RESOLVED, That the American Bar Association supports the principle that federal, state, territorial, and local governments permit the use of languages in addition to English to improve communication with government, to promote understanding of duties and responsibilities under the law, and to provide access to the justice system.
INTRODUCTION

This country always has been a nation of immigrants. Its inhabitants always have adapted and assimilated to an increasingly multi-cultural and multi-lingual culture, and most residents historically have learned, and continue to learn, English as the primary language of communication. Yet language designation and restrictions have been recognized as having a prominent role in national origin discrimination and limitation on individual rights. And in recent years, parallel to an unprecedented growth in population of language minorities in the United States, the inequities always experienced by foreign language speakers have become more pronounced. One result of this intolerance is the proliferation of proposals to restrict the use of languages other than English in governmental or other settings.

Contrary to the assertions of “English-Only” and “Official English” proponents, however, measures to bar government use of languages in addition to English create a hostile and divisive atmosphere that limits, rather than promotes, fluency. As demonstrated in the 104th and in the current Congress and in some recent court decisions, the current national debate regarding “English-Only” or “Official English” has in many ways sidestepped the facts and complexities that underlie the issue of language use and national origin discrimination. While earlier discussions about a national language focused on the acceptance of a dominant tongue, the renewed debate instead attacks the speakers themselves. The assault against immigrants has become an assault against all foreign language speakers.

This resolution calls upon the American Bar Association to support governments’ use of languages in addition to English to improve communication with government, to promote understanding of duties and responsibilities under the law, and to provide access to the justice system. The proposed resolution does not argue nor in any way imply that the “official” language in this country is anything other than English in practice. Rather, it supports legislative or other governmental policy that discourages divisiveness, discrimination, inefficiency, and reduction in the ordinary public service functions of our system of government.

This proposed resolution also complements other important Association work intended to enhance the justice system’s responsiveness to individuals’ needs. Equal access to justice, a goal embraced by this resolution, is an integral component to the work being done by the ABA’s Office of Justice Initiatives. Access to justice necessarily assumes a basic ability to receive information from and provide information to governmental bodies charged with the responsibility for both furnishing and determining legal rights. In order to ensure that this most basic charge is satisfied in its broadest context, government must be empowered with the discretion to use languages other than English when necessary. Without the basic ability to understand rights and privileges, access to justice is merely an elusive slogan.
This country's long-simmering debate over "English-Only" and "Official English" requirements recently has become a roiling controversy in many places around the country. It has surfaced in both federal and state legislative proposals and in draft state constitutional amendments. In broad terms, "English-Only" requirements prohibit government employees from speaking any language other than English in the scope of their employment duties. These restrictions encompass everything from greeting fellow employees or the citizenry to explaining government services in non-English languages. "Official English" proposals generally would have similar results, but would have the additional, if somewhat symbolic, effect of specifically elevating English above other languages. These means of depriving the country's language minorities of the ability to interact meaningfully with their government and denying them their substantial role in the country's heritage raises fundamental civil rights and constitutional concerns.

Over the last several years, the U.S. Congress has considered numerous proposals to establish, by legislation or constitutional amendment, English as the nation's official language and, by the terms of such proposals, bar governmental use of languages other than English. In an attempt to capitalize on heightened anti-immigrant sentiments and perceptions, the 104th Congress entertained at least seven separate "English-Only" or "Official English" bills. Although the bills varied in scope, all created great potential for discriminatory impact. The two bills that received the greatest degree of attention were H.R. 123, introduced by Representative Bill Emerson (R-MO), and S.356, introduced by Senator Richard Shelby (R-AL). As introduced, the bills, each entitled the "Language of Government Act of 1995," would have:

1. established English as the official language of the federal government;
2. mandated that all official business of the federal government be conducted in English;
3. given standing to sue to any person injured by a violation of this law; and
4. repealed inconsistent federal laws that protect language rights.

Neither would have preempted any state law. Some proponents, recognizing the breadth of such proposals, sought particular exceptions to the legislation to preserve, e.g., government's ability to address the need for emergency public health protections; the teaching of foreign languages; actions, documents, or policies necessary for international relations, trade, or commerce; and documents that used terms of art or phrases in languages other than English.

During the second session of the 104th Congress, the House took up a version of H.R. 123, as well as H.R. 351, that would have repealed provisions of the Voting Rights Act that require jurisdictions to provide language assistance (e.g., bilingual ballots) for affected voters in any area where a language-minority voting age citizen population constitutes five percent or more of the total adult-citizen population, or where the number of such citizens is at least 10,000, and the illiteracy rate of such a group is higher than the national rate. Without such assistance, eligible, taxpaying citizens have no meaningful vote; in fact, the Congress originally adopted and subsequently reauthorized these provisions out of concern that minority-language citizens...
otherwise would be subject to widespread discrimination in attempts to exercise their voting rights. Yet the House passed both bills. Proponents argued that government's use of other languages was an economic burden to government and a threat to the continued dominance of English usage in this country.

Although the Senate did not act on that legislation, and President Clinton threatened to veto any legislation that limited the language assistance provisions of the Voting Rights Act, such bills are surfacing again in the 105th Congress. The version of H.R. 123 from the 104th Congress was reintroduced by Rep. Randy Cunningham this session. In addition, on Feb. 4, 1997, Rep. John Doolittle (R-CA) introduced a constitutional amendment, HJ Res. 37, to establish English as the official language of the United States. Three other bills have been introduced in both the Senate and the House that would make English the official language of either the country or the federal government (S. 323, Sen. Richard Shelby, (R-AL), Feb. 13, 1997; HR 622, Rep. Bob Stump (R-AZ), Feb. 5, 1997; HR 1005, Rep. Peter King (R-NY), Mar. 11, 1997). The proposed constitutional amendment and all the bills have been assigned to various committees of the Senate and House of Representatives. As of May 20, no action had been taken on any of the measures.

The inherent danger in all forms of "English-Only" or "Official English" legislation is at once broader and more fundamental than any specific provisions might create. Despite its multitude of forms, all such legislation is intended to prohibit or severely restrict successful measures used to address and remedy discrimination, as well as to prohibit service delivery and access to justice to language minority communities. Even "purely symbolic" measures declaring English as the official language do nothing but promote private discrimination against non-English speakers. Playing upon unfounded fears that the use of English in this country is threatened, proponents fail to address measures that would increase English acquisition and instead increase intolerance and misunderstanding.

For example, contrary to opponents' arguments, government can respond to multi-lingual needs without significant additional expense. The cost to government for Constitutional compliance and increased efficiency is nominal. According to the General Accounting Office, more than 99.9 percent of all federal documents and publications were printed in English during

\[\text{3See, e.g., "Documented Complaints Concerning Language Discrimination, testimony of the Mexican American Legal Defense and Educational Fund concerning S. 156, The Language of Government Act of 1995, Submitted to the Senate Governmental Affairs Committee, December 6, 1995," describing incidents of service refused to Spanish speaking customers at J.C. Penny, refusal of child care, physical abuse of students in a Texas high school, and other "enforcement" attempts to promote monolingualism by private employers/employees.}\]
the period 1990-1995. Another GAO study reported that 79 percent of studied jurisdictions provided oral assistance on election day in non-English languages at no cost to taxpayers. Such documents and assistance in fact help federal tax collections and compliance, as well as providing citizens with the opportunity to exercise their right to vote.

CONSTITUTIONAL CONCERNS

"English-Only" or "Official English" requirements not only limit government access and the effectiveness of specific laws and policies, but also offend core First Amendment precepts by imposing unequal barriers to communication with government and by selectively disenfranchising language minority groups. Central to the First Amendment is the principle of equal liberty of expression, see, e.g., Carey v. Brown, 447 U.S. 455 (1980); Police Department of Chicago v. Mosley, 408 U.S. 92, 96 (1972) ("we have frequently condemned such discrimination among different users of the same medium for expression"). See also Grosjean v. American Press Co., 297 U.S. 233 (1936); Minneapolis Star & Tribune v. Minnesota Comm. of Revenue, 460 U.S. 575 (1983); and Arkansas Writers' Project v. Ragland, 481 U.S. 221 (1987) (selective taxation targeting small, discrete segments of the press violative of First Amendment). Cf. Brodick v. Oklahoma, 413 U.S., 601, 616 (1973) (upholding a law restricting the political activities of state employees, finding it "is not a censorial statute, directed at particular groups or viewpoints").

"English-Only" requirements violate the First Amendment equality principle by selectively barring small, discrete, and already vulnerable groups from the important arena of governmental communications. Never in its history has the U.S. Supreme Court countenanced the direct and purposefully discriminatory infringement upon the First Amendment rights of a discrete and disfavored group whose lack of English proficiency already puts them at a disadvantage in the public discourse and governmental communications. Official suppression of viewpoints is not the sole concern of the First Amendment. See City of Ladue, 114 S.Ct. at 2045; Jews for Jesus, 482 U.S. at 574-576. The systematic deprivation of unidentifiable groups right to communicate with government undermines one of the First Amendment's central values and functions: to "secure[e] and foster[ ]" the integrity of "our republican system of self-government. Richmond Newspapers, 448 U.S. at 587 (Brennan, J., concurring).

In addition to suppressing the fundamental right of language minorities to communicate with their government, "English-Only" requirements impose a structural obstacle to these

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minorities' participation in the political process by flatly prohibiting any public entity, including state and local legislatures, from discretionary creation of and enforcement of any law, order, decree, or policy that facilitates the use of a language other than English.

"English-Only" requirements preclude language minorities from seeking beneficial legislation (e.g., establishing multilingual services) through the normal political process. Unlike any other group, such as women, the disabled, veterans, or the elderly, language minorities may obtain beneficial legislation only by enlisting the citizenry to amend state constitutions.

Although "English-Only" requirements ostensibly are directed at the speech of public employees and officials, they unnecessarily and substantially impair the First Amendment rights of limited and non-English speaking residents because they typically extend well beyond so-called official "government speech" to affect virtually every interaction between government and the language minority public, depriving thousands of non-English proficient citizens and residents of the opportunity not only to receive information from, but to communicate with, their government. Thus, "English-Only" requirements not only offend fundamental First Amendment values essential to the functioning of our democracy, but also discriminatorily allocate burdens by impairing the ability of discretely identifiable and historically disadvantaged groups to participate in government and to petition for redress of grievances. See 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).

"English-Only" requirements also interfere with everyday activities and communications most citizens take for granted, burdening the non-English resident who seeks to take issue with his utility charges, address the city council, or contest an eviction from public housing. By erecting a permanent linguistic barrier between non-English speakers and every branch and agency of government upon an almost limitless variety of subjects, "English-Only" requirements unquestionably infringe upon the non-English speaking public's right to petition.

Additionally, by categorically prohibiting public employees and officials from communicating in a non-English language, "English-Only" requirements effectively bar language minorities from receiving important, often vital, governmental information. Under most "English-Only" requirements, for example, government employees are no longer able to convey in Spanish, Navajo, or Vietnamese information about a purposed redevelopment project, a water conservation program, consumer fraud, job-training opportunities, wage and hour laws, changes in hunting and fishing regulations, the contemplative closure of a local school or countless other subjects. "English-Only" requirements thus fundamentally impair the public's right "to receive information and ideas." Virginia State Board of Pharmacy, 425 U.S. at 757, quoting Kleindienst v. Mandel, 408 U.S. 753, 762-63 (1972).

Access to government information is particularly important to the proper functioning of a democracy. "Governments have an almost unique capacity to acquire and disseminate
information in the modern state." Yudof, When Government Speaks, 9-10 (1983); see also Meiklejohn, Free Speech and Its Relation to Self-Government 65-66 (1948) (First Amendment protects right of people to intelligently discuss issues of public concern for purpose of self-government). Accordingly, the principle that "the right to receive ideas is a necessary predicate to the recipients' meaningful exercise of his own rights of speech, press, and political freedom," Board of Ed v. Pico, 457 U.S. 853, 861 (1982), applies with particular force to government information. Certainly, the First Amendment interest in obtaining government information essential to the functioning of a democratic republic is at least as great as that in obtaining commercial information from private advertisers. See Bolger v. Youngs Drug Products Corp., 463 U.S. 60, 64-65 (1983) (commercial speech enjoys less protection than core First Amendment speech); see also 44 Liquormart, 116 S.Ct. at 1507-1508.

Finally, by barring public officials and employees from communicating with members of the public in any non-"official" language, "English-Only" requirements effectively prevent interactive communications between the government and the non-English speaking public. Public employees can neither initiate communication with, nor even receive or reply to, inquiries in the languages understood by non-English speakers. "English-Only" requirements ban everything from a town hall discussion with elected officials to a private dialogue between a parent and teacher. Without the possibility of conversation or dialogue, the essential nature of communication is thwarted.

"English-Only" requirements are intended to eliminate multi-lingual governmental functions and services—even those that promote government efficiency and equity and that government officials otherwise would voluntarily provide. Similarly, "English-Only" requirements blanket ban the use of all non-English languages in all levels and branches of government—coupled with its deliberate withdrawal of bilingual services—is a sweeping and pervasive infringement of constitutional guarantees that far exceeds the particularized failure of a single governmental agency to provide bilingual services or notices. Cf. Pico, 457 U.S. at 879 n. 1 ("removal, more than failure to acquire, is likely to suggest an impermissible political motivation may be present" (Blackmun, J., concurring) (citation omitted).

JUDICIAL REVIEW

There is longstanding precedent for language rights protections in constitutional law. The nation's founders considered and rejected suggestions to establish an official language for

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6See Sobarat-Perez v. Heckler, 717 F.2d 36 (2nd Cir. 1983), cert. den., 466 U.S. 929 (1984) (provision of governmental notices in English); Toure v. U.S., 24 F.3d 444 (2nd Cir. 1994) (per curiam) (no governmental notices in French); Carnona v. Sheffield, 475 F.2d 738 (9th Cir. 1973) (provision of forms and services in English only); Pomerata v. Sindell, 522 F.2d 1215 (6th Cir. 1975) (civil service exam provided only in English).
the new country, and subsequent, periodic efforts to bar languages other than English also have
been rebuffed. As early as 1923, when presented with a challenge to a state statute prohibiting
public or private school instruction in any language other than English, the U.S. Supreme Court
held that laws that restrict the use of languages other than English are unconstitutional under the
Numerous other similar decisions followed.

The Court also has found that barring use or recognition of languages other than English
is a form of national origin discrimination, whether in the context of jury selection,
employment, or education. (See, e.g., *Hernandez v. Texas*, 347 U.S. 475 (1954); *Saint Francis
College v. Al-Khazraji*, 481 U.S. 604 (1987)).

The U.S. Supreme Court most recently was presented with the “English-Only” debate in
*Arizonans for Official English v. Park v. Yniguez*. In the spring of 1996, the Court
granted a writ of certiorari in *Yniguez* on the issue of whether Article 28 of the Arizona
Constitution, which declares English the official state language (an “English-only” law similar
to the Language of Government Act introduced in the 104th Congress), violates the First
Amendment of the U.S. Constitution. Article 28 prohibits all state government employees and
elected officials from speaking any other language while performing government functions. It
makes English the official language of the "ballot, the public schools and all government
functions and actions." The law applies to "the legislative, executive and judicial branches of
government . . . all political subdivisions, departments, agencies, organizations and
instrumentalities of [the] state, including local governments and municipalities."* It broadly
requires that every level and branch of government, including every entity and person, "act in
English and no other language."* Under this Article, any "person who resides or does business
in [the] state" has the right to sue to enforce its provisions.*

Maria Yniguez, an employee of the Arizona Department of Administration and the
original plaintiff in the case, stopped speaking Spanish on the job for fear that she would be
subject to discipline,* but challenged the restriction in court. The district court held that Article
28 did violate her First Amendment rights, and the state declined to appeal.* However,

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*Article 28 of the Arizona Constitution, sec. 1.(1)(2) and sec. 1.(3)(a)(II).
*A Article 28, sec. 3.(1)(a).
*Article 28, sec. 4.

*Yniguez v. Arizonans for Official English, 69 F.3d 920, 924 (9th Cir. 1995), cert.
granted, USLW 3635 U.S. (March 26, 1996).

*Id. At 925.
Arizonaans for Official English (AOE), the proponents of the voter initiative that resulted in adoption of Article 28, successfully intervened. An en banc panel of the Ninth Circuit court of appeals affirmed the lower court ruling on the grounds that Article 28 was overbroad and far-reaching, in that it would affect the speech rights of all state and local employees, officials, officers, and non-English speaking Arizonans who had an interest in receiving all kinds of essential information. The court noted that among its perhaps unintended but real effects would be to limit or chill the speech of teachers in the classroom, the translation of judicial proceedings in courtrooms, the issuing of state university diplomas in Latin, and the ability of judges performing weddings to "Mazel Tov." Even the State of Arizona had conceded that prohibiting the use of languages other than English would make the delivery of government services more inefficient.

Ultimately, the Supreme Court held that the case was moot because the original petitioner no longer worked for the state and remanded the case to the district court for dismissal. However, the issues raised in Yniguez are very much alive.

CONCLUSION

Permitting government bodies to use languages in addition to English is not a grassroots effort to supplant the use of English in this country. No one can argue intelligibly that, in practical terms, languages other than English are primary in this country. Although anti-immigrant forces might suggest that this country is in danger of being overrun by non-English speaking populations that inevitably will bring the free flow of commerce to a standstill more than 98 percent of Americans, in fact, speak English fluently or are sufficiently proficient in English that language barriers do not impact their ability to "access justice." Moreover, the majority of citizens that do not possess sufficient proficiency in English to acquire and maintain desirable employment have and continue to make strong efforts to develop sound English skills. According to the citizens groups that interact most frequently with immigrant populations, the overwhelming majority of immigrants devote substantial time and energy to the cultivation of

10Id.
11Id at 932.
12Id. at 932.
13Id. at 942.
14With the permission of the authors, portions of this report are based upon The Continuing Struggle: Civil Rights and the Clinton Administration, Chapter XV: The Debate over English-Only/Official English (1997), published by the Citizens' Commission on Civil Rights, Corrine M. Yu and William L. Taylor, Editors.
SUMMARY OF RECOMMENDATION

This recommendation supports the principle that territories, localities, and the federal government shall permit use of languages in addition to English to improve communication with government, to promote understanding of duties and responsibilities under the law, and to provide access to the justice system.

APPROVAL BY SUBMITTING ENTITY

This Recommendation was approved by the Council of the Section of Individual Rights and Responsibilities on May 3, 1997, during its Spring Meeting in Washington, D.C.

HAS THIS OR A SIMILAR RECOMMENDATION BEEN SUBMITTED TO THE HOUSE OR BOARD PREVIOUSLY?

No recommendation has been submitted previously that supports per se the government's use of languages in addition to English. However, the House previously has considered resolutions addressing the different, but related, language rights issue of whether governments should adopt English as their official language. In 1987, the Section of Individual Rights and Responsibilities submitted a Report with Recommendation opposing the establishment of English as the official language of the United States and supporting the strengthening of English language training classes. This recommendation later was withdrawn. In 1988, the Section submitted a Report with Recommendation urging the ABA to oppose the approval of legal measures that would permit discrimination against racial or ethnic minorities by establishing English as the country's official language. The House recommitted this recommendation to the Section for further study.

WHAT EXISTING ASSOCIATION POLICIES ARE RELEVANT TO THIS RECOMMENDATION AND HOW WOULD THEY BE AFFECTED BY ITS ADOPTION?

No existing policies would be affected by approval of this Recommendation.

WHAT URGENCY EXISTS WHICH REQUIRES ACTION AT THIS MEETING OF THE HOUSE?

Approval of this proposed resolution at this meeting is essential to enable the ABA to help preserve one of our most fundamental rights—access to government for non-English speaking or limited English-speaking individuals in this country. The issues with which the resolution is concerned are under active consideration in the Congress, state legislatures, and courts across the country.

United States. In addition, several other bills have been introduced in the 105th Congress to amend Title IV of the U.S. Code (regarding the U.S. Flag and Seal, Seat of Government, and the States) to make English the official language of either the country or the federal government. (S. 323, Sen. Richard Shelby (R-AL), Feb. 13, 1997; HR 123, Rep. Randy Cunningham (R-CA), Jan. 7, 1997; HR 622, Rep. Bob Stump (R-AZ), Feb. 5, 1997; HR 1005, Rep. Peter King (R-NY), Mar. 11, 1997).

Approximately 20 states have laws that declare English the official language of the state, and 17 of those measures have been adopted within the past 15 years.

Arizona v. Official English v. Arizona, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997), a case involving an amendment to the Arizona constitution making English the official state language and requiring all governmental functions and actions to be conducted in English, presented some of these issues for consideration by the U.S. Supreme Court. However, on March 3, 1997, the Court vacated the decisions of the lower courts in this case because the original petitioner no longer was employed by the state of Arizona and remanded the case to the District Court for dismissal. Although the Court did not reach a decision in this case, cases involving other legislative or constitutional provisions are expected to be appealed to the Court.

There have always been non-English speaking minorities in this country, but in the current atmosphere of anti-immigrant sentiment, it is important for the ABA to encourage tolerance for different languages and the cultures they reflect and to underscore the constitutional underpinnings of opposition to English Only/Official English legislation that has negative civil rights and access to justice implications for many individuals in this country.

6. Status of Legislation. (If applicable.)

The proposed constitutional amendment and bills have been assigned to various committees of the U.S. Senate and U.S. House of Representatives, but as of this date no further action has been taken.

7. Cost to the Association. (Both direct and indirect costs.)

Adoption of the Recommendation would result in only minor indirect costs associated with Governmental Affairs and Section staff time devoted to the policy subject matter as part of the staff members' overall responsibilities.

8. Disclosures of Interest. (If applicable.)

None.


At the time of its submission, this Report with Recommendation was sent to the ABA Coordinating Committee on Immigration Law, which agreed to co-sponsor the recommendation following a poll of its members completed on June 6, 1997.
Following its submission, this Report with Recommendation was sent to the following entities to solicit their support or co-sponsorship:

**All Sections, Divisions, and Forums**

**Standing Committees:**
- Delivery of Legal Services
- Election Law
- Lawyers' Public Service Responsibility
- Legal Aid and Indigent Defendants
- Substance Abuse
- World Order Under Law

**Special Committees and Commissions:**
- Coalition for Justice
- Commission on Domestic Violence
- Commission on Homelessness and Poverty
- Commission on Legal Problems of the Elderly
- Consortium on Legal Services and the Public
- Commission on Mental and Physical Disability Law
- Commission on Opportunities for Minorities in the Profession
- Commission on Public Understanding about the Law
- Steering Committee on the Unmet Legal Needs of Children
- Commission on Women in the Profession

**Affiliated Organizations:**
- American Immigration Lawyers Association
- American Judicature Society
- Federal Bar Association
- Hispanic National Bar Association
- National Asian Pacific American Bar Association
- National Association of Attorneys General
- National Association of Bar Executives, Inc.
- National Association of Criminal Defense Lawyers, Inc.
- National Association of Women Judges
- National Association of Women Lawyers
- National Bar Association, Inc.
- National Conference of Women’s Bar Associations
- National District Attorneys Association
- National Legal Aid and Defender Association
- National Lesbian and Gay Law Association

10. **Contact Person** (Prior to the meeting.)

The principal contact persons in the Section of Individual Rights and Responsibilities are: