN29] When anticipatory relief is sought in federal court ****1073** against a state statute, respect for the place of the States in our federal system calls for close consideration of that core question. See, *e.g., Poe v. Ullman,* 367 U.S. 497, 526, 81 S.Ct. 1752, 1767-1768, 6 L.Ed.2d 989 (1961) (Harlan, J., dissenting) ("[N]ormally this Court ought not to consider the Constitutionality of a state statute in the absence of a controlling interpretation of its meaning and effect by the state courts."); *Rescue Army v. Municipal Court of Los Angeles,* 331 U.S. 549, 573-574, 67 S.Ct. 1409, 1421-1423, 91 L.Ed. 1666 (1947); Shapiro, Jurisdiction and Discretion, 60 N.Y.U.L.Rev. 543, 580-585 (1985).

FN29. The phrasing is borrowed from Traynor, Is This Conflict Really Necessary?, 37 Texas L.Rev. 657 (1959).

Arizona's Attorney General, in addition to releasing his own opinion on the meaning of Article XXVIII, see *supra,* at 1061, asked both the District Court and the Court of Appeals to pause before proceeding to judgment; specifically, he asked both federal courts to seek, through the State's certification process, an authoritative construction of the new measure from the Arizona Supreme Court. See *supra,* at 1060-1061, and n. 5, 1062-1063, 1066-1067, and nn. 17, 18.

Certification today covers territory once dominated by a deferral device called "*Pullman* abstention," after the generative***76** case, *Railroad Comm'n of Tex. v. Pullman Co.,* 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941). Designed to avoid federal-court error in deciding state-law questions antecedent to federal constitutional issues, the *Pullman* mechanism remitted parties to the state courts for adjudication of the unsettled state-law issues. If settlement of the state-law question did not prove dispositive of the case, the parties could return to the federal court for decision of the federal issues. Attractive in theory because it placed state-law questions in courts equipped to rule authoritatively on them, *Pullman* abstention proved protracted and expensive in practice, for it entailed a full round of litigation in the state court system before any resumption of proceedings in federal court. See generally 17A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §§ 4242, 4243 (2d ed.1988 and Supp.1996).

Certification procedure, in contrast, allows a federal court faced with a novel state-law question to put the question directly to the State's highest court, reducing the delay, cutting the cost, and increasing the assurance of gaining an authoritative response. See Note, Federal Courts-Certification Before Facial Invalidation: A Return to Federalism, 12 W. New Eng. L.Rev. 217 (1990). Most States have adopted certification procedures. See generally 17A Wright, Miller, & Cooper, *supra,* § 4248. Arizona's statute, set out *supra,* at 1061, n. 5, permits the State's highest court to consider questions certified to it by federal district courts, as well as courts of appeals and this Court.

[11] Both lower federal courts in this case refused to invite the aid of the Arizona Supreme Court because they found the language of Article

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XXVIII "plain," and the Attorney General's limiting construction unpersuasive. See 730 F.Supp., at 315-316, 69 F.3d, at 928-931.[FN30] Furthermore, the Ninth ***77** Circuit suggested as a proper price for certification a concession by the Attorney General that Article XXVIII "would be unconstitutional if construed as [plaintiff Yniguez] contended it should be." *id.*, at 930; see *id.*, at 931, and n. 14. Finally, the Ninth Circuit acknowledged the pendency of a case similar to Yniguez's in the Arizona court system, but found that litigation no cause for a stay of the federal-court proceedings. See *id.*, at 931; *supra*, at 1066, and n. 18 (describing the *Ruiz* litigation).

FN30. But cf. *Huggins v. Isenbarger*, 798 F.2d 203, 207-210 (C.A.7 1986) (Easterbrook, J., concurring) (reasoned opinion of State Attorney General should be accorded respectful consideration; federal courts should hesitate to conclude that "[a State's] Executive Branch does not understand state law").

A more cautious approach was in order. Through certification of novel or unsettled questions of state law for authoritative answers by a State's highest court, a federal court may save "time, energy, and resources and hel[p] build a cooperative judicial federalism." *Lehman Brothers v. Schein*, 416 U.S. 386, 391, 94 S.Ct. 1741, 1744, 40 L.Ed.2d 215 (1974); see also ****1074***Bellotti v. Baird*, 428 U.S. 132, 148, 96 S.Ct. 2857, 2866-2867, 49 L.Ed.2d 844 (1976) (to warrant district court certification, "[i]t is sufficient that the statute is susceptible of ... an interpretation [that] would avoid or substantially modify the federal constitutional challenge to the statute"). It is true, as the Ninth Circuit observed, 69 F.3d, at 930, that in our decision certifying questions in *Virginia v. American Booksellers Assn., Inc.*, 484 U.S. 383, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988), we noted the State's concession that the statute there challenged would be unconstitutional if construed as plaintiffs contended it should be, *id.*, at 393-396, 108 S.Ct., at 643-645. But neither in that case nor in any other did we declare such a concession a condition precedent to certification.

The District Court and the Court of Appeals ruled out certification primarily because they believed Article XXVIII was not fairly subject to a limiting construction. See 730 F.Supp., at 316 (citing *Houston v. Hill*, 482 U.S. 451, 467, 107 S.Ct. 2502, 2512-2513, 96 L.Ed.2d 398 (1987)); 69 F.3d, at 930. The assurance with which the lower courts reached that judgment is all the more puzzling ***78** in view of the position the initiative sponsors advanced before this Court on the meaning of Article XXVIII.

At oral argument on December 4, 1996, counsel for petitioners AOE and Park informed the Court that, in petitioners' view, the Attorney General's reading of the Article was "the correct interpretation." Tr. of Oral Arg. 6; see *id.*, at 5 (in response to the Court's inquiry, counsel for petitioners stated: "[W]e agree with the Attorney General's opinion as to [the] construction of Article XXVIII on [constitutional] grounds."). The Ninth Circuit found AOE's "explanations as to the initiative's scope ... confused and self-contradictory," 69 F.3d, at 928, n. 12, and we agree that AOE wavered in its statements of position, see, *e.g.*, Brief for Petitioners 15 (AOE may "protect its political and statutory rights against the State and government employees"), 32-39 (Article XXVIII regulates Yniguez's "language on the job"), 44 ("AOE might ... sue the State for limiting Art. XXVIII"). Nevertheless, the Court of Appeals understood that the ballot initiative proponents themselves at least "partially endorsed the Attorney General's reading." 69 F.3d, at 928, n. 12. Given the novelty of the question and its potential importance to the conduct of Arizona's business, plus the views of the Attorney General and those of Article XXVIII's sponsors, the certification requests merited more respectful consideration than they received in the proceedings below.

Federal courts, when confronting a challenge to the constitutionality of a federal statute, follow a

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"cardinal principle": They "will first ascertain whether a construction ... is fairly possible" that will contain the statute within constitutional bounds. See *Ashwander v. TVA*, 297 U.S. 288, 348, 56 S.Ct. 466, 483-484, 80 L.Ed. 688 (1936) (Brandeis, J., concurring); *Ellis v. Railway, Airline & Steamship Clerks*, 466 U.S. 435, 444, 104 S.Ct. 1883, 1890, 80 L.Ed.2d 428 (1984); *Califano v. Yamasaki*, 442 U.S. 682, 692-693, 99 S.Ct. 2545, 2553-2554, 61 L.Ed.2d 176 (1979); *Rescue Army*, 331 U.S., at 568-569, 67 S.Ct., at 1419-1420. State courts, when interpreting state statutes, are similarly equipped to apply that cardinal principle. See ***79***Knoell v. Cerkvenik-Anderson Travel, Inc.*, 185 Ariz. 546, 548, 917 P.2d 689, 691 (1996) (citing *Ashwander*).

Warnings against premature adjudication of constitutional questions bear heightened attention when a federal court is asked to invalidate a State's law, for the federal tribunal risks friction-generating error when it endeavors to construe a novel state Act not yet reviewed by the State's highest court. See *Rescue Army*, 331 U.S., at 573-574, 67 S.Ct., at 1421-1423. "Speculation by a federal court about the meaning of a state statute in the absence of prior state court adjudication is particularly gratuitous when ... the state courts stand willing to address questions of state law on certification from a federal court." *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 510, 105 S.Ct. 2794, 2805, 86 L.Ed.2d 394 (1985) (O'CONNOR, J., concurring).

[12] Blending abstention with certification, the Ninth Circuit found "no unique circumstances in this case militating in favor of certification." 69 F.3d, at 931. Novel, unsettled questions of state law, however, not ****1075** "unique circumstances," are necessary before federal courts may avail themselves of state certification procedures.[FN31] Those procedures do not entail the delays, expense, and procedural complexity that generally attend abstention decisions. See *supra*, at 1073. Taking advantage of certification made available by a State may "greatly simplif[y]" an ultimate adjudication in federal court. See *Bellotti*, 428 U.S., at 151, 96 S.Ct., at 2868.

FN31. Arizona itself requires no "unique circumstances." It permits certification to the State's highest court of matters "which may be determinative of the cause," and as to which "no controlling precedent" is apparent to the certifying court. Ariz.Rev.Stat. Ann. § 12-1861 (1994).

The course of Yniguez's case was complex. The complexity might have been avoided had the District Court, more than eight years ago, accepted the certification suggestion made by Arizona's Attorney General. The Arizona Supreme Court was not asked by the District Court or the Court of Appeals to say what Article XXVIII means. But the State's highest court has that very question before it in ***80** *Ruiz v. Symington*, see *supra*, at 1066, and n. 18, the case the Ninth Circuit considered no cause for federal-court hesitation. In *Ruiz*, which has been stayed pending our decision in this case, see *supra*, at 1066, n. 18, the Arizona Supreme Court may now rule definitively on the proper construction of Article XXVIII. Once that court has spoken, adjudication of any remaining federal constitutional question may indeed become greatly simplified.

* * *

For the reasons stated, the judgment of the Court of Appeals is vacated, and the case is remanded to that court with directions that the action be dismissed by the District Court.

It is so ordered.

APPENDIX TO OPINION OF THE COURT
ARTICLE XXVIII. ENGLISH AS THE OFFICIAL LANGUAGE

§ 1. English as the official language; applicability

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

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(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.

***81** 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 ****1076** than English under any of the following circumstances:

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

(b) to comply with other federal laws.

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

(d) to protect public health or safety.

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

***82** *§ 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.

U.S. Ariz.,1997.
Arizonans for Official English v. Arizona
520 U.S. 43, 117 S.Ct. 1055, 69 Empl. Prac. Dec. P 44,508, 137 L.Ed.2d 170, 65 USLW 4169, 97 FCDR 754, 97 Cal. Daily Op. Serv. 1531, 97 Daily Journal D.A.R. 2257, 97 CJ C.A.R. 298, 10 Fla. L. Weekly Fed. S 330

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Supreme Court of Arizona,
En Banc.
Armando RUIZ, Linda Aguirre, John Philip Evans, Rosie Garcia, Candido Mercado, Manuel Pena, Jr., Peter Rios, Jr., Macario Saldate IV, Federico Sanchez and Victor Soltero, Plaintiffs/Appellants/Cross-Appellees,
v.
Jane Dee HULL, Governor of Arizona; Grant Woods, Attorney General of Arizona; State of Arizona; Arizonans for Official English and Robert D. Park, Intervenors, Defendants/Appellees/Cross-Appellants.

No. CV-96-0493-PR.
April 28, 1998.

Elected officials, state employees and public school teacher brought action to challenge constitutionality of constitutional amendment requiring state and local governments to "act" only in English. The Superior Court, Maricopa County, No. CV 92-19603,Jeffrey S. Cates, J., upheld constitutionality of amendment. Plaintiffs appealed. The Court of Appeals reversed in part and affirmed in part. Plaintiffs petitioned for review. The Supreme Court, Moeller, J., held that: (1) amendment violated First Amendment and Equal Protection Clause of Fourteenth Amendment, and (2) valid portions of amendment would not be severed from amendment's invalid portions.

Decision of Superior Court reversed with directions; opinion of Court of Appeals vacated.

Martone, J., specially concurred with opinion.

West Headnotes

[1] Amicus Curiae 27 ⚷3

27 Amicus Curiae
27k3 k. Powers, functions, and proceedings. Most Cited Cases
Supreme Court bases its opinion solely on legal issues advanced by parties themselves, rather than those issues advanced by amici curiae.

[2] Constitutional Law 92 ⚷990

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In general. Most Cited Cases
(Formerly 92k48(1))
Every duly enacted state and federal law is entitled to presumption of constitutionality.

[3] Constitutional Law 92 ⚷993

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k993 k. Initiative measures. Most Cited Cases
(Formerly 92k48(1))
Presumption of constitutionality applies equally to initiatives as well as statutes, and where alternative constructions are available, court should choose the one that results in constitutionality.

[4] Constitutional Law 92 ⚷1030

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1030 k. In general. Most Cited Cases
(Formerly 92k48(1))

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Constitutional Law 92 ⚷1053

92 Constitutional Law
92VII Constitutional Rights in General
92VII(A) In General
92k1053 k. Strict or heightened scrutiny; compelling interest. Most Cited Cases
(Formerly 92k48(1))

Where regulation in question impinges on core constitutional rights, standards of strict scrutiny apply and burden of showing constitutionality is shifted to proponent of the regulation.

[5] Courts 106 ⚷89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In general. Most Cited Cases

In reviewing constitutionality of constitutional amendment requiring state and local governments to "act" only in English, Supreme Court would not adopt Attorney General's narrow construction of the amendment, pursuant to which use of English would only be required in the performance of official, binding governmental acts; Attorney General's construction was not in accordance with amendment's plain meaning, was at odds with intent of amendment's drafters and unnecessarily injected elements of vagueness into amendment. A.R.S. Const. Art. 28, § 1 et seq.

[6] Courts 106 ⚷89

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k89 k. In general. Most Cited Cases

Opinions of Attorney General are advisory and are not binding; however, reasoned opinion of state attorney general should be accorded respectful consideration.

[7] Statutes 361 ⚷205

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k205 k. In general. Most Cited Cases

Statutes 361 ⚷206

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k206 k. Giving effect to entire statute. Most Cited Cases

When construing statutes, Supreme Court must read statute as a whole and give meaningful operation to each of its provisions.

[8] Constitutional Law 92 ⚷604

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k604 k. History in general. Most Cited Cases
(Formerly 92k16)

In construing an initiative, Supreme Court may consider ballot materials and publicity pamphlets circulated in support of the initiative.

[9] Statutes 361 ⚷47

361 Statutes
361I Enactment, Requisites, and Validity in General
361k45 Validity and Sufficiency of Provi-

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sions
361k47 k. Certainty and definiteness. Most Cited Cases
Statute is unconstitutionally vague if it fails to give fair notice of what it prohibits.

[10] Constitutional Law 92 ⚷1925

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(P) Public Employees and Officials
92k1925 k. In general. Most Cited Cases
(Formerly 92k90.1(7.2), 92k90.1(1))

Constitutional Law 92 ⚷1926

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(P) Public Employees and Officials
92k1926 k. Public officials in general. Most Cited Cases
(Formerly 92k90.1(1))

Officers and Public Employees 283 ⚷110

283 Officers and Public Employees
283III Rights, Powers, Duties, and Liabilities
283k110 k. Duties and performance thereof in general. Most Cited Cases
Constitutional amendment requiring all state and local government officials and employees to "act" only in English during performance of government business violated First Amendment, by adversely impacting rights of nonEnglish-speaking persons to participate in and have access to government and by depriving elected officials and public employees of ability to communicate with their constituents and with the public. U.S.C.A. Const.Amend. 1; A.R.S. Const. Art. 28, § 1 et seq.

[11] Constitutional Law 92 ⚷1151

92 Constitutional Law
92X First Amendment in General
92X(A) In General
92k1151 k. Applicability to governmental or private action; state action. Most Cited Cases
(Formerly 92k82(5))
First Amendment applies to states as well as to federal government. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law 92 ⚷1622

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(D) False Statements in General
92k1621 Opinion
92k1622 k. In general. Most Cited Cases
(Formerly 92k90.1(5))
Expression of one's opinion is absolutely protected by First and Fourteenth Amendments. U.S.C.A. Const.Amends. 1, 14.

[13] Constitutional Law 92 ⚷1506

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)1 In General
92k1506 k. Strict or exacting scrutiny; compelling interest test. Most Cited Cases
(Formerly 92k90(3))
Laws directed at speech and communication are subject to exacting scrutiny and must be justified by substantial showing of need that First Amendment requires. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law 92 ⚷1435

92 Constitutional Law
92XV Right to Petition for Redress of Grievances
92k1435 k. In general. Most Cited Cases
(Formerly 92k91)

Constitutional Law 92 ⚷3775

92 Constitutional Law
92XXVI Equal Protection

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92XXVI(E) Particular Issues and Applications
92XXVI(E)19 Other Particular Issues and Applications
92k3775 k. Other particular matters. Most Cited Cases
(Formerly 92k225.1)

Officers and Public Employees 283 ⚷110

283 Officers and Public Employees
283III Rights, Powers, Duties, and Liabilities
283k110 k. Duties and performance thereof in general. Most Cited Cases

Constitutional amendment requiring all state and local government officials and employees to "act" only in English during performance of government business violated Equal Protection Clause of Fourteenth Amendment; amendment burdened fundamental First Amendment right of nonEnglish-speaking persons to petition government for redress of grievances, but was not drawn with narrow specificity to meet purported compelling state interest of promoting English as common language. U.S.C.A. Const.Amends. 1, 14; A.R.S. Const. Art. 28, § 1 et seq.

[15] Constitutional Law 92 ⚷1435

92 Constitutional Law
92XV Right to Petition for Redress of Grievances
92k1435 k. In general. Most Cited Cases
(Formerly 92k91)

Right to petition government for redress of grievances is one of fundamental rights guaranteed by First Amendment. U.S.C.A. Const.Amend. 1.

[16] Constitutional Law 92 ⚷1460

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1460 k. In general. Most Cited Cases
(Formerly 92k82(8))

Corollary to First Amendment right to petition government for redress of grievances is right to participate equally in political process. U.S.C.A. Const.Amend. 1.

[17] Constitutional Law 92 ⚷1435

92 Constitutional Law
92XV Right to Petition for Redress of Grievances
92k1435 k. In general. Most Cited Cases
(Formerly 92k91)

First Amendment right to petition government for redress of grievances bars state action interfering with access to legislature, executive branch and its various agencies and judicial branch. U.S.C.A. Const.Amend. 1.

[18] Statutes 361 ⚷64(2)

361 Statutes
361I Enactment, Requisites, and Validity in General
361k64 Effect of Partial Invalidity
361k64(2) k. Acts relating to particular subjects in general. Most Cited Cases

Valid portions of constitutional amendment requiring all state and local government officials and employees to "act" only in English during performance of government business would not be severed from amendment's invalid portions, and therefore the entire amendment would be declared unconstitutional, where amendment did not contain severability clause, and record was devoid of any evidence that voters would have enacted amendment without the invalid portions. A.R.S. Const. Art. 28, § 1 et seq.

[19] Statutes 361 ⚷64(1)

361 Statutes
361I Enactment, Requisites, and Validity in General
361k64 Effect of Partial Invalidity
361k64(1) k. In general. Most Cited Cases

Entire statute need not be declared unconstitutional if constitutional portions can be separated; however, valid portion of statute will be severed

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only if it can be determined from the language that voters would have enacted valid portion absent the invalid portion.

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****987 *444 OPINION**

MOELLER, Justice.

SUMMARY

¶ 1 This opinion addresses the constitutionality of Article XXVIII of the Arizona Constitution (the "Amendment"), which was adopted in 1988 and which provides, *inter alia,* that English is the official language of the State of Arizona and that the state and its political subdivisions-including all government officials and employees performing government business-must "act" only in English.

¶ 2 We hold that the Amendment violates the First Amendment to the United States Constitution because it adversely impacts the constitutional rights of non-English-speaking persons with regard to their obtaining access to their government and limits the political speech of elected officials and public employees. We also hold that the Amendment violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it unduly burdens core First Amendment rights of a specific class without materially advancing a legitimate state interest.

¶ 3 In making these rulings, we express no opinion concerning the constitutional validity of less restrictive English-only provisions discussed in this opinion. We also emphasize that nothing in this opinion compels any Arizona governmental entity to provide any service in a language other than English.

FACTS AND PROCEDURAL BACKGROUND

I. The Amendment

¶ 4 In October 1987, Arizonans for Official English ("AOE") initiated a petition drive to amend Arizona's constitution to designate English as the state's official language and to require state and local governments in Arizona to conduct business only in English. As a result of the general election in November 1988, the Amendment was added to the Arizona Constitution, receiving affirmative votes from 50.5% of Arizona citizens casting ballots. *See* ***Yniguez v. Arizonans for Official English*** ("**AOE**"), **69 F. 3d 920, 924 (9th Cir. 1995)** (en banc). FN1 The Amendment, entitled "English as the Official Language," is set forth in full in the Appendix and provides that "[t]he State and all political subdivisions of [the] State shall act in English and in no other language." The Amendment binds all government officials and employees in Arizona during the performance of all government business, and provides that any "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."

FN1. As pointed out ***infra***, the Ninth Circuit's opinion in *Yniguez v. AOE* was vacated by the United States Supreme Court because Yniguez lacked standing. *AOE v. Arizona,* 520 U.S. 43, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997), *vacated on remand, Yniguez v. AOE,* 118 F.3d 667 (9th Cir.1997). On the merits of the case, however, we agree with the result and with much of the reasoning of the Ninth Circuit opinion. Thus, we refer to the Ninth Circuit opinion throughout this opinion, re-

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cognizing that it has been vacated on grounds unrelated to the merits of the issues with which we are presented.

II. *Yniguez v. Mofford*

¶ 5 Two days after the voters passed the Amendment, Maria-Kelley F. Yniguez sued the State of Arizona, the Governor, and various parties pursuant to 42 U.S.C. § 1983 in the United States District Court for the District of Arizona, seeking to enjoin enforcement of the Amendment and to have it declared unconstitutional under the First and Fourteenth Amendments. She also contended that it violated federal civil rights laws. *Yniguez v. Mofford,* 730 F.Supp. 309 (D.Ariz.1990). When she filed her action, Yniquez was employed by the Arizona Department of Administration and handled medical malpractice claims asserted against the state. Yniguez was bilingual, fluent and literate in both Spanish and English, and, prior to the Amendment's passage, she communicated in Spanish with monolingual Spanish-speaking claimants and in a combination of English and Spanish with bilingual claimants. *Id.* at 310.

¶ 6 By the time the district court ruled, only the Governor remained as a defendant. *Id.* The district court granted declaratory ****988 *445** relief, finding that the Amendment was facially overbroad in violation of the First Amendment. *Id.* at 313. Injunctive relief, however, was denied because there was no enforcement action pending against Yniguez. *Id.* at 317. The Governor did not appeal the decision. The Attorney General of Arizona, AOE, and Robert D. Park, a principal sponsor of the Amendment, then moved to intervene for purposes of pursuing an appeal. The district court denied the motion. *Yniguez v. Mofford,* 130 F.R.D. 410 (D.Ariz.1990).

¶ 7 The Ninth Circuit Court of Appeals reversed the district court's denial and also allowed Arizonans Against Constitutional Tampering, the principal opponent of the Amendment, to intervene as plaintiffs-appellees. *Yniguez v. AOE,* 42 F.3d 1217, 1223-24 (9th Cir.1994). The intervention of the Arizona Attorney General was permitted for the limited purpose of urging adoption of his narrow interpretation of the Amendment discussed below or, alternatively, to urge the certification of the interpretation of the Amendment to this court pursuant to Arizona Revised Statutes Annotated ("A.R.S.") § 12-1861. [FN2]

FN2. The Ninth Circuit affirmed the district court's denial of the Arizona Attorney General's Motion to Intervene insofar as he sought to be reinstated as a party in the appeal, but permitted the intervention for the limited purpose described. *See Yniguez v. Arizona,* 939 F.2d 727, 740 (9th Cir.1991). The district court had refused to certify the question of the proper interpretation of the Amendment to this court, ruling that certification was inappropriate because the Amendment is not susceptible of a narrowing construction, and therefore could not be held constitutional. *See Yniguez v. Mofford,* 130 F.R.D. at 411.

¶ 8 The State of Arizona filed a suggestion of mootness because Yniguez was no longer employed by the State of Arizona. The court of appeals rejected the suggestion of mootness, reasoning that Yniguez had a right to appeal the district court's failure to award nominal damages to her and, therefore, had a sufficient concrete interest in the outcome of the litigation to confer standing to pursue declaratory relief. *Yniguez v. Arizona,* 975 F.2d 646, 647 (9th Cir.1992) (citations omitted).

¶ 9 AOE appealed the district court's judgment that declared the Amendment unconstitutional and Yniguez cross-appealed the denial of nominal damages. A panel of the Ninth Circuit Court of Appeals agreed with the district court that the Amendment is unconstitutionally overbroad and also held that Yniguez was entitled to nominal damages. *Yniguez v. AOE,* 42 F.3d at 1229, 1243. The Ninth Circuit then reheard the case en banc and affirmed. ***Yniguez v. AOE,* 69 F. 3d at 947.**

¶ 10 AOE petitioned for certiorari to the United

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States Supreme Court, which granted the petition and ordered additional briefing on whether the petitioners had standing to maintain the action and whether there remained a federal case or controversy with respect to Yniguez, in light of the fact that she was no longer employed by the State of Arizona. In a unanimous decision, the Supreme Court vacated the Ninth Circuit opinion and remanded to that court with directions that the action be dismissed. *AOE v. Arizona,* 520 U.S. 43, 117 S.Ct. 1055, 1075, 137 L.Ed.2d 170 (1997). The Court held there was no case or controversy to support federal court jurisdiction and determined that the lower court decisions should be vacated because the Ninth Circuit should have certified the construction of the Amendment to this court. *Id.*, 117 S.Ct. at 1074. In doing so, the Court expressed no opinion on the constitutionality of the Amendment. *Id.* at 1060.

III. This Litigation

¶ 11 In November 1992, the ten plaintiffs in this case brought an action in superior court against then-Governor J. Fife Symington, III and the Attorney General. On September 5, 1997, Governor Symington resigned and was succeeded by Jane Dee Hull, who has been substituted pursuant to Rule 27(c)(1) of the Arizona Rules of Civil Appellate Procedure. The plaintiffs sought a declaratory judgment that the Amendment violates the First, Ninth, and Fourteenth Amendments of the United States Constitution. The plaintiffs are four elected officials,[FN3] ****989 *446** five state employees, and one public school teacher. They are all bilingual and regularly communicate in both Spanish and English as private citizens and during the performance of government business. Plaintiffs allege that they speak Spanish during the performance of their government jobs and that they "fear communicating in Spanish 'during the performance of government business' in violation of Article XXVIII of the Arizona Constitution."

FN3. Arizona State Senator Joe Eddie Lopez was substituted for retired Senator Manuel Pena by this court's order of May 2, 1997.

¶ 12 The principal sponsors of the Amendment, AOE and Robert D. Park, AOE's spokesperson, intervened as defendants. On cross-motions for summary judgment, the superior court ruled that the Amendment is constitutional, finding that it (1) is a content-neutral regulation that does not violate the First Amendment; (2) does not violate the Equal Protection Clause of the Fourteenth Amendment because there is no proof of discriminatory intent; and (3) does not violate the Ninth Amendment because it does not protect choice of language.[FN4] The trial court denied AOE's request for attorneys' fees pursuant to A.R.S. § 12-2030, and AOE appealed that denial. Under this opinion, AOE is no longer a prevailing party so we do not discuss its request for attorneys' fees further.

FN4. No Ninth Amendment issue has been presented to us on appeal.

¶ 13 On appeal, the court of appeals reversed in part and affirmed in part. *Ruiz v. AOE,* 218 Ariz. Adv. Rep. 9 (App.1996). Citing the principle of judicial comity, the court held that "it is appropriate for us to exercise our discretion and defer to the federal litigation and thereby accept the construction of Article [XXVIII] and the analysis that was set forth by the Ninth Circuit." 1996 WL 309512 at *4, 218 Ariz. Adv. Rep. at 12. The state defendants petitioned this court for review, which we granted. In 1996, we stayed all proceedings pending the Supreme Court's decision in *AOE v. Arizona.*

¶ 14 As already noted, in 1997 the United States Supreme Court held that Yniguez' federal court claim was moot and remanded with directions that it be dismissed. Plaintiffs then filed a motion in this court to lift the stay and requested leave to submit supplemental briefs and for oral argument. AOE filed a motion to vacate our order granting review. AOE maintained, in essence, that there was no court of appeals decision for this court to review because the court of appeals had adopted the Ninth

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Circuit's construction and analysis of the Amendment, *see* ***Yniguez v. AOE,*** **69 F. 3d at 947**, and the United States Supreme Court had vacated the Ninth Circuit's opinion. The result, AOE argued, was that the court of appeals' opinion was "eradicated." Thus, AOE requested us to either affirm the trial court's judgment or to return the matter to the court of appeals for consideration. We denied AOE's motion to vacate the order granting review and granted plaintiffs' motion to lift the stay.

[1] ¶ 15 This court then received supplemental briefing and heard oral argument from the parties. In addition, numerous amici curiae briefs were filed on behalf of a host of organizations and individuals. We reviewed, considered, and appreciate the many amici briefs which advanced varying positions in this case. However, in accordance with our practice, we base our opinion solely on legal issues advanced by the parties themselves. *See Town of Chino Valley v. City of Prescott,* 131 Ariz. 78, 84, 638 P.2d 1324, 1330 (1981), *appeal dismissed,* 457 U.S. 1101, 102 S.Ct. 2897, 73 L.Ed.2d 1310, *reh. denied,* 459 U.S. 899, 103 S.Ct. 199, 74 L.Ed.2d 160 (1982), citing *City of Tempe v. Prudential Ins. Co.,* 109 Ariz. 429, 510 P.2d 745 (1973) (holding that amici curiae are not permitted to create, extend, or enlarge issues beyond those raised and argued by the parties). Because we resolve the case on the merits as presented by the parties, we do not discuss the concerns referred to in the special concurrence because, as the special concurrence itself observes, the parties have not raised, briefed, or argued any matter referred to by the special concurrence.

¶ 16 We have jurisdiction pursuant to A.R.S. § 12-102.21.

ISSUES

¶ 17 1. Whether the trial court erred by ruling that the Amendment did not violate***990 *447** the First Amendment to the United States Constitution because it was content-neutral, did not reach constitutionally-protected free speech rights, and was thus not fatally overbroad.

¶ 18 2. Whether the trial court erred by concluding that the Amendment did not violate the Fourteenth Amendment to the United States Constitution because there was no proof of discriminatory intent.

DISCUSSION

I. Introduction

¶ 19 Plaintiffs contend that the Amendment is a blanket prohibition against all publicly elected officials and government employees using any language other than English in the performance of any government business. Therefore, they reason that the Amendment is a content-based regulation of speech contrary to the First Amendment. Plaintiffs also argue that the Amendment constitutes discrimination against non-English-speaking minorities, thereby violating the Equal Protection Clause of the Fourteenth Amendment. AOE and the state defendants respond that the Amendment should be narrowly read and should be construed as requiring the use of English only with regard to "official, binding government acts." They argue that this narrow construction renders the Amendment constitutional.

¶ 20 At the outset, we note that this case concerns the tension between the constitutional status of language rights and the state's power to restrict such rights. On the one hand, in our diverse society, the importance of establishing common bonds and a common language between citizens is clear. ***Yniguez v. AOE,*** **69 F. 3d at 923**, citing *Guadalupe Organization, Inc. v. Tempe Elementary Sch. Dist.,* 587 F.2d 1022, 1027 (9th Cir.1978). We recognize that the acquisition of English language skills is important in our society. For instance, as a condition to Arizona's admission to the Union, Congress required Arizona to create a public school system and provided that "said schools shall always be conducted in English." Act of June 20, 1910, ch. 310, § 20(4). That same Act requires all state officers and members of the Legislature to have the "ability to read, write, speak and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpret-

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er." *Id.*, § 20(5). Also, the Sixth Amendment permits an English language requirement for jurors. *United States v. Bennuhar*, 658 F.2d 14, 18-20 (1st Cir.1981) (noting that state's significant interest in having branch of national court system operate in national language rebutted defendant's prima facie showing that English proficiency requirement for jurors resulted in underrepresentation). Congress has recognized the importance of understanding English in such matters as naturalization legislation, 8 U.S.C. § 1423, and the need for the education of non-English-speaking students, Equal Educational Opportunity Act of 1974, 20 U.S.C. §§ 1701-1758. Indeed, Arizona law mandates that school districts in which there are pupils who have limited English proficiency [FN5] shall provide programs of bilingual instruction or English as a second language with a primary goal of allowing the pupils to become proficient in English in order to succeed in classes taught in English. A.R.S. § 15-752. Finally, the importance of acquiring English skills is emphasized in the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1255a(b)(1)(D), which legalizes resident status of illegal immigrants who demonstrate progress toward learning English, and terminates legal residence for those who make little or no progress, 8 U.S.C. § 1255a(b)(2)(C).

FN5. "Limited English proficient" is defined as having a "low level of skill in comprehending, speaking, reading or writing the English language because of being from an environment in which another language is spoken." A.R.S. § 15-751(1). Article 20, paragraph 7 of the Arizona Constitution provides that Arizona public schools shall be conducted in English.

¶ 21 Indeed, English is also the language of political activity through initiative petition. *See Montero v. Meyer*, 861 F.2d 603 (10th Cir.1988) (providing that initiative petitions that are printed only in English are not covered by and do not offend provisions of ****991 *448** the Voting Rights Act); *accord Delgado v. Smith*, 861 F.2d 1489 (11th Cir.1988).

¶ 22 However, the American tradition of tolerance "**recognizes a critical difference between encouraging the use of English and repressing the use of other languages**." ***Yniguez v. AOE*, 69 F. 3d at 923**. We agree with the Ninth Circuit's statement that Arizona's rejection of that tradition by enacting the Amendment has severe consequences not only for Arizona's public officials and employees, but also for the many thousands of persons who would be precluded from receiving essential information from government employees and elected officials in Arizona's governments. ***Id.*** If the wide-ranging language of the prohibitions contained in the Amendment were to be implemented as written, the First Amendment rights of all those persons would be violated, ***id.***, a fact now conceded by the proponents of the Amendment, who, instead, urge a restrictive interpretation in accordance with the Attorney General's narrow construction discussed below.

¶ 23 By this opinion, we do not imply that the intent of those urging passage of the Amendment or of those who voted for it stemmed from linguistic chauvinism or from any other repressive or discriminatory intent.[FN6] Rather we assume, without deciding, that the drafters of the initiative urged passage of the Amendment to further social harmony in our state by having English as a common language among its citizens.

FN6. We fully recognize that the power of the people to legislate is as great as that of the Legislature. *See* Ariz. Const. art. IV; *Salt River Pima-Maricopa Indian Community v. Hull*, 190 Ariz. 97, 103, 945 P.2d 818, 824 (1997); *Queen Creek Land & Cattle Corp. v. Yavapai County Board of Sup'rs*, 108 Ariz. 449, 451, 501 P.2d 391, 393 (1972). However, we note that the search for the people's intent in passing initiatives is far different from the attempt to discern legislative intent: there are no

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legislative hearing transcripts, committee reports or other legislative history. Before an initiative is passed, no committee meetings are held; no legislative analysts study the law; no floor debates occur; no separate representative bodies vote on the legislation; no reconciliation conferences are held; no amendments are drafted; no executive official wields a veto power and reviews the law under that authority; and it is far more difficult for the people to "reconvene" to amend or clarify a law if a court interprets it contrary to the voters' intent. *See* Jane S. Schacter, *The Pursuit of "Popular Intent": Interpretive Dilemmas in Direct Democracy,* 105 Yale L.J. 107, 109 (1995).

¶ 24 This court must interpret the Amendment as a whole and in harmony with other portions of the Arizona Constitution. *State ex rel. Nelson v. Jordan,* 104 Ariz. 193, 196, 450 P.2d 383, 386 (1969); *State ex rel. Jones v. Lockhart,* 76 Ariz. 390, 398, 265 P.2d 447, 453 (1953). And, if possible, we must construe the Amendment to avoid conflict with the United States Constitution. *AOE v. Arizona,* 117 S.Ct. at 1074.

[2][3][4] ¶ 25 Every duly enacted state and federal law is entitled to a presumption of constitutionality. *Town of Lockport v. Citizens for Community Action at Local Level, Inc.,* 430 U.S. 259, 272-73, 97 S.Ct. 1047, 1055-56, 51 L.Ed.2d 313 (1977); *Eastin v. Broomfield,* 116 Ariz. 576, 580, 570 P.2d 744, 748 (1977). The presumption applies equally to initiatives as well as statutes, and where alternative constructions are available, the court should choose the one that results in constitutionality. *Slayton v. Shumway,* 166 Ariz. 87, 92, 800 P.2d 590, 595 (1990); *Hernandez v. Frohmiller,* 68 Ariz. 242, 249, 204 P.2d 854, 859 (1949). However, as discussed more fully below, where the regulation in question impinges on core constitutional rights, the standards of strict scrutiny apply and the burden of showing constitutionality is shifted to the proponent of the regulation. *See generally Rosen v. Port of Portland,* 641 F.2d 1243, 1246, 1249 (9th Cir.1981) (laws restricting speech face a heavy presumption against their constitutional validity and proponents bear burden of establishing that they are "narrowly tailored" to further a "compelling" government interest); *see also Barnes v. Glen Theatre, Inc.,* 501 U.S. 560, 576, 111 S.Ct. 2456, 2465-66, 115 L.Ed.2d 504 (1991) (Scalia, J., concurring). Mindful of these principles, we turn now to an analysis of the constitutionality of the Amendment.

II. Attorney General's Opinion

[5] ¶ 26 On its face, the Amendment provides that, except for some enumerated narrow exceptions, English is the official language of the State of Arizona, of all political ****992 *449** subdivisions, of the ballot, the public schools, and government functions and actions. The exceptions pertain to the teaching of English as a second language, matters required by federal law, any matter pertaining to the protection of public health or safety, or of the rights of criminal defendants or victims of crime. *See* Appendix. Before making a facial analysis of the Amendment, however, we must first determine the propriety of adopting the Attorney General's proposed narrowing construction.

¶ 27 In 1989, shortly after the Amendment was passed, Robert Corbin, then Attorney General, issued an opinion upholding the constitutionality of the Amendment, based upon a narrow construction of the Amendment. Ariz. Att'y Gen. Op. I89-009 (1989); *see also* Ariz. Att'y Gen. Ops. I89-013 and -014 (1989).

[6] ¶ 28 Opinions of the Attorney General are advisory. *Green v. Osborne,* 157 Ariz. 363, 365, 758 P.2d 138, 140 (1988), and are not binding. *Marston's Inc. v. Roman Catholic Church,* 132 Ariz. 90, 94, 644 P.2d 244, 248 (1982) (in division). However, the reasoned opinion of a state attorney general should be accorded respectful consideration. *See AOE v. Arizona,* 117 S.Ct. at 1073 n. 30, citing *Huggins v. Isenbarger,* 798 F.2d 203, 207-10 (7th Cir.1986) (Easterbrook, J., concurring).

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¶ 29 While we duly consider the Attorney General's proposed narrowing construction, we reject that construction for three substantive reasons, each of which we discuss in turn. First, the proffered narrowing construction does not comport with the plain wording of the Amendment, and hence, with the plain meaning rule guiding our construction of statutes and provisions in the Arizona Constitution. Second, it does not comport with the stated intent of the drafters of the Amendment. Third, it suffers from both ambiguity and implausibility. Therefore, the narrowing construction is rejected because the Amendment's clear terms are not "readily susceptible" to the constraints that the Attorney General attempts to place on them. ***Yniguez v. AOE.*** **69 F. 3d at 929**; *see also Virginia v. American Booksellers Ass'n,* 484 U.S. 383, 395, 108 S.Ct. 636, 644, 98 L.Ed.2d 782 (1988) (refusing to accept as authority a non-binding attorney general opinion where narrowing construction advocated by attorney general was not in accordance with the plain meaning of the statute).

A. Plain Meaning Rule

¶ 30 The Attorney General maintains that although the Amendment declares English to be Arizona's "official" language, its proscriptions against the use of non-English languages should be interpreted to apply only to "official acts of government." Ariz. Att'y Gen. Op. I89-009, at 5-6. The Attorney General defines "official act" as "a decision or determination of a sovereign, a legislative council, or a court of justice." *Id.* at 7. Although he does not further explain what acts would be official, the Attorney General concludes that the Amendment should not be read to prohibit public employees from using non-English languages while performing their public functions that could not be characterized as official. The Attorney General opines that the provision "does not mean that languages other than English cannot be used when reasonable to facilitate the day-to-day operation of government." *Id.* at 10.

¶ 31 Somewhat curiously, intervenors now agree with the Attorney General that the Amendment should be held to govern only binding, official acts of the state, which they also seek to construe narrowly as "formal rule-making or rate making ... or any other policy matters." AOE and the state defendants also point to the definition of "official act" adopted by the court in *Kerby v. State ex rel. Frohmiller,* 62 Ariz. 294, 310-11, 157 P.2d 698, 705-06 (1945). The court there defined "official acts" as "acts by an officer in his official capacity under color and by virtue of his office." *Id.* However, assuming, without deciding, that the government could require official acts to be conducted in English only, nothing in the language of the Amendment remotely supports such a limiting construction.

¶ 32 To arrive at his interpretation, the Attorney General takes the word "act" from § 3(1)(a) of the Amendment, which provides that, with limited exceptions, the "State and ****993 *450** all political subdivisions of this State shall act in English and in no other language." (Emphasis added.) The Attorney General proposes that the word "act" from § 3(1)(a) should be ascribed to the word "official," found in the Amendment's proclamation that English is the official language of Arizona. Therefore, the Attorney General interprets the Amendment to apply only to the official acts of the state and limits the definition of the noun "act" to a "decision or determination of a sovereign, a legislative council, or a court of justice." Op. Atty. Gen. Az. No. I89-009, at 7 (*quoting Webster's International Dictionary* 20 (3d ed., unabridged, 1976) (third meaning of "act")). We agree with the Ninth Circuit in *Yniguez v. AOE* that the former Attorney General's opinion ignores the fact that "act," when used as a verb as in the Amendment, does not include among its meanings the limited definition he proposed. **69 F. 3d at 929**. Similarly, section 1(2) of the Amendment also describes English as the language of "all government functions and actions." The Amendment does not limit the terms "functions" and "actions" to official acts as urged by the Attorney General, and the ordinary meanings of those terms

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do not impose such a limitation. *Id.* at 929 n. 13. We agree with the district court that originally evaluated the challenges to the Amendment in *Yniguez:* "The Attorney General's restrictive interpretation of the Amendment is in effect a 'remarkable job of plastic surgery upon the face of the [Amendment].' " *Yniguez v. Mofford,* 730 F.Supp. at 316, citing *Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 153, 89 S.Ct. 935, 940, 22 L.Ed.2d 162 (1969).

¶ 33 We hold that by ignoring the express language of the Amendment, the Attorney General's proposed construction violates the plain meaning rule that requires the words of the Amendment to be given their natural, obvious, and ordinary meaning. *County of Apache v. Southwest Lumber Mills, Inc.,* 92 Ariz. 323, 327, 376 P.2d 854, 856 (1962). By its express terms, the Amendment is not limited to official governmental acts or to the "formal, policy making, enacting and binding activities of government." Rather, it is plainly written in the broadest possible terms, declaring that the "English language is the language of ... *all government functions and actions* " and prohibiting all "government officials and employees" at every level of state and local government from using non-English languages " *during the performance of government business.* " Amendment, §§ 1(2), 1(3)(a)(iv) (emphasis added).

B. Legislative Intent

¶ 34 We also believe the Attorney General's proposed construction is at odds with the intent of the drafters of the Amendment. The drafters perceived and obviously intended that the application of the Amendment would be widespread. They therefore inserted some limited exceptions to it. Those exceptions permit the use of non-English languages to protect the rights of criminal defendants and victims, to protect the public health and safety, to teach a foreign language, and to comply with federal laws. Amendment, § 3.2. Regardless of the precise limits of these general exceptions, their existence demonstrates that the drafters of the Amendment understood that it would apply to far more than just official acts.

[7] ¶ 35 For example, one exception allows public school teachers to instruct in a non-English language when teaching foreign languages or when teaching students with limited English proficiency. Such instruction by teachers is obviously not a "formal, policy making, enacting or binding activity by the government," the narrow construction urged by the Attorney General. The exceptions would have been largely, if not entirely, unnecessary under the Attorney General's proposed construction of the Amendment. When construing statutes, we must read the statute as a whole and give meaningful operation to each of its provisions. *Kaku v. Arizona Board of Regents,* 172 Ariz. 296, 297, 836 P.2d 1006, 1007 (App.1992).

[8] ¶ 36 In construing an initiative, we may consider ballot materials and publicity pamphlets circulated in support of the initiative. *Bussanich v. Douglas,* 152 Ariz. 447, 450, 733 P.2d 644, 647 (App.1986). The ballot materials and publicity pamphlets pertaining to the Amendment do not support ****994 *451** the Attorney General's limiting construction. In AOE's argument for the Amendment, Chairman Robert D. Park stated that the Amendment was intended to "require the government to *function in English,* except in certain circumstances," and then listed those exceptions set forth in section 4 of the Amendment (emphasis added). Chairman Park's argument then went on to state that " *[o]fficially sanctioned multilingualism causes tension and division within a state.* Proposition 106 [enacting the Amendment] will *avoid that fate* in Arizona." (Emphasis added.) The Legislative Council's argument in support of the Amendment stated that the existence of a multilingual society would lead to "the fears and tensions of language rivalries and ethnic distrust." Arizona Publicity Pamphlet in Support of the Amendment, at 26. Therefore, the Amendment's legislative history supports a broad, comprehensive construction of the Amendment, not the narrow construction urged by the Attorney General.

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C. Ambiguity

[9] ¶ 37 The Attorney General's interpretation would unnecessarily inject elements of vagueness into the Amendment. We feel confident that an average reader of the Amendment would never divine that he or she was free to use a language other than English unless one was performing an official act defined as "a decision or determination of a sovereign, a legislative council, or a court of justice." FN7

FN7. Although it is unnecessary for us to address the plaintiffs' separate argument that the Amendment, as written, is unconstitutionally vague (because we hold that the Amendment violates the First and Fourteenth Amendments), we do note that the Attorney General's proposed narrowing construction, if adopted, would undoubtedly add weight to the plaintiffs' vagueness argument. A statute is vague if it fails to give fair notice of what it prohibits. *State ex rel. Purcell v. Superior Court,* 111 Ariz. 582, 584, 535 P.2d 1299, 1301 (1975); *see also Connally v. General Constr. Co.,* 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926) (Vagueness is concerned with clarity of law; a law is void on its face, and thereby violates due process, if it is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application.").

¶ 38 Because we conclude that the narrow construction advocated by the Attorney General is untenable, we analyze the constitutionality of the Amendment based on the language of the Amendment itself.

III. English-Only Provisions in Other Jurisdictions

¶ 39 Although English-only provisions have recently become quite common, Arizona's is unique. Thus, we receive little guidance from other state courts. Twenty-one states FN8 and forty municipalities FN9 have official English statutes. However, most of those provisions are substantially less encompassing and certainly less proscriptive than the Amendment. The official English provisions in most states appear to be primarily symbolic. *See, e.g., Puerto Rican Org. for Political Action v. Kusper,* 490 F.2d 575, 577 (7th Cir.1973) (noting that official English law appears with laws naming the state bird and state song, and does not restrict the use to non-English languages by state and city agencies). Indeed, the Amendment has been identified as "by far the most restrictively worded official-English law to date." M. Arrington, Note, *English Only Laws and Direct Legislation: The Battle in the States Over Language Minority Rights,* 7 L.J. & Pol. 325, 327 (1991). This observation is shared by other commentators-who note that the Amendment "is the *most restrictive* of the current wave of official-language ****995 *452** laws," and "is so far the *most restrictive* Official English measure." *See* D. Baron, *The English-Only Question* 21 (1990), and J. Crawford, *Hold Your Tongue* 176 (1992) (emphasis added).

FN8. Ala. Const. amend 509 (1990); Ariz. Const. art XXVIII (1988); Ark.Code Ann. § 1-4-117 (1987); Cal. Const. art. III, § 6 (1986); Colo. Const. art. II, § 30a (1988); Fla. Const. art. II § 9 (1988); Ga.Code Ann. § 50-3-100 (1996); Haw. Const. art. XV, § 4 (1978) (also naming Hawaiian as an official language); 5 Ill. Comp. Stat. Ann. 460/20 (West 1993); Ind.Code Ann. § 1-2-10-1 (1984); Ky.Rev.Stat. Ann. § 2.013 (1984); Miss.Code Ann. § 3-3-31 (1987); Mont.Code Ann. § 1-1-510 (1995); Neb. Const. art. I, § 27 (1920); N.H.Rev.Stat. Ann. § 3-C:1 (1995); N.C. Gen.Stat. § 145-12 (1987); N.D. Cent.Code § 54-02-13 (1987); S.C.Code Ann. § 1-1-696 (1987); S.D. Codified Laws § 1-27-20 (1995); Tenn.Code Ann. § 4-1-404 (1984); Wyo. Stat. Ann. § 8-6-101 (Michie 1996).

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FN9. *See* Cecilia Wong, *Language is Speech: The Illegitimacy of Official English After* Yniguez v. Arizonans for Official English, 30 U.C. Davis L.Rev. 277, 278 (1996).

¶ 40 In contrast to the Amendment, the official English laws that have been enacted in other states are for the most part brief and nonrestrictive. For instance, Colorado's official English law, Colo. Const. § 30, adopted by the initiative process, provides that 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." Similarly, the official English statute of Arkansas states: "(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." Ark. Stat. Ann. 1-4-117. Florida's 1988 official English law is similar: "(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." Fla. Const. Art. II, § 9 (1988). Indeed, three states have simply enacted a provision which declares that English is the official language of the state: Illinois, 5 Ill. Comp. Stat. Ann. § 460/20; Kentucky, Ky.Rev.Stat. § 2.013; and Indiana, Ind.Code Ann. § 1-2-10-1.

¶ 41 The more detailed official English laws contain provisions which avoid some of the constitutional questions presented by the Amendment. For instance, Wyoming's law provides, in pertinent part, that:

> (a) English shall be designated as the official language of Wyoming. Except as otherwise provided by law, no state agency or political subdivision of the state shall be required to provide any documents, information, literature or other written materials in any language other than English. (b) A state agency or political subdivision or its officers or employees may act in a language other than the English language for any of the following purposes: (i) To provide information orally to individuals in the course of delivering services to the general public .... (vii) To promote international commerce, trade or tourism.

Wyo. St. 8-6-101.

¶ 42 Similarly, Montana's official English law protects the free speech rights of state employees and elected officials by allowing them to use non-English languages in the course and scope of their employment, stating in pertinent part:

> 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 their employment from using a language other than English, including use in a government document or record, if the employee chooses.

Mont.Code Ann. § 1-1-510 (emphasis added).

¶ 43 Finally, although California's official English law, passed as an initiative in 1986, is specific and lengthy, it does not prohibit the use of languages other than English.[FN10] If ****996 *453** Arizona's Amendment were merely symbolic or contained some of the express exceptions of the official English provisions discussed above, it might well have passed constitutional muster. We do not express any opinion concerning the constitutionality of less restrictive English-only provisions. We turn now to a discussion of the constitutional questions presented by the Amendment.

FN10. California's Official English law, Cal. Const., Art. III, § 6, provides that:

> (a) *Purpose*
>
> English is the common language of the people of the United States of America and the State of California. This section

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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 limitations on the time and manner of suits brought under this section.

IV. Language is Speech Protected by the First Amendment

[10] ¶ 44 Unlike other English-only provisions, the Amendment explicitly and broadly prohibits government employees from using non-English languages even when communicating with persons who have limited or no English skills, stating that all "government officials and employees during the performance of government business" must "act in English and no other language." Amendment, §§ 1(3)(a)(iv), 3(1)(a). It also requires every level and branch of government to "preserve, protect and enhance the role of ... English ... as the official language" and prohibits all state and local entities from enacting or enforcing any "law, order, decree or policy which requires the use of a language other than English." §§ 2, 3(1)(b). We agree with the Ninth Circuit that the Amendment "could hardly be more inclusive" and that it "**prohibit[s] the use in all oral and written communications by persons connected with the government of all words and phrases in any language other than English**." ***Yniguez v. AOE***, **69 F. 3d at 933**.

¶ 45 Assuming *arguendo* that the government may, under certain circumstances and for appropriate reasons, restrict public employees from using non-English languages to communicate while performing their duties, the Amendment's reach is too broad. For example, by its express language, it prohibits a public school teacher, such as Appellant Garcia, and a monolingual Spanish-speaking parent from speaking in Spanish about a child's education. It also prohibits a town hall discussion between citizens and elected individuals in a language other than English and also precludes a discussion in a language other than English between public employees and citizens seeking unemployment or workers' compensation benefits, or access to fair housing or public assistance, or to redress violations of those rights.

¶ 46 The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

[11][12] ¶ 47 The First Amendment applies to

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the states as well as to the federal government. *Gitlow v. New York,* 268 U.S. 652, 665, 45 S.Ct. 625, 630, 69 L.Ed. 1138 (1925). The expression of one's opinion is absolutely protected by the First and Fourteenth Amendments. *AMCOR Inv. Corp. v. Cox Ariz. Publications, Inc.,* 158 Ariz. 566, 568, 764 P.2d 327, 329 (App.1988) (citation omitted); *see also Meyer v. Nebraska,* 262 U.S. 390, 401, 43 S.Ct. 625, 627, 67 L.Ed. 1042 (1923) (stating that the United States Constitution protects speakers of all languages). The trial court held that the Amendment is content-neutral, and, therefore, does not violate the First Amendment. *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 47-48, 106 S.Ct. 925, 929-30, 89 L.Ed.2d 29 (1986). That ruling is flawed.

¶ 48 "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." *Landmark Communications, Inc. v. Virginia,* 435 U.S. 829, 838, 98 S.Ct. 1535, 1541, 56 L.Ed.2d 1 (1978) (footnote omitted) (quoting *Mills v. Alabama,* 384 U.S. 214, 218, 86 S.Ct. 1434, 1437, 16 L.Ed.2d 484 (1966)). We note that the Amendment, Section 3, acknowledges that its mandate that government act only in English is superseded by the use of foreign languages in schools both to enable students to transition***997 *454** to English (subsection 2(a)) and to teach students a foreign language (subsection 2(c)). Subsection 2(b) states that the Amendment's English-only mandate does not apply in instances where foreign language use is required to ensure compliance with federal laws. Therefore, the Amendment would not apply, for instance, with regard to bilingual ballots in Arizona in designated political subdivisions as required by the Voting Rights Act, 42 U.S.C. §§ 1973 aa-1a(c) (forbidding states from conditioning the right to vote on the ability to read, write, understand, or interpret English). Nor would it affect a criminal defendant's right to have a competent translator assist him, at state expense, if need be. *See United States ex rel. Negron v. New York,* 434 F.2d 386, 391 (2d Cir.1970).

¶ 49 Notwithstanding these limited exceptions, we find that the Amendment unconstitutionally inhibits "the free discussion of governmental affairs" in two ways. First, it deprives limited- and non-English-speaking persons of access to information about the government when multilingual access may be available and may be necessary to ensure fair and effective delivery of governmental services to non-English-speaking persons. It is not our prerogative to impinge upon the Legislature's ability to require, under appropriate circumstances, the provision of services in languages other than English. *See, e.g.,* A.R.S. § 23-906(D) (Providing that every employer engaged in occupations subject to Arizona's Workers' Compensation statutes shall post in a conspicuous place upon his premises, in English and Spanish, a notice informing employees that unless they specifically reject coverage under Arizona's compulsory compensation law, they are deemed to have accepted the provisions of that law). The United States Supreme Court has held that First Amendment protection is afforded to the communication, its source, and its recipient. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 756-57, 96 S.Ct. 1817, 1822-23, 48 L.Ed.2d 346 (1976).

¶ 50 In his concurring opinion in *Barnes,* Justice Scalia stated, "[W]hen any law restricts speech, even for a purpose that has nothing to do with the suppression of communication ..., we insist that it meet the high First-Amendment standard of justification." 501 U.S. at 576, 111 S.Ct. at 2465-66. The Amendment contravenes core principles and values undergirding the First Amendment-the right of the people to seek redress from their government-by directly banning pure speech on its face. By denying persons who are limited in English proficiency, or entirely lacking in it, the right to participate equally in the political process, the Amendment violates the constitutional right to participate in and have access to government, a right which is one of the "fundamental principle[s]

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of representative government in this country." *See Reynolds v. Sims,* 377 U.S. 533, 560, 566-68, 84 S.Ct. 1362, 1381, 1383-85, 12 L.Ed.2d 506 (1964). The First Amendment right to petition for redress of grievances lies at the core of America's democracy. *McDonald v. Smith,* 472 U.S. 479, 482-83, 485, 105 S.Ct. 2787, 2790, 2791, 86 L.Ed.2d 384 (1985); *United Mine Workers of America v. Illinois State Bar Assn.,* 389 U.S. 217, 222, 88 S.Ct. 353, 356, 19 L.Ed.2d 426 (1967) (right to petition is "among the most precious liberties safeguarded by the Bill of Rights"). In *Board of Education v. Pico,* 457 U.S. 853, 867, 102 S.Ct. 2799, 2808, 73 L.Ed.2d 435 (1982), the Court recognized that "the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press and political freedom."

¶ 51 The Amendment violates the First Amendment by depriving elected officials and public employees of the ability to communicate with their constituents and with the public. With only a few exceptions, the Amendment prohibits all public officials and employees in Arizona from acting in a language other than English while performing governmental functions and policies. We do not prohibit government offices from adopting language rules for appropriate reasons. We hold that the Amendment goes too far because it effectively cuts off governmental communication with thousands of limited-English-proficient and non-English-speaking persons in Arizona, even when the officials and employees have the ability and desire to communicate in a language understandable to them. Meaningful communication in ****998 *455** those cases is barred. Under such circumstances, prohibiting an elected or appointed governmental official or an employee from communicating with the public violates the employee's and the official's rights. *See, e.g., United States v. National Treasury Employees Union,* 513 U.S. 454, 465-66, 115 S.Ct. 1003, 1012, 130 L.Ed.2d 964 (1995) (employee commenting on matters of public concern has right to speak, subject to considerations of governmental efficiency); *Eu v. San Francisco County Democratic Cent. Comm.,* 489 U.S. 214, 223, 109 S.Ct. 1013, 1020, 103 L.Ed.2d 271 (1989) (finding state law violates party officials' rights to spread political message to voters seeking to inform themselves on campaign issues). As the Ninth Circuit noted, the Amendment could "hardly be more inclusive"; it " **prohibit[s] the use in all oral and written communications by persons connected with the government of all words and phrases in any language other than English**." ***Yniguez v. AOE,* 69 F . 3d at 933**.

¶ 52 Except for a few exceptions, the Amendment prohibits all elected officials from acting in a language other than English while carrying out governmental functions and policies. Several of the plaintiffs in this matter are elected state legislators, who enjoy the "widest latitude to express their views on issues of policy." *Bond v. Floyd,* 385 U.S. 116, 136, 87 S.Ct. 339, 349, 17 L.Ed.2d 235 (1966) . Heretofore, when necessary in order to communicate effectively with their constituents, those legislators have spoken their constituents' primary language if those constituents do not speak English well, or at all.

¶ 53 Citizens of limited English proficiency, such as many of the named legislator's constituents, often face obstacles in petitioning their government for redress and in accessing the political system. Legislators and other elected officials attempting to serve limited-English-proficient constituents face a difficult task in helping provide those constituents with government services and in assisting those constituents in both understanding and accessing government. The Amendment makes the use of non-English communication to accomplish that task illegal. In Arizona, English is not the primary language of many citizens. A substantial number of Arizona's Native Americans, Spanish-speaking citizens, and other citizens for whom English is not a primary language, either do not speak English at all or do not speak English well enough to be able to express their political beliefs, opinions, or needs to their elected officials. Under the Amendment, with

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few exceptions, no elected official can speak with his or her constituents except in English, even though such a requirement renders the speaking useless. While certainly not dispositive, it is also worth noting that in everyday experience, even among persons fluent in English as a second language, it is often more effective to communicate complex ideas in a person's primary language because some words, such as idioms and colloquialisms, do not translate well, if at all. In many cases, though, it is clear that the Amendment jeopardizes or prevents meaningful communication between constituents and their elected representatives, and thus contravenes core principles and values undergirding the First Amendment.

¶ 54 AOE argues that the "First Amendment addresses [the] content not [the] mode of communication." The trial court adopted this argument, concluding that the Amendment was a permissible content-neutral prohibition of speech. Essentially, AOE argues that strict scrutiny should be reduced in this case because the decision to speak a non-English language does not implicate pure speech rights, but rather only affects the "mode of communication." By requiring that government officials communicate only in a language which is incomprehensible to non-English speaking persons, the Amendment effectively bars communication itself. Therefore, its effect cannot be characterized as merely a time, place, or manner restriction because such restrictions, by definition, assume and require the availability of alternative means of communication. *E.g., Ward v. Rock Against Racism,* 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) (requiring the performance of a concert at a lower than desired volume); *see also Members of City Council of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) (requiring the distribution****999 *456** rather than the posting of leaflets on public property).

¶ 55 AOE also argues that the Amendment can be characterized as a regulation that serves purposes unrelated to the content of expression and therefore should be deemed neutral, even if it has an incidental effect on some speakers or messages but not others. *See Ward,* 491 U.S. at 791, 109 S.Ct. at 2754 (citing *City of Renton,* 475 U.S. at 47-48, 106 S.Ct. at 929-30). We agree with the Ninth Circuit's emphatic rejection in *Yniguez v. AOE* of the suggestion that the decision to speak in a language other than English does not implicate free speech concerns, but is instead akin to expressive conduct. There, the court said that "**[s]peech in any language is still speech and the decision to speak in another language is a decision involving speech alone.**" **69 F. 3d at 936**. *See generally* Cecilia Wong, *Language is Speech: The Illegitimacy of Official English After* Yniguez v. Arizonans for Official English, 30 U.C. Davis L.Rev. 277, 278 (1996).

¶ 56 The United States Supreme Court has observed that "[c]omplete speech bans, unlike content-neutral restrictions on time, place or manner of expression, are particularly dangerous because they all but foreclose alternative means of disseminating certain information." *44 Liquormart, Inc. v. Rhode Island,* 517 U.S. 484, 506, 116 S.Ct. 1495, 1507, 134 L.Ed.2d 711 (1996) (internal citation omitted); *see also City of Ladue v. Gilleo,* 512 U.S. 43, 55, 114 S.Ct. 2038, 2045, 129 L.Ed.2d 36 (1994) ("Our prior decisions have voiced particular concern with laws that foreclose an entire medium of expression.").

[13] ¶ 57 The Amendment poses a more immediate threat to First Amendment values than does legislation that regulates conduct and only incidentally impinges upon speech. *Cf. United States v. O'Brien,* 391 U.S. 367, 375-76, 382, 88 S.Ct. 1673, 1678, 1681-82, 20 L.Ed.2d 672 (1968) (statute prohibiting knowing destruction or mutilation of selective service certificate did not abridge free speech on its face); *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293-94, 104 S.Ct. 3065, 3068-69, 82 L.Ed.2d 221 (1984) (National Park Service regulation forbidding sleeping in certain areas was defensible as a regulation of symbolic conduct or a time, place, or manner restriction).

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Laws "directed at speech" and communication are subject to exacting scrutiny and must be "justified by the substantial showing of need that the First Amendment requires." *Texas v. Johnson,* 491 U.S. 397, 406, 109 S.Ct. 2533, 2541, 105 L.Ed.2d 342 (1989) (citations omitted); *accord First National Bank of Boston v. Bellotti,* 435 U.S. 765, 786, 98 S.Ct. 1407, 1421, 55 L.Ed.2d 707 (1978); *Buckley v. Valeo,* 424 U.S. 1, 16-17, 96 S.Ct. 612, 633, 46 L.Ed.2d 659 (1976). Here, the drafters of the Amendment articulated the need for its enactment as promoting English as a common language. The Legislative Council's official argument in favor of the Amendment stated: "The State of Arizona is at a crossroads. It can move toward the fears and tensions of language rivalries and ethnic distrust, or it can reverse this trend and strengthen our common bond, the English language."

¶ 58 Even if the Amendment were characterized as a content- and viewpoint-neutral ban, and we hold such a characterization does not apply, the Amendment violates the First Amendment because it broadly [FN11] infringes on protected speech. *See National Treasury Employees Union,* 513 U.S. at 470, 115 S.Ct. at 1015 (striking down content-neutral provisions of Ethics Reform Act due to significant burdens on public employee speech and on the "public's right to read and hear what Government employees would otherwise have written and said"). In *National Treasury Employees Union,* the Court recognized that a ban on speech *ex ante* (such as that imposed by the Amendment) constitutes a "wholesale deterrent to a broad category of ****1000 *457** expression by a massive number of potential speakers" and thus "chills potential speech before it happens." *Id.* at 467-68, 115 S.Ct. at 1013-14 (footnote omitted) (citation omitted); *see also City of Ladue,* 512 U.S. at 55, 114 S.Ct. at 2045 (holding that even content- and viewpoint-neutral laws can "suppress too much speech"); *Board of Airport Comm'rs v. Jews for Jesus, Inc.,* 482 U.S. 569, 574, 107 S.Ct. 2568, 2572, 96 L.Ed.2d 500 (1987) (viewpoint neutral regulation held unconstitutional because it "prohibited *all* protected expression").

FN11. We do not address the plaintiffs' separate overbreadth claim because we hold that the Amendment unconstitutionally infringes on First Amendment rights. Overbreadth should only be addressed where its effect might be salutary. *Massachusetts v. Oakes,* 491 U.S. 576, 581-82, 109 S.Ct. 2633, 2636-37, 105 L.Ed.2d 493 (1989); *see also Broadrick v. Oklahoma,* 413 U.S. 601, 613, 93 S.Ct. 2908, 2916, 37 L.Ed.2d 830 (1973) (holding that applying overbreadth analysis constitutes manifestly strong medicine that is to be employed sparingly and only as a last resort).

¶ 59 The chilling effect of the Amendment's broad applications is reinforced by Section 4 which provides that elected officials and state employees can be sued for violating the Amendment's prohibitions. *See* Appendix. We conclude that the Amendment violates the First Amendment.

V. Equal Protection

[14][15][16] ¶ 60 Section One of the Fourteenth Amendment provides, in pertinent part, that "[n]o state shall ... deny to any person within its jurisdiction the equal protection of the laws." The right to petition for redress of grievances is one of the fundamental rights guaranteed by the First Amendment. *United Mine Workers,* 389 U.S. at 222, 88 S.Ct. at 356 (right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights). A corollary to the right to petition for redress of grievances is the right to participate equally in the political process. *See Reynolds,* 377 U.S. at 560, 556-68, 84 S.Ct. at 1380, 1379-85 (concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged); *accord Evans v. Romer,* 854 P.2d 1270, 1276 (Colo.1993)("the Equal Protection Clause guarantees the fundamental right to participate equally in the political process and ... any at-

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tempt to infringe on an independently identifiable group's ability to exercise that right is subject to strict judicial scrutiny"); *see also Dunn v. Blumstein,* 405 U.S. 330, 335, 92 S.Ct. 995, 1000, 31 L.Ed.2d 274 (1972) (recognizing fundamental right to participate in state elections on an equal basis with other citizens in the jurisdiction).

[17] ¶ 61 The Amendment is subject to strict scrutiny because it impinges upon the fundamental First Amendment right to petition the government for redress of grievances. *United Mine Workers,* 389 U.S. at 222, 88 S.Ct. at 356. The right to petition bars state action interfering with access to the legislature, the executive branch and its various agencies, and the judicial branch. *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.,* 365 U.S. 127, 137-39, 81 S.Ct. 523, 529-31, 5 L.Ed.2d 464 (1961) (legislature); *United Mine Workers v. Pennington,* 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965) (executive); *California Motor Transport Co. v. Trucking Unlimited,* 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972) (administrative agencies and courts); *United Mine Workers,* 389 U.S. at 221-22, 88 S.Ct. at 355-56 (courts).

¶ 62 The trial court rejected plaintiffs' equal protection argument on the grounds that plaintiffs had not shown that the Amendment was driven by discriminatory intent. *See Hunter v. Underwood,* 471 U.S. 222, 229, 105 S.Ct. 1916, 1921, 85 L.Ed.2d 222 (1985). Because the Amendment curtails First Amendment rights, however, it is presumed unconstitutional and must survive this court's strict scrutiny.[FN12] *See generally Rosen,* 641 F.2d at 1246. AOE and the state defendants bear the burden of establishing the Amendment's constitutionality by demonstrating that it is drawn with narrow specificity to meet a compelling state interest. *Id.* ¶

FN12. Because strict scrutiny analysis applies to the governmental regulation of speech imposed by the Amendment, we do not address whether a language minority constitutes a suspect class for equal protection purposes. *See San Antonio Independent Sch. Dist. v. Rodriguez,* 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) (describing the criteria characterizing suspect classification for equal protection purposes).

¶ 63 Challenges to official English pepper history, but, except for its decision in *Yniguez* which was dismissed on standing, the United States Supreme Court has not addressed the constitutionality of official English****1001 *458** statutes since the 1920s. In *Meyer,* 262 U.S. 390, 43 S.Ct. 625,[FN13] the Court reviewed a statute forbidding any teacher to "teach any subject to any person in any language other than the English language." The Court held that teachers have the constitutional right to teach, and students have the equivalent right to receive, foreign language instruction. *Id.* at 400-03, 43 S.Ct. at 627-28. In so doing, the Court noted:

FN13. We recognize that in *Yniguez v. AOE* the Ninth Circuit relied upon *Meyer* in concluding that the Amendment violated the First Amendment. **69 F. 3d at 945-48** (citing *Meyer,* 262 U.S. at 403, 43 S.Ct. at 626). We note, however, that *Meyer* was decided two years before the Court applied the First Amendment to the states through the Fourteenth Amendment. *Gitlow,* 268 U.S. 652, 45 S.Ct. 625. While we hold that the Amendment violates the First Amendment, we rely on the decisions previously discussed and we do not reach the issue of whether *Meyer* offers speech any particular protection under the First Amendment. *See* Howard O. Hunter, *Problems in Search of Principles: The First Amendment in the Supreme Court from 1791-1930,* 35 Emory L.J. 59, 117, 128 (1986) (stating that *Meyer* does not offer speech any particular protection).

[T]he individual has certain fundamental rights which must be respected. *The protection of the*

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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 highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution-a desirable end cannot be promoted by prohibited means.

Id. at 401, 43 S.Ct. at 627 (emphasis added).

¶ 64 In *Meyer,* the Court held that the statute violated Fourteenth Amendment due process and equal protection rights. Specifically, the Court held that the Nebraska statute, by forbidding foreign language instruction, was arbitrary and did not reasonably relate to any end within the competency of the state to regulate. *Id.* at 403, 43 S.Ct. at 628. The Court acknowledged that a state has legitimate interests in promoting the civic development of its citizens and that a uniform language might aid this promotion. *Id.* at 401, 43 S.Ct. at 627. The Court held, however, that the statute abrogated the fundamental, individual right of choice of language. *Id.* at 403, 43 S.Ct. at 628. Despite its desirable goals, the Nebraska statute was held to employ prohibited means exceeding the state's powers. *Id.* at 402, 43 S.Ct. at 628. The discriminatory Nebraska law, as applied, thus deprived both teachers and students of their liberty without due process of law. *Id.* at 400-02, 43 S.Ct. at 627-28. We believe the Amendment suffers from the same constitutional infirmity.

¶ 65 As discussed previously, the compelling state interest test applies to the Amendment because it affects fundamental First Amendment rights. Even assuming *arguendo* that AOE and the state defendants could establish a compelling state interest for the Amendment (and they have not met that burden), they cannot satisfy the narrow specificity requirement. Under certain very restricted circumstances, states may *regulate* speech. *See, e.g., Kovacs v. Cooper,* 336 U.S. 77, 80, 69 S.Ct. 448, 450, 93 L.Ed. 513 (1949) (the First Amendment permits regulation of the time, place, and manner of the use of sound trucks). However, the Amendment is not a "regulation." Rather, it is a *general prohibition* of the use of non-English languages by all state personnel during the performance of government business and by all persons seeking to interact with all levels of government in Arizona. The Amendment's goal to promote English as a common language does not require a general prohibition on non-English usage. English can be promoted without prohibiting the use of other languages by state and local governments. Therefore, the Amendment does not meet the compelling state interest test and thus does not survive First Amendment strict scrutiny analysis.

¶ 66 Finally, we note that any interference with First Amendment rights need not be an absolute bar to render it unconstitutional as violating equal protection; a substantial burden upon that right is sufficient to warrant constitutional protections. By permanently implementing a linguistic barrier between persons and the government they have a right to petition, the Amendment substantially burdens First Amendment rights. *See Eastern R.R. Presidents Conference,* 365 U.S. at 137, 81 S.Ct. at 529 ("The ****1002 *459** whole concept of representation depends upon the ability of the people to make their wishes known to their representatives"). Therefore, the Amendment violates the Fourteenth Amendment's guarantees of equal protection because it impinges upon both the fundamental right to participate equally in the political process and the right to petition the government for redress.

VII. Severability

[18][19] ¶ 67 In an effort to salvage the Amendment, the Attorney General urges us to hold that only Sections 1(2) and 3(1)(a) are unconstitutional and to sever the remaining portions. In Arizona, an entire statute (in this case, a constitutional provision) need not be declared unconstitutional if constitutional portions can be separated. *Republic Inv. Fund I v. Town of Surprise,* 166 Ariz. 143, 151, 800 P.2d 1251, 1259 (1990). However, the valid portion of the statute will be severed only if it can be determined from the language that the voters

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would have enacted the valid portion absent the invalid portion. *State Compensation Fund v. Symington,* 174 Ariz. 188, 195, 848 P.2d 273, 280 (1993). We hold that the Amendment is not capable of such judicial surgery, and we decline to sever the invalid portions of the Amendment. We do so, first, because the Amendment does not contain a severability clause and, second, because the record is devoid of evidence that the voters would have enacted such a rewritten and essentially meaningless amendment. *See Campana v. Arizona State Land Dep't,* 176 Ariz. 288, 294, 860 P.2d 1341, 1347 (1993) ("A statute or provision is severable if the valid and invalid portions are not so intimately connected as to raise the presumption that the legislature would not have enacted the one without the other and if the invalid portion was not the inducement for the passage of the entire act") (citations omitted).

¶ 68 It is not possible to sanitize the Amendment in order to narrow it sufficiently to support its constitutionality. We have no way of knowing, aside from mere speculation, whether the people would have passed the two sections that declare English as the official language and require that all acts of government be conducted in English. Moreover, even if those two provisions alone had been passed, it would be an unjustified stretch to insert the word "official" before the word "act" as the Attorney General now proposes. Therefore, we hold that the Amendment does not lend itself to severability.

CONCLUSION

¶ 69 The Attorney General's attempt to narrow the construction and application of the Amendment is irreconcilable with both the Amendment's plain language and its legislative history. Thus, that construction cannot be used to obviate the Amendment's unconstitutionality or to cure its overbreadth. The Amendment is not content-neutral; rather, it constitutes a sweeping injunction against speech in any language other than English. The Amendment unconstitutionally infringes upon multiple First Amendment interests-those of the public, of public employees, and of elected officials.

¶ 70 The Amendment adversely affects non-English speaking persons and impinges on their ability to seek and obtain information and services from government. Because the Amendment chills First Amendment rights that government is not otherwise entitled to proscribe, it violates the Equal Protection Clause of the Fourteenth Amendment. The Amendment's constitutional infirmity cannot be salvaged by invoking the doctrine of severability.

¶ 71 We expressly note that we do not undertake to define the constitutional parameters of officially *promoting* English, as distinguished from banning non-English speech. Our holding does not question or denigrate efforts to encourage English as a common language; but such efforts must not run afoul of constitutional requirements and individual liberties. Nor is the constitutionality of a less comprehensive English-only provision before us.

¶ 72 Significantly, in finding the Amendment unconstitutional, we do not hold, or even suggest, that any governmental entity in Arizona has a constitutional obligation to provide services in languages other than English,****1003 *460** except, of course, to the extent required by federal law.

¶ 73 The opinion of the court of appeals is vacated and the trial court's judgment is reversed. This matter is remanded with directions to enter judgment in accordance with this opinion.

ZLAKET, C.J., and JONES, V.C.J., and FELDMAN, J., concur.

MARTONE, Justice, specially concurring.

¶ 74 A word of caution is in order. The posture of this case is unusual. The plaintiffs here have never faced actual or threatened injury because the defendants take the position that the English Only Amendment is narrow and applies only to official acts. Not content with this narrowing construction, the plaintiffs have taken the position that the

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Amendment is not limited to official acts and is broad enough to include even legislator-constituent communications. The defendants, however, do not raise a standing or case or controversy defense, and we are left to wonder about its proper resolution.

¶ 75 There is yet a second layer of potential case or controversy question in this case. The defendants concede that if the Amendment is interpreted as broadly as suggested by plaintiffs, then it is unconstitutional. And yet the plaintiffs take the position that if the Amendment is as narrow as the defendants say it is (i.e., applies only to official acts), then it is not unconstitutional. This leaves us with plaintiffs arguing that it is unconstitutional because of its breadth, but no one arguing that it is constitutional notwithstanding its breadth. We thus have no adversariness in connection with the ultimate federal constitutional question. *Cf.* U.S. Const. art. III, § 2 (requiring the existence of a "case" or "controversy" for federal adjudication); *see, e.g., Arizonans For Official English v. Arizona,* 520 U.S. 43, 117 S.Ct. 1055, 1067-69, 1075, 137 L.Ed.2d 170 (1997) (remanding case for dismissal for lack of case or controversy). To illustrate, the en banc opinion of the United States Court of Appeals for the Ninth Circuit in ***Yniguez v. Arizonans for Official English,*** **69 F. 3d 920 (9th Cir. 1995),** was decided by a 6-5 vote, but the contentions of the five dissenting judges in the court of appeals have not been made in this court because the defendants agree with the plaintiffs that if the Amendment is broadly construed, it is unconstitutional.

¶ 76 It is likely, therefore, that were we an Article III court, we would have had to dismiss this case for lack of case or controversy. We are not unaware of a disquieting paradox: because of the lack of adversity, there is a greater risk of error-yet that same lack of adversity diminishes the likelihood of further judicial review.

APPENDIX

Article XXVIII of the Arizona Constitution provides as follows:

ARTICLE XXVIII. ENGLISH AS THE OFFICIAL LANGUAGE

§ 1. English as the official language; applicability

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

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

(3) (a) This Article applies to:

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

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

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

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

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

****1004 *461 § 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

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(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 crime.

§ **4. Enforcement; standing**

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

Ariz.,1998.
Ruiz v. Hull

191 Ariz. 441, 957 P.2d 984, 268 Ariz. Adv. Rep. 3

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Mr. NADLER. Would you like to correct the record at this time?

Ms. PORTER. I would like to comment on the *Flores v. Arizona* case or *Arizona*——

Mr. NADLER. No, no, no. You said in your testimony that the U.S. Supreme Court upheld the right of States to have official English laws in the case of *Arizonians for Official English v. Arizona*. In fact, the Court ruled that the case was moot because the employee had quit and said we are not ruling on the constitutionality of the law, which directly contradicts your testimony. Would you like to correct your testimony at this point?

Ms. PORTER. The Supreme Court ruled that the case that was brought, the person who brought the case legitimately had the right to do so, and they did not rule then on the constitutionality, if I understood.

Mr. NADLER. Yes. So in other words, they said she did not have the right to bring the case because she was no longer an employee, and, therefore, the case was moot.

Ms. PORTER. Yes.

Mr. NADLER. And then they said, "We express no view on the correct interpretation of the statute or on the measure's constitutionality." Now in your testimony, you said they upheld the constitutionality. So would you like to correct your testimony at this point?

Ms. PORTER. Well, I may have misstated.

Mr. NADLER. Okay.

Ms. PORTER. But——

Mr. NADLER. Thank you very much. Thank you very much.

Dr. Porter and Mr. Mujica, your organizations seek to promote, preserve, and strengthen the use of English. In striking down portions of the law that we just talked about the Alaska Supreme Court found that there are less restrictive ways to achieve your goal. I am sorry, we are talking about a different case here. The Alaska Supreme Court found that there are less restrictive ways to achieve your goal. The Court specifically noted as one example that, "The State could create and fund programs promoting English as a second language." This is the *Kritz* case.

What has your organization done to support programs to teach English? And would you agree to submit to the Committee the amounts spent by your organizations in each of the last 5 years, say, on promoting English as a second language or other programs that teach English, and promoting passage of legislation declaring English as the official language of the United States or of States and local government?

In other words, what have you done to promote teaching English as opposed to trying to get the law changed to prohibit the use of other languages?

Mr. MUJICA. Well, let me say the country is slightly larger for the money that we have. We do have a foundation that promotes English in other ways, not paying for lessons or anything. People can call in to the foundation and we would tell them where they can go for English classes.

We have been trying for a long time to institute something like what Israel has, the old panning system. An old pan, and that would be actually the answer for this country. An old pan is a

school where a new immigrant is sent for 6 months at the expense of the government. The immigrant cannot work. The immigrant goes for 6 months to be assimilated. They teach him or they teach her how to be an Israeli, how to function in Israel, how to learn Hebrew, et cetera. That would be a wonderful program in this country if every immigrant would have the chance of not working for 6 months.

Mr. NADLER. Would you support an amendment asking for the funding to do that? That would have a little problem with the balanced budget amendment, I would think.

Mr. MUJICA. Maybe after January we could talk about that. [Laughter.]

Mr. NADLER. Thank you.

Mr. FRANKS. Thank you very much. And I would now recognize the distinguished gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. I do thank all the witnesses for your testimony and for being here today.

It was interesting to me to hear Mr. Mujica bring up the situation in Israel. I recall a meeting with several of the members of the cabinet in Israel a few years ago in the capital building across the street. And they told the narrative of how they had adopted Hebrew as the official language of Israel in 1954. And Hebrew, having been a language that was used in prayer for thousands of years, but not commonly spoken, and essentially they think they said a dead language other than prayer. We brought it back to life was their message to us. And I said, why did you establish an official language for Israel? They formed Israel in 1948. Why did you establish an official language? And their answer was, we followed the model of the United States of America. You have been so successful with your assimilation because English is the common language of the United States, we wanted to do the same thing because we are bringing Jews from all over the world into Israel, and we wanted a language that identified us as a people.

And what did they use in Entebbe, Hebrew to tell the Israelis get down out of the line of fire. And Benjamin Netanyahu's brother was killed in that raid, as you might know. So I appreciate the testimony and comments on that.

I wanted to ask Senator Garcia, I do not speak but just a handful of words of Spanish, but if I were to have to learn Spanish in order to vote a Spanish ballot, how long do you think that would take me if I were sit down and focus on learning a Spanish ballot enough to be able to make those decisions?

Mr. GARCIA. Mr. Chairman, you would not have to learn Spanish.

Mr. KING. But my question is, though, if I were required to vote in Spanish, then how long would it take a person who is not literate in Spanish to learn enough to be able to read the ballot, read the names, and make a decision on which of those candidates they would vote for?

Mr. GARCIA. I am not following the question because the ballot is in English already. Why would you——

Mr. KING. You understand that you have said to me that people need to be able to vote in Spanish and in Creole as well as English. So just in your mind's eye, pick up one of those Spanish ballots that you identified here in your testimony, and then imagine some-

one who does not speak Spanish and think how much education does it take to learn that ballot in Spanish if you are an English speaker?

Mr. GARCIA. They would not need to read the Spanish ballot because it is already in English.

Mr. KING. I can see you are not going to answer my question. But I really expected more of an objective answer. And it troubles me that you will not do that.

I wanted to follow up with another question. You said how will you communicate with your constituency. Well, first of all, you know, I think you know that this does not address the State functions in Florida. You have English as the official language in Florida. You have mad exceptions. I do not know what they are, but you alluded to them in your testimony. And I would point out that in the bill in Section 165, it says, "Nothing in this chapter shall be construed to prohibit a Member of Congress or any officer or agent of the Federal Government while performing official functions from communicating unofficially through any medium with another person in a language other than English, provided that or as long as official functions are performed in English."

And so that exception that is written for Federal officials I presume is also written for State officials within Florida within your official English law. Is that correct?

Mr. GARCIA. I would not know what the exceptions are, but I will tell you one of the problems that I see with the section that I addressed earlier. When you deal with any Federal programs that the State receives, as it was mentioned earlier, when we talk about Medicaid and those Medicaid applications, that could be potentially a problem for anyone that is going to fill out an application or have communications from my office with that constituency that may not understand or read English in a proficient manner.

Mr. KING. I am going to ask you to please go back and read the exceptions that are in this bill. I think they will reflect a lot of the practices in Florida. And I can tell you that in the State of Iowa, we do not have problems. I would have heard about them if anybody would have heard about those problems.

And your concern that it would exclude a lot of your constituency, in listening to the testimony here, I do not think so. And I would turn to Mr. Mujica, who I know has been broadly engaged in this globally and nationally and within the States and ask, can you think of the number one problem that might have been created by any of the States that have adopted an official language or any of the other countries that have adopted official language? Have you seen that people cannot vote or that people cannot function?

Mr. MUJICA. None whatsoever. And I will tell you something about the so-called translations. I live in Maryland, and the ballots are in Spanish and English. When I read the English I can barely understand it. And then I go to the Spanish, and it is even worse. [Laughter.]

When you translate things, you have no idea. And I think the people who translate have no idea what they said because things usually do not match. And if you get into a situation where you have to translate into 2 or 3 different languages—luckily I speak 4—sometimes I do not understand any one of the 4 translations.

So when you have someone that translates something for a ballot, you know, especially those long things that you have to vote to change some zoning law or whatever, it is impossible to understand even in English.

Mr. KING. And in conclusion then, a State that chose the next leader of the free world in the year 2000, I think that illustrates the kind of confusion we could have if we do not have an official language that we vote in, we make decisions in, and direct the future of this country. And I thank all the witnesses, and I would yield back.

Mr. FRANKS. I thank the gentleman, and I would yield to Mr. Scott for 5 minutes for questions.

Mr. SCOTT. Thank you. Mr. Mujica, you indicated that the legislation does not prohibit use of other languages. If the bill were to pass, you could still conduct business in other languages. The language on page 3 says, "Official functions of the government of the United States shall be conducted in English." They talk about a couple of exceptions, and then said that there is nothing to prevent you from communicating unofficially on the side, but the official functions of government shall be conducted in English.

Mr. MUJICA. Right, and I will give you a good example. Our function today here, I did not see in the invitation that it said that the hearing will be in English. We all assumed it would be in English, right? We did not need to know that.

Mr. SCOTT. That is right.

Mr. MUJICA. Back when Mr. Conyers was speaking in Spanish, my first language is Spanish, I got about 5 percent of what he said. [Laughter.]

And if each one of you would have spoken in the language of your ancestors, I would have left, you know. I would be gone because I would not know what we are talking about. So we do need the common language to understand each other.

Mr. SCOTT. Are you suggesting that we need legislation to—what problem are we trying to correct?

Mr. MUJICA. Why do you stop at a red light? Because we have something in writing that was passed that says you must stop at a red light.

Mr. SCOTT. Okay. The legislation says official functions of the government of the United States shall be conducted as English, so the suggestion that you can——

Mr. MUJICA. This is an official function right now.

Mr. SCOTT. Now if a bilingual clerk can explain better to a person in another language, what constructive purpose would be served by denying that clerk the ability to speak in the other language?

Mr. MUJICA. It depends on who does the translation, as I was telling you. How do you control what the translator said?

Mr. SCOTT. Well, I do not know what we are trying to protect. I have not had any problems communicating with people. For people who speak English, is there anything in here to protect their right to use English? I mean, is there any threat to a person's right to go to a government agency and speak English?

Mr. MUJICA. No, there is no threat.

Mr. SCOTT. There is not threat to that, okay. Senator Garcia, you indicated communicating with your constituents. And Dr. Porter used the term "immigrant success." Is there any question in the minds of your constituents that immigration success depends on their ability to learn English?

Mr. GARCIA. No, there is no question about that. It is the opposite.

Mr. SCOTT. And does the passage or failure of this legislation make any difference about whether or not they need to be alerted to that reality?

Mr. GARCIA. Absolutely not.

Mr. SCOTT. Did you notice that there was no money in here to help people learn English?

Mr. GARCIA. I noticed that.

Mr. SCOTT. You noticed that?

Mr. GARCIA. Yes.

Mr. SCOTT. Are there waiting lists in your district for people who want to learn English that cannot because we do not put enough money into English classes?

Mr. GARCIA. Absolutely.

Mr. SCOTT. You indicated that you do not want to be inflicted with this so that can communicate with your constituents the best possible. Do you not see a problem with Federal officials communicating with same constituents if they are restricted by this legislation?

Mr. GARCIA. Absolutely.

Mr. SCOTT. Mr. Mujica, you indicated that 90 percent of the people responded that they wanted English as the official language of the United States?

Mr. MUJICA. According to the poll, yes.

Mr. SCOTT. Now I noticed in the way you said it, the question was not shall there be an official language, but should English be the official language. What were the alternatives?

Mr. MUJICA. Well, the question is would you agree to make English the official language of the United States?

Mr. SCOTT. As opposed to what? As opposed to what?

Mr. MUJICA. Well, you can only ask one question when you are calling somebody.

Mr. SCOTT. Okay. Well, I mean, say, as opposed to Spanish, as opposed to——

Mr. MUJICA. As to opposed to any language.

Mr. SCOTT. Okay. Well, the question was not whether or not there shall be an official language, but whether English shall be the official language. The only thing surprising about that part is——

Mr. MUJICA. Right, because the great majority of Americans speak English, so we are not calling somebody referring to Chinese.

Mr. SCOTT. And was the poll conducted in English?

Mr. MUJICA. Pardon? Yes. [Laughter.]

Mr. SCOTT. So to answer anything other than yes, you would have to be speaking to somebody in English and suggested maybe something else ought to be the official language.

Mr. MUJICA. Well, we were calling Americans regardless. If they call my house, they are calling an American house.

Mr. SCOTT. But the question was not whether or not there should be an official language, but whether English should be that language. So we want to be clear as to what the alternatives were. And obviously the alternatives would be absolutely absurd.

I yield back, Mr. Chairman.

Mr. FRANKS. Alright. Well, I want to thank you all for coming today.

Mr. NADLER. Mr. Chairman?

Mr. FRANKS. Mr. Nadler?

Mr. NADLER. I just had one point to correct the record. Israel has two official languages, English and—I am sorry, Hebrew and Arabic. And at the raid on Entebbe when they warned the hostages that we are freeing you, get down, they used many different languages. Thank you.

Mr. FRANKS. All right. Well, again, I want to thank all of you for coming today. It has been an interesting hearing.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond to as promptly as possible so that they can have their answers be made part of the record.

Without objection, all Members will have 5 legislative days within which to submit additional materials for inclusion in the record.

And with that, again I thank the witnesses and thank the Members and observers. And this hearing is now adjourned.

[Whereupon, at 12:59 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

CONGRESSMAN
JERROLD NADLER
8th Congressional District of New York

Statement of Rep. Jerrold Nadler
Hearing on: H.R. 997, the
"English Language Unity Act of 2011"
Subcommittee on the Constitution

FOR IMMEDIATE RELEASE: Thursday, August 2, 2012
CONTACT: Ilan Kayatsky, 212-367-7350

Thank you, Mr. Chairman.

Having already spent an extraordinary amount of Committee time and resources in an effort to roll-back the civil rights of women, persons with disabilities, gay and lesbian Americans and other minorities, our Majority colleagues are now taking their last opportunity to highlight a bill that would place at risk the 24.5 million people in the United States who need language assistance from their government in some situations. H.R. 997 does nothing to help these individuals learn English and to assure that, in the meantime, they are brought into the mainstream of American life.

English is universally acknowledged as the common language of the United States. Government proceedings and publications are always performed or provided in English, though in some instances augmented by other languages when necessary for effective communication with the constituents that we serve. These additional means of communication do not threaten us as a people or a nation; on the contrary, they prove that – beyond our common language – what truly unifies us is a shared commitment to the principles upon which this nation was founded and flourishes – freedom of speech, equal protection of the laws, and representative democracy.

That shared commitment is unquestionably tested at times. Efforts to use the force of law to prohibit the use of languages other than English are not new, nor is the fact that these restrictions often have been put in place because of anxiety and distrust of new immigrant populations.
In the aftermath of World War I, for example, when anti-German sentiments were running high and large numbers of European (including many German) immigrants were coming to this country, some states passed laws prohibiting the teaching of any language other than English in their schools.

My colleagues on this Subcommittee should be familiar with the Supreme Court case in which that law was struck down, Meyer v. Nebraska, because it is one of the leading cases establishing the fundamental right of parents to guide the upbringing of their children, the subject of a recent Subcommittee hearing and a proposed constitutional amendment introduced by our Distinguished Chairman.

As the Supreme Court admonished in Meyer, the desire to ensure that immigrants to this country learn and speak English – a claimed purpose of the law in Meyer and the bill that we are considering today – "cannot be coerced by methods which conflict with the Constitution – a desirable end cannot be promoted by prohibited means."

The Alaska Supreme Court cited this passage from Meyer in Alaskans for a Common Language v. Kritz, finding that Alaska's requirement that English be used for all government functions and acts violates the First Amendment. That law, as would H.R. 997, deprived government officials, agents, and employees the ability to communicate with the public. It also prevented individuals from accessing vital information and services from their government, prevented effective communication with the government, and infringed on the Constitutional right to petition the government for redress.

As the Alaska Supreme Court noted – if the purpose of the law truly is to promote, preserve, and strengthen the use of English – then creating and funding programs promoting English as a second language is a far less restrictive means of achieving that goal. This is what our Constitution requires; and it is what we as elected officials should demand. Laws like H.R. 997, which provide no affirmative support for those with limited English proficiency but – as the Alaska Supreme Court put it – "merely creat[e] an incentive to learn English by making it more difficult for people to interact with their government" have no place in our Constitutional scheme.

These laws also should trouble us because, while proponents claim that their purpose is to unite the nation, these proposals divide us by sending a clear message that no one is welcome here until – and unless – they are fluent in English. But this cannot possibly be true. All of us represent multi-lingual communities. The district I represent is home to people who speak Spanish, Yiddish, Creole, Russian, Arabic, Hebrew, Chinese (Cantonese and Mandarin, among others), Vietnamese, French, Korean, Portuguese, Wolof, Ukrainian, Italian, and German, to name just a few.

Our communities work because we all have mutual respect for each other, our different religions, traditions, cultures, and languages, as well as shared values and a common belief in the American Dream.

Unfortunately, there is reason to suspect that proponents of English-only laws are not interested in ensuring inclusion in this American Dream but, instead, seek to bar our newest immigrant populations from its achievement. We need look no further than the experience in Iowa to confirm that this fear is not unfounded.

Representative King championed legislation that is nearly identical to H.R. 997 while a member of the Iowa. While campaigning for passage of his law in Iowa, Representative King said the law would not prohibit government usage of other languages and, to illustrate this claim, explained that "if the Storm Lake policy chief wanted to post signs in five languages, he would be allowed to do so, as long as one of the languages included English." Once the law was passed, however, Representative King sued the Secretary of State for providing online voter registration forms in other languages, in addition to forms being provided in English.

H.R. 997 unquestionably poses the same threat to the protections for language minorities in the Voting Rights Act, particularly given Representative King's efforts to remove those protections during our most-recent reauthorization of the VRA. Perhaps Representative King can clarify exactly how H.R. 997 will impact voting rights and whether his provision granting standing for anyone claiming injury under the law is intended to allow him to sue government officials for their usage of languages other than English. I would also like to hear why Representative King did not include in H.R. 997 a provision from his Iowa bill that allowed "any language usage required by or necessary to secure the rights guaranteed by the Constitution and laws of the United States of America or the Constitution of the State of Iowa."

As we consider this bill, let us not forget that we are a nation of immigrants and that this has made us stronger, not weaker. As we will hear from our colleague from Texas, Representative Charlie Gonzalez and from Florida State Senator Rene Garcia, those who are new to America embrace English and learn it as fast and as well as they can. They do so because English is the unquestionable gateway to opportunity but also because it allows them to become part of the fabric of this great nation. There simply is no legitimate need for "official English" or "English only" bills like H.R. 997.

With that, I yield back the balance of my time.

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Jerrold Nadler has served in Congress since 1992. He represents New York's 8th Congressional District, which includes parts of Manhattan and Brooklyn.

Statement of the Honorable John Conyers, Jr.
Hearing on H.R. 997, the English Language Unity Act"

Subcommittee on the Constitution
Thursday, August 2, 2012

Gracias, Sr. Presidente y miembros del comité.

Bueno, estamos aqui otra vez, en este último día del período de sesiones antes de regresar a nuestros distritos para más de un mes, considerando legislación divisiva sobre un problema social que — afortunadamente — no tiene posibilidad de convertirse en ley.

La legislación que estamos considerando hoy, la "Ley de la Unidad de Idioma Inglés del dos mil y once" es a la vez mal llamada y, yo creo, hará mucho daño a esta nación.

HR Nueve Nueve Siete no promoverá la unidad, como lo sugiere el título.

Limitando nuestra vida pública a un solo idioma no nos haceremos más unidos. Lo que nos une no es una lengua, pero los ideales compartidos que hace los Estados Unidos el país grande y único que es.

HR Nueve Nueve Siete excluirá a muchas personas de la

ciudadanía plena, haciendo más difícil la participación en transacciones simples, como conseguir una licencia de conducir o inscribir a sus hijos para la escuela, o acceder a otros servicios.

Excluyerá a personas de nuestra democracia, trayendo de vuelta las desacreditada — e ilegal — pruebas de alfabetización que una vez mantuvo a los pobres, las minorías y los inmigrantes fuera de las urnas.

Esta legislación está en contradicción con nuestra historia.

Somos una nación de inmigrantes y somos una nación de personas que llegaron aquí hablando muchas diferentes idiomas. Lo que mantiene a esta nación junta son los valores compartidos y la creencia compartida en los valores americanos de libertad, democracia e igualdad de oportunidades.

Hoy en día, los inmigrantes de Asia o América Latina son los objetivos de la demonización y la discriminación. Un día, nuestro país mirará hacia atrás a este período con vergüenza y arrepentimiento.

Esta legislación no reconoce que somos, y siempre hemos sido, una nación multilingüe.

Puedo ver ningún efecto — sea cual sea la intención — además de excluir a personas de su plena participación en el sueño americano. Peor aún, la legislación envía un mensaje de que estas personas no son bienvenidos, que son ciudadanos de segunda clase.

Quiero dar la bienvenida a nuestros testigos, y espero con interés escuchar su testimonio.

Prepared Statement of the Honorable Charles A. Gonzalez, a Representative in Congress from the State of Texas

Mr. Chairman, Ranking Member Nadler, Hermano Conyers, and Members of the Subcommittee, I'm grateful for this opportunity to testify before you today.

I have never understood the motivations of those who believe either our country or our language needs to be "protected" by a law like H. R. 997. Let us leave aside, for now, the questionable use of the word "English" in the bill's title instead of what H.L. Mencken called, "The American Language". Maybe it's because I had such good teachers as a child that I learned the power and majesty of English and so I have no fear that the language of Shakespeare and Twain needs a federal law to protect it. Maybe it's because I have known Americans for whom English was not their first language and seen firsthand their burning desire to learn to speak the language in which our Constitution and our laws are written.

The French have a government agency to protect their language because our language so dominates the world, from commerce to culture, that they feel threatened. I've never had such worries about *our* commerce or culture.

This bill would certainly change our American culture, however. For most of our history, this country has welcomed immigrants. They have made us stronger, economically and otherwise, and their very desire to come to this country is a recognition of our national strength.

Now, there have been vocal minorities who did not share a faith in the strength of our American culture. Even Benjamin Franklin, as reported in an essay by Dennis Baron, "...considered the Pennsylvania Germans to be a 'swarthy' racial group distinct from the English majority in the colony. In 1751 he complained, 'Why should the Palatine Boors be suffered to swarm into our Settlements, and by herding together establish their Language and Manners to the exclusion of ours? Why should Pennsylvania, founded by the English, become a Colony of Aliens, who will shortly be so numerous as to Germanize us instead of our Anglifying them, and will never adopt our Language and Customs, any more than they can acquire our Complexion.'"[1]

In the mid-19th century, they called themselves "The American Party" and bragged that they were defending us from the imminent destruction that would be wrought by criminal immigrants, Catholics from Ireland and Germany. Most Americans called them "Know Nothings" and their ignorant bigotry is justly condemned today. In the later-19th century, we heard of our imminent demise at the hands of the "Yellow Horde" of Chinese immigrants, and it's not yet two months since the House expressed our regret for that lengthy fit of unjustifiable bigotry.

These cries of our imminent demise by assorted alarmists were wrong then and they're wrong now. Do we really want to return to the mindset of a century ago, when a man could testify to Congress about immigrant laborers and say, "These workers don't suffer—they don't even speak English."?

We are a country, and a strong country, when and because we act as one, when "We the People… establish Justice, insure domestic Tranquility, provide for the common defence, [and]

[1] Dennis Baron, "Official American. English Only." © 2005 MacNeill Lehrer Productions. http://www.pbs.org/speak/seatosea/officialamerican/englishonly/

Anyone who has listened to the Chairman and Ranking Member of the Financial Services Committee when they converse might wonder if they were, indeed, speaking the same language. We speak English and Inuit. We are one because we *will* it so. The United States is about what we *do*, not how we describe it.

That is why, back in 1787, the Constitution was translated and printed in German: so that the non-English speaking minority in Franklin's Pennsylvania, which would become the second state to ratify our Constitution, could fully participate in the ratification debate. What that means, Mr. Chairman, is that our founding document, under and from which we derive all of our authority as Congress, is the result of the opinions and votes of men who didn't even speak the language.

While the tradition of printing some public documents in German continued well into the 20th Century, it died out because, then as now, everyone living here, especially American citizens, finds life easier if they learn to speak English. We don't need to go out of our way to punish non-English speakers. The opportunity to enjoy all of the attributes of our country is more than enough of an incentive. There is no need for H. R. 997, as is evidenced by the 97% of Americans who speak English.[2]

[2] Mauro E. Mujica, "Why An Immigrant Runs An Organization Called U.S.ENGLISH." http://www.usenglish.org/view/5

WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

"H. R. 997, the English Language Unity Act of 2011"

Submitted to the House Judiciary Subcommittee on the Constitution

August 2, 2012

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I. Introduction

The ACLU is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The Washington Legislative Office (WLO) represents the interests of the ACLU before Congress and the executive branch of the federal government. The ACLU submits this statement to express its strong opposition to Representative Steve King's proposed H.R. 997, the English Language Unity Act of 2011.

H.R. 997 would require all "official functions of the Government of the United States," including "laws, public proceedings, regulations, publications, orders, actions, programs, and policies" to be conducted in English, with narrow designated exceptions such as protection of "public health and safety."[1] H.R. 997 would require all naturalization applicants to "be able to read and understand generally the English language text of the Declaration of Independence, the Constitution, and the laws of the United States made in pursuance of the Constitution," an open-ended test so onerous that many current U.S. citizens could not satisfy it. And H.R. 997 would allow anyone "injured" by a violation of the Act to sue the federal government, turning bona fide mistakes by federal employees resulting from the law's vague prohibitions into damages paid out of taxpayer funds.

H.R. 997 is:

•unwise and dangerous policy with negative ramifications for a wide range of federal functions ranging from tax collection to voting access to naturalization procedures;

•clearly contrary to civil rights laws protecting language minorities from discrimination based on national origin;

•unconstitutional under the First Amendment and the Fifth Amendment's Equal Protection Clause; and

•based on false premises about immigrants' and language minorities' English proficiency and assimilation (unfairly targeting, in particular, Latinos and Asian Americans).

[1] As written, H.R. 997 appears to focus on state governments, as it defines "the term 'United States' [to] mean[] the several States and the District of Columbia" (excluding the federal government). As this drafting is inconsistent with the bill's discussion of *federal* government functions, and with its findings' statement that "[a]mong the powers reserved to the States respectively is the power to establish the English language as the official language of the respective States," this statement assumes that state government functions are in fact not part of H.R. 997's purview.

H.R. 997 does nothing constructive to increase English proficiency for Limited English Proficient ("LEP") individuals. H.R. 997 simply discriminates against those who have not yet learned English or those perceived not to be proficient in English, with damaging consequences for society as a whole. The House Judiciary Committee should reject H.R. 997 as contrary to established law – including the Constitution – and as unsound policy.

II. H.R. 997 would interfere with efficient federal governance, including tax collection, voter registration and ballot access, and naturalization procedures.

a. Core federal functions such as tax collection

H.R. 997 would mandate English-only usage throughout the federal government's "official functions," including all federal "laws, public proceedings, regulations, publications, orders, actions, programs, and policies." For example, the Internal Revenue Service ("IRS") would be prohibited from publishing guidance on tax return filing in other languages. As a result, LEP individuals would face added difficulties in determining their tax obligations, with negative consequences for the Treasury. The IRS website proudly announces: "Buenos dias! Did you know that the IRS has tax forms, publications, and information available in Spanish? It's amazing just how many resources are available in Spanish now."[2] Any accounting of H.R. 997's costs must therefore include reduced tax revenue after this assistance disappears.

The IRS is only one of numerous federal agencies that would be hampered by H.R. 997. Executive Order 13166, issued by President Clinton in 2000, states that the "Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons . . . ."[3] Attorney General Holder in 2011 reaffirmed that "the success of government efforts to effectively communicate with members of the public depends on the widespread and nondiscriminatory availability of accurate, timely, and vital information."[4] Twelve years of progress for LEP persons would be cast aside and erased by H.R. 997, at great monetary and humanitarian cost.

b. Voter registration and ballot access

H.R. 997 would, moreover, impose an undue burden on language-minority voters and damage implementation of Section 203 of the Voting Rights Act (VRA). It is crucial that every citizen in our democracy have the right to vote. Yet that right is meaningless if certain groups of

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[2] Available at http://www.irs.gov/newsroom/article/0,,id=206260,00.html (Aug. 30, 2011).
[3] Available at http://www.justice.gov/crt/about/cor/Pubs/eolep.php
[4] Memorandum from the Attorney General to Heads of Federal Agencies, General Counsels, and Civil Rights Heads re: Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166 (Feb. 17, 2011), available at http://www.justice.gov/crt/about/cor/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf

people are unable to cast their ballots accurately at the polls. Voters may be well-informed about the issues and candidates, but, to make sure their vote is accurately cast, language assistance is necessary. When Congress amended the VRA in 1975 by adding Section 203, it found that through the use of various practices and procedures, such as English-only ballots, "citizens of language minorities have been effectively excluded from participation in the electoral process . . . .The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices."[5]

H.R. 997 guarantees voter suppression in contravention of these principles. For example, the U.S. Election Assistance Commission established by the Help America Vote Act of 2002 now offers a National Mail Voter Registration Form in Spanish, Chinese, Japanese, Korean, Tagalog, and Vietnamese.[6] H.R. 997 would turn back the clock on this sort of progress toward inclusive voting by mandating a regime of second-class citizenship whereby access to the polls depends on English proficiency.

c. Naturalization Procedures

Ever since the Immigration and Nationality Act of 1952, naturalization applicants must demonstrate elementary-level reading, writing, and comprehension of the English language, as well as knowledge and comprehension of the fundamentals of U.S. history and government.[7] In creating the general English language requirements, Congress chose to exempt older lawful permanent residents (over age 50) who have lived in the U.S. as permanent residents for an extended period (20 years for applicants older than 50, supplemented in 1990 by a provision specifying 15 years for applicants older than 55).[8]

By proposing an unnecessary, unrealistic naturalization test of being "able to read and understand generally the English language text of the Declaration of Independence, the Constitution, and the laws of the United States made in pursuance of the Constitution," H.R. 997 would prevent nearly every applicant from becoming a U.S. citizen.[9] Indeed, with the exception of legal scholars, it is questionable whether even highly educated U.S. citizens would be able to pass such a rigorous test. The door to U.S. citizenship should not be shut based on an unfair and arbitrary pop quiz about what federal statutes mean.

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[5] 42 U.S.C. § 1973aa-1a(a).
[6] Available at http://www.eac.gov/voter_resources/register_to_vote.aspx
[7] See 8 U.S.C. § 1423(a); 8 C.F.R. §§312.1-312.2
[8] See 8 U.S.C. § 1423; 8 C.F.R. §§ 312.1(b) & 312.2(b).
[9] Perhaps the Internal Revenue Code is the model "law of the United States" envisioned by H.R. 997's author for this test; although language assistance by the IRS will be eliminated, LEP individuals should still have no trouble "understanding generally" subjects such as the mortgage interest deduction.

III. H.R. 997 conflicts with venerable civil rights protections of language minorities from discrimination on the basis of national origin, and violates the Constitution's First and Fifth Amendments.

Federal civil rights protections include a prohibition on discrimination based on national origin. For example, implementing Title VI of the Civil Rights Act of 1964[10] which prohibits discrimination in federal programs based on national origin and other protected classes, "both Supreme Court precedent and longstanding congressional provisions and federal agency regulations have repeatedly instructed state entities for decades that a nexus exists between language and national origin."[11] Further, the bill's impact on the Equal Employment Opportunity Commission's (EEOC) effective administration of Title VII[12] in the private sector is far from clear—as are the implications for discrimination based on national origin in public employment and federal contracting under Title VII. The EEOC has, since 1980, notified state entities that English-only rules constrain "opportunities on the basis of national origin" and constitute a prima facie case of national origin discrimination.[13] H.R. 997 is wholly inconsistent with this body of anti-discrimination law, and also with the Equal Protection guarantee of the Fifth Amendment.[14]

H.R. 997 is, in addition, squarely contrary to the First Amendment. When the Alaska Supreme Court invalidated a government communications restriction in an English-only statute enacted by the state legislature, it noted that the provision failed the First Amendment's narrow tailoring test. Like H.R. 997, which creates "an affirmative obligation to preserve and enhance the role of English as the official language of the Federal Government," the Alaska law's principal goal was "promoting, preserving and strengthening the use of English." The court held that the means asserted by the state statute in furtherance of this goal were unconstitutional because "prohibiting the use of other languages in most instances . . . is considerably broader than other available alternatives. For example, the state could create and fund programs promoting English as a second language. The goal of arming non-English speakers with knowledge of English could directly be achieved by teaching English to non-English speakers."[15]

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[10] 42 U.S.C. § 2000d et seq.
[11] *Sandoval v. Hagan*, 197 F.3d 484 (11th Cir. 1999), (rev'd on other grounds sub nom. *Alexander v. Sandoval*, 532 U.S. 275 (2001)).
[12] 42 U.S.C. § 2000e et seq.
[13] 29 C.F.R. § 1606.7(a).
[14] See, e.g., *Hernandez v. New York*, 500 U.S. 352, 371 (1991) ("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").
[15] *Alaskans for a Common Language v. Kritz*, 170 P.3d 183, 208 (Alaska 2007); *see also In re: Initiative Petition No. 366, State Question No. 689*, 46 P.3d 123 (Okla. 2002) (initiative petition requiring all official documents, transactions, proceedings, meetings and publications of the State of Oklahoma and its political subdivisions to be in English only "unconstitutionally infringes upon the freedom of speech [and] upon the freedom to petition the government for redress"); *Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998) (holding that a state constitutional amendment providing that all government officials and employees performing government business must act only in English

H.R. 997 also violates the First Amendment's protection of the right to petition the federal government. "The right to petition for redress of grievances is a fundamental First Amendment right lying at the core of our democracy," "among the most precious of the liberties safeguarded by the Bill of Rights."[16] The petition right bars interference with access to the legislature, the executive branch and its various agencies, and the judicial branch.[17] By erecting a permanent linguistic barrier between non-English speakers and every branch and agency of their federal government on an almost limitless variety of subjects, H.R. 997 unquestionably infringes the non-English speaking public's right to petition. It severely impairs that public's right "to receive information and ideas."[18]

Access to government information is particularly important for the proper functioning of a democracy. "Governments have an almost unique capacity to acquire and disseminate information in the modern state."[19] Accordingly, the principle that "the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his [or her] own rights of speech, press, and political freedom,"[20] applies with particular force to government information. H.R. 997 violates the free flow of information between non-English speakers and their federal government, a conduit safeguarded by the First Amendment.

IV. H.R. 997 makes government services and programs inaccessible to millions of Americans, while doing nothing constructive to address the dearth of ESL instruction opportunities.

Immigrant assimilation now takes place very quickly across generations; for example, "virtually 100 percent of [a sample of] second-generation Latino Americans have mastered the English language, thus overcoming any barriers their parents suffered."[21] A study of 2000 Census data found that "English is almost universally accepted by the children and

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"violates the First Amendment to the United States Constitution because it adversely impacts the constitutional rights of non-English-speaking persons with regard to their obtaining access to their government and limits the political speech of elected officials and public employees. We also hold that the Amendment violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it unduly burdens core First Amendment rights of a specific class without materially advancing a legitimate state interest.").

[16] *McDonald v. Smith*, 472 U.S. 479, 482-83, 485 (1985); *United Mine Workers v. Illinois State Bar Assn.*, 389 U.S. 217, 222 (1967).

[17] *See Eastern R. Pres. Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137-38 (1961) (legislature); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965) (executive); *Cal. Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972) (administrative agencies); *Illinois State Bar*, 389 U.S. at 221 (courts).

[18] *Va. State Bd. of Pharmacy v. Va. Consumer Council*, 425 U.S. 748, 757 (1976) (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972)).

[19] Mark Yudof, *When Government Speaks* 9-10 (1983); *see also* Alexander Meiklejohn, *Free Speech and its Relation to Self-Government* 65-66 (1948) (First Amendment protects right of people intelligently to discuss issues of public concern for purpose of self-government).

[20] *Bd. of Ed. v. Pico*, 457 U.S. 853, 867 (1982).

[21] Dowell Myers and John Pitkin, *Assimilation Today: New Evidence Shows the Latest Immigrants to America Are Following in Our History's Footsteps*. Center for American Progress (Sept. 2010), 20, available at http://www.americanprogress.org/issues/2010/09/pdf/immigrant_assimilation.pdf

grandchildren" of immigrant groups that have come to the U.S. since the 1960s. Among second-generation "Hispanics, 92 percent speak English well or very well, even though 85 percent speak at least some Spanish at home."[22] Similar assimilation has occurred for other language groups like second-generation Asian Americans, of whom "96 percent are proficient in English."[23]

Language minorities who aspire to learn English would be punished rather than assisted by H.R. 997, precisely the wrong way to encourage national unity. Creating second-class citizenship for language minorities is not an effective means of encouraging English proficiency. A recent report observed that "[n]umerous recommendations on expanding access to English learning programs are made to Congress every year, such as combining ESL with workplace training—to no avail."[24] Charles S. Amorosino, Jr., executive director of Teachers of English to Speakers of Other Languages, testified in 2009 to the House Committee on Education and the Workforce's Subcommittee on Higher Education, Lifelong Learning, and Competitiveness that "[o]ther English-speaking countries such as Canada and Australia have comprehensive national policies that address integration of new immigrants; however the United States lacks any such policy or system."[25] H.R. 997 does nothing to address these gaps.

H.R. 997 contains no provisions to expand access to English-language education, which is the best route to "English Language Unity." Instead, the bill substitutes empty rhetoric, calling on unidentified federal government "representatives" to "encourage[e] greater opportunities for individuals to learn the English language." Immigrants are eager and willing to learn English, but lack adequate educational resources. The Migration Policy Institute reported that "there is substantial unmet demand for ESL [English as a second language] services across the country. Most ESL programs have waiting lists with thousands of LEP adults in major cities like New York, Boston, and Chicago."[26] Indeed, "language classes are not evenly provided across all states and have lost funding in recent years."[27]

Moreover, Congress has in the past recognized the "crucial" contribution multilingualism makes to "our nation's economic competitiveness and national security," as well as to the United States' "global perspective" and "understanding of diverse people and cultures."[28] H.R. 997 is out-of-touch with the global recognition that all people should learn and embrace other languages. H.R. 997 offers no solutions to the twin needs of English-language instruction and

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[22] Richard Alba, Lewis Mumford Center for Comparative Urban and Regional Research, University of Albany, *Language Assimilation Today: Bilingualism Persists More Than in the Past, but English Still Dominates* (Dec. 2004), 2, available at http://mumford.albany.edu/children/reports/language_assimilation/language_assimilation_brief.pdf
[23] Id.
[24] Myers and Pitkin, *supra*, at 21.
[25] Id.
[26] Randy Capps et al., *Taking Limited English Proficient Adults into Account in the Federal Adult Education Formula* Migration Policy Institute, National Center on Immigrant Integration Policy (June 2009), 4, available at http://www.migrationpolicy.org/pubs/WIA-LEP-June2009.pdf
[27] Myers and Pitkin, *supra*, at 2.
[28] Foreign Language Assistance Act of 1994, Pub. L. 103-382 (1994).

the fostering of a competitive American workforce in the global marketplace. Rather, it divides Americans into officially approved English speakers and second-class others.

V. Conclusion

While claiming to promote the English language, H.R. 997 would harm a vast array of federal government functions, including tax collection, voter access, and naturalization procedures. H.R. 997 also contravenes a half-century of civil rights law by promoting discrimination based on national origin, and is unconstitutional as an infringement of the First and Fifth Amendments. The House Judiciary Committee should oppose H.R. 997 as an unsound policy and an unconstitutional law.