Constitutional Challenges to Official English Legislation

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CONSTITUTIONAL CHALLENGES TO OFFICIAL ENGLISH LEGISLATION

"[V]erbal cacophony is . . . not a sign of weakness but of strength."¹ The United States Constitution does not stipulate that English is the official language of the United States.² In fact, the Constitution itself was originally published in several languages including English, German and French.³ As a country founded by immigrants for immigrants,⁴ there has been a general intolerance for mono-linguistic ratification.⁵ Recently, however, there has

² See 9 JOURNALS OF THE CONTINENTAL CONGRESS 1774-1789 1088 (Worthington Chauncey Ford ed., 1907) (stating non-designation of one “official” language in Colonial America was no oversight by Framers of Constitution as it recognized presence of various European ethnic groups and existing Native American languages); see also Harris v. Rivera Cruz, 710 F. Supp. 29, 31 (D.P.R. 1989) (stating that there is no official language in United States “and if prudence and wisdom . . . prevail there never shall be . . .”). But see Soberal-Perez v. Heckler, 717 F.2d 36, 42 (2d Cir. 1983) (mentioning that English is national language of United States); Dalomba v. Director of the Div. of Employment Sec., 337 N.E.2d 687, 689 (Mass. 1975) (asserting that official language in United States is English); Alfonso v. Board of Review, Dep't of Labor and Indus., 444 A.2d 1075, 1077 (N.J. Sup. Ct. 1982) (claiming that English is “official language of this country and of this Commonwealth”). See generally Juan F. Perea, Official English Laws Demography and Distrust: An Essay on American Languages, Cultural Pluralism and Official English, 77 MINN. L. REV. 269, 271-81 (1992) (noting that there is no official language in United States).
³ See 1 Heinz Kloss, Das Volksgruppenrecht in Den Vereinigten Staaten Von America 78 (1940) (reprinting Continental Congress entries reflecting English, German, and French editions of Articles of Confederation); JOURNALS OF THE CONTINENTAL CONGRESS, supra note 2, at 1035 (noting Extracts from Votes and Proceedings issued by 1774 Continental Congress ordered published in English and German); see also Yniguez v. Arizonans for Official English, 69 F.3d 920, 928 n.10 (citation omitted) (stating that “early political leaders recognized the close connection between language and religious/cultural freedoms, and they preferred to refrain from proposing legislation which might be construed as a restriction on these freedoms”); Nancy F. Conklin & Margaret A. Louie, A Host of Tongues: Language Communities in the United States 3-6 (1983) (specifying linguistic demographics of Colonial America); Perea, supra note 2, at 271-81 (noting existence of official Articles of Confederation by Continental Congress in German).
⁴ See N.Y. TIMES, Nov. 5, 1944, at 38 (noting statement by President Franklin D. Roosevelt where it was recognized that Americans are immigrants or descendants of immigrants); see also 22 JOURNALS OF THE CONTINENTAL CONGRESS 338-40 (Gaillard Hunt ed., 1914) (demonstrating that committee named by John Hancock proposed Great Seal on August 20, 1776 for newly formed United States reflecting Framers’ recognition of emerging American cultural pluralism); Horace M. Kallen, Cultural Pluralism and the American Idea Page (1956) (noting that proposed seal was to be engraved symbolizing different origins of Americans); Heinz Kloss, The American Bilingual Tradition 11-12 (1977) (stating that, in addition to English, German, French and Spanish were principal European languages spoken in what is now continental United States, German being predominant of three).
been a growing trend to pass legislation on both the state and federal levels, declaring English the official governmental language. On the federal level, proposals to make English the official language generally have been unsuccessful. On the state level, however, many states have passed official-English legislation into law. Language restrictions and discriminatory prototype legislation aimed at non-English speaking Americans are the unfortunate repercussions of an intolerant majority of the population.

The imposition of English as the official language of the United States has invoked much debate in both the political and judicial arenas. While political figures fight to pass official-English legislation, courts are in the midst of deciding whether this legislation

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7 See ALA. CONST. amend. 509; ARIZ. CONST. art. XXVIII (1988); ARK. CODE. ANN. § 1-4-117 (Michie 1997); CAL. CONST. art. III, § 6 (1986); COLo. CONST. art. III, § 30a; FLA. CONST. art. II, § 9 (1986); GA. LAws 529; HAW. CONST. art. XV, § 4; 5 Ill. COMP. STAT. 460/20 (West 1997); IND. CODE ANN. § 1-2-10-1 (Michie 1997); KY. REV. STAT. ANN. § 2.013 (Michie 1997); MISS. CODE ANN. § 3-3-31 (1997); NEB. CONST. art. 1, § 27; N.C. GEN. STAT. § 145-12 (1997); N.D. CENT. CODE § 54-02-13 (1997); S.C. CODE ANN. § 1-1-696 (Law Co-op. 1997); TENN. CODE ANN. § 4-1-404 (1997); VA. CODE ANN. § 22.1-212.1 (Michie 1997).


transgresses constitutional boundaries. These laws have been challenged on both First and Fourteenth Amendment grounds.

Recently, the Supreme Court of the United States vacated, based on standing, a Ninth Circuit decision which struck down an amendment to the Arizona Constitution declaring English the official language of that state. This Note, however, will not focus on the Supreme Court decision but instead will discuss the Ninth Circuit's decision, since the Supreme Court's decision was based on procedural grounds. In *Yniguez v. Arizonans For Official English*, the United States Court of Appeals found that official English legislation was inconsistent with the First Amendment. The infringement of constitutional rights based on equal protection, due process and Title VII of the Civil Rights Act of 1964, under the rubric of "English-only rules" were, however, left unanswered by the *Yniguez* court.

This Note maintains that in a society as diverse as ours, tolerance for dissimilarity should be at its apogee, and thus justifica-

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10 See H.R.J. Res. 81, supra note 6 (attempting to establish English as official language); S.J. Res. 13, supra note 9 (attempting to establish English as official language); see also *Yniguez v. Arizonans For Official English*, 69 F.3d 920, 920 (9th Cir. 1995) (discussing constitutionality of official English legislation), vacated sub nom., *Arizonians For Official English v. Arizona*, 117 S. Ct. 1055 (1997).

11 See U.S. Const. amend. I. The First Amendment states in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Id.

12 See U.S. Const. amend. XIV.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Id.

13 See Ariz. Const. amend. XVIII (stating in part that "... all government functions ... [including state, government officials, employees, etc.] must ... act in English and no other language"); see also *Yniguez*, 69 F.3d at 934-35 (finding that Article XVIII "chills" speech).

14 69 F.3d 920, 939 (9th Cir. 1995).

15 See id. The court held the Arizona provision making English the official state language and prohibiting all government employees from speaking languages other than English in performing their official duties violated the First Amendment. *Id.* In *Yniguez*, a Spanish speaking state employee who handled medical malpractice claims for claimants who did not speak English, was forced to refrain from speaking Spanish to Spanish speaking clients for fear of losing her job. *Id.* She then brought an action against the state seeking an injunction to prevent the enforcement of this legislation and seeking a declaration that the amendment was unconstitutional based on the First and Fourteenth Amendments. *Id.; see also Cohen v. California*, 403 U.S. 15, 17 (1971). The Court undertook a thorough evaluation of freedom of speech. *Id.*


17 See *Yniguez*, 69 F.3d at 936 (noting that other languages are spoken not of pure capriciousness but of genuine need to convey information to non-English speaking individuals).
tions set forth in opposition to non-English languages are innocuous. Part One examines both the motivations behind official-English legislation and the legitimate state objectives to be achieved by the legislation. Part Two discusses Yniguez as set forth by the Ninth Circuit Court of Appeals. Part Three explores the rationale used by the Yniguez court in finding official-English legislation unconstitutional based on First Amendment grounds with particular focus on the intrusion of employee and individual rights. Part Four analyzes official-English legislation in the context of equal protection. Part Five asserts that the passage of English only legislation inherently violates due process rights. Finally, this Note concludes that official-English legislation could not be considered constitutional either on First Amendment, Fourteenth Amendment or Title VII grounds.

I. OFFICIAL ENGLISH JUSTIFICATIONS

Proponents of official-English legislation use national unity and unfounded fears of undermining national security as rationales to legitimize their efforts. These arguments contend that language differences encourage divisiveness among people in this

18 See Ronald Takaki & Linda Chavez, Are the Multicultural Experiments Working? Two Views, WASH. POST EDUC. REV., Aug 1, 1993, at 1 (asserting that demands for multilingual instruction inculcates separatism); see also William G. Milan, Comment, Undressing the English Language Amendment, 60 INT'L J. SOC. LANGUAGE 93, 95 (1986) (asserting that greatest myth is that there is necessary connection between speaking English and being American); William C. Anderson, The Power of Language: A Call for a Common Language, ST. PETERSBURG TIMES, May 23, 1993, at 1D (stating that if English is not adopted as official language nationwide divisiveness will continue to grow). But cf. Donna M. Greenspan, Symposium, Twenty-Five Years and Counting: Florida Constitution of 1968 Part I: Individual Rights, Florida's Official English Amendment, 18 NOVA L. REV. 891, 892 (1994) (supporting English only legislation for reasons other than national unity, such as curtailing bilingual classes, or purely symbolic reasons).

19 See Anthony J. Califa, Declaring English the Official Language: Prejudice Spoken Here, 24 HARV. C.R.-C.L. L. REV. 293 (1989) (stating that hidden inside velvet glove of national unity is iron fist of prejudice and discrimination); see also Meyer v. Nebraska, 262 U.S. 390, 400-01 (1923) (prohibiting teaching of any subject in language other than English arose out of concerns for national security and animosity towards foreigners and bore no reasonable relation to any state aim, thereby depriving teachers and parents of liberty without due process of law); Yniguez, 69 F.3d at 944 (stating justifications such as national unity, political stability, promoting common language); Perea, supra note 2, at 272 (discussing that language and national unity are intertwined); cf. Korematsu v. United States, 323 U.S. 214, 217-19 (1944) (holding that curfew orders and forced relocation applicable only to persons of Japanese ancestry were not violative of equal protection as "pressing public necessity may sometimes justify racial restrictions").
Proponents believe that linguistic diversity may lead to problems of separatism and conflicts among citizenry much like the "Canadian experience," where language differences have been blamed for the growing divisiveness throughout the country. Proponents further contest that official-English legislation must be enacted in order to encourage non-English speaking residents to learn the English language. This is based on the myth that non-English speaking citizens choose to remain linguistically ignorant. Many, for whom English is not

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21 See Orlando Patterson, Black Like All of Us, WASH. POST, Feb. 7, 1993, at C2 (suggesting that multiculturism will lead to "balkanization"); see also Jacques Brossard, Le droit du peuple quebecois a l'autodetermination et à l'indépendence, 8 ETUDES INTERNATIONALES 151, 153-54 (1977) (describing first attempt at separation commencing with election of Parti Quebecois in Quebec in 1976 until narrow defeat of "l'association-souveraineté" referendum in 1980); Califa, supra note 19, at 293 (citing differences in Canada between French speaking Quebec and English speaking Canada and citing Belgium and Sri Lanka as nations divided as result of language multilinguality); Patricia Chisolm, Weathering the Storm in Canada, MACLEAN'S, Sept. 28, 1992 (describing Quebec's imminent attempts at secession as result of worsened cultural and linguistic conflicts between Quebec and rest of Canada.

22 See, e.g., C. SCHMID & R. BRISCHETTO, SOCIAL BASIS OF SUPPORT AND OPPOSITION FOR THE ENGLISH ONLY MOVEMENT AMONG ANGLOS AND LATINOS 2 (1989). Study data shows that there is wide support for English language legislation among voters. Id. at 20. This stems from "a general perception that [the United States] is losing ground." Id. This reflects a response that prompts the creation of "mythical and simplistic stereotyped scapegoats." Id. at 20.; cf. Jack Citrin et al., The "Official English" Movement and the Symbolic Politics of Language in the United States, 43 W. Pol. Q. 535, 548-58 (1990). In addition to "anti-minority" sentiments, support for "Official English" provisions stems from positive attachment to symbols of nationhood. Id.

23 See Alfonso v. Board of Review, Dep't of Labor and Indus., 444 A.2d 1075, 1083 (N.J. 1982) (Wilentz, C.J., dissenting) (stating that providing translations was no threat to national unity or English language); Califa, supra note 19, at 322 (stating that English is universal language); Perea, supra note 2, at 278 (noting that during times of national stress Americans lash out at those who are different); see also John K Gamble & Charlotte Ku, Choice of Language in Bilateral Treaties: Fifty Years of Changing State Practice, 3 INT'L & COMP. L. REV. 233, 238 (1993) (explaining that Latin was "lingua franca" of most treaties until eighteenth century, eventually replaced by French through this century, which was overtaken by English as "lingua franca" for international treaties). See generally France: Language Defenders Take Crusade to Cyberspace, OTTAWA CITIZEN, Mar. 11, 1996, at C10 (noting English dominates computer world-wide net).

24 See Irritation and Intrigue, supra note 5, at 804 (recognizing utility of bilingual education and positing that in situations, such as posted road signs, requiring that English be spoken is public safety interest).

25 See Alfonso, 444 A.2d at 1083 (Wilentz, C.J., dissenting) (stating that non-English speaking Americans do not need added incentive, because they are continuously reminded of their minority status); see also Greenspan, supra note 18, at 913, (citation omitted) (stating that it is "a socioeconomic imperative for United States immigrants to learn English");
their primary language, however, are cognizant that speaking English is a crucial step for successful communication in America.26 Non-English speaking citizens crowd bilingual classes that teach English as a second language.27 Thus, contentions that official-English will provide an incentive for non-English speaking citizens to learn the language are unsupported.28

Supporters of official-English legislation also claim that these laws will not affect American citizens because part of becoming an American citizen requires passing an exam which, in part, tests English literacy. It would appear that only illegal immigrants are adversely affected by English-only laws.29 These laws, however, may effectively discriminate against citizens. For example, a large population of Native American Indians, who communicate in their native language, would be adversely affected by this legislation. They, like other non-English speaking persons, are punished because these laws prohibit the government from communicating

cf. Pre-Cuban Miami Was a Good Place to Live, MIAMI HERALD, Oct. 15, 1990, at 8A (describing biases against Latino population in Miami). 26 See Califa, supra note 19, at 321 (stating that immigrants are cognizant that unless they speak English they will not reap some benefits of this country). See generally The Naturalization Act of 1906, ch. 3592, § 8, 34 Stat. 596, 599 (providing in pertinent part that "no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language"); Susan Headden et al., One Nation, One Language? Would Making English the Nation's Official Language Unite the Country or Divide it?: Only English Spoken Here, U.S. NEWS & WORLD REP., Sept. 25, 1995 (suggesting economic incentive of learning English). But cf. In re Rodriguez, 81 F. Supp. 337, 353 (W.D. Tex. 1897) (finding illiteracy in English and Spanish was not barrier for law abiding person of Mexican descent). 27 See Deborah Gastefreud Schuss, Speaking Volumes on Culture Immigrants' Children Find Roots to Past, BOSTON GLOBE, Nov. 2, 1997, at 6 (observing that Portuguese are one example of nationalities learning English as second language); see also Mensah Dean, English: To Make it Countries Official Language Foreign Majority is in Favor of Action, WASH. TIMES, Oct. 15, 1995, at C8 (discussing ESL programs and importance of speaking English); Patrick McDonnell, Learning the Language of Citizenship Immigrants: National Debate Spurs a Rush to Gain English and Civics Skills, L.A. TIMES, Aug. 3, 1996, at A1 (observing people of various nationalities flocking to English as Second Language classes); William Trombley, California Elections English-Only Proposition Kindles Minorities Fears, L.A. TIMES, Oct. 12, 1996, at 1 (stating immigrants want to learn English). But see Katherine L. O'Connor, An Overview of Illegal Immigration Along The United States Border, 4 J. INTL L. & PRAc. 585, 595 (stating that immigrants have no desire to assimilate or learn to speak English). 28 See Federal Limits, supra note 6, at 1345 (suggesting that increased government services in languages other than English reduces immigrants' incentive to learn language). But see Linda Chavez, Bilingual Education Gobbles Kids Taxes, USA TODAY, June 15, 1994, at A15 (contending that bilingual classes provide disincentive for students to learn English). 29 See Perea, supra note 2, at 332-40 (demonstrating development of requirements for United States citizenship, including ability to speak English); see also 8 U.S.C. § 1423 (1988) (requiring knowledge of English language for citizenship); Petition of Contreas, 100 F. Supp. 419, 419 (S.D. Cal. 1961) (requiring testimony in English for citizenship); In re Swenson, 61 F. Supp. 376 (D. Or. 1945) (requiring capacity to speak English).
with its citizens in any language other than English. Additionally, taking away the rights of legal or illegal immigrants is violative of the Equal Protection Clause of the Fourteenth Amendment. This clause states in part that "every person" is protected by the Constitution, not just every citizen. It is here noted that imposing linguistic conformity through official-English language laws, rather than perpetuating unity, might actually engender hostility and social unrest.\(^30\)

II. THE NINTH CIRCUIT COURT OF APPEALS AND YNIGUEZ

In *Yniguez v. Arizonans for Official English*,\(^31\) the Ninth Circuit struck down an amendment to the Arizona Constitution commanding that the government "act" in English only.\(^32\) This case involved a state employee, who brought an action against several defendants, including the State of Arizona.\(^33\) Yniguez, a Latina, working in a division which processed malpractice claims against the state, spoke to monolingual claimants in Spanish while performing her duties.\(^34\) Subsequent to the passage of Article XVIII, Yniguez refrained from speaking in any language other than English for fear of being sanctioned.\(^35\) Yniguez instituted an action claiming that the legislation unconstitutionally restricted freedom of speech, abrogated individual rights to due process and equal protection of the law.\(^36\) Ignoring arguments of constitutional infringement based on either equal protection or due process grounds, the court restricted its holding to a First Amendment analysis.\(^37\) The Ninth Circuit found the Arizona amendment over-

\(^{30}\) See, e.g., Denis Baron, *The English-Only Question* 56, 180 (1990) (stating that there are countereffects to legitimate state interests such as national dissolution and exacerbation of racial tensions between non-English speaking and English speaking individuals).

\(^{31}\) 69 F.3d 920 (9th Cir. 1995).

\(^{32}\) Id. at 947 (holding that Arizona’s Article XVIII unconstitutional).

\(^{33}\) See id. at 925. The named defendants included the State of Arizona, Arizona Governor Rose Mofford, Arizona Attorney General Robert Corbin, and the Director of the Arizona Department of Administration Catherine Eden. Id.

\(^{34}\) See id.

\(^{35}\) See id.

\(^{36}\) See id. at 928 (noting that Arizona Attorney General proffered limited reading of Article XVIII, implying that act only means “official acts” and that it reflects government’s desire to allow speaking language other than English when it facilitates governmental operations).

\(^{37}\) See id. at 925 n.7 (noting court did not reach other constitutional arguments once it found First Amendment transgression); see also Rutan v. Republican Party of Illinois, 497 U.S. 62, 72 (1990) (upholding First Amendment challenge to infringement of public em-
broad on its face because it limitlessly restricted speech in numerous instances. In Yniguez, the court found that the Arizona amendment limited speech overbroadly because official-English laws have various implications; they not only restrict employees' freedom of speech but also restrict the rights of non-English speaking individuals to receive information. The Yniguez court noted that Arizona's prohibition of governmental use of non-English languages would yield absurd results. For example, such a prohibition would prevent state universities from issuing diplomas in Latin, prevent a rabbi from saying Mazel Tov at a wedding, and prevent legislators from speaking to their constituents in a language other than English.

III. FIRST AMENDMENT ARGUMENT

The First Amendment to the United States Constitution prohibits governmental restrictions on speech. To constitutionally restrict freedom of speech, there must be a narrowly tailored statute which promotes a compelling governmental interest.

A. Content v. Conduct and the O'Brien Test

Conduct based legislation is generally deemed constitutional whereas punishing "content," "expression" or "pure speech" is deemed unconstitutional. Proponents of official-English legislation assert that the restriction on speech is conduct-based rather than employee's rights by government); Perry v. Sinderman, 408 U.S. 593, 597 (1972) (stating that government can not deny benefit because speech was protected).

See Yniguez, 69 F.3d at 932-947 (holding on several independent grounds under First Amendment that Arizona Official English statute was facially overbroad). But see Brown v. Glines, 444 U.S. 348, 354 (1980) (finding substantial governmental interest and therefore no violation of First Amendment).

See Yniguez, 69 F.3d at 923.

See id. at 931 (giving examples of possible results under Article XVIII).

See id. at 932. See, e.g., Saucedo v. Brothers Well Serv., Inc., 464 F. Supp. 919, 921 (S.D. Tex. 1979) (holding that blanket prohibition on uses of languages other than English was overbroad as applied to "a casual Spanish phrase in a context which caused no failure of communication and no danger").

See id. at 923 (noting severity of repressing "foreign" language use); Id. at 935 (stating that "[[language is by definition speech, and the regulation of any language is the regulation of speech]]").

See, e.g., United States v. O'Brien, 391 U.S. 367, 377 (1968) (stating there must be important governmental interest for law to be constitutional).

See, e.g., Texas v. Johnson, 491 U.S. 397, 397 (1989) (concerning flag burning as means of expression and speech); Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 503 (1969) (noting that wearing arm band was speech and expression); O'Brien, 391 U.S. 367 (noting that government restriction of burning draft card was constitutional, and did not abrogate free speech rights).
than content-based. In analyzing this distinction between content-based and conduct-based legislation, courts examine the purpose behind the speech or conduct. If what is being conveyed is a message, then the actions or speech are content-based and will be safeguarded under the First Amendment. Official-English legislation is not conduct-based because communication through speech is inherently self expression. As such, restrictions on language use are considered restrictions on "content-based speech." While it is argued that selectively choosing to speak a language should be deemed "conduct," the court has rejected this reasoning, rendering it clear that choice of language statutes are content-based legislation.

1. The O'Brien Test

In United States v. O'Brien, a test was established to evaluate restrictions on "expression" under the First Amendment. The test determines whether such governmental restrictions on "freedom of expression" are permissive under the First Amendment. Thus a state may be permitted to pass legislation that infringes on individual rights if: (i) it furthers an important or substantial governmental interest; (ii) that interest is unrelated to the suppression of free expression; and (iii) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

2. Yniguez and O'Brien

The United States Court of Appeals for the Ninth Circuit held that the Arizona Amendment failed to meet the requirements of

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45 See Yniguez, 69 F.3d at 934 (noting that proponents make distinction between pure speech and expressive conduct).
46 See id.
47 See, e.g., Cohen v. California, 403 U.S. 15, 18-23 (1971) (noting that profane statements by individual were not conduct, but content based, and such speech was protected under First Amendment).
48 See, e.g., O'Brien, 391 U.S. at 388 (stating that burning draft card was conduct and therefore criminalization was constitutional).
49 See Yniguez, 69 F.3d at 934-935.
50 See Texas v. Johnson, 491 U.S. 397, 404 (1974) (explaining test to determine whether speech existed was whether "an intent to convey a message was present") (quoting Spence v. Washington, 418 U.S. 405, 410-11 (1970))).
52 O'Brien, 391 U.S. at 377 (setting forth test for expressive conduct).
53 See id.
54 Id.
the *O'Brien* test. The court in *Yniguez* found that an important or substantial interest was not being promoted. While the government claimed the goals of the statute were efficiency and effectiveness, it was completely inefficient and ineffective for an employee to wait to get an interpreter rather than speak to individuals in their native language. Furthermore, the court concluded that excluding speech in any language but English was not a sufficiently narrowly tailored means of establishing state interests.

**B. Overbreadth**

The doctrine of overbreadth is invoked when restrictions on individual speech will undermine the rights of third parties. Legislation will be considered overbroad if there is a danger that a constitutional infirmity exists. Arizona’s Article XVIII is facially overbroad because it not only prevented *Yniguez* from speaking in languages other than English, but it violates the rights of numerous individuals to receive information.

1. **Employee Rights**

In *Yniguez*, proponents attempted to distinguish between governmental employees and individuals. These distinctions, however, are dispositive because, despite the context, there is an en-
croachment on First Amendment rights. Courts have held that the government is allowed more latitude when dealing with employees' freedom of speech rights than with individual freedom of speech rights. Thus, when acting in a "master-servant" relationship, the state's interest in attaining its goals efficiently and effectively are magnified.

Additionally, advocates for official English legislation attempt to distinguish between speech of public and private concern. Although speech of public concern is afforded greater constitutional protection than speech of private concern, employees cannot be admonished for speaking on matters not relating to their employment because private speech is also constitutionally protected. Restrictions on speech, whether they be of a public or private nature, may not be arbitrarily imposed. In order to restrict speech of public concern, the government must have a compelling interest, other than mere efficiency. As noted in Yniguez, official-

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63 See id. at 940 (explaining that although there are different approaches concerning controlling speech of government and private employers, these distinctions were irrelevant in determining case outcome).

64 See Waters v. Churchill, 511 U.S. 661, 670 (1994) (plurality opinion) (noting less restrictive standards are placed for public employees); see also Connick v. Myers, 461 U.S. 138, 147 (1983) (mentioning right of government in limiting employee speech); Pickering v. Board of Educ. of Township High Sch. Dist., 391 U.S. 563, 568 (1968) (discussing how government must meet requirements of test to impose restrictions on employees' speech). See, e.g., Garcia v. Gloor, 618 F.2d 264, 270-71 (5th Cir. 1980) (upholding dismissal of bilingual salesman because he was bilingual and chose to violate rule).

65 See Waters, 511 U.S. at 662 (mentioning consideration given as enlarging state interests); see also Connick, 461 U.S. at 146-47 (regarding First Amendment as protecting employee's speech if it concerns public matters); Yniguez, 69 F.3d at 938 (citing Martin v. Parrish, 805 F.2d 538, 584 (5th Cir. 1986)) (noting that government is entitled to restrict employee speech in some areas).

66 See Waters, 511 U.S. at 663 (holding whether content of employee speech is protected under First Amendment depends on whether speech was matter of public or private concern); Connick, 461 U.S. at 146-147 (holding that where content of employee speech was not of public concern, then matter left to discretion of employer); see also Rankin v. McPherson, 483 U.S. 378, 384 (1987) (expressing that private speech is protected by First Amendment).

67 See Yniguez, 69 F.3d at 938 (holding that amendment to Arizona Constitution mandating use of English by "all government officials and employees during performance of government business" violated First Amendment free speech protections). See, e.g., Rust v. Sullivan, 500 U.S. 173, 193 (1991) (acknowledging that government has expansive powers in arena of government "acts" yet power is not subject to exceptions).

68 See Waters, 511 U.S. at 673. "A government employee, like any citizen, may have a strong, legitimate interest in speaking out on public matters. In many such situations, the government may have to make a substantial showing that the speech is, in fact, likely to be disruptive before it may be punished." Id.
English hinders, rather than enhances, the efficiency and effectiveness of governmental business.\(^{69}\)

2. Right to Receive Information - National Treasury

The First Amendment protects "freedom of discussion" which necessarily implies protection not only for the speaker and provider of information but also for the audience and the consumer of information.\(^{70}\) Proponents of official-English laws suggest that although a barrier is erected by a failure to provide non-English speaking individuals with information in their respective language, there is no affirmative right to receive information in the language of your choice.\(^{71}\) As mentioned in *United States v. National Treasury Employees Union*,\(^{72}\) the right to receive information is included within the freedom of speech guaranteed by the First Amendment.\(^{73}\) Some courts have hesitated to hold that there are affirmative rights to receive information.\(^{74}\) The right to receive information, however, is inextricably tied to both the freedom of speech and due process guarantees, and policies of non-dissemination of information to non-English speaking individuals in other languages violates both the First and Fourteenth Amendments.\(^{75}\) It is also argued that, while there is no affirmative right, at the very least, there is a "negative" right to decline the receipt of information. Thus, Article XVIII of the Arizona Constitution, by failing to provide non-English speaking individuals with information

\(^{69}\) See *Yniguez*, 69 F.3d at 941 (providing examples of how Article XVIII adversely affects government business).


\(^{71}\) See *Guadalupe Org. Inc. v. Tempe Elementary Sch. Dist. No.3*, 587 F.2d 1022, 1024 (9th Cir. 1978) (holding there is no right to bilingual education); see also *Carmona v. Sheffield*, 475 F.2d 738, 739 (9th Cir. 1973) (deciding there is no right to notices in Spanish); *Frontera v. Sindell*, 522 F.2d 1215, 1216 (6th Cir. 1975) (stating there is no right to take civil service exam in Spanish).


\(^{73}\) See *id.* at 455 (expressing right of public to read and hear government statement by employees); *Board of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 866-68 (1982) (discussing role of First Amendment in fostering individual self-expression and in affording public access to discussions, debates, dissemination of information and ideas); see also *Virginia State Bd. of Pharmacy*, 425 U.S. at 756-57 (noting that First Amendment protects receiver of information).

\(^{74}\) See, e.g., *DeShaney v. Winnebago County Dep't of Soc. Serv.*, 489 U.S. 189, 196-197 (1989) (discounting proposition that there are "affirmative obligations" imposed on governments).

\(^{75}\) See *Stanley v. Georgia*, 394 U.S. 557, 562 (1969) (noting constitutional protection of right to receive information); *Pico*, 457 U.S. at 86 (stating there is right to receive ideas necessary to rights of free speech, press and political freedom).
in their respective languages, erects a barrier to the receipt of information.\textsuperscript{76} The provision serves to exclude a part of the population from participating in the political process and democracy in general.\textsuperscript{77}

3. Title VII

Title VII of the Civil Rights Act of 1964\textsuperscript{78} is a broad remedial statute intended to strike at many forms of discrimination which may not be actionable under the Fourteenth Amendment.\textsuperscript{79} The objective behind the passage of Title VII was to eliminate discrimination in the workplace.\textsuperscript{80} Title VII prohibits discrimination based on national origin.\textsuperscript{81} The Equal Employment Opportunity Commission (EEOC) has promulgated instructions on what is considered national origin discrimination.\textsuperscript{82} Official-English laws have been interpreted by the EEOC and the Supreme Court to be a form of national origin discrimination.\textsuperscript{83} Because of this, many argue that official-English laws are in violation of Title VII.\textsuperscript{84} The EEOC has specifically interpreted English-only laws, which require that English be the only language spoken in the workplace, as violations of Title VII.\textsuperscript{85} Title VII, however, is not transgressed when the law limits the speech of other languages to breaks and

\textsuperscript{76} See Yniguez v. Arizonans for Official English, 69 F.3d 920, 936 (9th Cir. 1995).
\textsuperscript{77} See Yniguez, 69 F.3d at 936.
\textsuperscript{78} 42 U.S.C. § 2000e-2 (a) (1) (Supp. V 1993) (making it unlawful for employer “to discriminate against any individual with respect to his . . . conditions, or privileges of employment, because of such individual’s race, color, religion, sex or national origin”).
\textsuperscript{80} See generally Irritation and Intrigue, supra note 5, at 795 (mentioning how Title VII has been utilized to protect minorities in work arena).
\textsuperscript{82} See 29 C.F.R. § 1606.1 (1993) (stating that national origin discrimination is “the denial of equal employment opportunity because of an individual’s, or his or her ancestor’s, place of origin, or because an individual has the physical, cultural or linguistic characteristics of a national origin group”); see also 29 C.F.R. § 1606.7 (a) (1991) (mentioning that “prohibiting employees at all time in the workplace, from speaking their primary language . . . disadvantages an individual’s employment opportunities on the basis of national origin”). See, e.g., Garcia v. Gloor, 618 F.2d 264, 270 (5th Cir. 1980) (discussing importance of individual’s language and ties to national and racial identity).
\textsuperscript{83} See Hernandez v. New York, 500 U.S. 352, 353 (1991) (plurality opinion) (noting that “proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis”).
\textsuperscript{84} See Garcia v. Spun Steak, 998 F.2d 1480, 1480 (9th Cir. 1993) (allowing employer to pass English only rule without showing any business necessity).
\textsuperscript{85} See Storper, supra note 81, at 619-20 (explaining that EEOC balances language restriction with possible effect of national origin discrimination).
lunch, providing the employer has demonstrated a business necessity of having English be the only spoken language, particularly when in contact with monolingual customers.\textsuperscript{86} It is submitted that the Arizona Amendment is in violation of Title VII because it blanketly disallows the speech of any language but English in any situation. The author further argues, that were this Amendment to limit the speech of other languages at specified times, it would nevertheless be in violation of Title VII because the state has not demonstrated a business necessity that only English be spoken in the workplace. In fact, as conceded by the state, it was actually more efficient to allow employees to speak to clients and customers in that person's native language.\textsuperscript{87}

IV. EQUAL PROTECTION

One of the goals of the Fourteenth Amendment is to eliminate discrimination.\textsuperscript{88} This goal is attained by deeming discrimination based on race,\textsuperscript{89} gender,\textsuperscript{90} or national origin\textsuperscript{91} unconstitutional.

\textsuperscript{86} See generally United States v. N.L. Indus. Inc., 479 F.2d 354, 364-66 (8th Cir. 1973) (mentioning need for there to be business necessity).

\textsuperscript{87} See Yniguez v. Arizonans for Official English, 69 F.3d 920, 924 n.4 (9th Cir. 1995) (agreeing that employee's use of Spanish was efficient).

\textsuperscript{88} See Palmore v. Sidoti, 466 U.S. 429, 432 (1984) (holding that core premise of Fourteenth Amendment is to eliminate all government imposed discrimination).

\textsuperscript{89} See Powers v. Ohio, 199 U.S. 400, 410 (1991) (holding that under Equal Protection Clause, criminal defendants may object to race-based exclusions of jurors even though they are not of same race); see also Loving v. Virginia, 388 U.S. 1, 12 (1967) (holding that Virginia statute prohibiting marriage between whites and non-whites violated Equal Protection Clause); McLaughlin v. Florida, 379 U.S. 184, 194-195 (1964) (holding race as suspect class); Bolling v. Sharpe, 347 U.S. 497, 497 (1954) (determining that racial segregation of District of Columbia Schools was unconstitutional). See generally Batson v. Kentucky, 476 U.S. 79, 84 (1986) (stating that use of peremptory challenges merely for race based issues was unconstitutional under Equal Protection Clause of Fourteenth Amendment).

\textsuperscript{90} See Craig v. Boren, 429 U.S. 190, 199 (1976) (holding gender-based classifications must serve important governmental aims and must be substantially related to achieving such aims).

\textsuperscript{91} See Hernandez v. Texas, 347 U.S. 475, 481 (1954) (holding national origin suspect class, discriminating based on surnames, was same as discrimination based on national origin); see also Oxamo v. California, 332 U.S. 633, 644-646 (1948) (ruling that state statute prohibiting ownership of land by son of Chinese immigrant was unconstitutional); Hirabayashi v. United States, 320 U.S. 81, 100 (1943) (recognizing that legislative classifications based on ancestry were subject to strict scrutiny but were upheld because of nations interest at wartime); Craino v. University of Okla. Bd. of Regents, 750 F.2d 815, 819 (10th Cir. 1984) (noting demotion based on accent is disallowed as discrimination based on national origin); Berke v. Ohio Dept' of Public Welfare, 628 F.2d 980, 981 (6th Cir. 1980) (discrimination based on accent is unconstitutional because it was based on national origin).
This goal has been partly successful in reigning in discrimination through substantive due process and equal protection analysis.\textsuperscript{92} Nativism,\textsuperscript{93} a counterforce continuing to grow in reaction to an increasing number of minorities asserting constitutional rights, is currently being used to retard linguistic diversity.\textsuperscript{94} While nativism itself is not entirely negative, problems do arise when, under its cloak, the majority tramples upon individual rights in favor of reasserting its sociocultural, political, and linguistic dominance.\textsuperscript{95} The Constitution protects every individual’s rights regardless of popular trends.\textsuperscript{96} “Although the Constitution may not control private prejudices because they are beyond the law’s reach, the law cannot, directly or indirectly, give them effect.”\textsuperscript{97} States in the past have attempted to restrict the use of foreign languages.\textsuperscript{98} Courts have found these endeavors unconstitutional based on equal protection grounds.\textsuperscript{99} Reasons given by state legislatures in support of official-English legislation do not pass constitutional


\textsuperscript{93} See \textit{WEBSTER’S THIRD NEW INT’L DICTIONARY}, UNABRIDGED 1817 (1981) (defining nativism as “the practice or policy of favoring native-born citizens as distinguished from immigrants”).


\textsuperscript{95} See Joshua Fishman, \textit{Language an Ethnicity}, in \textit{LANGUAGE, ETHNICITY AND INTERGROUP RELATIONS} 133-34 (Howard Giles ed., 1977) (asserting that English only movement stems from “anglo-oriented middle class Americans” worried about their loss of social and political power); see also Richard L. Berke, \textit{Politicians Discovering an Issue: Immigration}, N.Y. TIMES, Mar. 8, 1994, at A19 (discussing politicians using immigrants as scapegoats for economic and social problems). But see Puerto Rican Org. for Political Action v. Kusper, 490 F.2d. 575, 577 (7th Cir. 1973) (noting that official English legislation has no real effect, but is purely symbolic).

\textsuperscript{96} See \textit{Irritation and Intrigue}, supra note 5, at 808 (stating that English movement trumps linguistic minorities rights).


\textsuperscript{98} See Meyer v. Nebraska, 262 U.S. 390, 403 (1923) (finding statute prohibiting teaching in language other than English unconstitutional); see also Farrington v. Tokushige, 273 U.S. 284, 298 (1927) (invalidating statute prohibiting use of foreign language); Yu Cong Eng v. Trinidad, 271 U.S. 500, 527-28 (1926) (determining that state restriction on maintaining business records in foreign language unconstitutional); Bartels v. Iowa, 262 U.S. 404, 409 (1923) (invalidating provision prohibiting teaching of language other than English).

\textsuperscript{99} See \textit{Farrington}, 273 U.S. at 298 (finding it unconstitutional to restrict languages other than English from being used). But see Garcia v. Spun Steak Co., 13 F.3d 296, 298 (9th Cir. 1993) (Reinhardt, J., dissenting) (discussing that English only laws appear to be form of national origin discrimination).
muster,' because these reasons are neither legitimate nor compelling state interests. In *Meyer v. Nebraska,* the seminal language case, it was held that the Constitution shelters the liberty interests of parents to employ teachers to teach children in languages other than English. This case, like many others of its time, were decided on substantive due process grounds. Modern day analysis has veered from a substantive due process rationale in this area, instead utilizing an equal protection rationale under the Fourteenth Amendment.

A. The Three-Tiered Analysis

The United States Supreme Court has established three standards of review to analyze claims arising under the Fourteenth Amendment. Strict scrutiny, heightened scrutiny, and rational basis review.  

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100 See Califa, supra note 19, at 331-46 (stating that these laws are unconstitutional under all but rational basis review).
101 See generally Secretary of State of Md. v. Joseph H. Munson Co., 467 U.S. 947, 968 (noting that imprecise methods of achieving governmental interests are unconstitutional).
102 262 U.S. 390 (1923).
103 See id. at 402 (stating that legislature could not impose such restrictions without doing violence to both letter and spirit of Constitution); Bartels v. Iowa, 262 U.S. 404, 409 (1923) (striking down statutes in Ohio and Iowa requiring English language as medium of instruction in secular schools); see also Whitney v. California, 274 U.S. 357, 373 (1927) (finding that rights of free speech and right to assemble are fundamental rights incorporated under Fourteenth Amendment); Farrington v. Tokushige, 273 U.S. 284, 298 (1927) (invalidating Hawaiian territorial statute that imposed stringent regulation upon foreign language schools); Gitlow v. New York, 268 U.S. 652, 666 (1925) (stating that freedom of speech and press are among liberties protected against impairment by states); Pierce v. Society of Sisters, 268 U.S. 510, 534 (1925) (holding that Fourteenth Amendment prevented Oregon from requiring children of certain age to attend public school).
104 See *Meyer v. Nebraska,* 262 U.S. 390, 398 (1923) (discussing that during early part of twentieth century, equal protection was not desirable means used to attack discrimination, instead substantive due process was utilized); see also *Farrington,* 273 U.S. at 298-99 (holding Territorial Act severely restricting expression and substance of what was taught in foreign language schools); Bartels, 262 U.S. at 409 (finding that rule requiring that all school branches be taught in English was violation of equal protection).
105 See Hill v. Texas, 316 U.S. 400, 400 (1943) (recognizing that equal protection of laws must be followed by states); Yick Wo v. Hopkins, 118 U.S. 356, 356 (1886) (stating that Equal Protection Clause is used to protect all people). See generally *Takahashi v. Fish & Game Comm'n,* 334 U.S. 410, 420 (1948) (including aliens as protected under Equal Protection Clause).
107 See *Cleburne,* 473 U.S. at 440 (citation omitted) (reasoning that strict scrutiny finds classification of statute by race, alienage, or national origin is seldom relevant to achieve legitimate state interest); see also Greenspan, supra note 18, at 912 (discussing application of strict scrutiny). But see Korematsu v. United States, 323 U.S. 214, 216 (1944) (demonstrating instances where legislation was held constitutional, despite use of strict scrutiny.
ational basis review are used in determining whether individual rights have been violated under the Fourteenth Amendment. Each standard requires the application of a two-prong test, which balances governmental interests and the means used to attain stated goals. Strict scrutiny is utilized when a suspect classification is established in legislation based on race, alienage, national origin to protect against discrimination or when a fundamental right is abrogated. The Supreme Court stated in *Hernandez v. New York*, that official-English legislation creates a suspect classification because suppression of languages other than English has been equated to discrimination based on national origin. Recognizing language discrimination as national basis review are used in determining whether individual rights have been violated under the Fourteenth Amendment. Each standard requires the application of a two-prong test, which balances governmental interests and the means used to attain stated goals. Strict scrutiny is utilized when a suspect classification is established in legislation based on race, alienage, national origin to protect against discrimination or when a fundamental right is abrogated. The Supreme Court stated in *Hernandez v. New York*, that official-English legislation creates a suspect classification because suppression of languages other than English has been equated to discrimination based on national origin. Recognizing language discrimination as national basis review are used in determining whether individual rights have been violated under the Fourteenth Amendment. Each standard requires the application of a two-prong test, which balances governmental interests and the means used to attain stated goals. 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tional origin discrimination creates a suspect class, entitling courts to examine official-English legislation using strict scrutiny analysis.\textsuperscript{116}

The result of treating a classification as "suspect" is that the statute at issue would be subjected to strict scrutiny, the highest standard of constitutional review.\textsuperscript{117} Generally, once the court embarks on a strict scrutiny analysis, the government has an "uphill" battle in attempting to prove that the legislation is constitutional.\textsuperscript{118} The government must prove that the state interest is compelling and that the means used to achieve its interests are narrowly tailored to achieve the desired interest.\textsuperscript{119} Even if national unity, promotion of English, prevention of separatism and decreasing costs are found to be compelling governmental inter-

100-01 (1976) (applying strict scrutiny analysis to statute prohibiting aliens from civil service jobs); Garcia v. Spun Steak Co., 13 F.3d 296, 298 (9th Cir. 1993) (Reinhardt, J., dissenting from denial of rehearing en banc) (noting that "[l]anguage is intimately tied to national origin and cultural identity: its discriminatory suppression cannot be dismissed as an inconvenience . . ."); Daniel J. Garfield, Comment, Don't Box Me In: The Unconstitutionality of Amendment 2 and English-only Amendments, 89 Nw. U. L. Rev. 690, 692 (1995) (stating that English-only legislation discriminates against non-English speaking individuals). See generally Califa, supra note 19, at 347-48 (discussing history behind English-only movement); Perea, supra note 2, at 370-71 (reviewing American legal history's interaction with various languages).

116 See Federal Limits, supra note 6, at 1347 (arguing that official-English declarations, broadly applied, impermissibly single out suspect classes for discriminatory treatment, and are invalid attempts to block access to political process for language minorities); see also Califa, supra note 19, at 33 (arguing that official-English laws classify people by language similar to national origin and should also be accorded strict scrutiny standard of review). See, e.g., Graham v. Richardson, 403 U.S. 365, 372 (1971) (holding that state statute precluding aliens from receiving welfare is subject to strict scrutiny analysis); Hernandez, 347 U.S. at 480 (asserting that primary speakers of language are equivalent to national origin classifications and reviewed under strict scrutiny analysis).

117 See Hirabayashi v. United States, 320 U.S. 81, 100 (1943) (stating that if government can prove that there is compelling state interest and means used are least restrictive, legislation will be upheld under strict scrutiny analysis).

118 See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440-41 (1985) (stating that law will be held unconstitutional unless state can prove compelling interest); Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 723 (1982) (stating that party seeking to uphold statute under strict scrutiny analysis must carry burden of showing "exceedingly persuasive justification" for classification); Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256, 273 (1979) (recognizing that burden of proving justification falls on state); see also Rostker v. Goldberg, 453 U.S. 57, 79-80 (1981) (noting that courts serve as check on legislative and executive branches to confirm that Congress has not overstepped its boundaries with regard to Constitution).

119 See Cleburne, 473 U.S. at 440 (declaring that laws are subject to strict scrutiny and only upheld if suitably tailored to serve a compelling governmental interest); Mississippi Univ. for Women, 458 U.S. at 723 (suggesting that burden is met when classification serves "important governmental objectives and that discriminatory means employed" are substantially related to achievement of those objectives); see also Kramer v. Union Free Sch. Dist., 395 U.S. 621, 627 (1969) (stating that statutes are presumed unconstitutional under strict scrutiny analysis); McLaughlin v. Florida, 379 U.S. 184, 191 (1964) (stating that discriminating law bears heavy burden of justification).
ests, English-only statutes would nonetheless fail strict scrutiny review because the means undertaken to effectuate those interests are not narrowly tailored.  \( ^{120} \)

English-only laws also violate individual fundamental rights, which require strict scrutiny analysis, because these laws infringe upon the right to vote.  \( ^{121} \) The right to vote is frustrated under the guise of official English legislation which allows for only single-language voting.  \( ^{122} \) The Voting Rights Act  \( ^{123} \) states that "[n]o voting qualification or prerequisite to voting . . . shall be . . . applied by any state or political subdivision to deny or abridge the right of any citizen to vote because he is a member of a language minority group."  \( ^{124} \) Furthermore, an individual cannot be reasonably expected to exercise her right to vote when she does not comprehend what the procedure entails.  \( ^{125} \)

Infringement of the right to vote is particularly evident with Native Americans and American citizens residing in Puerto Rico.  \( ^{126} \) American Indians and Puerto Ricans are citizens of the

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\( ^{120} \) See Secretary of State of Md. v. Joseph H. Munson Co., 467 U.S. 947, 967-68 (1984) (explaining that if means chosen are not narrowly tailored legislation is rightfully subjected to constitutional attack); see also Perea, supra note 2, at 338 (asserting that there are less restrictive ways to provide incentive to learn English and achieve national unity than official-English legislation, among them increasing funding to English classes).

\( ^{121} \) See Montero v. Meyer, 696 F. Supp. 540, 549-550 (D. Col. 1988) (holding Hispanic voters demonstrated likelihood of irreparable injury under Voting Rights Act in connection with passage of proposed amendment designating English as official language); see also Harper v. Virginia Bd. of Elections, 383 U.S. 663, 665 (1966) (holding that right to vote is fundamental right guaranteed by Constitution); Reynolds v. Sims, 377 U.S. 533, 554 (1964) (holding that all citizens have constitutional right to vote). But see Rosario v. Rockefeller, 410 U.S. 752, 756 (1973) (allowing restriction of voting until individual was registered for certain period). See generally McDonald v. Board of Election, 394 U.S. 802, 802 (1969) (demonstrating that because voting was fundamental right imprisoned voters could not be denied absentee ballots).

\( ^{122} \) See Califa, supra note 19, at 337 (arguing that it is invidious discrimination to take away people's bilingual ballots because right to vote is fundamental right).


\( ^{124} \) See 42 U.S.C. § 1973b (f) (2). See generally Ex parte Yarbrough, 110 U.S. 651, 651 (1884) (upholding right to vote for all citizens).


\( ^{126} \) See Puerto Rican Org. for Political Action v. Kusper, 490 F.2d 575, 578 (7th Cir. 1973) (holding that United States citizens who attend school in Puerto Rico must be given right to vote in language they can understand); Torres v. Sachs, 69 F.R.D. 343, 346 (S.D.N.Y. 1975) (awarding attorney fees to citizens who enforced bilingual ballots provision of Voting Rights Act); see also 42 U.S.C. § 1973aa-1a (providing that no state is allowed to implement English only voting before August 6, 2007).
United States and, as such, possess the right to vote.\textsuperscript{127} On American Indian reservations and in Puerto Rico, however, English is not the primary language.\textsuperscript{128} Should federal English-only legislation succeed, the right to vote would merely be a "token" to Native Americans and Puerto Ricans who would not be able to understand the English-only ballot.\textsuperscript{129} For these reasons, official English legislation should be reviewed under a strict scrutiny analysis,\textsuperscript{130} either because a suspect classification exists, or because these laws eradicat a fundamental right.\textsuperscript{131}

In the unlikely event that the courts do not apply strict scrutiny, the English-only legislation should still be deemed unconstitutional because such legislation would not pass the lower standard of rational basis review.\textsuperscript{132} Under this standard, legislation

\textsuperscript{127} See Puerto Rican Org. for Political Action, 490 F.2d at 578, n.7 (stating that Spanish is primary language and English is only taught as secondary language in Puerto Rican Schools); Alfonso v. Board of Review, Dep't of Labor and Indus., 444 A.2d 1075, 1075 (N.J. 1982) (recognizing that Puerto Ricans do not need to learn English before voting); Gerald M. Rosenberg, Aliens and Equal Protection: Why Not the Right to Vote, 75 Mich. L. Rev. 1092, 1119 (1977) (discussing effect of precluding non-English speaking people from voting).

\textsuperscript{128} See 8 U.S.C. § 1402 (1952) (codifying that Puerto Ricans are United States citizens); 8 U.S.C. § 1423 (1970) (recognizing Puerto Ricans as citizens without knowledge of English language); see also Puerto Rican Org. for Political Action, 490 F.2d at 578 (noting that Puerto Ricans are United States citizens with right to vote).

\textsuperscript{129} See Puerto Rican Org. for Political Action, 490 F.2d at 579 (holding that right to vote is right to cast effective ballots; meaning that Puerto Ricans are entitled to assistance in language they can understand); see also 42 U.S.C. § 1973 aa-1a (1981 & 1993 Supp.) (guaranteeing Puerto Ricans right to vote). But see Castro v. California, 466 P.2d 244, 245 (Cal. 1970) (failing to uphold statute denying bilingual assistance in voting).

\textsuperscript{130} See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439-42 (1985) (citation omitted) (explaining different standards of equal protection review); Id. at 472 (Marshall, J., dissenting) (stating that because "prejudice spawns prejudice, and stereotypes produce limitations, history of unequal treatment requires sensitivity"); see also Perea, supra note 2, at 332 (asserting that federal official English legislation will be reviewed under strict scrutiny analysis). See generally Hernandez v. Texas, 347 U.S. 475, 478 (1954) (disallowing peremptory challenges based solely on Spanish speaking ability); Yu Cong Eng v. Trinidad, 271 U.S. 500, 523-25 (1926) (stating that it was violation of Equal Protection Clause to prohibit Chinese businessmen to keep records in Chinese).

\textsuperscript{131} See Hernandez, 347 U.S. at 478 (prohibiting discrimination of Hispanics in jury selection process); Yu Cong Eng, 271 U.S. at 523-25 (applying strict scrutiny to rule prohibiting Chinese merchants keeping records in Chinese); Yick Wo v. Hopkins, 118 U.S. 356 (1886) (recognizing due process rights belong to all); Perea, supra note 2, at 332 (discussing how non-English speakers is suspect class); see also Trimble v. Gordon, 430 U.S. 762 (1977) (recognizing illegitimate children as suspect class and subject to strict scrutiny analysis).

\textsuperscript{132} See Cleburne, 473 U.S. at 440 (stating that rational basis review is general rule and that legislation is presumed valid and will be upheld if classification is rationally related to legitimate state interest). See, e.g., Vance v. Bradley, 440 U.S. 93, 96 (1979) (using rational basis to determine validity of mandatory retirement statute); United States Dep't of Agric. v. Moreno, 413 U.S. 528, 538 (1973) (applying rational basis standard, court struck down federal food stamp statute which provided assistance to households of groups of related individuals by deeming there was irrational basis). But cf. Schweiker v. Wilson, 450 U.S. 221, 234 (1981) (stating that under most deferential standard statute, denying federal com-
will be deemed constitutional if there is a legitimate state interest and that the legislation is rationally related to that interest.\textsuperscript{133} The government's interests in mandating official-English are mere allegations and masked discrimination.\textsuperscript{134} As previously discussed, notions that the state has a legitimate interest in passing official English legislation, in fact, have been negated.\textsuperscript{135} Moreover, even if a legitimate state interest is somehow produced, such legislation would not pass constitutional muster because invoking a language limitation is by no means a rational means of achieving any of the aforementioned state interests.\textsuperscript{136}

B. Purposeful Discrimination & Administration of the Law

Violations based on the Equal Protection Clause turn on the intentions of governmental classifications.\textsuperscript{137} The invidious quality of a law claimed to be racially discriminatory must be traced to a discriminatory purpose.\textsuperscript{138} In \textit{Washington v. Davis},\textsuperscript{139} the...
Supreme Court held that governmental action is not unconstitutional solely because it has a racially disproportionate impact. There must also be a showing by data of purposeful discrimination.

1. De Jure v. De Facto Legislation

In determining whether legislation purposefully discriminates it is necessary to consider whether the legislation is "de jure" or "de facto." "De jure" discrimination is action which, on its face, is unlawful and disadvantages people based on race. In contrast, "de facto" legislation is governmental action that is racially neutral on its face, but, through its administration and purpose has a disparaging impact. The distinction rests on the differ-

U.S. at 375-76 (Blackmun, J., dissenting) (finding equal protection violations required showing of discriminatory purpose); see also Batson v. Kentucky, 476 U.S. 79, 93 (stating that patterns may cause "inference of discrimination").


140 Id. at 239 (citing Akins v. Texas, 325 U.S. 398, 403-404 (1945)) (ruling that in order to keep blacks off juries, "[a] purpose to discriminate must be present which may be proven by systematic exclusion of eligible jurors of the proscribed race or by unequal application of the law to such an extent as to show intentional discrimination").

141 See Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 265-266 (1977) (requiring proof of racially discriminatory purpose to show violation of Equal Protection Clause); Washington v. Davis, 426 U.S. 229, 239 (1976) (explaining that "our cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact"); see also Hernandez, 500 U.S. at 362-63 (noting that purposeful discrimination must be demonstrated, and it may be inferred from all facts). See, e.g., Meyer v. Nebraska 262 U.S. 390, 403 (1923) (ruling statute prohibiting teaching of children in different language other than English is unconstitutional under rational basis test, because it purposefully discriminates).

142 See BLACK'S LAW DICTIONARY 425 (6th ed. 1990) (defining "de jure" as "by law").

143 See id. at 416 (defining "de facto" as government action which is legal on its face, but has discriminatory consequences).

144 See, e.g., Rogers v. Lodge, 458 U.S. 613, 617 (1982) (overturning statute because it was promulgated solely to take away black voting strength); Whitecomb v. Chavis, 403 U.S. 124, 149-50 (1971) (stating that "multimember districts violate Fourteenth Amendment if 'conceived or operated as purposeful devices to further racial discrimination' by minimizing, canceling out or diluting voting strength of racial elements in voting population"); Strauder v. West Virginia, 100 U.S. 303, 303-04 (1880) (declaring statute which denies African-Americans right to participate as juror as violating equal protection).

145 See Yick Wo v. Hopkins, 118 U.S. 356, 365-67 (1886) (showing that it is unconstitutional under equal protection when ordinance issued by board gave permits to only one Chinese applicant, yet gave permits to all non-Chinese applicants); see also Sims v. Georgia, 389 U.S. 404, 407 (1967) (overruling case where African-American was convicted of rape by forced confession of police officers); Hill v. Texas, 316 U.S. 400, 404-06 (1942) (recognizing that application of excluding jurors violated equal protection). See, e.g., Edwards v. Aguillard, 482 U.S. 578, 635 (1987) (noting discrimination behind veil of neutrality). But see, e.g., Palmer v. Thompson, 403 U.S. 217, 220 (1971) (holding Jackson City acted constitutionally when it closed its pools subsequent to being ordered to desegregate them since there was no showing of purposeful discrimination).
ence between the words "purposeful" and "effect." While purposeful discrimination is unconstitutional, legislation that merely causes a discriminatory effect is constitutional. Consequently, to establish a constitutional violation, there must be purposeful discrimination.

By utilizing an equal protection analysis, some courts have concluded that language is a "surrogate for race" and, as such, official English legislation is abhorrent because it is a pretext for discrimination. In recent years there has been an enormous influx of Asian and Latin American immigrants in the United States.

146 See Hernandez, 500 U.S. at 377-78 (Stevens and Marshall, J.J., dissenting) (claiming that "[t]he line between discriminatory purpose and discriminatory impact is neither as bright nor as critical as the Court appears to believe"); Washington v. Davis, 426 U.S. 229, 253-54 (1976) (Stevens, J., concurring) (suggesting there is no bright line test for determining difference between discriminatory intent and discriminatory purpose); see also Yick Wo, 118 U.S. at 364-66 (noting irrelevance of whether standard was purpose or effect). But see also Gormillion v. Lightfoot, 364 U.S. 339, 339 (1960) (demonstrating that when there is a dramatic disproportion it does not matter whether it is denoted in terms of purpose or effect).

147 See Rogers, 458 U.S. at 617 (holding statute unconstitutional because it dissolved black voting power); Whitecomb, 403 U.S. at 149-50 (ruling multi-member districts were unconstitutional because statute expressly discriminates against blacks); Bush v. Orleans Parish Sch. Bd., 365 U.S. 564, 581 (1961) (declaring statute that gave governor power to close schools if he was forced to desegregate them unconstitutional); Strauder, 100 U.S. at 304-05 (declaring statute invalid that kept blacks off juries because of color).

148 See Palmer, 403 U.S. at 220 (recognizing no discriminatory purpose when mayor closed swimming pools rather than desegregating them). But see Sims, 389 U.S. at 407 (overturning conviction of African-American because police officers physically forced him to confess); Yick Wo, 118 U.S. at 365-67 (ruling application of statute unconstitutional because it discriminated against Chinese ancestry).


150 See Hernandez, 347 U.S. at 480 (recognizing that discrimination based on Spanish surnames was comparable to discrimination based on national language); Yu Cong Eng v. Trinidad, 271 U.S. 500, 517-19 (1926) (stating that "proficiency in particular language, like skin color, should be treated as surrogate for race"); Olagues v. Russoiello, 797 F.2d 1511, 1520 (9th Cir. 1989) (stating that investigation of Spanish and Chinese speakers was comparable to targeting Spanish and Chinese immigrants, vacated as moot, 108 S. Ct. 52 (1987); see also Meyer v. Nebraska, 262 U.S. 390, 400 (1923) (showing that law prohibiting teachers from teaching other languages was unconstitutional).

151 See Yniguez v. Arizonans for Official English, 64 F.3d 920, 925 (9th Cir. 1995) (declaring Arizonan's official English legislation unconstitutional on First Amendment grounds).

152 See O'Connor, supra note 27, at 586 (noting increases in Chinese immigrants as result of declines in China's economy).

153 See O'Connor, supra note 27, at 588 (discussing increase in Latin immigrants); see also Linda Diebel, NAFTA: Where Did the Jobs Go? Labor Losses in Canada and U.S. Have Not Been Offset By Gains in Mexico, THE TORONTO STAR, Sept. 24, 1995, at F7 (discussing that decrease in hourly wages in Mexico as result of NAFTA has led to greater need for...
States.\textsuperscript{154} This influx of cultures has lead to a growing anti-immigrant sentiment.\textsuperscript{155} In response to changing trends, the majority, by passing racially biased legislation is, discriminating against immigrants.\textsuperscript{156} It seems that the Arizona amendment is just one example of legislation that is, on its face, discriminatory.

2. Examples of De Jure Legislation

In \textit{Korematsu v. United States},\textsuperscript{157} the court upheld “racist” legislation\textsuperscript{158} passed during WWII.\textsuperscript{159} This legislation excluded all persons of Japanese ancestry from designated west coast areas.\textsuperscript{160} A fear of the Japanese led to what Justice Murphy termed “racist legislation.”\textsuperscript{161} There are striking similarities between the unfounded threat of non-English languages and the fears which led

immigration to United States for many Mexicans). \textit{See generally} Greenspan, supra note 18, at 895 (noting that population in Dade county has increased from 5.3% Hispanic in 1959 to 40% Hispanic in 1980) (citation omitted).


\textsuperscript{155} \textit{See} Yniguez, 69 F.3d at 933 (stating that Article XVIII was promulgated to prohibit communication in language other than English).

\textsuperscript{156} \textit{See}, e.g., Soberal-Perez v. Heckler, 717 F.2d 36, 40 (2d Cir. 1983) (holding there was no right to receive Spanish Social Security notices); Guadalupe Org. Inc. v. Tempe Elementary Sch. Dist., 587 F.2d 1022, 1024 (9th Cir. 1978) (holding failure to provide bilingual education is disallowed and noting there was no right to unemployment notices in Spanish); Carmona v. Sheffield, 475 F.2d 738, 738 (9th Cir. 1973) (concerning dissemination of unemployment insurance benefits literature only in English).

\textsuperscript{157} \textit{See Korematsu v. United States}, 323 U.S. 214, 214 (1944) (excluding persons of Japanese ancestry, including citizens whose loyalty was not questioned, from West Coast war area in 1942, was constitutional).

\textsuperscript{158} \textit{See id.} at 234 (Murphy, J., dissenting) (stating that regulation was “obvious racial discrimination”).


\textsuperscript{160} \textit{See Korematsu}, 323 U.S. at 242 (Murphy, J., dissenting) (claiming that legislation was violative of equal protection and was in fact “legalization of racism”); \textit{id.} (noting that “reasons [invoked in support of government’s policy] appear . . . to be largely an accumulation of much of the misinformation, half-truths and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices—the same people who have been among the foremost advocates of the evacuation.”).

\textsuperscript{161} \textit{See id.} at 242 (Murphy, J., dissenting) (noting that legislation was discriminatory).
to the Korematsu case. Official English legislation may very well be a modern Korematsu, where "racist" legislation is promulgated under the guise of English-only laws.

Another modern day example of the consequences of racial hostility is "Proposition 187," a California proposal which limited public benefits to illegal immigrants. Legislation that is de jure discrimination has not fared well in the courts. For example, in Proposition 187, a preliminary injunction was granted restraining the government from implementing legislation, and striking down some of its sections as unconstitutional.

162 See Hernandez v. New York, 500 U.S. 352, 371 (1991) (showing that multilingual or bilingual speakers are viewed with ridicule and scorn); see also Califa, supra note 19, at 328 (showing that individual fears of Hispanics were driving force for "official English" legislation); Kevin R. Johnson, Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class, 42 U.C.L.A. L. Rev. 1509, 1528-31 (1995) (noting how undocumented persons are not eligible for federal public assistance programs).

163 See Perea, supra note 2, at 278 (noting that during times of strife majority lashes out at minority and uses them as scapegoat). See, e.g., Hirabayashi v. United States, 320 U.S. 81, 90 (1943) (holding curfew order against Japanese-Americans was constitutional delegation of power necessary to prevent insurgence in area threatened by Japanese attack).

164 See Barbara Nesbet, California's Proposition 187: A Painful History Repeats Itself, 1 U.C. DAVIS J. INT'L L. & POL'Y 153, 156-60 (1995) (warning that pitfalls of "Save our State" (Proposition 187) tracked failed Depression-era initiative, "Bracero Program," which focused on denying state services such as education and health care to those suspected of being undocumented immigrants).

165 See Farrington v. Tokushige, 273 U.S. 284, 298 (1927) (finding legislation restricting language use unconstitutional); Yu Cong Eng v. Trinidad, 271 U.S. 500, 506 (1926) (finding Chinese Bookkeeping Act invalid since it was discriminatory); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (stating that legislation was arbitrary and discriminatory); Bartels v. Iowa, 262 U.S. 404, 409 (1923) (finding statute limiting language use unconstitutional). See, e.g., Gregorio T. v. Wilson, 59 F.3d 1002, 1005 (9th Cir. 1995) (granting preliminary injunction preventing California from enforcing "Proposition 187").

166 See Gregorio T., 59 F.3d at 1002 (preventing application of Proposition 187); see also Paul Feldman & Rich Connell, Wilson Acts to Enforce Prop. 187; 8 Lawsuits Filed, L.A. TIMES, Nov. 10, 1994, at A1 (citing eight lawsuits filed in state and federal courts to enjoin enforcement of Proposition 187). See generally Roberto Suro, Two California Judges Block Anti-Immigrant Measure at Start, WASH. POST, Nov. 10, 1994, at A39 (noting that support for Proposition was clearly divided along ethnic lines: approved overwhelmingly by whites, rejected by Latinos more than three to one, and supported by half of Asian and African-American populations).

167 See generally League of United Latin American Citizens v. Wilson, 908 F. Supp. 755, 771-74, 780-81 (C.D. Cal. 1995) (holding motions granted in part, denied in part; i.e. (a) California initiative excluding illegal aliens from public social services and from publicly funded health care were preempted under federal immigration law as impermissible scheme of immigration regulation; (b) provision excluding illegal aliens from schools was prohibited by Equal Protection Clause of Fourteenth Amendment from excluding undocumented alien children from public schools; (c) provision denying public social services to illegal immigrants conflicted with federal law making those benefits available regardless of immigration status).
V. OFFICIAL ENGLISH LAWS VIOLATE THE DUE PROCESS CLAUSE

The fundamental purpose of the Due Process Clause of the Fourteenth Amendment is to guarantee individuals the right to receive notice and the opportunity to be heard. It is submitted that, by preventing non-English speaking citizens from receiving and understanding information, English-only laws violate due process.

The Supreme Court in *Mullane v. Central Hanover Bank & Trust Co.* declared that poor attempts at notice are not due process, but a mere spectacle of a due process procedure. The Court's present view, illustrated in *Mullane*, may be considered a balancing test, in which the court weighs the costs of requiring a particular set of procedures against the benefit received from the use of those procedures. The factors considered in this test include: (i) the private interest that will be affected by the official action; (ii) the risk of erroneous deprivation of such an interest

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168 See Grannis v. Ordean, 234 U.S. 385, 394 (1914) (noting that due process includes right to be heard); see also Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 420-21 (1948) (stating that aliens have right to due process). But see also Gorman v. University of Rhode Island, 887 F.2d 7, 7 (1st Cir. 1988) (holding that University gave plaintiff his rights when he was charged with abusive language through hearing and appeal procedure and furthermore, due process does not require trial in adversarial procedure; in this case hearings were fair and comported with requirements of due process).

169 See Goss v. Lopez, 419 U.S. 565, 575 (1975) (holding that suspension from public school, without notice or hearing constituted deprivation of constitutionally protected property interest); Id. at 576 (stating that where students are suspended for disciplinary reasons for more than trivial period, due process requires that they be given oral or written notice); Grannis, 234 U.S. at 393 (stating that fundamental requirement of due process is opportunity to be heard); see also Mullane v. Central Hanover & Trust Co., 339 U.S. 306, 314 (1950) (stating that "right to be heard has little reality or worth unless one is informed that matter is pending"). But see also Ingram v. Wright, 430 U.S. 651, 682 (1977) (proposing that corporal punishment in schools implicates constitutionally protected liberty interest, but procedural due process does not require hearing before beatings can be inflicted).


171 See id. at 314-315 (stating that person's due process is violated when means employed to convey information are nonsensical); see also Milliken v. Meyer, 311 U.S. 457, 462 (1941) (stating that fundamental requirement of due process is notice reasonably calculated, under all circumstances, to apprise interested parties of action and give them opportunity to be heard); Grannis, 234 U.S. at 397 (stating that fundamental requisite of due process is opportunity to be heard and notice); Roller v. Holly, 176 U.S. 398, 409 (1900) (stating that notice must afford reasonable time for those interested to make appearance); Alfonso v. Board of Review, Dep't of Labor and Indus., 444 A.2d 1075 (N.J. 1982) (Wilentz, C.J., dissenting) (stating that, following *Mullane*, plaintiff was not given notice of right to appeal). See generally Pabon v. Levine, 70 F.R.D. 674, 677 (1976) (holding that New York State Department of Labor unlawfully deprived plaintiffs of unemployment insurance benefits because all materials pertaining to person's right to assert claim for such benefits were printed in English).

172 See *Mullane*, 339 U.S. at 306 (establishing balancing test to be used in determining violation of Due Process Clause).
through procedures used and (iii) the burdens that the additional or substitute procedural requirement would produce.\textsuperscript{173}

Under this balancing test, the constitutionality of official English legislation would be examined by weighing the burden on the government in providing notice to non-English speaking individuals against the benefit to individuals in receiving information in their native language.\textsuperscript{174} Proponents of the Arizona legislation claim that not having English as the official language would impose a major burden on the government because it would require the government to be continually vigilant in ascertaining whether proper notice is given to every individual.\textsuperscript{175} The supporters assert that it would be extremely expensive to properly monitor due process guarantees. Thus, the burden to the government would far outweigh the benefit to the individual.\textsuperscript{176} In addition, proponents assert that it is very expensive to maintain documents in languages other than English.\textsuperscript{177} This argument is dubious under the \textit{Mullane} test because much of the information is already translated by the government and it would cost little to continue such

\textsuperscript{173} See Mathews v. Eldridge, 424 U.S. 319, 334 (1976) (utilizing balancing test, finding that due process was not violated when person's social security disability benefits were terminated before receiving evidentiary hearing); \textit{see also} Arnett v. Kennedy, 416 U.S. 134, 167-68 (1974) (stating that analysis of governmental and private interest is required to determine constitutionality of due process); Morrissey v. Brewer, 408 U.S. 471, 481 (1972) (noting that "due process is flexible," depending on particular situation); Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970) (stating that intent of procedural due process depends on whether recipient's interest outweighs governmental interest in summary adjudications).

\textsuperscript{174} See 20 U.S.C. § 3223 (a) (2) (1997) (defining native language as "language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child"); \textit{see also} Lau v. Nichols, 414 U.S. 563, 567 (1974) (holding that placing non-English speaking students in classroom without special assistance violated Civil Rights Act of Title VI); \textit{Id.} (deciding issue of right of minority children to receive equal education). \textit{See generally Mullane}, 339 U.S. at 317-18 (analyzing governmental interests and benefits to individuals).

\textsuperscript{175} See Dandridge v. Williams, 397 U.S. 471, 486 (1970) (stating that state should not be second-guessed on discussions of allocating limited public welfare funds); Carmona v. Sheffield, 475 F.2d 738, 739 (9th Cir. 1973) (claiming that states argue that providing interpreters and sending Spanish language notices would impose undue burden).

\textsuperscript{176} See Frontera v. Sindell, 522 F.2d 1215, 1219 (6th Cir. 1975) (claiming that city which already has severe financial problems would get "saddled" with expenses such as hiring translators); \textit{Carmona}, 475 F.2d at 739 (stating that government would be severely burdened if English language requirement is not imposed). \textit{But see} Reed v. Reed, 404 U.S. 71, 76-77 (1971) (stating that reducing workload of probate courts by mandatory preference based on sex is arbitrary).

\textsuperscript{177} See Tamayo, \textit{supra} note 154, at 7 (stating that immigrants are burdensome to United States); \textit{see also} O'Connor, \textit{supra} note 27, at 592, 598 (stating that Florida wanted reimbursement for $1.5 billion state expected to spend on providing social services for illegal immigrants) (citing Neil R. Pierce, \textit{The Ugly-But Inevitable Debate}, NAT'L L.J., July 16, 1994, at 1700). \textit{See generally Frontera}, 522 F.2d at 1219 (discussing how translations are impractical); \textit{Carmona}, 475 F.2d at 739 (noting burden of translating literature).
activity. In addition courts would assess the public interest as great because of the value to the millions of individuals to whom information will be effectively disseminated.

CONCLUSION

The promulgation of monolinguistic legislation will lead to separatism. Allowing official English legislation is governmental promotion of discrimination. Official English legislation is stigmatizing and discriminatory. This legislation is unconstitutional under the First Amendment, the Fourteenth Amendment, and Title VII. These laws create feelings of inferiority and inequality and are nothing but a symbol of misdirected anger at differences in cultures and people.

Carmen B. Tigreros

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178 See Guerrero v. Carleson, 512 P.2d 833, 835 (Cal. 1973) (Tobriner, J., dissenting) (stating that if some forms are now printed in Spanish, it cannot be unduly burdensome to print form of revocation or reduction in Spanish).

179 See Alfonso v. Board of Review, Dep't of Labor & Indus., 444 A.2d 1075, 1079 (N.J. 1982) (Wilentz, C.J., dissenting) (proposing that when using balancing test in Mullane, future benefits should be included in formula). See, e.g., Yniguez v. Arizonans For Official English, 69 F. 3d 920, 941 (9th Cir. 1995) (noting that downside to official-English will “preclude a legislative committee from convening on reservation and questioning a tribal leader in his native language concerning the problems of his community”).