



MALDEF

Mexican American Legal Defense and Educational Fund

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“Examining Views on English as the Official Language”

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Chairman Castle, Congresswoman Woolsey, thank you for the opportunity to testify regarding Official English/English-Only laws and policies. I am John Trasviña, interim President and General Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF).

We can all agree, newcomers to the United States included, that learning English is critical to participating in, contributing to and succeeding in American society. Yet English-only and Official English laws do nothing constructive to advance the important goal of English proficiency. Instead, such laws carry with them the potential to jeopardize the health, safety, and well-being not only of English Language Learners (ELLs), but of our communities as a whole. Laws that interfere with or undermine the government’s ability to communicate quickly and effectively are simply bad public policy. Such laws fuel divisiveness and discrimination, and leave all of us more vulnerable to danger, all without yielding any discernible benefit.

Official English and English-only policies are founded upon the myth that the primacy of the English language is somehow under threat. In fact, more than 92 percent of our country’s population speaks English, according to the last Census, confirming that the problem English-only laws are designed to address simply does not exist. Moreover, English-only laws are built upon, and help to perpetuate, a baseless stereotype of immigrants, and in particular of immigrants from Latin America: specifically, the false perception that Latino immigrants do not want to learn English.

In reality, Latinos, both native-born and newly-arrived, embrace English and place tremendous importance and value upon attaining English-language fluency. By wide margins, Latinos believe that learning English is essential for participation and success in American society. A recent survey by the Pew Hispanic Center found that an overwhelming majority of Latinos – 92 percent – believes that teaching English to the children of immigrants is very important, a percentage far higher than other respondents.¹

¹ Pew Hispanic Center, Hispanic Attitudes Toward Learning English, (June 7, 2006), factsheet available at <http://pewhispanic.org/files/factsheets/20.pdf>.

Indeed, Latino immigrants *are* learning English, and doing so as quickly as or more quickly than previous generations of immigrants. As is typical of immigrant populations in the United States, by the third generation most Latinos tend to speak only English. Latino immigrants, then, do not need official English or English-only legislation to coerce them into learning English; that desire and determination already runs deep in the Latino community. They do, however, require the means and the opportunity. English Language Learners are too often hampered in their efforts to achieve full proficiency.

For ELL students in grades K-12, two-thirds of whom are native-born U.S. citizens,² poor instruction denies them the tools to gain the language skills necessary to participate fully in the American economy and society. There is ample evidence of the challenges these students face: Since 1975, at least 24 successful education discrimination cases have been brought on behalf of ELL students in 15 states.

For example, in December 2005, a federal district court cited the State of Arizona for contempt for failing to take action pursuant to a 2000 judicial decree intended to remedy ongoing inequalities in the educational opportunities available to ELL students.³ The 2000 decree in *Flores v. Arizona* found many inequalities in programs for ELL students in the state, including 1) too many students per classroom; 2) insufficient classrooms available for ELL students; 3) insufficient numbers of qualified teachers and teachers' aides; 4) inadequate tutoring programs for ELL students; and 5) insufficient teaching materials for classes in English language acquisition and content area studies.

ELL students' efforts to learn English are further impeded by the fact that a high proportion of ELL K-12 students attend linguistically segregated schools. Although ELL students represent a relatively small share of the total student population (approximately 10 percent), more than 53 percent of ELL students are concentrated in schools where more than 30 percent of their peers are also ELL. By contrast, only 4 percent of non-ELL students attend schools where more than 30 percent of the students are ELL.⁴

With limited opportunities to learn English, ELL students face particularly poor outcomes, failing graduation tests and dropping out of high school at far higher rates than classmates who are fluent in English. It is critical that we improve instruction for these students to help them learn English, not penalize them for the poor quality of instruction that denies them the opportunity to learn the language well.

Adults who seek ESL classes also face an acute shortage of high-quality English-acquisition programs, which are too few and too often oversubscribed. A June 2006 study by Dr. James Tucker for the NALEO Educational Fund surveyed the demand for and availability of adult ESL programs nationwide, and found tremendous unmet need.

² Michael E. Fix and Jeffrey S. Passel, Urban Institute, U.S. IMMIGRATION: TRENDS AND IMPLICATIONS FOR SCHOOLS, (Jan. 28 2003), available at <http://www.urban.org/url.cfm?ID=410654>.

³ *Flores v. State of Arizona*, 405 F.Supp.2d 1112 (D. Ariz. 2005) (contempt order).

⁴ Fix and Passel, Urban Institute, U.S. IMMIGRATION: TRENDS AND IMPLICATIONS FOR SCHOOLS, at 24.

In Phoenix, Arizona, for example, a large ESL provider reported an 18-month long waiting period for in-demand evening classes. In Boston, Massachusetts, there are at least 16,725 adults on waiting lists for ESL classes, and waiting times for some programs approach three years. In New York City, courses are so oversubscribed that last year, only 41,347 adults – out of an estimated one million adult English Language Learners – were able to enroll. New York City programs can require waits of several years for adult learners.

Providing real opportunities to learn English is the most efficient and effective means of fostering English proficiency. By contrast, English-only and official English proposals, including the Inhofe Amendment, do nothing to eradicate the barriers I have described or to help ELLs achieve fluency. Instead, they compromise the health, safety, and well-being of not only ELLs, but of the communities in which they live. English-only laws would undermine the federal government’s ability to communicate with the public in situations where communication is urgently needed, thereby leaving all U.S. residents more vulnerable to danger.

Examples of situations in which government officials must communicate efficiently and effectively to ensure the safety of the general populace abound. In the event of a natural disaster or terrorist threat, for example, federal emergency workers must be able to convey important information and instructions to as broad an audience as possible, a need that may require the use of languages other than English. National English-only policies could impede the government’s ability to convey warnings or post danger or hazard signs in languages other than English. They could prevent local law enforcement from effectively investigating crimes, communicating with crime victims or witnesses, or providing critically needed services to victims of domestic violence and abuse. In the area of public health, they could hinder the ability of medical personnel to communicate effectively with patients at federal or federally-funded hospitals, potentially complicating diagnosis and treatment, or even facilitating the spread of communicable diseases. English-only policies could prevent language minorities from seeking cost-effective preventive health care, leading to dangerous or expensive complications, or prevent parents from immunizing their children, putting entire communities at risk.

The Inhofe Amendment to the Senate’s comprehensive immigration reform bill highlights the dangers created by English-only type legislation. If enacted, the Inhofe Amendment would make English the national language and provide that “[u]nless otherwise authorized or provided by law, no person has a right, entitlement, or claim to have the Government of the United States or any of its officials or representatives act, communicate, perform, or provide services, or provide materials in any language other than English.”

Standing alone, the Inhofe Amendment, with its vague and ambiguous language, may be read to undermine or even rescind Executive Order 13166, titled *Improving Access to Services for Persons with Limited English Proficiency*.⁵ EO 13166 is designed

⁵Following passage of the Inhofe Amendment, the Senate also passed an amendment offered by Sen. Salazar, which specifically defines laws as “provisions of the United States Code, the United States

to enforce and implement Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of federal funding.⁶

Under EO 13166, federal agencies that provide financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to people who are Limited English Proficient (LEP). EO 13166 charged DOJ with the task of providing LEP Guidance to other federal agencies and for ensuring consistency among these agency-specific policy statements. Accordingly, other agencies have promulgated LEP guidance similar to that of DOJ.

DOJ's policy guidance on EO 13166 reaffirms the agency's "long-standing" and continuing "commitment to implement Title VI through regulations reaching language barriers ..."⁷ The guidance permits funding recipients flexibility to assess factors such as the projected demand for particular LEP services, the nature and importance of a particular service or activity, and the resources available to the recipient. The flexibility of this framework permits agencies and funding recipients to serve LEPs and carry out their Title VI obligations, without imposing unreasonably costly or burdensome requirements. While DOJ's policy guidance pursuant to EO 13166 allows funding recipients to use professional judgments and consider resource constraints in providing LEP services, it makes clear that they are to take meaningful steps to achieve "voluntary compliance," and sets out a mechanism for enforcement.⁸

The entities that are subject to Title VI and the Executive Order provide critical services, and in many instances it is vital that LEPs have meaningful access to these services, both for their own health and safety and for that of the public. The DOJ LEP Guidance, for example, references such fundamental law enforcement services as 911 assistance, crime investigation, community policing and crime prevention programs, juvenile justice programs, and domestic violence prevention and treatment initiatives. In the context of health care and human services, HHS' Guidance contains discussions of such programs as SCHIP and Head Start, health promotion and awareness activities, and the "vital" nature of such documents as consent and intake forms.⁹ DOT's guidance notes that its funding recipients include hazardous materials transporters and other first responders, and state and local agencies with emergency transportation responsibilities, such as the transportation of supplies for natural disasters, planning for evacuations, quarantines, and other similar action.¹⁰

The Inhofe Amendment may operate to erode the framework set out by EO 13166 and correlative policy guidance, thereby eroding agencies' and funding recipients' obligation to provide meaningful access to such important services by LEPs. At the same

Constitution, controlling judicial decisions, and Presidential Executive Orders." 152 Cong. Rec. S4725 (May 17, 2006). The Salazar Amendment expressly preserves EO 13166.

⁶ 42 U.S.C. §2000d.

⁷ *Id.*

⁸ See 67 Fed. Reg. at 41465-466.

⁹ See 68 Fed. Reg. at 47311-47323.

¹⁰ See 68 Fed. Reg. at 34698-34708.

time, like other English-only/Official English proposals, it would serve no useful purpose in helping anyone learn English, while inflicting very real harms upon ELLs and on the communities in which they live.

In addition to the practical implications of English-only/Official English laws on access to important services and information, such laws also perpetuate false but persistent stereotypes about the Latino immigrant community, and fuel divisiveness and anti-immigrant sentiment. The push for English-only policies today, and the hostile climate in which they have arisen, are hardly unique in America's history. In the late 1910's, amidst nationwide anti-German sentiment fueled by World War I, several states passed English-only laws that sought to restrict the use of foreign languages in public. The most famous example was a 1918 edict by Governor William Harding of Iowa, which became known as the Babel Proclamation, and outlawed the use of foreign languages in all schools, all public addresses, all conversation in public places, on trains, and over the telephone.¹¹ Most of those arrested under this proclamation were turned in by eavesdroppers and switchboard operators for using a foreign language during private telephone conversations.¹²

Although proponents of anti-German laws of that time portrayed them as efforts to have "a united people, united in ideals, language and patriotism,"¹³ these efforts had unmistakably xenophobic roots. The Supreme Court addressed the anti-foreign language movement in 1923 in the seminal case of *Meyer v. Nebraska*,¹⁴ in which it found that English-only laws unconstitutionally infringed upon liberties protected by the Fourteenth Amendment of the Constitution. The case involved a challenge brought by a German group against a Nebraska law that prohibited the teaching of the German language to young children. The Nation's highest court noted that the life, liberty and property protected by the Fourteenth Amendment included the right "those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."¹⁵ In holding that teaching and learning a foreign language were privileges included in that protection, the Court stated:

The 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 highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced with methods which conflict with the Constitution – a desirable end cannot be promoted by prohibited means.¹⁶

The *Meyer* Court's invalidation of the challenged English-only law was rooted in the Court's recognition of constitutional principles of tolerance and respect for

¹¹ Stephen J. Frese, *Divided by a Common Language: The Babel Proclamation and its Influence in Iowa History*, 39 *THE HISTORY TEACHER* 1, 59 (Nov. 2005) (available at: <http://www.historycooperative.org/journals/ht/39.1/index.html>).

¹²*Id.*, note 1.

¹³ Brief and Argument for State of Nebraska, Defendant in Error. *Meyer v. Nebraska*, 262 U.S. 390 (1923).

¹⁴ *Meyer v. Nebraska*, 262 U.S. 390 (1923).

¹⁵ *Id.* at 399.

¹⁶ *Id.* at 401.

diversity.¹⁷ Contemporary English-only proposals are no less offensive to these ideals and directives. They also threaten to inflict very real harms on ELLs, and to erode public safety and public health more generally. At the same time, they do nothing to advance the important goal of English proficiency for all ELLs – a goal that they themselves view as paramount to success and full participation in American society. We must do more to improve the availability and the quality of English-acquisition programs, both for K-12 students and for adult learners. MALDEF urges Congress to take constructive steps toward helping ELLs learn English and contribute more fully to America’s economic and social fabric. English-only and Official English laws are not the answer.

¹⁷ The holding was reinforced by a 1990 federal district court decision that again found an English-only law to be unconstitutional. In *Yniguez v. Mofford*, 730 F.Supp. 309 (D.Ariz.1990), an Arizona district court struck down an English-only amendment to the Arizona Constitution, prohibiting the use of foreign languages by government employees in the course of their work. The court found that the provision was “so broad as to inhibit ... constitutionally protected speech” and forced public employees “to either violate their sworn oaths to obey the state constitution, and thereby subject themselves to potential sanctions and private suits, or to curtail their free speech rights.” Although this decision was later vacated on procedural grounds by the Supreme Court, the central holding was never overruled.