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

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Summary

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

Recent Developments

Thus far in the 105th Congress, five official English bills and resolutions have been introduced. In the 104th Congress, the House passed H.R. 123, the Bill Emerson English Language Empowerment Act of 1996, on August 1, 1996.

Background

Throughout its history, America has had a linguistically diverse population. At the time of Independence, English was spoken as well as, for example, German, Dutch, French, and native American languages. The 1990 census found that of those persons aged 5 and older, 31.8 million spoke a language other than English at home (14% of the total population aged 5 and older). The census reported that among those persons aged 5 and older who spoke a language other than English at home, 6.7 million indicated that

they spoke English “not well” or “not at all” (21% of those aged 5 and older who spoke a language other than English at home).

Questions involving language policy have been before the nation during this century. In 1906, Congress required that persons becoming naturalized citizens of the United States demonstrate the ability to speak and understand English. In 1923, the Supreme Court ruled in *Meyer v. Nebraska* that the state’s interest in fostering “a homogeneous people with American ideals” was not adequate justification to prohibit the teaching of school children in a foreign language. In 1968, the Bilingual Education Act (BEA) was enacted providing federal aid to public schools for programs to meet the special educational needs of children of limited English proficiency. In 1975, Congress amended the Voting Rights Act requiring bilingual voting procedures where there are a significant number of citizens who do not speak English.

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

Congressional Action

Contemporary efforts in Congress to declare English as the official language of the United States began in 1981 with the introduction of a Senate joint resolution proposing an amendment to the U.S. Constitution.³ Joint resolutions proposing different versions of an English language constitutional amendment have been introduced in every Congress since then. Hearings on English language amendment resolutions were held in the Senate in 1984 and in the House in 1988. No further action on the measures occurred.

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

¹ These documents represented less than 1/10th of 1% of all of the government documents reviewed by the GAO. See: U.S. General Accounting Office. Letter to Honorable Richard C. Shelby, Honorable William F. Clinger, Jr., and Honorable Bill Emerson. Washington, Sept. 20, 1995.

² These documents primarily provided information on various government benefits.

³ For more information on these efforts, see CRS Report 96-64, *Official English Legislation in the 97th-104th Congresses*, by Andorra Bruno.

In the 104th Congress, various official English bills and resolutions and related measures were introduced, including multiple bills to amend title 4 of the United States Code to declare English as the official language of the U.S. government. One of these latter bills, S. 356, was the subject of hearings held by the Senate Governmental Affairs Committee in 1995 and 1996. No further action was taken on S. 356. H.R. 123, the companion bill to S. 356, was marked up by the House Economic and Educational Opportunities Committee in July 1996. On August 1, 1996, the House passed H.R. 123, as amended, by a vote of 259 to 169. As passed by the House, H.R. 123, the “Bill Emerson English Language Empowerment Act of 1996,” consisted of two titles. Title I declared English to be the official language of the federal government. Title II repealed the bilingual requirements of the Voting Rights Act. On August 2, 1996, H.R. 123 was received in the Senate and referred to the Judiciary Committee. No further action occurred.

Five official English bills and resolutions have been introduced in the 105th Congress. Four of these measures (H.R. 123, H.R. 622, H.R. 1005, and S. 323) would amend title 4 of the United States Code to declare English as the official language of the U.S. government. H.R. 123 is similar to the bill of the same number that passed the House in the 104th Congress; the only significant difference is that the H.R. 123 introduced in the 105th Congress would not repeal bilingual voting requirements. The fifth measure, H. J. Res. 37, proposes a constitutional amendment to establish English as the official language of the United States. A related symbolic resolution, the “English Plus Resolution” (H. Con. Res. 4), has also been introduced in the 105th Congress.

State Action

The official English movement has made considerable gains at the state level. Twenty-two states have declared English to be their official language, either by statute or by constitutional amendment. The majority of these declarations have occurred since 1984. State official-English designations vary in content. Some consist solely of statements that English is the state’s official language, while others are more detailed and include such components as enforcement provisions.

Selected Issues

Legal Questions Raised

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

to this declaration by requiring adherence to English in the official affairs of all branches of the federal government--executive, judicial, and legislative.⁴

H.R. 123 and S. 323, the principal measures before the current Congress, would require that all “official business” of the federal government--including any “enforceable” domestic “governmental actions, documents, or policies”--be conducted in English. These bills would also create a private “entitlement” to “communicate with” and “receive information from” the federal government in English and an “affirmative obligation” on the part of governmental representatives “to preserve and enhance the role of English.” Beyond these general similarities, H.R. 123 (as carried forward from the substitute version of the Bill Emerson English Language Empowerment Act of 1996 that passed the House last year) differs considerably in scope and exceptions to coverage from S. 323.

There may be some unresolved legal issues regarding the operation of the present proposals. First, there is a question whether the “official business” of government, subject to the official English mandate, refers only to the form of speech or linguistic medium used by the federal government, or its employees, to communicate with the public or may also extend to the content or subject of governmental speech. If narrowly interpreted by the courts, as reaching only the formal aspect of governmental documents, rather than their substance, H.R. 123 and S. 323 may have minimal impact on federal policies regarding the education of language minorities or private employer English-only workplace rules. On the other hand, the bills could conceivably be read to apply both to the form and substance of federal laws, regulations, orders, *etc.* so as to preclude imposition upon state or local authorities, or private parties, of foreign language assistance or bilingual requirements of various sorts. A private civil action, as authorized for enforcement of the government’s “affirmative obligation” to promote English and other bill “entitlements,” could provide judicial leverage for significant expansion of the proposed official English mandate in this regard. Indeed, legal standing conferred on private parties to secure judicial enforcement of the bills might be expected to foster substantial litigation concerning the impact of various governmental policies for official English.

The U.S. Supreme Court in *Arizonans for Official English v. Arizona* (No. 95-974, 1997 U.S. Lexis 1455) recently side-stepped constitutional controversy when it vacated for procedural irregularities a ruling by the Ninth Circuit voiding Arizona’s official English law. In 1988 Arizona voters had approved by referendum a state constitutional amendment providing *inter alia* that English is the official language of the state of Arizona and that the state and its political subdivisions--including “all governmental officials and employees during the performance of government business”--must “act” only in English. A former insurance claims manager for the state who spoke both English and Spanish in her daily service to the public argued that the law had a silencing and chilling effect on constitutionally protected speech of bilingual, monolingual, and Spanish-speaking public employees and their clients. Despite assertions by Arizona’s Attorney General that communications “to facilitate delivery of governmental services” were not “official acts” covered by the law, the Ninth Circuit held that the “plain wording” of the law defied such

⁴ For further analysis of legal issues in these proposals, see CRS Report 97-383, *Legal Analysis of Proposals to Make English the Official Language of the United States Government*, by Charles V. Dale and Mark Gurevitz.

limitation and was an overly broad restriction on free speech rights of state employees and the public they served.

The Supreme Court vacated and remanded the case, in effect leaving the Arizona law intact for the time being. Speaking for a unanimous Court, Justice Ginsburg declared the case moot since the plaintiff had resigned from state employment prior to appeal and had never sought to have the case certified as a class action. In addition, the Justices had “grave doubts” whether Arizonans for Official English, original sponsors of the ballot initiative, had standing to appeal the case as a party after the Arizona Governor declined to do so. Finally, the federal district and appeals courts had erred by failing to certify unsettled state-law questions regarding the scope of the English-only amendment to the Arizona Supreme Court for “authoritative construction” before proceeding with the case. The Supreme Court thus left a constitutional ruling on the Arizona official English law for another day. That day may not be far off. Another constitutional challenge to the Arizona law, *Ruiz v. Symington*,⁵ is presently before the state courts and may reach the Supreme Court once state appellate review has been completed.

Role of Bilingual Education

The topic of bilingual education has been raised often during congressional hearings and debate over designating an official language. Much of the attention has centered on the most appropriate method of teaching limited English proficient (LEP) school children. There are several approaches that schools utilize. The basic difference between them is the degree to which the child’s native language is used while the child is taught English and other academic subjects; some approaches, such as immersion, make little use of the native language while other approaches, such as transitional, rely more heavily on the native language.⁶ The BEA currently has a funding preference for projects that include the child’s native language --with limited exception, no more than 25% of all grants made to school districts by the U.S. Department of Education (ED) can be for projects that do not make use of the child’s native language. About \$157 million was appropriated for the BEA in FY1997.

Assimilation of Immigrants

One of the primary themes in the dispute over declaring an official language is facilitating the assimilation of newly arrived immigrants. Whether the legislative declaration of English as the official government language is sufficient in itself to promote assimilation has been questioned by some given the shortage of English training courses across the nation to prepare immigrants to read, write, speak, and understand English. Some observers claim that the federal government should make a greater effort to assist immigrants to learn English. Currently, the task of teaching immigrants English is left largely to nonprofit organizations, churches, and public schools. The primary federal

⁵ *No. 1 CA-CV 94-0235, 1996 WL 209512 (Ariz. App. 1996).*

⁶Research on the most effective method of instruction indicates that there are several factors, such as the child’s age and past exposure to formal education and availability of trained staff and materials, that determine which approach is likely to be more successful in teaching LEP children English.

program that is a potential source of English training for immigrants is the Adult Education Act, administered by ED. Participating states must outline in their plan for adult education how they will meet the needs of LEP adults. About \$355 million was appropriated for the Adult Education Act in FY1997, although the amount devoted to services for immigrants and LEP adults is not known.⁷

Pro/Con Arguments

Supporters of the effort to make English the official language of the United States argue that historically the English language has served to unite the nation's diverse population. In their view, having a common language has enabled the United States to avoid the linguistic, cultural, and political divisiveness seen in Canada. Official English advocates believe that the role of English as a national bond is threatened today in a society that is becoming increasingly fractionalized and multilingual. They argue that costly government policies, such as bilingual education and bilingual voting, encourage immigrants to use their native languages rather than learn English and, thus, hinder immigrants' assimilation and socioeconomic advancement. Supporters maintain that designating English as the nation's official language would make it clear that it is essential to learn English to fully participate in American society. At the same time, they emphasize that individuals would still be able and encouraged to learn and use other languages and to preserve their cultural heritage.

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

⁷A former program under the Adult Education Act had English language training for immigrants and LEP adults as its sole purpose. The English literacy grants program was last funded in FY1992 at \$1 million.