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FACT SHEET: Why English Only-Legislation Violates Civil Rights

(Prepared by the Asian Pacific American Legal Center of Southern California, the Los Angeles Affiliate of the National Asian Pacific American Legal Consortium).

The "English-only" movement promotes the enactment of legislation designed to ban or restrict the use of other languages besides English by government entities. Declaring English as the official language evokes arguments over many controversial issues involving patriotism, race, ethnicity, culture, and discrimination. Above all, however, it is important to remember that laws passed in the United States must pass constitutional muster. This article explains why English-only laws fail to do so, and thus should not become a part of the fabric of our American democracy.

Examples of English-only legislation include the elimination of oral or written forms of bilingual government services, bilingual education, bilingual ballots, and bilingual citizenship tests. Government services include access to public safety services, health services, social welfare services, courtroom translation, and driver's license examinations. For the 56% of the Asian Pacific population that is limited-English proficient, a declaration of English as the official language would deny access to health and safety services, the legal system, voting, education, and the workplace.

Fourteenth Amendment

English-only legislation violates the Fourteenth Amendment of the United States Constitution. The Equal Protection clause of the Fourteenth Amendment states that laws cannot discriminate against certain groups based on specific characteristics, such as race, gender, or national origin. In *Hernandez v. New York*, the Supreme Court held that language proficiency could be viewed as one of these classifications. Also, *Asian American Business Group v. Pomona*, equated the use of foreign languages as an expression of national origin. Such laws are dangerous because they are based on a rejection of unpopular national origin, motivated by a dislike of foreigners, and relegate limited-English proficiency groups to second-class citizenship.

The Fourteenth Amendment, under the due process clause, also ensures that every person has the opportunity to be heard and tried before any deprivation of life, liberty or property. The lack of any bilingual support for non-English speaking persons in the courts precludes them from utilizing the judicial system and to assert their rights and obtain fair hearings.

Freedom of Speech

English-only laws also implicate the First Amendment of the Constitution and its freedom of speech guarantee. Laws that do not allow the government to communicate with citizens on issues of public and political importance violate the First Amendment. Examples of such communication may include disseminating information, providing access to information, and oral assistance in other languages. If the government is precluded from using bilingual resources to provide services or assistance, limited-English proficiency groups are cut off from their right to communicate and receive information from the government.

Right to Vote

The right to vote would also be violated by English-only legislation. The Supreme Court has ruled that laws giving States discretion to control the make-up of the voting population by imposing burdens on minority groups are unconstitutional. For example, in *Louisiana v. United States*, the Court struck down a requirement that voters take a test interpreting part of the state constitution before registering to vote. The elimination of multilingual ballots would impose a similar burden on citizens who do not speak English well and would allow States to exclude a group of citizens from the electoral process based on their ability to speak English. Studies have

shown that many limited-English speaking citizens utilize bilingual ballots and would not vote if not for the mandated translations. Also, the elimination of multilingual ballots would contradict Section 203 of the Voting Rights Act of 1965, which requires bilingual ballots for certain language minority groups.

Right to Education

Although the right to education is not a fundamental one under the Constitution, the courts have deemed education as "perhaps the most important function of state and local government" and a "right which must be made available to all on equal terms." In 1974, the Supreme Court held that Chinese American students were denied equal educational opportunities in violation of the Civil Rights Act of 1964. These students were not proficient in English, and the Court held that the failure to provide English language assistance precluded the students from receiving meaningful instruction. In accordance with these principles, Congress passed the Bilingual Education Act ensuring that immigrant children receive the same access to education as non-immigrant children. English-only laws calling for the end of bilingual education would repeal the Bilingual Education Act and would violate the Civil Rights Act of 1964.

Effects in the Workplace

English-only laws apply primarily to government services but such laws could also have egregious effects in the private sector. Giving license to the idea that people should only speak English, such legislation may cause private employers to discriminate on the basis of English proficiency, accent, or attempt to institute "English-only" policies in the workplace. These types of actions all fall under national origin discrimination and would violate the Civil Rights Act of 1964, unless the employer can show a "business necessity." This standard is extremely difficult to meet because the employer must show a necessity that the nature of the work requires all communications to be in English and the use of other languages would have serious consequences. Thus, an employer could not force employees to speak English simply because other employees feel uncomfortable or customers are bothered by the use of foreign languages.

Symbolic English-only Laws are also Dangerous

Many States have enacted laws that simply declare English to be the official language and claim that the laws hold only symbolic meaning. The danger, however, lies in the fact that most of these statutes leave the state legislatures with the discretion to enact future laws that may go beyond symbolism. Further, Professor Juan Perea from the University of Florida College of Law puts forth a compelling argument regarding these "symbolic" statutes. Unlike other state symbols, such as a state bird or flag, declaring English the "symbolic" state language excludes "different, but equally American, languages." Although this declaration may be indicative of what the majority language is, it denies the existence of other languages by silencing the validity of their general use as part of the diversity this country has celebrated for hundreds of years. Perea describes a hypothetical in which Congress designates "white" as the official race of America and "male" as the official gender. While these symbolic designations simply mirror realities of the actual power and economic distribution in society, such declarations would not be considered neutral or symbolic, nor would they be tolerated by society because they disempower women and people of color. Therefore, even apparently neutral and symbolic declarations of English as the official language are inappropriate because they reject marginalized, but still American, cultures.

Conclusion

Proposed English-only legislation has the potential of stripping some of the most important constitutional and statutory rights this country offers to citizens and residents. Preserving the rights to vote, seek judicial remedies, education, work, and participate in the democratic process for all citizens is crucial in maintaining the principles of equality and justice upon which this country was built.