

Written Testimony

By

**The Honorable Rene Garcia
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Before

**The United States House of Representatives Committee on the Judiciary
Subcommittee on the Constitution**

**At a Hearing Concerning H.R. 997,
The English Language Unity Act of 2011**

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Chairman Franks, Ranking Member Nadler, and members of the Subcommittee: thank you for the opportunity to submit this testimony in opposition to H.R. 997, the English Language Unity Act. I am pleased to be able to speak to the critical importance of English, Spanish, and Creole communications to the community I represent. I believe that multilingual communications are equally essential to the millions of Americans around the country who speak languages other than English – many of whom are the constituents of members of this Committee.

My name is Rene Garcia. I currently serve as Florida State Senator for the state's District 40, which is located in northern Miami-Dade County. If there is any part of the country or group of people that stands to be affected by the negative implications of the English Language Unity Act, it is my District and constituents, who have widely variant language access needs and abilities, but who are, as a community, fundamentally multilingual. My District is home to a population that speaks multiple languages in everyday life. Almost 45% of the U.S. citizens living in District 40 were born in another country and naturalized. According to the American Community Survey, 90% of my constituents – more than 345,000 people – speak a language other than English at home, and among these individuals, about 45% also speak English very well.¹

Like my Congressional colleagues on the first panel and my policy colleagues on this second panel, I strongly believe that the English language is a critical component of American identity, and one of the unifying factors that has made this country a successful melting pot that incorporates newcomers from around the world. I believe it is critical that those who are not yet

¹ U.S. Census Bureau, *State Senate District 40, Florida – Population and Housing Narrative Profile: 2005 – 2009*, available at <http://www.flsenate.gov/UserContent/Senators/Districts/CensusData/District40.pdf>.

fluent English speakers make proactive efforts to learn the language, and I see the same desire and belief among my many constituents who are still learning the language.

More English instruction for people who are not yet fluent is needed. I urge members of this Committee to support discretionary funding for English education - for example, for discretionary funding for USCIS's Citizenship and Integration Grants Program. When we prioritize expanding opportunities to learn English, we strengthen our democracy by helping individuals become better informed and more active participants in civic and political affairs.

I am also a strong proponent of inclusionary measures that integrate communities into the fabric of this great country. This is why I find it dismaying that Congress would attempt to advance English fluency by enacting legislation that would paradoxically inhibit inclusion and civic participation at this difficult time, when our country needs engaged and active citizens more than ever. Our strength as a nation and as the world's premier democracy and economy come from our diversity of experiences and abilities, and from the principles we hold dearest: equality, opportunity, and a vote and voice in our collective governance for each American. The English Language Unity Act would betray these principles by denying as many as millions of citizens a vote; by inhibiting the democratic process; by reducing the number of legal permanent residents who are able to fulfill their dream of becoming Americans; and by curtailing numerous other chances for concerned individuals to take part in the revitalization of our civic institutions and our economy.

Impact on the Voting Rights Act

Congress included language assistance mandates in the Voting Rights Act to end exclusionary practices in the voting booth, such as English-only ballot provisions. The scope of the need among citizens who are not yet fully proficient in English remains great. In my home state of Florida, there are nearly 680,000 Latino voters alone who need assistance in Spanish to cast ballots.² In total, there are nearly 9.3 million adult American citizens who speak English less than very well and who are likely to need assistance to vote, a significant number of whom were born in the United States.³

We cannot lightly afford to impair the participation of so many Americans – and the evidence is clear that language assistance at the polls empowers citizens who are still learning English to be active participants in the political process. The Leadership Conference on Civil and Human Rights, for example, has documented numerous successes: after the Department of Justice moved to ensure that Harris County, Texas provided Vietnamese language ballots on its electronic voting machines, turnout among Vietnamese-speaking citizens doubled, and the first Vietnamese American candidate was elected to the state’s legislature one year later. The voter registration rates of Native Americans and Latinos have increased dramatically – by between 50% and 150% – since the Voting Rights Act’s language assistance provisions concerning American Indian languages and Spanish were enacted.⁴

² U.S. Census Bureau, *Voting Rights Determination File, October 13, 2011 Public Use Data, Florida VACLEP* (Total citizen voting age population who do not “speak or understand English adequately enough to participate in the electoral process”) (October 13, 2011), available at http://www.census.gov/rdo/data/voting_rights_determination_file.html.

³ U.S. Census Bureau, *American Community Survey 5-year estimates 2006-2010* (Unique query conducted using variables Citizenship Status, Age, and Ability to Speak English), July 30, 2012, available at dataferrett.census.gov.

⁴ Leadership Conference on Civil and Human Rights, *Fact Sheet – Language Assistance Provisions of Section 203 of the Voting Rights Act* (October 12, 2011), available at <http://www.civilrights.org/press/2011/203.html>.

The provision of language assistance makes a critical difference in opening up elections to all Americans, but it does not dissuade Americans from learning English. The desire to become proficient in English burns as strongly as ever. The Census Bureau has historically re-evaluated need for language assistance pursuant to Section 203 of the Voting Rights Act once every ten years. In 2001, it found that 296 political subdivisions in 30 states met the applicable criteria. By 2011, the numbers had declined to 248 jurisdictions in 26 states.⁵ Even as we are constantly improving on efforts to make elections accessible to citizens of all language abilities, the American electorate is increasingly fluent in English.

American democracy would suffer were the English Language Unity Act adopted. The intent and ability of this bill to prohibit language assistance at polling places has been made clear by the results of the implementation of nearly identical legislation in the State of Iowa. The Iowa English Language Reaffirmation Act (IELRA) was enacted in 2002; its key provisions are parallel to those in the English Language Unity Act.⁶ After state officials concluded that the law allowed them to provide registration and ballot request forms in languages other than English so long as the materials were also available in English, a group of elected officials and county auditors sued to prevent this action under the IELRA, arguing that providing the election materials was an official action and not covered by any exception to the English-only rule. The Iowa State District Court which presided over the case cautioned that a blanket prohibition on

⁵ Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 63602, 63602-07 (October 13, 2011); Voting Rights Act Amendment of 1992, Determinations Under Section 203, 67 Fed. Reg. 48871, 48872-77 (July 26, 2002).

⁶ For example, both Acts require “official functions” of the government to be conducted in English, and define “official” functions as those that bind the government, are required by law, or are subject to scrutiny by the press or public. Both provide for the same exceptions to this rule with the addition of an exception for actions, documents and policies necessary for national security and international relations onto the federal version of the bill. Both state their intention not to limit the preservation of Native American languages, not to discourage individuals from learning languages other than English, and not to run afoul of applicable Constitutions. Iowa Code § 1.18 (2012); English Language Unity Act of 2011, H.R. 997, 112th Cong. (2011).

governmental communications in languages other than English likely would violate the First Amendment, and that the application of the IELRA to prevent publication of bilingual election materials might also violate the Fourteenth Amendment by resulting in unequal treatment of citizens vis-à-vis their fundamental right to vote and take part in the political process.

Ultimately, however, the Court agreed with the petitioners that the IELRA could and did reach as far as restricting the publication of certain government documents to English-only.⁷ It is likely that the English Language Unity Act would be used to similar tragic effect, to block implementation of the Voting Rights Act provisions that have empowered millions of Americans to exercise their civic duty.

Impact on the Democratic Process

My ability to communicate with my constituents is critical not only to the encouragement of robust civic participation, but ultimately to the success of the work that I was elected to do. Constituents who can engage fully and easily with me in whatever language they are most comfortable using are more likely to take part in elections, as experience under the Voting Rights Act has shown, and to share their ideas and opinions in between elections, so that the representative experiment started over two hundred years ago continues to succeed.

I use languages other than English, including Spanish and Creole, not just to communicate with people not yet fully fluent in English. In my home state of Florida, almost 2.5 million eligible voters speak a language other than English at home⁸; in my District, as I mentioned, the vast

⁷ *King v. Mauro*, No. CV 6739, Iowa District Court for Polk County (March 31, 2008).

⁸ U.S. Census Bureau, *American Community Survey 5-year estimates 2006-2010* (Unique query conducted using variables Citizenship Status, Age, Language Spoken At Home and State Code=Florida), July 30, 2012, available at dataferrett.census.gov.

majority of residents share this characteristic. Your experiences may be similar. Nearly 19 million adult citizens speak English very well, but also speak a language other than English at home.⁹ The best way to engage such constituents, including the large percentage which also speaks English, is often to reach them on their own terms, in the language in which they live their daily lives. I believe this is true whether one represents Americans at the state or federal level.

The English Language Unity Act threatens to chill citizen participation in public affairs not only by impairing voting, but also by creating an artificial wall of silence between elected and appointed officials and their constituents who speak languages other than English. The Act's definition of "official" functions is so broadly written, to include all laws, public proceedings, regulations, publications, orders, actions, programs, and policies that may be subject to press or public scrutiny, that it is likely to apply an English-only limitation to everything from a section of a website providing information about legislation in consideration to remarks made to a town hall-style gathering. This result would undermine the purpose and functioning of representative government, and completely exclude citizens, who have fundamental rights to petition and to receive information from their government, from the political process.

The potential impact of the English Language Unity Act in this domain is far-reaching. Had the Act been in force, it likely would have, for instance, prevented Senator Marco Rubio from including brief remarks in Spanish in his address to the conference of the National Association of Latino Elected and Appointed Officials (NALEO), which I recently attended. It would likely

⁹ *Id.* (Unique query conducted using variables Citizenship Status, Age, Ability to Speak English, and Language Spoken At Home).

prevent federal officials who, like me, are multilingual from conducting interviews about legislative and administrative affairs with media outlets in languages other than English. Even campaign advertisements paid for with public funds might be restricted to being aired in English-only, whereas at present we are being inundated with Spanish-language ads in anticipation of the coming election in the battleground state of Florida. Each of these prohibitions sends a clear, shameful message to Americans who speak languages other than English that their participation in civic affairs is not welcomed or encouraged.

Impact on Naturalization

Naturalization is a rigorous process through which immigrants take on the rights and responsibilities of citizenship. The United States has a special interest in and draws unique benefits from naturalization, stemming from the personal commitment naturalized citizens make to the long-term prosperity and security of the nation. The prerequisites for naturalization eligibility are many, and include satisfaction of a period of legal permanent residence and proof of good moral character. Every applicant must demonstrate ability to communicate in English and mastery of American civics, with only very narrow exceptions set out for individuals older than age 50 who have been legal permanent residents (LPRs) for at least 20 years; individuals older than 55 who have been LPRs for at least 15 years; and those who have difficulties with regular testing due to physical or developmental disability or other mental impairment.

The vast majority of immigrants who naturalize already fulfill requirements for English language ability. Typically, fewer than 20% of newly naturalized citizens fall into an age grouping that

may be eligible for an exemption¹⁰, and many of these individuals do not meet tenure-as-LPR requirements to qualify for an exemption.¹¹ Disability waivers are difficult to obtain, and the particularly tough scrutiny to which they have been subjected by adjudicators has resulted in both lawsuits¹² and requests for more assistance and outreach efforts from advocates to USCIS.¹³ In sum, exceptions are just that: exceptions for a very limited number of deserving individuals, and not the rule.

Citizens who have received exemptions from English language requirements include traumatized refugees and asylees, individuals with conditions such as Down Syndrome whose entire families are U.S. citizens and whose entire support structure is rooted in this country, and immigrants who have raised future generations of Americans and find themselves suffering from limited physical and mental ability in older age. Mikhail Kholchanskiy, for example, was profiled by the New York Times when he was 80, in 1999, and seeking a disability waiver.¹⁴ Mr. Kholchanskiy's children and grandchildren were U.S. citizens, and he professed a desire to, "stand up in front of my grandchildren and show them that I am a citizen like them." After suffering a stroke and heart attack, however, Mr. Kholchanskiy found himself unable to retain

¹⁰ See James Lee, Department of Homeland Security, Office of Immigration Statistics, *U.S. Naturalization: 2011* 4, Table 5 (April 2012), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/natz_fr_2011.pdf.

¹¹ See *id.* at 4, Table 7. In 2011, median length of time as an LPR among people naturalizing was 6 years. Historical records reflect average tenures consistently less than tenure as an LPR required to qualify for a language exemption, meaning that most successful naturalization candidates have been in the United States for less than 15 or 20 years.

¹² *E.g.*, *Campos v. I.N.S.*, No. 98-2231-CV-GOLD (S.D. Fla., Sept. 22, 1998), litigation documents available at <http://www.clearinghouse.net/detail.php?id=9547>.

¹³ *E.g.*, Department of Homeland Security, Citizenship and Immigration Services, *USCIS Response to the Citizenship and Immigration Service Ombudsman's 2010 Annual Report* 17-19 (Nov. 9, 2010), available at <http://www.uscis.gov/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/cisomb-2010-annual-report-response.pdf>.

¹⁴ Susan Sachs, *An I.N.S. Hurdle for the Disabled; Promised Exemptions Elude Many Would-Be Citizens*, N.Y. TIMES, Feb. 18, 1999, available at <http://www.nytimes.com/1999/02/18/nyregion/an-ins-hurdle-for-the-disabled-promised-exemptions-elude-many-would-be-citizens.html?pagewanted=all&src=pm>.

knowledge of English for even the length of a day, let alone long enough to use in his naturalization interview.

Many of those who qualify for exemptions based on age and length of residence are like Esther, an 85-year old grandmother of 26.¹⁵ Esther became an LPR in 1989 and had dreamt, since then, of becoming a U.S. citizen. She was too intimidated, though, to begin the process, because of her inability to speak English and the complexity of the paperwork she would need to complete. Esther was referred to Catholic Charities, and with the encouragement and help of staff who spoke her native language, she was finally able to start down the path towards becoming a citizen. Esther qualified for an exemption based on her age and length of residence in the United States, and was allowed to take the civics test in her native language. She passed, and became a citizen on August 24, 2011. She is filled with pride to be an American, and grateful to have had the opportunity to naturalize.

It would be cruel, if not also contrary to the dictates of protective legislation like the Americans with Disabilities Act, for us to require that committed immigrants who are Americans in their hearts, like Mr. Kholchanskiy and Esther, overcome insurmountable hurdles before qualifying to become United States citizens. Thus is the intent of the English Language Unity Act, however: this bill would eliminate the very narrow exemptions available to individuals who wish to naturalize but cannot satisfy English language fluency requirements.

¹⁵ Client History provided by Laura Burdick, Catholic Legal Immigration Network, Inc., in Washington, DC on July 30, 2012.

The federal government need not pass this legislation to ensure that every immigrant has incentive to learn English and integrate as fully as possible into American society. As just one indicator, individuals who speak English fluently may earn as much as 17% more than those who do not, controlling for other relevant factors such as education and work experience.¹⁶ Instead, we should renew our efforts to fund and to improve the quality of English learning opportunities. United States Citizenship and Immigration Services' Citizenship and Integration Grants Program has been highly successful in ensuring the availability of English and civics instruction to tens of thousands of LPRs since its inception in 2009. For Fiscal Year 2013, a very modest \$11.2 million in discretionary appropriations has been requested to support this vital programming. Congress can best demonstrate its commitment to English acquisition by fully funding this and other exemplary programs that make it possible for all Americans to communicate in a common language.

Impact on Public Education and Other Benefits

Multilingualism plays an important role in efficient allocation of public benefits and services, from education to assistance with medical care, food, and housing. Recognition of this fact is one of the central reasons why Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, was promulgated in 2000 and has been embraced by each succeeding Administration. E.O. 13166 and Title VI of the Civil Rights Act of 1964, which it implements, would be effectively superseded and invalidated by passage of the English Language Unity Act.

¹⁶ E.g., Libertad Gonzalez, *Nonparametric Bounds on the Returns to Language Skills*, Universitat Pompeu Fabra Institute for the Study of Labor Discussion Paper No. 1098 (March 2004), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=527122.

Meaningful access for people not yet fluent in English – many of whom are of Latino or Asian origin – to a wide array of programs would thereby be severely impaired. In this testimony, I will highlight just two of the many available examples of government services that would be negatively affected by the English Language Unity Act.

Public Education

One of the innovations embraced by federal education law has been the enhancement of mandates to local school districts to involve parents more closely and intentionally in monitoring their children's educational progress. Schools that struggle to serve economically and socially challenged students and that receive federal funding are required to develop plans and policies to engage parents, and to annually evaluate the success of these efforts and the existence of barriers to parental involvement.¹⁷ Interactions between school officials and parents are specifically called for around the sharing of testing and evaluation results and detailed plans for changes to curricula, for instance, and around student selection for and design of programming for English language learners.¹⁸ A wealth of studies affirms that parental engagement in education is positively associated with growth and academic success.¹⁹

Laws governing federal assistance to state and local education systems recognize that parents who are not yet fluent in English must be accommodated if they are to become active partners in their children's education. These laws draw grantee schools' attention to the need to produce information about school and parent programs in languages that parents can understand, for

¹⁷ *E.g.*, Elementary and Secondary Education Act § 1118, 20 U.S.C. § 6318 (2012)

¹⁸ *Id.*; *also, e.g.*, 20 U.S.C. § 6312(g).

¹⁹ *E.g.*, Alyssa R. Gonzalez-DeHass, Patricia P. Willems, and Marie F. Doan Holbein, *Examining the Relationship Between Parental Involvement and Student Motivation*, 17 *Educational Psychology Review* 99, 100 (June 2005), available at http://people.uncw.edu/caropresoe/EDN523/examining_the_relationship.pdf.

example, and to produce tailored parental involvement policies for English language learning programs that incorporate parents' input.²⁰ All such efforts by schools to build partnerships with parents who are not yet fluent in English would be prevented, however, by the English Language Unity Act, to the detriment of the quality of education provided to many of the children who must overcome the greatest obstacles to academic success. The progress of, in particular, students who are still learning English would also suffer as a result of the prohibition the Act would create on transitional bilingual educational programs that help English language learners keep up with their peers by studying subjects such as math, science, and social studies in their native tongues. Ever since the passage of the Elementary and Secondary Education Act of 1965, we have striven, in the states and at the federal level, to eliminate inequities in education so that all children have an equal opportunity to learn and to succeed as adults; the English Language Unity Act threatens to reinforce and reinstitute these very same inequities.

Basic Assistance to Refugees and Asylees

Refugees and asylees often arrive in the United States with little more than their very lives. Many have no family members, friends, or even acquaintances in the United States to rely upon for assistance while they get on their feet. By definition, refugees and asylees have faced trauma, threats and/or violence. These individuals have endured enormous difficulty, in a phrase, and struggle to leave painful experiences behind and to adapt to radically different lives they did not freely choose. In recognition of the hardship refugees face in integrating into American communities and becoming self-sufficient, the law makes unique provisions for assistance to them in the months following their arrival. Refugees and asylees may specially

²⁰ *E.g.*, 20 U.S.C. § 6311(h)(1)(B)(ii) (2012); 20 U.S.C. § 6316(c)(6) (2012); 20 U.S.C. § 6318(b)(1) (2012); 20 U.S.C. § 6318(e)(5) (2012); 20 U.S.C. § 6812(6) (2012); 20 U.S.C. § 6826(b)(4) (2012).

qualify for benefits including food stamps, Supplemental Security Income, Temporary Assistance to Needy Families and other cash assistance.²¹

It is unlikely that the limited exceptions in this Act would apply to ensure that particularly-vulnerable new immigrants, many of whom are not yet fluent in English, receive comprehensible information about the benefits available to them. We have recently observed the zealous application and narrow interpretation of exceptions enacted in Iowa that are very similar to those in this bill. Instead, agencies' multilingual efforts would be scuttled by the English Language Unity Act. Official communications with individuals desperately in need of resettlement assistance are certainly a matter of decency and humanity, however.

Conclusion

The English Language Unity Act furthers a divisive policy that would severely impair the ability of people who are still learning English to contribute to our civic life and economic and social progress. Excluding these individuals from the political process is simply un-American, and a rejection of our history as a nation of immigrants that has embraced and benefitted from linguistic tolerance. The Act would create stark divisions where none actually exist, prospectively inhibiting exchange between English speakers and learners. It would decrease opportunities for current and aspiring American citizens to become an integral part of our national fabric by voting, sharing ideas and concerns with governmental officials, and learning about individual rights and responsibilities. It would prevent the naturalization of thousands of immigrants who love the United States and are committed to its success, even though, as the

²¹ *E.g.*, Personal Responsibility and Work Opportunity Reconciliation Act § 402(a)(2), 8 U.S.C. § 1612(a)(2); § 403(b), 8 U.S.C. § 1613(b); § 412(b)(1), 8 U.S.C. § 1622(b)(1); § 431(b)(2) and (b)(3); 8 U.S.C. § 1641(b)(2) and (b)(3).

House of Representatives recently noted, our nation has “strong interests in supporting a path for legal immigrants to become citizens.”²² Most troublingly, it would make these counterproductive changes without good cause: Americans and immigrants in this country need no further incentive to learn English, and are anxious to do so. Accordingly, shortages of classroom spaces and waiting lists are endemic to affordable English courses around the country.²³

An English-only policy will not help a single person learn English or integrate. People don't learn languages because of laws, but rather through classes. The English Language Unity Act does not attempt to provide for increased opportunity to learn English, and does nothing to promote the inclusion and partnership across barriers of language, national origin, race, ethnicity, and religion that have made the United States the moral, economic, and social power that it is today. Our future strength lies in sustaining policy that builds unity of purpose while acknowledging the different but complimentary skills, backgrounds, and knowledge we each contribute to our shared success.

²² H.R. Rep. No. 112-492, at Title IV, User Fee Funded Programs (2012).

²³ E.g., Dr. James Thomas Tucker, NALEO Educational Fund, *The ESL Logjam: Waiting Times for Adult ESL Classes and the Impact on English Learners* (Sept. 2006), available at <http://www.naleo.org/downloads/ESLReportLoRes.pdf>.