



# English as the Official Language of the United States: Legal Background and Recent Legislation

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## Summary

Congressional proposals to install English as the official language of the United States reflect yet another aspect of the complicated ongoing national debate over immigration policy. The modern “Official English” movement may be traced to the mid-1980s, when various proposals to achieve linguistic uniformity by constitutional amendment were considered. While these earlier federal efforts failed, some legislation promoting official English laws at the state level was more successful. At least 30 states have laws declaring English to be the official state language.

In response, renewed congressional efforts to codify English as the “official” or “national” language by statute largely replaced the constitutional amendment approach of earlier years. This trend culminated in 1996 when the House passed H.R. 123, to declare English the official language of the United States government and restricting other linguistic usage in the conduct of “official” governmental business. The measure died in the Senate. Contemporary versions of the earlier measure, however, have appeared in subsequent legislative sessions, and similar legislation may reappear in the 111th Congress.

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## Introduction

The steady growth within U.S. borders of new immigrant populations, whose primary language is other than English, has created a public policy divide on issues of language diversity. On one side, opposition to expanded foreign language use has led at least 30 states to enact statutes or amend state constitutions to declare English the official state language.<sup>1</sup> Federal statutes and the U.S. Constitution, however, have traditionally afforded some legal protection to minority language rights. For example, the Voting Rights Act of 1965, as amended, mandates the use of bilingual voting materials in states and political subdivisions when certain conditions are met.<sup>2</sup> Other federal statutory safeguards include Title VI of the 1964 Civil Rights Act and the Equal Educational Opportunities Act.<sup>3</sup> In addition, state and federal policies mandate the use of languages other than English when necessary for effective delivery of public and private services to non-English speakers in judicial and law enforcement proceedings, health and managed care services, conduct of state and local administrative agencies, business and professions, elections, and other critical areas.<sup>4</sup>

Congressional proposals to install English as the official language of the United States reflect yet another aspect of the complicated ongoing national debate over federal immigration policy. The modern “Official English” movement in Congress is traceable to the mid-1980’s, when various proposals to achieve linguistic uniformity by constitutional amendment were considered.<sup>5</sup> When that approach failed, Congress renewed its efforts to codify English as the official language, proceeding on a statutory track. This effort culminated in 1996 with House passage of H.R. 123, declaring English the official language of the United States Government and restricting other linguistic usage in the conduct of “official” governmental business. The “Language in Government Act” passed the House in the 104<sup>th</sup> Congress but died in the Senate.<sup>6</sup> Substantially amended versions of this earlier measure, however, have appeared in subsequent legislative sessions.

For example, during the 109<sup>th</sup> Congress, the Senate adopted the Inhofe Amendment as part of its comprehensive immigration reform package, declaring English to be our “national language” and calling for a governmental role in “preserving and enhancing” the role of English.<sup>7</sup> An alternative offered by Senator Salazar also passed the Senate; it would have recognized English as the “common and unifying language of the United States,” while protecting existing rights of non-English speakers “to services and materials provided by the government” in languages other than

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<sup>1</sup> See U.S. English, Inc., States with Official English Laws, at <http://www.us-english.org/view/13>.

<sup>2</sup> 42 U.S.C. § 1973aa-1a.

<sup>3</sup> *Id.* at §§ 2000d et seq; 20 U.S.C. § 1703(f).

<sup>4</sup> See the “Miscellaneous Federal Policies Providing for Non-English Translation and Services” and the “State Laws” sections below for additional information.

<sup>5</sup> See The English Language Amendment: Hearings on S.J.Res. 167 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 98<sup>th</sup> Cong., 2<sup>nd</sup> sess. (1984); Hearings on H.J.Res. 13, H.J.Res. 33, and H.J.Res. 60 before the Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary, 100<sup>th</sup> Cong., 2<sup>nd</sup> sess. (1988).

<sup>6</sup> 142 *Cong. Rec.* 21206-07 (1996). H.R. 123, among other things, proposed that the federal government has an “affirmative obligation to preserve and enhance the role of English as the official language of the United States,” and would have repealed the bilingual voting requirements.

<sup>7</sup> 152 *Cong. Rec.* S4770 (daily ed. May 18, 2006).

English.<sup>8</sup> Both the Inhofe and Salazar proposals were approved as amendments to S. 1348, the comprehensive immigration reform bill that was under consideration in the 110<sup>th</sup> Congress.<sup>9</sup>

Other legislation introduced during the 110<sup>th</sup> Congress included H.J.Res. 17 and H.J.Res. 19, which would have amended the Constitution to establish English as the official language of the United States, and H.Con.Res. 11, which would have resolved that the federal government should pursue policies that not only encourage all residents to become fully proficient in English, but also encourage all residents to learn or maintain skills in languages other than English. Likewise, H.R. 768 would have prohibited the enforcement of any executive order that creates an entitlement to services provided in languages other than English, while H.R. 769, H.R. 997, S. 1335, and S. 1348 would, among other things, have declared English to be the official language of the United States.

## **Federal Legislation to Make English the Official Language of Government**

Standing alone, a legislative declaration of English as the “official” or “national” language 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 the past, however, any official English proposals introduced during the 111<sup>th</sup> Congress would give varying force to this declaration depending on the degree to which they would propose adherence to English in various governmental activities at the federal and state level. Several examples of legislation introduced during the 110<sup>th</sup> Congress illustrate this concept.

### **Previous Legislation**

Both the Inhofe and Salazar amendments to the proposed immigration reform effort included elements from earlier legislative proposals. Declaring English to be our “national language,” the former measure called on “the Government of the United States ... [to] preserve and enhance” the role of English, and except as otherwise provided by statute, would have denied any private “right, entitlement, or claim” to non-English governmental services or materials. The Salazar amendment would have recognized English as the “common language of the United States,” while protecting existing rights of non-English speakers “to services or materials provided by the Government” in languages other than English.

As far as the jurisdictional scope of the amendments was concerned, the Inhofe Amendment appeared largely limited in any direct manner to actions of the federal government rather than the states and localities. Nor did it appear that the Salazar Amendment would carry direct legal implications—beyond, perhaps, those that Congress might impose by means of the “carrot and stick” of federal funding conditions—on the linguistic policies of state or local governmental

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<sup>8</sup> *Id.*

<sup>9</sup> 153 Cong. Rec. S7161 (daily ed. June 6, 2007).

entities. Indeed, the major sticking point between Inhofe Amendment supporters and its opponents appeared to center on the measure's potential effect on Executive Order 13166, a Clinton-era order directing federal departments and agencies to ensure that individuals with limited English proficiency (LEP) are provided meaningful access to programs and activities conducted by the federal government or by recipients of federal financial assistance.<sup>10</sup>

Although proponents of the Inhofe amendment appeared concerned that EO 13166 currently guarantees LEP individuals the right to receive government services or materials in a language other than English and seemed to believe that the amendment would therefore invalidate EO 13166, it is unclear whether either premise was correct. Indeed, although EO 13166 directs federal agencies and recipients to provide meaningful access to LEP individuals, nothing in the order currently grants such individuals an enforceable right to receive documents in a language other than English. As a result, it is unclear whether the Inhofe amendment, which did not actually prohibit the federal government from providing services or materials in languages other than English, would have altered existing law. In addition, because the amendment would have denied any right, entitlement, or claim to documents in languages other than English “unless specifically provided by statute,” it would not have precluded language claims brought pursuant to Title VI of the Civil Rights Act. (Both EO 13166 and Title VI are discussed in more detail in the following section.) Ultimately, given their largely symbolic declaration that English was the “national” or “common” language of the United States and their limited impact on existing laws regarding services or materials provided by the federal government in languages other than English, it appears that, if enacted, the Inhofe and Salazar amendments would not have had a significant effect on current law.

## **Federal Policy on Foreign Language Assistance**

The interplay of previously proposed legislation with current federal foreign language policy is perhaps best illustrated by E.O. 13166 and departmental regulations by the federal government issued thereunder. That order, issued by President Clinton in 2000, directed each federal department and agency to “implement a system” for insuring that persons with limited English proficiency (LEP) are provided “meaningful access” to programs and activities conducted by the federal government and by recipients of federal financial assistance covered by Title VI of the 1964 Civil Rights Act.<sup>11</sup> A policy guidance document, released by the Department of Justice (DOJ) on the same day, and referenced in the order, set forth “compliance standards that recipients must follow to ensure that the programs and activities that they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of Title VI ... and its implementing regulations.” Each federal grant-making agency was to tailor the general standards of the DOJ guidance into an approach “ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.”<sup>12</sup>

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<sup>10</sup> 153 Cong. Rec. S7152 (daily ed. June 6, 2007).

<sup>11</sup> Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” Id. § 2000d.

<sup>12</sup> 65 FR 50121. Additional information on the order and implementing guidance is available at <http://www.usdoj.gov/crt/cor/13166.php>.

The DOJ guidance notes that Title VI and its regulations require recipients of federal funds to take reasonable steps to insure “meaningful” access to information and services they provide. What constitutes reasonable steps, the document advises, will be contingent on a number of factors, such as the number and proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come into contact with the program, the importance of the service provided by the program, and the resources available to the recipient. In balancing factors for determining what steps are reasonable, agencies are to particularly address the appropriate mix of oral and written language assistance. Acknowledging that written translations are a “highly effective way” of communicating with LEP persons, the document states that oral communication may also be a necessary part of the exchange of information. LEP persons include those born in other countries, some children of immigrants born in the United States, and other non-English or limited English proficient persons born in the United States, including some Native Americans.

In its guidance, DOJ cited *Lau v. Nichols*,<sup>13</sup> in which the U.S. Supreme Court interpreted Title VI as requiring that a federal financial aid recipient take steps to insure that language barriers do not exclude LEP children from effective participation in public educational benefits and services. *Lau* involved a group of Chinese students in the San Francisco public school system who received classroom instruction solely in English. The Court ruled that the failure to provide such students with supplemental instruction in their primary language violated the Title VI ban on national origin discrimination. The DOJ document extrapolates an extension of the *Lau* doctrine beyond education to other contexts. Note, however, that while the *Lau* precedent remains intact, its value as precedent may be diminished somewhat by subsequent judicial developments, most notably the Court’s decision in *Alexander v. Sandoval*.<sup>14</sup>

The Court’s ruling in the *Sandoval* case was decided after publication of the DOJ guidance, although DOJ has taken the position that the *Sandoval* decision did not strike down the Title VI regulations that form the basis for Executive Order 13166.<sup>15</sup> At issue in *Sandoval* was the State of Alabama’s “English-only policy” requiring all aspects of its driver’s license examination process, including the written portion, to be exclusively in English. In rejecting a Mexican immigrant’s claim that the state policy violated Title VI because of its “disparate impact” on ethnic minorities, a five Justice majority ruled that Congress did not intend a private right of action to enforce Title VI except as a remedy for intentional discrimination. Federal regulations prohibiting state practices that have a discriminatory impact, regardless of intent, could not provide a basis for private lawsuits. *Sandoval*, however, did not directly confront federal agency authority, previously acknowledged by the Court, to enforce Title VI compliance administratively with rules condemning practices discriminatory in their effect on protected minority groups. Thus, at least for now, “disparate impact” rules—mandating language assistance for non-English proficient clients of federally financed programs—may still be enforced by the government, just not by private litigants. However, some previous congressional proposals would arguably have negated any private Title VI remedy for linguistically-based ethnic discrimination. And any requirement regarding the government’s “affirmative obligation” to promote English could portend similar perils for agency rules condemning the disparate impact of English-only policies under Title VI.

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<sup>13</sup> 414 U.S. 563 (1974).

<sup>14</sup> 532 U.S. 275 (2001).

<sup>15</sup> Memorandum from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, Department of Justice, for Heads of Departments and Agencies, General Counsels and Civil Rights Directors (October 26, 2001), available at <http://www.usdoj.gov/crt/cor/lep/Oct26memorandum.pdf>.

## Constitutional Law Implications of Official English

Judicial decisions involving the constitutional implications of government language policies have arisen in a variety of legal contexts. One series of cases has involved non-English speaking plaintiffs who have unsuccessfully sought to require the government to provide them with services in their own language. In *Soberal-Perez v. Heckler*,<sup>16</sup> for example, the Second Circuit rejected an action on behalf of Hispanic individuals of limited English proficiency who claimed that the equal protection and due process clauses of the Constitution required the Secretary of Health and Human Services to provide them with Social Security forms and instructions in Spanish. The appeals court could find no basis for the constitutional and related statutory claims since the Secretary's action bore a rational relationship to a legitimate governmental purpose:

We need only glance at the role of English in our national affairs to conclude that the Secretary's actions are not irrational. Congress conducts its affairs in English, the executive and judicial branches of government do likewise. In addition, those who wish to become naturalized citizens must learn to read English.... Given these factors, it is not irrational for the Secretary to choose English as the one language in which to conduct her official affairs.<sup>17</sup>

The federal courts have similarly found no constitutional duty on the part of government to provide certain other forms of official notice or services to individuals in their native tongue.<sup>18</sup> These cases, however, hold only that in the circumstances involved, non-English speakers have no affirmative right to compel government to provide information in a language that they can comprehend. They do not address the converse issue of legislative power to restrict official speech in languages other than English as a matter of state or national policy.

Another body of judicial authority has found that certain state law restrictions on linguistic diversity may act as a "proxy" for national origin discrimination or infringe upon First Amendment free speech rights. In *Meyer v. Nebraska*,<sup>19</sup> for example, the Supreme Court found that a state law prohibiting modern foreign language instruction in any school, public or private, before the ninth grade violated Fourteenth Amendment due process because it infringed upon the liberty of parents to make educational choices for their children. According to the *Meyer* Court:

[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be advantageous if all had

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<sup>16</sup> 717 F.2d 36 (2d Cir. 1983), cert. denied, 466 U.S. 929 (1984).

<sup>17</sup> *Id.* at 43-44.

<sup>18</sup> See, e.g., *Toure v. United States*, 24 F.3d 444 (2d Cir. 1994)(no right to notice of administrative seizure in French); *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993), cert. denied 512 U.S. 1228 (1994)(employer's English-only workplace rules do not violate Title VII of the 1964 Civil Rights Act); *Vialez v. New York City Hous. Auth.*, 783 F.2d 109 (S.D. N.Y. 1991) (Housing Authority's failure to provide documents in Spanish does not violate Title VI or the Fair Housing Act since "it reflects, at most, a preference for English over all other languages" rather than racial or ethnic discrimination); *Guadalupe Org., Inc. v. Tempe Elementary Sch. Dist. No. 3*, 587 F.2d 1022, 1027 (9th Cir. 1978)(no right to bilingual education); *Frontera v. Sindell*, 522 F.2d 1215, 1219-20 (6th Cir. 1975)(English-only civil service exams do not violate Hispanic individuals' equal protection rights since "[l]anguage, by itself, does not identify members of a suspect class"); and *Carmona v. Sheffield*, 475 F.2d 738 (9th Cir. 1973)(no right to employment notices in Spanish).

<sup>19</sup> 262 U.S. 390 (1923).



ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.<sup>20</sup>

*Meyer* was applied by the Court in *Farrington v. Tokushiga* to invalidate a Hawaii statute that singled out “foreign language schools,” such as those in which Japanese was taught, for stringent government control.<sup>21</sup> The state’s purpose for regulating language instruction in *Tokushiga* was “in order that the Americanism of the students may be promoted.”<sup>22</sup> Similarly, the governmental interests asserted in defense of the *Meyer* statute were “to create an enlightened American citizenship in sympathy with the principles and ideals of this country,”<sup>23</sup> “to promote civic development,”<sup>24</sup> and to prevent inculcation in children of “ideas and sentiments foreign to the best interests of the country.”<sup>25</sup> Despite a judicial acknowledgment of the validity of such goals, the Court found them insufficient to warrant state interference with foreign language usage in the schools.

*Yu Cong Eng v. Trinidad* considered the constitutionality of a Philippine law forbidding Chinese merchants from keeping their business account books in Chinese, the only language they knew.<sup>26</sup> Finding that enforcement of the law “would seriously embarrass all of [the Chinese merchants] and would drive out of business a great number,”<sup>27</sup> the Court held that the law denied the merchants due process and equal protection under the Constitution. Although based on the substantive due process doctrine of an earlier period, reverberations of *Yu Cong Eng* and *Meyer* may be found in rulings of more recent vintage. In *Hernandez v. New York*,<sup>28</sup> for example, the Court determined that peremptory challenges directed at Latino jurors because of their bilingualism and demeanor were not unconstitutional because the factors motivating the prosecutor’s action in that case did not function as a proxy for race. Writing for the plurality, however, Justice Kennedy stated that:

[w]e would face a quite different case if the prosecutor had justified his peremptory challenges with the explanation that he did not want Spanish-speaking jurors. It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.<sup>29</sup>

The U.S. Supreme Court in *Arizonans for Official English v. Arizona* side-stepped constitutional controversy when it vacated for procedural irregularities a ruling by the Ninth Circuit voiding Arizona’s official English law.<sup>30</sup> In 1988, Arizona voters had approved by referendum a state constitutional amendment providing that English is the official language of the State of Arizona and that the state and its political subdivisions—including “all governmental officials and

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<sup>20</sup> *Id.* at 401.

<sup>21</sup> 273 U.S. 284 (1927).

<sup>22</sup> 273 U.S. at 293.

<sup>23</sup> *Id.* at 393.

<sup>24</sup> *Id.* at 390.

<sup>25</sup> *Id.* at 398.

<sup>26</sup> 271 U.S. 500 (1926).

<sup>27</sup> *Id.* at 514.

<sup>28</sup> 500 U.S. 352 (1991).

<sup>29</sup> *Id.* at 371. Similarly, Justice Stevens, in dissent, asserted that “an explanation [for striking prospective jurors] that is ‘race-neutral’ on its face is nonetheless unacceptable if it is merely a proxy for a discriminatory practice.” *Id.* at 379.

<sup>30</sup> 520 U.S. 43 (1997).

employees during the performance of government business”—must “act” only in English. A former insurance claims manager for the state who spoke both English and Spanish in her daily service to the public argued that the law had a silencing and chilling effect on constitutionally protected speech of bilingual, monolingual, and Spanish-speaking public employees and their clients. Despite assertions by Arizona’s Attorney General that communications “to facilitate delivery of governmental services” were not “official acts” covered by the law, the Ninth Circuit held that the “plain wording” of the law defied such limitation and was an overly broad restriction on free speech rights of state employees and the public they served.<sup>31</sup>

The First Amendment analysis applied by the 6-5 *en banc* majority of the Ninth Circuit required balancing the right of public employees to speak on matters of “public import” against the government’s legitimate interest as an employer “in achieving its goals as effectively and efficiently as possible.” Although the government may generally regulate public employee speech concerned simply with “matters of personal or internal interest,” the Arizona law “significantly interfere[d]” with “communications by or with government employees” related to “the provision of government services and information,” a form of public discourse entitled to greater constitutional protection.<sup>32</sup> Moreover, the efficiency and effectiveness considerations constituting fundamental governmental interests in the usual “public concern” case—and that provide the justification against which the employee’s First Amendment interests must be weighed—were found totally lacking by the Ninth Circuit. Indeed, the appeals court determined that government efficiency would actually be promoted rather than hindered by permitting public employee speech in languages other than English. Nor was the state’s asserted interest in forging “unity and political stability” by “encouraging a common language” sufficient to warrant restrictions on foreign language usage.

The Supreme Court vacated and remanded the case, in effect leaving the Arizona law intact for the time being. Speaking for a unanimous Court, Justice Ginsburg declared the case moot since the plaintiff had resigned from state employment prior to appeal and had never sought to have the case certified a class action. In addition, the Justices had “grave doubts” whether Arizonans for Official English, original sponsors of the ballot initiative, had standing to appeal the case as a party after the Arizona Governor declined to do so. Finally, the federal district and appeals courts had erred by failing to certify unsettled state-law questions regarding the scope of the English-only amendment to the Arizona Supreme Court for “authoritative construction” before proceeding with the case. The Supreme Court thus left a constitutional ruling on the Arizona Official English law for another day.

In 1998, the Arizona Supreme Court decided *Ruiz v. Hull*,<sup>33</sup> holding that the state’s English-only amendment violated the First Amendment and the Equal Protection Clause. Like the Ninth

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<sup>31</sup> *Yniquez v. Arizonans for Official English*, 69 F.3d 920 (1995).

<sup>32</sup> In this regard, the court’s opinion observed: “The practical effects of Article XXVIII’s de facto bar on communications by or with government employees are numerous and varied. For example, monolingual Spanish-speaking residents of Arizona cannot, consistent with the article, communicate effectively with employees of a state or local housing office about a landlord’s wrongful retention of a rental deposit, nor can they learn from clerks of the state court about how and where to file small claims court complaints. They cannot obtain information regarding a variety of state and local social services, or adequately inform the service-givers that the governmental employees involved are not performing their duties properly or that the government itself is not operating effectively or honestly. Those with a limited command of English will face commensurate difficulties in obtaining or providing such information.” *Id.*, at 941.

<sup>33</sup> 191 Ariz. 441, 957 P.2d 984, cert. denied, 525 U.S. 1093 (U.S. 1999).

Circuit, the Arizona Court found a core First Amendment right in a citizen's ability to receive essential information from government officials and to petition the government for redress of grievances. According to the opinion, the state law "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." Applying strict scrutiny analysis, *Ruiz* held the English-only amendment violated the First Amendment because it was overbroad and could not satisfy the compelling state interest test. The Arizona Court also found an Equal Protection violation based on earlier precedents establishing a "fundamental individual right of choice of language." Pending a definitive federal court ruling, however, the constitutionality of restrictive official English policies remains a somewhat unsettled matter.

## **Miscellaneous Federal Policies Providing for Non-English Translation and Services**

Besides voting rights, federal statutory requirements regarding foreign language interpretation and use are included in various other federal programs and activities. For example:

- **American Indians:** Congress enacted the Native American Languages Act to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages." (25 U.S.C. § 2903(1)) The law is supported by congressional findings relative to the "unique" and "special" status of Native-American language and culture, and to the need for the "United States, individual States, and territories to encourage the full academic and human potential achievements of all students and citizens and to realize these ends..." (Id. at § 2901) Specifically, in regard to education, the declaration of policy "encourage[s] and support[s]" the use of Native American languages "as a medium of instruction" in Indian schools, and also "encourages" all other "elementary, secondary, and higher education" institutions to "afford full academic credit" and "include Native American languages in the curriculum in the same manner as foreign languages." (Id. at § 2903) In aid of this policy, the statute further provides that "[t]he right of Native Americans to express themselves through the use of Native American languages shall not be restricted in any public proceeding, including publicly supported education programs." (Id. at § 2904) Federal departments and agencies are to evaluate their policies and procedures, and laws within their administrative jurisdiction, for compliance with the stated policy, but no procedure for governmental enforcement of the linguistic "right" created by the law is provided.
- **Immigration:** Interpreters must be provided during physical and mental examinations of alien immigrants seeking entry into the United States (8 U.S.C. § 1222 (b)).
- **Judicial proceedings:** The Director of the Administrative Office of the U.S. Courts is to establish a program for the use of foreign language interpreters in federal civil and criminal proceedings instituted by the United States (28 U.S.C. § 1827); courts may appoint interpreter to be paid by the government in federal criminal proceedings (Rule 28, Fed. R. Crim. Proc.); service of judicial process by the United States and state courts on a foreign state, its political subdivisions,

agencies, or instrumentalities must be accompanied by a translation “into the official language of the foreign state” (28 U.S.C. § 1608); employment of interpreters in court-martial, military commission, or court of inquiry proceedings is required, if needed. (10 U.S.C. § 828).

- Social and health care services: Notices must be provided “in language that is easily understandable to reader” under various Social Security Act programs (42 U.S.C. §§ 405, 1383). Foreign language interpreters or translations are required in connection with federally funded migrant and community health centers (42 U.S.C. §§ 254b(b)(1)(a)(iv) and 254b(j)) in a grant program for certain health care services for the homeless (42 U.S.C. § 256); in alcohol abuse and treatment programs, which serve a substantial number of non-English speaking persons (42 U.S.C. § 4577(b)); and in the grant program for supportive services under the Older Americans Act (42 U.S.C. § 3030d(a)(3)).
- Agriculture: Department of Agriculture funds may be used for translation of publications into foreign languages (7 U.S.C. § 2242b).

## State Laws

As noted, 30 states have adopted Official English laws in various forms. Some enactments make a simple declaration of English as the official state language, without more.<sup>34</sup> Others arm state legislatures with power to enforce linguistic uniformity, or otherwise to preserve and enhance the official role of the English language. More specific measures expressly prohibit or restrict, in one fashion or another, foreign language usage by state agencies or employees in the conduct of official business. Specific exceptions to English-only requirements are frequently included, however, particularly where necessary to comply with federal law.

Meanwhile, a plethora of other laws have also been enacted by various state legislatures to facilitate communication with persons of limited English proficiency in the provision of needed public and private services. For example, most states require the use of interpreters in courtroom and other law enforcement settings,<sup>35</sup> while many states require similar services for LEP individuals appearing before administrative agencies or seeking health care.<sup>36</sup> Similar requirements regarding interpretation and translation also appear in state laws pertaining to

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<sup>34</sup> See, e.g., Colo. Const. Art. II, § 30, which states, in its entirety, “[t]he English language is the official language of the State of Colorado.”

<sup>35</sup> See, e.g., Code of Ala. §§ 12-21-130, 15-1-3 (Foreign language interpreters are provided to non-English speaking defendants or witnesses in criminal or civil proceedings); ALM GL ch. 221C, § 2 (Non-English speakers have the right to the assistance of a qualified interpreter in legal proceedings).

<sup>36</sup> See, e.g., Md. State Government Code Ann. § 10-212.1 (In contested cases, parties may apply to an agency for an interpreter if they cannot understand English); Minn. Stat. § 15.441 (“Every state agency that is directly involved in furnishing information or rendering services to the public and that serves a substantial number of non-English-speaking people shall employ enough qualified bilingual persons in public contact positions, or enough interpreters to assist those in these positions, to ensure provision of information and services in the language spoken by a substantial number of non-English-speaking people.”); Conn. Gen. Stat. § 19a-490i. (Each “acute care hospital” shall ensure that interpreters are available for patients that speak a language other than English that is spoken by more than 5% of the population and must review and translate standardized forms for non-English speaking patients); Fla. Stat. § 381.026 (Patients who do not speak English have the right to be provided with an interpreter when receiving medical services if the facility has a person readily available who can interpret on behalf of the patient).

professional licensing,<sup>37</sup> business and employment,<sup>38</sup> state and local elections,<sup>39</sup> and military justice.<sup>40</sup>

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## **Acknowledgments**

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<sup>37</sup> See, e.g., Md. Business Regulation Code Ann. § 2-110 (Applicants for professional or business licenses are permitted to use interpreters, provided the Department of Licensing determines that such use would not “compromise the integrity” of the testing process).

<sup>38</sup> See, e.g., Iowa Code § 91E.2 (If 10% or more of an employer’s workforce does not speak English and they speak the same language, then the employer must provide an interpreter); NY CLS Exec Appx § 466.11 (The provision of an interpreter is specifically included in the definition of “reasonable accommodation” in the workplace).

<sup>39</sup> See, e.g., Fla.Stat. § 101.2515 (A translated ballot in the language of any minority group should be provided if the supervisor of an election requests such a translation 60 days prior to an election); N. M. Stat. Ann. § 1-2-19 (An election translator shall be appointed to assist language minority voters).

<sup>40</sup> See, e.g., A.R.S. § 26-1028 (Interpreters may be provided for proceedings before “a court-martial, military commission or court of inquiry”); S.C. Code Ann. § 25-1-2640 (The convening authority of a military court may detail or employ interpreters who shall interpret for the court).