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Florida's Official English Amendment

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I. INTRODUCTION

> And the whole earth was of one language, and of one speech. . . . And the LORD said . . . let us go down, and there confound their language, that they may not understand one another's speech. . . . So the LORD scattered them abroad . . . and they [never completed the tower] . . . called Babel.[1]

From the time of the Tower of Babel, people the world over have struggled to communicate despite language barriers. In America, where English is the de facto,[2] although not official,[3] language of the country,

1. *Genesis* 11:1-9. According to the Bible, the descendants of Noah began to build a great city, including a tower that would reach to heaven. *Id.* But God did not want the tower completed, so he made the workers speak different languages and then scattered them over the earth. *Id.* The story of the Tower of Babel has been used to explain the origin of languages. 19 THE WORLD BOOK ENCYCLOPEDIA 349 (1988 ed.)

2. English is not only the language spoken most frequently in the United States, but the language of the Constitution and the country's laws as well.

3. The Founding Fathers rejected the establishment of a national language as well as John Adams' proposal for an "American Language Academy" designed to standardize the English language. Hiram Puig-Lugo, *Freedom to Speak One Language: Free Speech and*

governmental policy has historically tolerated the presence of minority languages[4] under the theory that natural societal and economic pressures would force new immigrants to learn English and assimilate into American life.[5]

Since the early 1980's, however, there has been a growing movement to legislate language by requiring people in the United States to learn and use English. This push for language unity has resulted in several state statutes and constitutional amendments designating English as the official language of the particular state.[6]

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the English Language Amendment, 11 CHICANO L. REV. 35 (1991).

4. However, immigrants must meet literacy requirements in order to become naturalized citizens, with an exception for persons over 50 years old with at least 20 years of United States residency and persons over 55 years old with at least 15 years of United States residency. 8 U.S.C. § 1423 (1988).

5. *See* Dennis Baron, *Federal English*, *in* LANGUAGE LOYALTIES 36-37 (James Crawford ed., 1992). This is commonly referred to as the melting-pot theory. *See* AMERICAN COLLEGE DICTIONARY 759 (1970).

6. The eighteen states that currently have statutes or amendments declaring English to be the official language of the state are as follows:

Alabama, in 1990: requiring enforcement by the Legislature and providing for standing to bring suit, ALA. CONST. amend. 509;

Arizona, in 1988: prohibiting the use of non-English languages and providing for standing, ARIZ. CONST. art. XXVIII; held to violate the First Amendment, *see* Yniguez v. Mofford, 730 F. Supp. 309, 317 (D. Ariz. 1990), *aff'd and rev'd in part*, 939 F.2d 727 (9th Cir. 1991);

Arkansas, in 1987: mandating that the amendment does not prohibit public schools from providing equal educational opportunities to all children, 1987 ARK. CODE ANN. § 1-4-117 (Michie 1987);

California, in 1986: requiring enforcement by the Legislature and providing for standing, CAL. CONST. art. III, § 6; found by the attorney general not to prohibit the use of languages in addition to English, *see infra* note 106;

Colorado, in 1988: allowing enforcement by the Legislature, COLO. CONST. art. II, § 30a;

Florida, in 1988: allowing enforcement by the Legislature, FLA. CONST. art. II, § 9;

Georgia, in 1986: merely designating English as the official language, 1986 GA. LAWS 70;

Hawaii, in 1978: designating both English and Hawaiian as official languages, but only requiring Hawaiian for public acts and transactions as provided by law, HAW. CONST. art. XV, § 4;

Illinois, in 1923: merely designating English as the official language, ILL. ANN. STAT. ch. v, para. 460/20 (Smith-Hurd 1991); held to be purely symbolic, Puerto Rican Org. for Political Action v. Kusper, 490 F.2d 575 (7th Cir. 1973);

Indiana, in 1984: merely designating English as the official language, IND. CODE ANN. § 1-2-10-1 (West 1988);

Kentucky, in 1984: merely designating English as the official language, KY. REV. STAT. ANN. § 2.013 (Michie/Bobbs-Merrill 1985);

On November 8, 1988, Florida voters overwhelmingly approved a controversial "Official English" amendment[7] to the state constitution.[8] The Official English amendment declared that "English is the official language of the State of Florida . . . . The legislature shall have the power to enforce this section by appropriate legislation."[9] Supporters of the amendment applauded its passage as "sending a clear message to government to conduct its business in English."[10] Opponents, however, charged that the amendment was driven by anti-Hispanic sentiments and that it advertised Florida as a land of bigots.[11]

Despite the amendment's landslide victory, the Florida legislature has

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Mississippi, in 1987: merely designating English as the official language, MISS. CODE ANN. § 3-3-31 (1991);

Nebraska, in 1920: requiring all official proceedings, records, and publications to be in English, and English to be used in all public and private schools, NEB. CONST. art I, § 27;

North Carolina, in 1987: mandating that the section is meant to preserve and protect the English language, and not to supersede any state or federal constitutional rights, N.C. GEN. STAT. § 145-12 (1992);

North Dakota, in 1987: merely designating English as the official language, N.D. CENT. CODE § 54-02-13 (1987);

South Carolina, in 1987: mandating that no law shall require the use of any non-English language except as required for state employment or educational purposes, S.C. CODE ANN. §§ 1-1-696 to 1-1-698 (Law. Co-op. 1991);

Tennessee, in 1984: requiring governmental communications and public school courses to be in English, TENN. CODE ANN. § 4-1-404 (1992);

Virginia, in 1981: mandating that school boards have no obligation to provide classes in languages other than English, VA. CODE ANN. § 22.1-212.1 (Michie 1992).

7. For purposes of this note, a distinction will be made between Official English and English-only legislation. English-only legislation specifically *excludes* the use of languages other than English, while Official English legislation declares English to be the official language and may or may not provide for enforcement of that declaration. The distinction is often blurred, however. Because enforcement provisions are often vague, it is not always easy to classify a particular amendment or statute as English-only or Official English legislation. *See, e.g.*, Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293 (1989); Laura A. Cordero, *Constitutional Limitations On Official English Declarations*, 20 N.M. L. REV. 17 (1990).

8. Maya Bell, *State Gets an Official Language — English*, ORLANDO SENTINEL, Nov. 9, 1988, at D4.

9. FLA CONST. art. II, § 9. It should be noted that the amendment only permits, rather than directs, legislators to enforce the amendment. Since the concept of a standardized national language was rejected by the Founding Fathers, *see supra* note 3, the question remains as to how and by whom "official English" would actually be defined.

10. Bell, *supra* note 8.

11. *Id.*

as yet declined to pass any legislation to enforce it.[12] However, on May 18, 1993, the 13-year-old English-only ordinance of Dade County, Florida was repealed.[13] The repeal of this 1980 forerunner to the Official English amendment unleashed a new determination to put "teeth" into the amendment.[14] The current influx of Haitians into South Florida may further fuel this determination.[15] Attempts to enforce the Official English amendment, however, raise issues of constitutional and statutory legality, depending on the type of legislation proposed.

This note chronicles the divisive history of the Florida Official English amendment and analyzes why attempts to enforce this amendment by English-only legislation would violate federal statutory and constitutional law. Part two of this note sets forth the history of the amendment's passage, beginning with the 1980 Dade County English-only ordinance. Part three of this note discusses the constitutional and statutory issues that might be raised by English-only legislation enacted to enforce the amendment.

II. HISTORY OF THE FLORIDA OFFICIAL ENGLISH AMENDMENT

A. *Dade County English-Only Ordinance*

In 1959, the year of the Cuban revolution, Dade County's population of less than one million residents was 80% non-Hispanic white, 5.3%

12. Karen Branch, *English-Only Scuffles Are Far From Over*, MIAMI HERALD, May 23, 1993, at 6B.

13. John Fernandez, *United Commission Votes to Dump Dade's English-only Measure*, PALM BEACH POST, May 19, 1993, at 1A.

14. Branch, *supra* note 12. Citizens for Dade United, a local organization that bitterly fought repeal of the English-only ordinance, announced a possible statewide petition drive to put teeth into the Official English amendment by making it impossible for government to conduct business in anything but English. *Id.*

15. Out of the 41,000 boat people picked up by the U.S. Coast Guard since a military coup ousted Haitian President Jean-Bertrand Aristide in September 1991, 11,000 have passed immigration officials' initial screening for political asylum. Lisa Ocker, *Let Haitians Go, Judge Orders*, SUN-SENTINEL, June 9, 1993, at 1A. On June 8, 1993, a federal judge ordered the release into the United States of 158 Haitians. *Id.* These Haitians had previously not been allowed to leave the U.S. Navy base at Guantanamo Bay, Cuba because they or their relatives had tested positive for HIV, the virus commonly thought to cause AIDS. *Id.* This has increased fears that many more thousands of refugees will be encouraged to flee Haiti for the United States. *Id.*

Hispanic, and 14.7% black.[16] As hundreds of thousands of Cubans fled their homeland, they poured into nearby Dade County, especially the city of Miami, which had long been popular with immigrants.[17] An influx of Haitians and Central Americans added to the ethnic influence.[18] By the time the Mariel boatlift of 1980 brought more than 100,000 new Cuban exiles into Miami, including a small but noticeable criminal element, it had become apparent that the Cubans were not temporary exiles who would soon return to a liberated Cuba.[19]

By November 1980, the population of Dade County was more than forty percent Hispanic.[20] Perhaps because they had seen their flight from Cuba as only temporary, perhaps due to close family ties, or perhaps simply because their numbers were so great, the Cubans had not followed the expected process of assimilation into pre-existing Miami life. Rather than accommodating the melting-pot theory, Cubans had become a culturally, economically, and politically distinct presence.[21]

As the Cuban influence grew, non-Hispanic whites felt increasingly alienated from their Hispanic neighbors and threatened with the loss of the community they had known.[22] Festivals, concerts, films, and theater, as well as the media, all began to reflect Miami's multi-ethnic nature.[23] Non-Hispanic whites began to complain of daily encounters with Cubans who were either unwilling or unable to speak to them in English.[24]

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16. Joanne Bretzer, *Language, Power, and Identity in Multiethnic Miami*, *in* LANGUAGE LOYALTIES 209-11 (James Crawford ed., 1992).

17. Max J. Castro, *On the Curious Question of Language in Miami*, *in* LANGUAGE LOYALTIES 178-79 (James Crawford ed., 1992).

18. Bretzer, *supra* note 16, at 213-14.

19. *Id.*

20. Castro, *supra* note 17, at 181.

21. Bretzer, *supra* note 16, at 213. This does not mean, however, that these immigrants have refused to learn English. Hispanics are learning English just as rapidly as preceding German, Italian, Jewish and other immigrant waves. Andres Viglucci, *Studies: Hispanics Are Learning English—And Fast*, MIAMI HERALD, July 31, 1988, at 15A. While it typically takes three generations for newcomers to become English-dominant, Hispanics approached a two-generation model during the 1980's. James Crawford, *Official English Amendment 11: Should English Become Florida's Official Language? No*, MIAMI HERALD, Oct. 16, 1988, at 1C (citing a study by demographer Calvin Veltman).

22. *See* Castro, *supra* note 17, at 179.

23. Bretzer, *supra* note 16, at 213.

24. *See, e.g., id.*, at 210. One Miami resident voiced the feelings of many non-Hispanic whites by declaring, "if I had wanted to live in a Latin country, I would have moved to one. . . . Strangers come up to me on the street to ask directions, in Spanish, presuming that everyone here knows the language. . . . Many of the criminals have Spanish surnames, but

Against this backdrop of simmering ethnic tension, and sparked by the final straw of the Mariel boatlift, the 1980 Dade County English-only ordinance was enacted.[25] The ordinance prohibited county officials from using any language but English, and from fostering any culture other than that of the United States.[26] "In effect, the county government had to conduct meetings and print documents only in English."[27] The ordinance was so restrictive that "even zoo signs identifying an animal's name in Latin violated the law."[28]

In 1984, the county commissioners voted to cure the most egregious overreachings of the ordinance by allowing certain exceptions for promoting tourism, providing medical and emergency services, and serving the elderly and handicapped.[29] Even these common-sense exceptions were met by bitterness and ethnic discord.[30] People attending the hearings held signs calling for the commissioners to be hanged.[31]

Even after the ordinance had been slightly relaxed, educational information was still restricted to English.[32] For example, Spanish directional signs in the county hospital had to be removed, and fire-prevention information, neo-natal care literature, and bus schedules could not be printed in Spanish.[33] In 1993, however, Federal court-ordered

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then so do the policemen. How many [other] major American newspapers have a Spanish-language edition, or need to?" *Pre-Cuban Miami Was a Good Place to Live*, MIAMI HERALD, Oct. 15, 1990, editorial, at 8A.

25. Citizens for Dade United, the political action group that organized the anti-bilingual campaign, was born practically overnight when two women met through a WNWS radio talk show. Castro, *supra* note 17, at 178. In just over four weeks, the group had gathered twice the necessary signatures to put the ordinance on the ballot. *Id.*

By the time the 1988 Florida Official English Amendment was passed, thirty-one Florida cities and two other counties had followed Dade County's lead by passing English-only or Official English laws or resolutions. Tom Lassiter, *English-only Fight Heats Up, Intent Unclear*, SUN-SENTINEL, Oct. 31, 1988, at 1A.

26. *Language Law Out in Dade; The County Commission Repeals the Ordinance That Made English the Only Medium for County Business*, ORLANDO SENTINEL, May 19, 1993, at A1.

27. Fernandez, *supra* note 13.

28. Califa, *supra* note 7.

29. Celia W. Dugger, *Metro OKs Bilingualism Law Changes*, MIAMI HERALD, Oct. 17, 1984, at 1D.

30. *Id.*

31. Craig Gemoules, *English Campaign Truce is Short-Lived*, MIAMI HERALD, Nov. 10, 1988, at 1C.

32. Maya Bell, *Where is English Battle Going?*, ORLANDO SENTINEL, Oct. 23, 1988, at G1.

33. *Id.*

redistricting resulted in a new commission that promptly voted to repeal the ordinance.[34]

B. *The Florida Official English Amendment*

In early 1985, Florida English kicked off a campaign drive to collect enough initiative petition signatures to place the Official English amendment on Florida's ballot.[35] Florida English, a state organization, was sponsored by U.S. English, a national organization with the primary goal of a federal Official English amendment.[36] Placing the amendment on the 1988[37]

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34. *Dade Redistricting Could Lead to Repeal of 'English-only' Law*, PALM BEACH POST, May 3, 1993, at 8A; Fernandez, *supra* note 13.

35. Robert A. Liff, *In Fla., An Effort to Make English the Official Language*, PHIL. INQUIRER, Feb. 17, 1985, at CO3. "Amendments to the Florida Constitution must be approved by a majority of people voting on them in a general or special election." Bobette Husick, *Constitutional Amendments 1990*, ST. PETERSBURG TIMES, Oct. 30, 1990 (Citrus Times), at 2. Amendments can be placed on the ballot in one of five ways: (1) joint resolutions approved by a three-fifths vote of each house of the Legislature; (2) action of a constitution revision commission, which convenes every 20 years; (3) action of a constitutional convention, convened by citizen petition initiative; (4) action by the Taxation and Budget Reform Commission, which convenes every 10 years; and (5) *citizen petition initiatives*, requiring signatures equaling at least: (a) eight percent of the total votes cast in the last preceding general election, and (b) eight percent of the votes cast in the last preceding general election in at least half of the state's congressional districts. FLA. CONST. art. XI, §§ 1-6.

Of the 79 constitutional amendments placed on the Florida ballot between 1968 and 1990, six were citizen initiatives, three of which (the Sunshine Amendment, the Florida Lottery, and Official English) were approved. Husick, *supra*.

36. Liff, *supra* note 35. U.S. English, based in Washington, D.C., was founded in 1983 by Dr. John Tanton, an ophthalmologist and civic activist, and former U.S. Senator S.I. Hayakawa (R-Calif.), who had unsuccessfully introduced federal Official English legislation in 1981. Califa, *supra* note 7. By 1988, U.S. English had over 300,000 members and a seven million dollar annual budget. *Id.* U.S. English is located at 818 Connecticut Avenue, N.W., Suite 200, Washington D.C. 20006. 10 U.S. ENGLISH UPDATE 1 (Spring 1993) at 1.

In arguing that the real motivation behind U.S. English was discriminatory, critics pointed out that Tanton had previously founded the Federation for American Immigration Reform ("FAIR") in 1979 to lobby for stricter immigration policy. Califa, *supra* note 7. Critics also noted that Hayakawa, a native Canadian of Japanese ancestry, found it "'perfectly understandable' that Japanese-Americans were sent to relocation camps during World War II." *Former Sen. S.I. Hayakawa Dies, Defied Student Protesters in '60s*, ORLANDO SENTINEL, Feb. 28, 1992, at A1. Hayakawa died of a stroke at age 85 in 1992. *Id.*

37. Florida English had been previously unsuccessful in placing the Official English amendment on the 1986 Florida ballot. *See* Liff, *supra* note 35.

ballot would require 342,939[38] validated signatures[39] by August 9, 1988.[40]

From its inception, the proposed amendment generated suspicion and distrust, dividing its supporters and its opponents into hostile camps.[41] Both sides agreed that immigrants coming to this country need proficiency in English.[42] However, they disagreed on whether the amendment was necessary and whether it would ultimately help or harm non-English speaking people.[43] Amendment supporters and opponents also fiercely debated whether the true aims of the supporters were altruistic, nationalistic, or xenophobic.[44]

Opponents of the amendment feared that its passage would hurt South Florida's extensive business and tourism ties with Central and South America by insulting foreign investors and tourists.[45] They saw the amendment as a threat to elderly, less-fluent immigrants who might not be afforded a needed interpreter in the courtroom or in an emergency situation.[46] Opponents feared that the amendment would affect not only

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38. Maya Bell, *Even Success Doesn't Stop English-only Petition Drive*, ORLANDO SENTINEL, Mar. 10, 1988, at D1.

39. Maya Bell, *English-only Petitions to be Peddled at Polls*, ORLANDO SENTINEL, Mar. 5, 1988, at D1. A validated signature is one that has been verified as belonging to a registered voter. *Id.*

40. Tom Lassiter, *English-only Amendment to Go to Vote, Last-Minute Blitz Nets Necessary Signatures*, SUN-SENTINEL, Aug. 9, 1988, at 1B.

41. *See infra* text accompanying notes 44-58. Ironically, 82% of those polled believed that sharing an official language would draw Floridians together, even as the amendment debate polarized the state. *See* Paul Anderson, *81% Support Official English, Amendment Backers' Poll Shows*, MIAMI HERALD, Sept. 24, 1988, at 20A.

42. *Leaders to Fight Ordinance, English-only Plan Crippling, Group Says*, SUN-SENTINEL, June 21, 1988, at 4B.

43. Supporters of the amendment charged the U.S. Government of pursuing a policy primarily directed at "native language maintenance" that could thwart the natural process of assimilation and language acquisition. Linda Chavez, *Official English Amendment 11: Should English Become Florida's Official Language? Yes*, MIAMI HERALD, Oct. 16, 1988, at 1C. However, this statement is at odds with recent demographic studies. *See supra* note 21.

44. *See infra* text accompanying notes 45-58. Xenophobia is a fear or hatred of foreigners. AMERICAN COLLEGE DICTIONARY 1411 (1970).

45. Tom Lassiter, *'Official Language' Vote OK'd 'English-only' Lobby Gains Court's Ruling*, SUN-SENTINEL, Feb. 5, 1988, at 13A.

46. *Florida's Constitutional Amendments on Official English*, MIAMI HERALD, Oct. 22, 1988, at 26A. In calling for the elimination of "911" services for non-English speakers, Florida English declared that "everybody calling the emergency line should have to learn enough English so they can say 'fire' or 'emergency' and give the address." Laura A. Cordero, *Constitutional Limitations on Official English Declarations*, 20 N.M. L. REV. 17,

official governmental functions, but would contribute to the loss of freedom to speak a non-English language in the workplace.[47] They charged that the drive behind the amendment was fueled by bigotry and anti-Hispanic sentiments.[48] Opponents of the amendment included the Greater Miami Chamber of Commerce,[49] Florida's Roman Catholic bishops,[50] and Florida's governor.[51]

The difficulty in determining what the amendment would actually mean was due not only to the nonspecific nature of the amendment itself[52] but to the mixed motivations and contradictory statements of its supporters,[53]

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51 (1990).

47. Zita Arocha, *Dispute Fuels Campaign Against Official English; Foes Say Memo Shows Racism's Behind Plan*, WASH. POST, Nov. 6, 1988, at A20. Opponents of the amendment also feared it would halt the purchase of foreign language books by public libraries. Tom Lassiter, *English-only Fight Heats Up, Intent Unclear*, SUN-SENTINEL, Oct. 31, 1988, at 1A.

48. Maya Bell, *Leader Quits Language Group Over Controversy*, SUN-SENTINEL, Oct. 18, 1988, at 3A.

49. *English-only Foes Push Spanish Plan*, SUN-SENTINEL, Apr. 9, 1988, at 19A.

50. *Official English is Racist, State Catholic Bishops Say*, SUN-SENTINEL, Oct. 7, 1988, at 14A. A representative of Florida's Roman Catholic bishops maintained that much of the support for the amendment was based on racism. *Id.*

51. *Allow the Vote*, MIAMI HERALD, Oct. 13, 1988, at 24A. Governor Bob Martinez noted, "We don't select a religion for Americans . . . and we have not selected a language for Americans. If you pass it, the only thing you'll get is hard feelings." *Id.*

52. Supporters of the amendment admitted that they did not know what legislation would be required to maintain English as the official language of government. Lassiter, *supra* note 47. "We are not legislators. The more specifics you put into this, the more it's going to be attacked." *Id.*

53. The stated goals of U.S. English, in addition to the passage of a national English amendment, were to reform bilingual education to use short-term immersion techniques rather than long-term transitional methods, and to eliminate bilingual ballots. Chavez, *supra* note 43. The executive director of U.S. English said her principal objection to bilingual balloting is that it makes voting "too easy." John Jacobs, *Supporters Spread Word on English-only Ballot*, WASH. POST, Nov. 12, 1983, at A8.

Florida English's campaign chairman, however, saw the amendment as having little real impact. Bell, *supra* note 39. He insisted that it was designed merely to turn the social reality of English as the state's official language into law, although he later stated that the practice of allowing applicants to take driver's license tests in Spanish should be reviewed. Lassiter, *supra* note 47. The campaign's spokeswoman, on the other hand, said that the campaign intended to ask legislators to encourage funding for English classes, promote foreign language instruction, and emphasize learning the geography and history of Central and South America. Bell, *supra* note 39.

Some supporters felt the amendment would mean that Florida's government would only be under no obligation to use non-English languages in the provision of services, while others saw it as a loud and clear mandate to government to conduct business in English only.

some of whom spoke Spanish fluently.[54] Supporters viewed the amendment as everything from a mere symbol[55] to a way of demanding government to curtail bilingual programs[56] or enact English-only legislation[57] to a way of forcing immigrants to speak English.[58]

Florida's Official English amendment won its first legal battle on February 4, 1988, after the state legislature directed the attorney general to petition the Florida Supreme Court for an advisory opinion as to the

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Backers to Argue for English as Official Language, MIAMI HERALD, Dec. 12, 1987, at 2C; Maya Bell, *Where is English Battle Going?*, ORLANDO SENTINEL, Oct. 23, 1988, at G1. News articles at times described the amendment as actually prohibiting state and local governments from using non-English languages in conducting public business. *Leaders to Fight Ordinance, English-only Plan Crippling, Group Says*, SUN-SENTINEL, June 21, 1988, at 4B.

Although supporters maintained that the intent of the proposed amendment was "not at all anti-Hispanic," they conceded that at least some of its backers were driven by discriminatory motives. Jon Marcus, *English Drive Called Racially Motivated, Backers Say Move 'Not Anti-Hispanic'*, SUN-SENTINEL, Jan. 9, 1988, at 14A. Some supporters hoped the impact of the amendment would be to force the use of English even in the private sector. Lassiter, *supra* note 40, at 1B. "English is the language that should be spoken in America," said the Broward Country coordinator for Florida English. *Id.*

Some Floridians supported the measure because of their frustration at feeling like a foreigner in Dade County, and their annoyance at not being able to find a convenience store clerk or taxi driver who speaks English. Bell, *supra* note 32. Non-Spanish speaking employees felt uncomfortable and excluded when fellow employees, who could speak English, chose to speak Spanish in front of them. Lydia Villalva, *Hispanics Attack Ban on Spanish, English-only Amendment is Concern for Ethnic Group*, ORLANDO SENTINEL, Dec. 22, 1988 (Osceola Sentinel), at 1. An official language was seen by many as a way to prevent the country from becoming a "Tower of Babel." Bell, *supra* note 32. As of a 1987 survey, Spanish was the dominant language in 36.7% of all Dade County households. Marcus, *supra*.

54. For example, the spokeswoman for the Tampa-based Florida English Campaign spoke fluent English, as did the president of U.S. English. Zita Arocha, *Dispute Fuels Campaign Against Official English, Foes Say Memo Shows Racism's Behind Plan*, WASH. POST, Nov. 6, 1988, at A20; Lassiter, *supra* note 40; *Official English is Racist, State Catholic Bishops Say*, SUN-SENTINEL, Oct. 7, 1988, at 14A.

55. Bell, *supra* note 39. It seems unlikely, however, that U.S. English would contribute more than $300,000 to Official English groups in Florida, Arizona, and Colorado (where Official English amendments were also on the 1988 ballot) to promote passage of a mere "symbol." *See* Susan Kelleher, *Advocates of Official English on the Defensive; Proponents of Ballot Measures in 3 States Deny Racism Charges in Wake of Controversy*, WASH. POST, Oct. 23, 1988, at A16.

56. Chavez, *supra* note 43.

57. Bell, *supra* note 32.

58. Lassiter, *supra* note 40.

petition's validity.[59] In holding that the initiative petition was legally sufficient, the court found that the amendment was not so broad as to violate the single-subject requirement of the Florida Constitution[60] and that the ballot summary fairly represented the substance of the amendment.[61]

The court rejected the attorney general's argument that because Florida law requires that "the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot," the ballot summary should explain in detail what the amendment's proponents hoped to accomplish by its passage.[62] The court held that the seventy-five word ballot summary required by statute did not have to provide this detail.[63] The court cautioned that its opinion dealt only with the legal validity of the amendment and ballot and, therefore, should not be construed as either favoring or opposing passage of the amendment.[64]

The court victory spurred amendment supporters into well-organized and heavily-funded[65] activity.[66] Petitions were distributed at festivals,

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59. *In re* Advisory Opinion to the Attorney General, 520 So. 2d 11, 12 (Fla. 1988). An advisory opinion is required when an initiative petition has validated signatures equal to 10% of the state's voters in at least one-fourth of the congressional districts. FLA. STAT. ANN. § 15.21 (West Supp. 1993).

60. *In re Advisory Opinion to the Attorney General*, 520 So. 2d at 13. The purpose of the single-subject requirement of article XI, § 3 of the Florida Constitution is to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support. *Id.* at 12. Opponents of the amendment argued that it was so broad that legislation to implement it might abridge the freedom of speech or the press, violate due process, or invade the right of privacy. *Id.* The court agreed that the amendment could have broad ramifications, but held that dealing with only one subject "on its face" was legally sufficient. *Id.* at 13.

61. *Id.* The attorney general had pointed out that the ballot summary stated that the amendment enables the legislature to "implement this article" by appropriate legislation, whereas the amendment itself gave the legislature the power "to enforce this section" by appropriate legislation. *In re Advisory Opinion to the Attorney General*, 520 So. 2d at 13. The court held that the differing use of terminology could not reasonably mislead the voters. *Id.*

62. *Id.*

63. *Id.* Based on the conflicting interpretations given the amendment by its supporters, however, *see supra* note 53, it strains credulity to think that a voter could really have "intelligently cast his ballot." *See supra* text accompanying note 62.

64. *In re Advisory Opinion to the Attorney General*, 520 So. 2d at 13.

65. U.S. English contributed more than $300,000 to Official English groups in Florida, Arizona, and Colorado. Kelleher, *supra* note 55.

66. Amendment opponents did not organize until April, 1988, when prominent members of Miami's Hispanic community banded with members of the black, Anglo and Jewish communities to form English Plus, which was created with the blessings of the Greater Mi-

club and organizational meetings, and shopping centers.[67] The amendment's greatest gain, however, came when its supporters capitalized on the opportunity presented by the presidential primary ballot.[68]

On Super Tuesday, March 8, 1988, 500 volunteers and an equal number of paid staffers[69] staked out polling places across the state, asking voters[70] to sign Official English petitions.[71] Voters were more than willing to comply; the demand for petitions was so great that people stood in line to sign them, and complained when petitions were unavailable because the supply had been depleted.[72]

By the next day, the number of signatures collected had jumped from 240,000 to about 450,000, exceeding the 342,939 signatures required to put the amendment on the ballot.[73] Only 126,000 of the signatures had been validated, however, and campaign officials vowed to continue the petition

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ami Chamber of Commerce. Andres Viglucci, *Opposition to Official English Debuts, Foes' Cry: Law Would Hurt Business*, MIAMI HERALD, June 20, 1988, at 1B; *English-only Foes Push Spanish Plan*, SUN-SENTINEL, Apr. 9, 1988, at 19A. English Plus is a concept declaring that it is best when individuals can acquire strong English language proficiency along with the mastery of two or more languages. *Official Language*, ORLANDO SENTINEL, Nov. 19, 1988, at D14.

English Plus aired radio spots and sponsored ads, conferences, and debates to deliver the message that the Official English amendment would be discriminatory and could cripple business and tourism in a state with such strong ties to Latin America. *Leaders to Fight Ordinance, English-only Plan Crippling*, SUN-SENTINEL, June 21, 1988, at 4B. In August, 1988, Speak Up Now for Florida ("SUN") was created to spread this message to North and Central Florida. Andres Viglucci, *Group to Speak Up For Florida, Will Battle Official English Drive*, MIAMI HERALD, Aug. 10, 1988, at 2B.

67. Tom Lassiter, *Signatures Increase for State's 'Official Language' Campaign*, SUN-SENTINEL, Apr. 26, 1988, at 2B.

68. Bell, *supra* note 38.

69. In Meyer v. Grant, 486 U.S. 414 (1988), the Supreme Court ruled that a Colorado statute prohibiting the use of paid circulators to gather signatures on an initiative petition violated the First and Fourteenth Amendments.

70. The signature of a registered voter had the advantage of being, by definition, a valid signature. *See supra* note 39. Aware that the sight of petition gatherers could arouse anger in some voters, particularly in Dade County, the petition gatherers were instructed to be "courteous and polite" and not to get into arguments. Bell, *supra* note 39.

71. Bell, *supra* note 38. Staffers, who were paid by the number of valid signatures collected, were organized by a professional consultant hired by U.S. English at a cost of over $50,000. *Id.* While volunteers collected about 60,000 signatures, the equal number of paid staffers gathered over 150,000 signatures. The professional consultant noted, "[w]e do a lot of work with very dedicated volunteers, but nothing seems to motivate like profit." *Id.*

72. Lassiter, *supra* note 67. At this point, polls were showing about 74% support for the amendment. *Id.*

73. Bell, *supra* note 38.

drive until the required 342,939 signatures had been validated.[74] Eventually, 366,666 signatures were validated, exceeding the requirement to sign up at least eight percent of the number of residents who voted in the 1984 general elections.[75]

Just six days before the August 8th deadline for amendment initiatives, however, campaign officials realized that they had not met a second requirement to gather the eight percent in at least ten of the state's nineteen congressional districts.[76] They were, instead, one district short.[77]

Campaign officials targeted the twelfth congressional district, where another 956 signatures were required to pick up the district and meet the requirement.[78] The signatures were obtained, and, just twenty-four hours before the deadline, the state Division of Elections approved the referendum for the November ballot.[79] Many amendment opponents agreed with its supporters that, having been placed on the ballot, the amendment would probably be passed by the voters.[80]

In late October, 1988, however, amendment supporters suddenly found themselves on the defensive in the face of renewed charges of racism and bigotry when a memo written by John Tanton, the chairman and founding member of U.S. English, became public.[81] In the internal memo, Tanton suggested that the growing Hispanic population threatens the United States because Hispanics are both fertile and corrupt.[82] Tanton also suggested that Hispanics are overwhelmingly Catholic and therefore may not respect the well-established separation between church and state.[83]

In response to the memo, retired CBS anchorman Walter Cronkite resigned as a member of the U.S. English advisory board, and former

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74. *Id.*

75. Tom Lassiter, *English-only Amendment to Go to Vote, Last-Minute Blitz Nets Necessary Signatures*, SUN-SENTINEL, Aug. 9, 1988, at 1B.

76. *Id.*

77. *Id.* A miscount by an election official in St. Lucie county had left the petition short by almost 1,000 signatures. *Id.*

78. *Id.*

79. Lassiter, *supra* note 75.

80. *Id.*

81. Maya Bell, *Leader Quits Language Group Over Controversy*, SUN-SENTINEL, Oct. 18, 1988, at 3A.

82. *Id.* In discussing birthrates, Tanton wrote: "Perhaps this is the first instance in which those with their pants up are going to get caught by those with their pants down." David Hacker, *Petosky Doctor Leads English Only Crusade*, DETROIT FREE PRESS, Feb. 14, 1989, at 3A. Tanton also wondered whether Latin-American immigrants will "bring with them the tradition of the mordida, or bribe." *Id.*

83. Bell, *supra* note 81.

Reagan aide Linda Chavez resigned as the organization's president.[84] Amendment opponents hoped that news of the memo would make Florida voters realize that they were being manipulated by a bigoted national organization with a dangerous hidden agenda.[85] Florida English's founder, Dr. Mark LaPorta, took immediate steps to distance his group from its sponsor, calling the memo anti-immigrant, anti-Hispanic, anti-Catholic, and "not what Florida English is all about."[86]

The Official English amendment met its second legal challenge when four registered voters, whose primary language was Spanish, sought to enjoin Florida officials from conducting an election on the citizen initiative.[87] The plaintiffs argued that the amendment petition violated the Voting Rights Act of 1965 because the petition, which was written only in English, was circulated in designated bilingual political subdivisions.[88] The plaintiffs' position was supported by the U.S. Department of Justice, which agreed that petitions should have been available in Spanish in six counties.[89]

The Court of Appeals for the Eleventh Circuit found, however, that the Voting Rights Act does not apply to initiative petitions because initiative petitions are related to political speech rather than to the process of casting a vote.[90] The court also found that involvement by state officials in the initiative process does not constitute state action because the state's responsibility is solely to ensure that the petition meets the requirements of

84. *Id.* Linda Chavez said that her decision to step down was hastened by revelations that a major U.S. English backer had helped reprint "an awful, awful book" called *Coup of Saints*, which was a "paranoid fantasy" about "undesirables of the Third World" taking over developed nations. *Id.*

85. Kelleher, *supra* note 55.

86. Sandra Dibble, *Amendment Backers Downplay U.S. English Ties*, MIAMI HERALD, Oct. 20, 1988, at 3D.

87. Delgado v. Smith, 861 F.2d 1489 (11th Cir. 1988), *cert. denied*, 492 U.S. 918 (1989). The voters were appealing a prior federal district court judgment dismissing their complaint. *Id.*

88. *Id.* Colorado voters had previously presented the same Voting Rights Act challenge to the Official English amendment petition in their state. Montero v. Meyer, 861 F.2d 603 (10th Cir. 1988), *cert. denied*, 492 U.S. 921 (1989). The Tenth Circuit reversed a district court's order which had enjoined the Secretary of State of Colorado from conducting an election on the proposed amendment. *Id.*

89. Dave Von Drehle, *U.S. Fights Language Petitions, Official English Opponents Buoyed*, MIAMI HERALD, Nov. 3, 1988, at 1A.

90. *Delgado*, 861 F.2d at 1495.

law and will fairly present the proposed amendment.[91] The court's November 4, 1988, decision removed the amendment's last legal hurdle to being placed on the November 8th ballot.[92]

The Official English amendment moved quickly to victory on election day, passing with an overwhelming eighty-four percent of the vote.[93] As a conciliatory measure, amendment supporters joined with its opponents to warn that the amendment should not be used as an excuse for discrimination.[94] Nevertheless, the truce was short-lived.[95]

Florida English's Dr. LaPorta caused a near-riot when he urged repeal of the Dade County English-only ordinance, arguing that the ordinance should be pro-English like the amendment, rather than anti-bilingual.[96] Feeling betrayed, his former supporters rushed the stage, grabbing and breaking the microphone, and calling him a traitor.[97] This display convinced amendment opponents more than ever that amendment supporters were hard-core xenophobes with no constructive agenda.[98]

Several incidents immediately following the amendment's passage seemed to confirm the fears of its opponents as the amendment allegedly was misused to justify and vocalize anti-Hispanic sentiments.[99] A supermarket employee was suspended for speaking Spanish to another employ-

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91. *Id.* at 1497. The state does not initiate, draft, or address the merits of petitions, and does not participate in the circulation of petitions or collection of signatures. *Id.* The court noted a distinction between Florida and states such as Massachusetts, where, pursuant to the Voting Rights Act, petitions are printed in both English and the applicable minority language because the state itself pays for and prints the initiative petitions. *Id.*

92. *Id.* at 1489. A later challenge to the Eleventh Circuit's ruling was rejected without comment by the United States Supreme Court. *See* Delgado v. Smith, 492 U.S. 918 (1989).

93. Maya Bell, *Workers, Customers Report Bias Over Non-English Use*, SUN-SENTINEL, Jan. 2, 1989 (Weekly Business), at 10. The actual tally was 3,457,039 for the amendment and 664,861 against. *Florida Trivia*, MIAMI HERALD, Apr. 3, 1991, at 1B.

94. Maya Bell, *State Gets An Official Language*, ORLANDO SENTINEL, Nov. 9, 1988, at D4.

95. *See id.*

96. Maya Bell, *English Won Vote, Now Comes Real Battle*, ORLANDO SENTINEL, Nov. 14, 1988, at B1.

97. *Id.*

98. *Id.*

99. Maya Bell, *English-only Rule Raises Concern*, ORLANDO SENTINEL, Dec. 11, 1988, at D1. On the other hand, charges of anti-Hispanic bias were sometimes raised to defend inconsiderate behavior, such as the use of Spanish to exclude others. Lydia V. Lijo, *Hispanics Attack Ban on Spanish, English-only Amendment is Concern for Ethnic Group*, ORLANDO SENTINEL, Dec. 22, 1988 (Osceola Sentinel), at 1.

ee;[100] a city mayor was quoted as making derogatory remarks about his Hispanic opponent;[101] and children complained that they were forbidden to speak Spanish in school hallways and on school buses.[102] An 18-year-old clause in a hospital handbook requiring employees to speak English during the workday was used for the first time to prohibit employees from speaking a foreign language to non-English-speaking patients and to each other.[103] A Spanish-speaking customer seeking to place an order was told that she must speak English.[104] Listeners who called into an English-language station talk show willingly admitted that they had voted for the amendment because it seemed to be anti-Hispanic.[105]

Despite these incidents, however, most legal experts felt that unless the legislature decided to "enforce this section by appropriate legislation," the amendment would remain nothing more than a symbolic measure.[106] In January, 1989, Florida's governor issued an executive order that recognized English as the state's official language and directed that all official records

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100. *Hispanics Blame English Law for Rise in Harassment*, ORLANDO SENTINEL, Nov. 16, 1988, at D3. Publix supermarket administrators, who apologized profusely and transferred the Coral Gables manager involved, nevertheless insisted that the cashier was actually disciplined for carrying on a personal conversation while serving a customer. *Id.* The written reprimand, however, cited only his use of Spanish. *Ethnic Ugliness*, MIAMI HERALD, Nov. 15, 1988, at 22A.

101. *Mayor Apologizes For Latin Remark*, ORLANDO SENTINEL, Nov. 17, 1988, at D8. The mayor, who later apologized, said that he was more qualified than his Hispanic opponent, because Hispanics like to sleep late. *Id.*

102. Lijo, *supra* note 99; *Hispanics Blame English Law for Rise in Harassment*, ORLANDO SENTINEL, Nov. 16, 1988, at D3.

103. Bell, *supra* note 99. The rule was subsequently rewritten. *Id.*

104. *Id.* Sears, Roebuck and Co. officials apologized for their employee's behavior. *Id.*

105. *Id.*

106. Bell, *supra* note 99. The California Attorney General, in discussing that state's Official English amendment, noted that the amendment was not merely symbolic, because a state act, in order to have a binding effect, must be published in English. Califa, *supra* note 7, at 302. However, the attorney general found that the text of the amendment does *not prohibit* the use of languages in addition to English. *Id.*

California's Official English amendment goes further than the Florida amendment. It not only gives the Legislature power to enforce the amendment by appropriate legislation, but commands the Legislature and state officials to "take all steps necessary to ensure that the role of English is preserved and enhanced." CAL. CONST. art. III, § 6. The amendment also prohibits the Legislature from making a law "which diminishes or ignores the role of English as the common language" of the state. *Id.*

and proceedings of state and local governments be in English.[107] The order also stated that the use of languages other than English in the state's economic, social, or political institutions, or by an employee in the workplace, *shall not be restricted.*[108] This order did not satisfy amendment supporters, however, and a U.S. English-backed bill which required that all official governmental acts, documents, and publications be in English was proposed in the Florida Senate in March, 1989.[109] Although a U.S. English director insisted that the bill was not English-only legislation,[110] the bill allowed for non-English communication only when necessary to comply with federal law.[111]

The bill's supporters predicted an easy victory, believing that legislators would respond to the overwhelming voter approval of the Official English amendment.[112] The bill, however, which was described as vague, unnecessary, and a threat to public health,[113] was defeated in a 3-3 vote after three Cuban-American senators gave impassioned arguments against it.[114]

In the four years since this bill was defeated, there have been no serious attempts to pass legislation which would enforce the Official English amendment. This period of relative quiet may be ending, however, now that

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107. Tom Lassiter, *Print Government Documents in English, Group Proposes*, SUN-SENTINEL, Mar. 14, 1989, at 20A.

108. *Id.* The governor's press secretary noted that the governor was more interested in ensuring that the amendment did not interfere with the health, safety, and welfare of all Floridians than in regulating foreign languages. Maya Bell, *English Won Vote, Now Comes Real Battle*, ORLANDO SENTINEL, Nov. 14, 1988, at B1.

109. Lassiter, *supra* note 107. The proposed legislation stated "[a]ll official documents that are governmental acts must be in English except that translation services and accommodating communications are permissible to comply with Federal laws and regulations. All official publications must be printed and made available in English." *Id.*

110. *Id.* If, as the U.S. English director insisted, the bill was not English-only legislation, there would seem little point in promoting it, since it would then be quite similar to the governor's executive order.

111. *Id.* The same U.S. English director conceded that official documents were already being maintained in English, but argued that a law was necessary to sustain the status quo. *Id.*

112. John Kennedy, *Panel Kills English-only Plan, Amendment Backers Vow to 'Regroup, Retrench and Reorganize,'* SUN-SENTINEL, May 18, 1989, at 24A.

113. Wesley Loy, *Senate Panel's Tie Vote Kills English-only Bill*, ORLANDO SENTINEL, May 18, 1989, at B3. In calling the bill unnecessary, Senator Ileana Ros-Lehtinen (R-Miami), argued that there was not a single government document printed in a foreign language and not English. *Id.* The senator also said that the bill was so vague in defining an "official document" that it could threaten public health by stopping state publications such as AIDS pamphlets printed in Spanish and Creole. *Id.*

114. Kennedy, *supra* note 112.

the Dade County English-only ordinance has been repealed.[115] The constitutional and statutory issues raised by English-only legislation that could be enacted to enforce the amendment is the subject of Part three of this note.

III. LEGAL RAMIFICATIONS OF POSSIBLE LEGISLATION TO ENFORCE THE OFFICIAL ENGLISH AMENDMENT

A. *Constitutionality of the Amendment Itself*

In order to analyze the legality of any legislation created to enforce the Florida Official English amendment, it is first necessary to determine whether the amendment itself might be unconstitutional. The Florida Supreme Court found the amendment's initiative petition legally valid.[116] However, some authors have suggested that all Official English amendments, even those such as Florida's which have not been "enforced by appropriate legislation," are unconstitutional because they violate the Equal Protection Clause of the Fourteenth Amendment.[117]

Laws potentially implicate the Equal Protection Clause when they treat one class of people differently than another class.[118] Such laws are analyzed with varying levels of scrutiny: strict, intermediate, and rational basis.[119] Strict scrutiny, which is the highest level of scrutiny, is only applied when the law infringes on a fundamental right, such as the right to vote, or when the law operates to the disadvantage of a suspect class, such as a class based on race or national origin.[120] When strict scrutiny is applied, the law must be necessary for a compelling governmental interest or the law will be struck.[121]

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115. *See supra* note 14. Fears about the influx of Haitian refugees may also lead to renewed attempts to enforce the Official English amendment. *See supra* text accompanying note 15.

116. *See supra* text accompanying notes 59-61.

117. *See, e.g., supra* note 7, at 330; Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992). The Fourteenth Amendment provides that "[n]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

118. *See infra* text accompanying notes 120-25.

119. *See infra* text accompanying notes 120-25.

120. *See, e.g.*, Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 312 (1976).

121. *See, e.g.*, Burson v. Freeman, 112 S.Ct. 1846, 1852 (1992).

Intermediate scrutiny is applied when the class has not been found to be "suspect," but still merits heightened judicial review, such as a class based on gender.[122] When intermediate scrutiny is applied, the law must be substantially related to an important governmental interest, or the law will be struck.[123]

All other classes are analyzed under rational basis.[124] A law is rarely defeated under this level of scrutiny; rational basis merely requires that a law be rationally related to a legitimate governmental interest in order to be upheld.[125]

The Supreme Court has not resolved the question of whether language-based discrimination constitutes a "suspect class."[126] However, several authors have made a convincing argument that language is a proxy for national origin, and therefore language-based discrimination should be afforded the same strict scrutiny as discrimination based on national origin.[127]

The Official English amendment would not necessarily be struck, however, even assuming that language-based discrimination deserves strict scrutiny analysis and assuming that language unity is not a compelling state interest. The amendment would not be violative of the Fourteenth Amendment unless it can first be shown that the amendment is intentionally discriminatory.[128] Purposeful discrimination is commonly referred to as de jure discrimination.[129]

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122. *See, e.g.*, City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440 (1985).

123. *See, e.g.*, Mississippi University for Women v. Hogan, 458 U.S. 718, 724 (1982).

124. *See, e.g.*, United States Railroad Retirement Board v. Fritz, 449 U.S. 166, 167-175 (1980).

125. *See id.*

126. *See* Cordero, *supra* note 7, at 26.

127. *See, e.g.*, Califa, *supra* note 7, at 347-48; Cordero, *supra* note 7, at 26; Perea, *supra* note 117, at 370-71.

One author argues that people who are reluctant to acknowledge racist tendencies are more comfortable using language as a basis for exclusion because language, unlike race, is seen as a mutable quality; language choice is something one can be held accountable for. Joanne Bretzer, *Language, Power, and Identity in Multiethnic Miami*, *in* LANGUAGE LOYALTIES 209, 215 (James Crawford ed., 1992).

128. *See* Washington v. Davis, 426 U.S. 229, 247 (1976). A law is not invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than another. *Id.* at 242.

129. De jure means "by law." BLACK'S LAW DICTIONARY 425 (6th ed. 1990). Discrimination that is found not to result from a discriminatory purpose is known as "de facto" discrimination. *See id.* at 416.

De jure discrimination can be found either: (1) on the *face* of the law;[130] (2) through discriminatory *application* of the law;[131] or (3) by evidence of the discriminatory *intent* of the law.[132]

Florida's Official English amendment is not discriminatory either facially, or by application, because it does not legislate the *exclusion* of another language.[133] Some authors contend, however, that the xenophobic nature of all Official English amendments is sufficient evidence of discriminatory intent to satisfy the de jure requirement.[134]

The history of Florida's Official English amendment, discussed in Part two of this note, however, clearly reveals that its supporters interpreted the amendment in various ways, and backed it for various reasons. This inconsistency in motivating factors, combined with the Supreme Court's reluctance to infer discrimination based on intent,[135] renders it unlikely that the requisite de jure discrimination would be found, despite the clearly discriminatory purpose of many of the amendment's backers.[136]

Assuming, then, that the Florida Official English amendment itself would not be found unconstitutional, the question is whether legislation enacted to enforce it by putting "teeth" into the amendment, as many of its supporters advocate,[137] would be legally valid.[138] Such legislation would

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130. *See, e.g.*, Strauder v. West Virginia, 100 U.S. 303, 303-04 (1880).

131. *See, e.g.*, Yick Wo v. Hopkins, 118 U.S. 356, 366 (1886).

132. *See, e.g.*, Rogers v. Lodge, 458 U.S. 613, 617 (1982).

133. *See supra* text accompanying notes 9 and 106.

134. *See, e.g.*, Califa, *supra* note 7, at 324-25; Perea, *supra* note 117, at 356-57.

135. *See, e.g.*, Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 270 (1977); City of Richmond v. United States, 422 U.S. 358, 378 (1975).

136. *See supra* text accompanying note 105.

137. *See supra* text accompanying note 14.

138. It should be noted that Dade County's English-only ordinance, which was extremely restrictive, was repealed before being facially challenged on constitutional grounds. *See supra* text accompanying notes 25-34. The ordinance did lose in another legal challenge, however.

After substantial research and consultation between Dade County's Election Department, Communications Department, and the office of the County Attorney, Dade County reached the conclusion that the ordinance prohibited the county from publishing and disseminating election pamphlets in Spanish. United States v. Metropolitan Dade County, 815 F. Supp. 1475, 1476 (S.D. Fla. 1993). The United States challenged the county's English-only publication of election pamphlets, and the federal district court agreed, holding that a voter information pamphlet was "assistance or . . . information relating to the electoral process" that should have been provided in the language of the applicable minority group. *Id.* at 1477-78. Ironically, the election related to these election pamphlets was based on court-ordered redistricting and subsequently resulted in a new commission that repealed the ordinance. *See supra* note 34, at 1A.

transform the amendment into English-only legislation that might implicate the First and Fourteenth Amendments and violate the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

B. *First Amendment Considerations*

Legislation to enforce the amendment could require all official governmental acts to be in English. This requirement could take two forms: (1) requiring any official governmental act to be in English, in addition to any other language used; or (2) restricting official governmental acts to English-only. The first alternative would make little sense, since it would go no further than the governor's 1989 executive order, which did nothing to change the status quo because official documents were already being maintained in English.[139] It seems more likely that legislation supporters would attempt to have the amendment replicate the repealed English-only Dade ordinance by restricting official state and local governmental acts to English-only.[140]

Attempts to restrict governmental acts to English, however, to the *exclusion* of other languages, would likely violate the First Amendment, which prohibits laws "abridging . . . the freedom of speech."[141] Regulation of content-based speech must be "necessary to serve a compelling state interest" and "narrowly drawn to achieve that end" to be constitutionally valid.[142] With respect to English-only legislation, a compelling state interest can be found in the need for the state's government to communicate with its constituents. Requiring public agencies such as state courts, county hospitals, and city police departments to operate exclusively in English, however, would be counter-productive, rather than "necessary," where those constituents cannot speak English. English-only legislation also fails the "narrowly-drawn" requirement because there are less restrictive means of improving communication, such as increasing the quality and availability of English-instructional courses.

English-only legislation, which could be far-reaching when taken to its logical extremes, is also likely to be unconstitutionally vague. Under such

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139. *See supra* text accompanying note 107.

140. *See supra* text accompanying notes 25-34.

141. U.S. CONST. amend. I.

142. Widmar v. Vincent, 102 S.Ct. 269, 274 (1981). The guarantee of free speech, however, "does not comprehend the right to speak on any subject at any time." American Communications Ass'n v. Douds, 339 U.S. 382, 394 (1950). Certain speech, such as obscenity, defamation, and "fighting words," is considered undeserving of constitutional protection. Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

legislation, governmental officials might feel compelled to communicate only in English during a disaster such as 1992's Hurricane Andrew. A bilingual county hospital employee might believe she could not legally utilize her ability to comfort a dying patient in his own language. A police officer might feel restricted to English while pursuing and apprehending a Spanish-speaking suspect. If individuals affected by the English-only legislation are uncertain as to its application, they will "'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked."[143] A law which reasonably deters people from engaging in otherwise protected speech is unconstitutionally vague.[144]

This reasoning is in accord with the holding in *Yniguez*, an Arizona case.[145] Arizona's Official English amendment, which was adopted by initiative petition at the same time as Florida's amendment, specifically provides that the state and its subdivisions act in English and in *no other language*.[146] A federal court found the amendment facially invalid as overbroad because it gave rise to substantial potential for inhibiting constitutionally protected free speech.[147]

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143. Yniguez v. Mofford, 730 F. Supp. 309, 317 (D. Ariz. 1990), *aff'd and rev'd in part*, 939 F.2d 727 (9th Cir. 1991) (quoting Baggett v. Bullitt, 377 U.S. 360, 372 (1964)).

144. *Id.* at 315 (citing Village of Hoffman Estates v. Flipside, 455 U.S. 489, 494 n.6 (1982)).

145. *See id.* at 309.

146. *See* ARIZ. CONST. art. XXVIII, § 3. The amendment binds all government officials and employees during the performance of all government business, and gives standing to any person who resides in or does business in the state to bring suit to enforce the amendment. *Id.* §§ 1, 4.

147. *Yniguez*, 730 F. Supp. at 314. Ms. Yniguez was a government employee who often spoke Spanish to Spanish-speaking persons asserting medical malpractice claims against the state. *Id.* at 310. After passage of the Official English amendment, Yniguez, who had signed a state loyalty oath promising to obey the Arizona Constitution, immediately ceased speaking Spanish while performing her official duties because she feared sanctions for speaking Spanish. *Id.*

In finding that the Official English amendment violated the First Amendment, the court did not accept the Arizona Attorney General's restrictive construction of the state amendment. *Id.* at 315. The Attorney General interpreted the amendment to mean that the English-only requirement applies solely to official acts of the state governmental entities and does not prohibit the use of languages other than English that are reasonably necessary to facilitate the day-to-day operation of government. *Id.* at 315. The court criticized the Attorney General's opinion as a "remarkable job of plastic surgery upon the face of the [amendment]." *Yniguez*, 730 F. Supp. at 316.

The federal court noted that no Arizona state court had as yet construed or interpreted the state's amendment. *Id.* at 315. A class action suit is currently pending, whereby it is alleged that plaintiffs' rights under the First, Ninth, and Fourteenth Amendments have been

C. *Equal Protection Under the Fourteenth Amendment*

Florida English spokespersons have repeatedly claimed that driver's license tests should not be offered in Spanish because such tests give immigrants the mistaken notion that it is not necessary to learn English.[148] Eliminating Spanish driver's license tests, they claim, would be a step toward language unity.[149] The question of eliminating such tests would likely become a heated topic in any renewed push to enforce Florida's Official English amendment, especially since driver's license tests may soon be offered in Creole as well.[150]

Any statute to prohibit non-English driver's license tests, however, potentially implicates the Equal Protection Clause.[151] Assuming, as discussed above, that language discrimination deserves strict scrutiny analysis, the required de jure discrimination would be found on the face of

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violated by the Arizona Official English amendment. Ruiz v. Arizona, No. CV 92-19603 (Ariz. Mar. 4, 1993).

Ironically, on July 2, 1993, Arizona became the first state in the nation to conduct a naturalization ceremony partly in Spanish. *Hispanics Take Oath as Citizens Ceremony Conducted Mostly in Spanish*, SUN-SENTINEL, July 3, 1993, at 4A. The ceremony was held for immigrants who had been allowed, based on their age and residency, to take the citizenship test in their native language. *Spanish in Citizenship Ceremony Upsets English-only Supporters*, MIAMI HERALD, July 3, 1993, at 12A.

U.S. English, which has backed several unsuccessful proposals for a national Official English amendment over the last decade, reacted to the unfavorable Arizona court ruling by backing yet another proposed national amendment, the "Language of Government Act," introduced by Representative Bill Emerson (R-MO) on January 5, 1993. *See* 10 U.S. ENGLISH UPDATE 1 (Spring 1993), at 1. The Language of Government Act, like the Arizona amendment, requires government to conduct its official business in English and grants allegedly injured persons the standing to file suit. *See* H.R. 123, 103d Cong., 1st Sess. (1993). The Act attempts to circumvent the Arizona amendment's First Amendment problems by stating that the Act is "not intended to discourage or prevent the use of languages other than English in any nonofficial capacity." *See id.*

148. Lassiter, *supra* note 47.

149. *Id.*

150. Telephone Interview with representative of the Bureau of Records, Division of Driver's Licenses, Florida Department of Highway Safety and Motor Vehicles (June 11, 1993). Driver's license examinations are currently available statewide in both English and Spanish. *Id.* An application has been filed for the federal funding of examinations in Creole as well, in order to accommodate the growing Haitian community. *Id.*

151. A statute to prohibit non-English driver's license tests may also be violative of the Civil Rights Act of 1964, which bans discrimination based "on the ground of race, color, or national origin," in "any program or activity receiving Federal financial assistance." Lau v. Nichols, 414 U.S. 563, 566 (1974). Driver's license tests are funded by federal grant. *See supra* note 150.

the statute. The statute would *exclude* non-English languages on its face by prohibiting non-English speaking persons from taking the driver's license test.

Given strict scrutiny, a statute prohibiting non-English driver's license tests would fail. Even if promoting language unity is a compelling state interest, prohibiting non-English driver's license tests to promote it would be neither necessary nor productive. While studies have shown that Florida immigrants are in fact learning English rapidly,[152] and past events indicate that English-only laws lead to ethnic bitterness,[153] nothing has supported the theory that English-only driver's license tests lead to language unity.

Even if the argument that language is a proxy for national origin discrimination were rejected and the English-only statute was analyzed under rational basis scrutiny, it is likely that the statute would be struck. Even assuming that promoting language unity is a legitimate state interest, a law leading to ethnic divisiveness cannot be rationally related to promoting language unity.

D. *Violating the Civil Rights Act of 1964*

Official English supporters and critics agree that it is a socioeconomic imperative for United States immigrants to learn English.[154] Official English supporters, however, want to shift away from bilingual education[155] to the "sink-or-swim" approach of English-immersion classes.[156]

The question, then, is whether legislation to enforce the Official English amendment by prohibiting bilingual education in the public schools would survive a legal challenge. The answer depends on whether the bilingual program would simply be withdrawn, leaving a child "immersed"

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152. *See supra* note 21.

153. *See supra* text accompanying notes 25-31.

154. *Leaders to Fight Ordinance, English-only Plan Crippling, Group Says*, SUN-SENTINEL, June 21, 1988, at 4B.

155. In bilingual education, a non-English-speaking child keeps up with other classes in her native language while studying English until she is proficient enough to attend all classes in English. Puig-Lugo, *supra* note 3.

156. Andres Viglucci, *Supporters of English Target Polls Push Official Language*, MIAMI HERALD, Mar. 6, 1988, at 1A. Today, U.S. English has shied away from using the term "English-immersion." Its current flyer insists that Official English legislation does not even affect bilingual education. *What is Official English?*, U.S. ENGLISH FACTS (undated). Another flyer states, however, that the newly proposed "Language of Government Act," *see supra* note 147, will strengthen "the purpose of bilingual education, that of teaching non-English proficient . . . children English." *Common Questions about Official English*, U.S. ENGLISH ISSUES (undated).

in English-only classes, or whether the child's native language would continue to be used, on a limited basis, in order to teach the child English.

In *Lau v. Nichols*,[157] the Supreme Court held that by denying Chinese children the opportunity to learn English, the school district had violated the Civil Rights Act of 1964, which bans discrimination based "on the ground of race, color, or national origin" in "any program or activity receiving Federal financial assistance."[158] The Court found that "there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education."[159] Therefore, any attempts to restrict bilingual education in Florida would have to ensure that English language instruction would still be available and meaningful.[160]

E. *Violating the Voting Rights Act of 1965*

The call to "eliminate bilingual ballots" was a rallying cry behind Florida's Official English campaign.[161] However, it appears that Official English supporters are now willing to concede that eliminating bilingual ballots would not be possible, at least at the state level.[162]

The federal Voting Rights Act of 1965 requires that state and local governments publish bilingual election ballots in designated bilingual

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157. 414 U.S. at 563.

158. *Id.* at 566. By relying solely on § 601 of the Civil Rights Act of 1964 to reverse the court of appeals, the Court did not reach the Equal Protection argument advanced by the plaintiffs. *Id.*

159. *Id.* A concurring opinion emphasized the substantial number of non-English speaking students involved and would not consider the decision as conclusive in situations where only a very few students were involved. *Id.* at 572 (Blackmun, J., concurring).

160. A 1990 agreement worked out between Florida's Department of Education and anti-discrimination groups that had threatened to sue the state was seen as a step around the Official English amendment. Luisa Yanez, *State's Schools to Relax Rules for English-only Amendment*, SUN-SENTINEL, Aug. 16, 1990, at 1A. Under the agreement, new statewide guidelines would: (1) end the disciplining of non-English-speaking students for using their native language at school; (2) classify minority students by nationality, rather than solely by race; (3) require that information sent from schools to students' homes be written in the parents' native language; (4) guarantee that students who lack proficiency in English are not shut out of programs for the gifted, talented, or handicapped; and (5) mandate close monitoring of dropout rates among students not fluent in English. *Id.* The cost of the program was estimated to be in the millions of dollars for Broward, Dade, and Palm Beach counties. *Id.*

161. *See supra* note 53.

162. *Common Questions about Official English*, U.S. ENGLISH ISSUES (undated).

political subdivisions.[163] Several counties in Florida have been designated as bilingual political subdivisions.[164] Since the Supremacy Clause of Article VI provides that state law must yield to federal law in case of conflict,[165] a state statute prohibiting bilingual ballots, thereby conflicting with federal law, would not be valid.

IV. CONCLUSION

Florida's Official English amendment, despite the alleged high ideals of many of its supporters, served only to widen the rift between the English-speaking and Hispanic communities of Florida. Fortunately, the amendment has not been enforced and remains a mere symbolic measure. Despite the ill-will it engendered, the amendment is not unconstitutional, even under strict scrutiny analysis, because it lacks the requirement of de jure discrimination. Discriminatory intent is not likely to be inferred based on the mixed motivations of its supporters.

English-only legislation, however, would serve to *exclude* other languages and people who do not speak English. Therefore, although the unenforced Official English amendment is not unconstitutional, English-only legislation to enforce the amendment would likely violate federal statutory and constitutional law.

Finally, even if the Official English amendment could be legally

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163. 42 U.S.C. § 1973aa-1a (1981 & Supp. 1993). The Voting Rights Act of 1965, as amended in 1975, extended in 1982 as the Voting Rights Act Amendments of 1982 and in 1992 as the Voting Rights Language Assistance Act of 1992, requires state and political subdivisions to publish bilingual voting materials when:

> (i)(I) more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;
> (II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or
> (III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and
> (ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

Id.

164. *See supra* text accompanying notes 88-89.

165. U.S. CONST. art. VI, cl. 2.

enforced through English-only legislation, it seems unlikely that such legislation could result in the public good. Enforcing the amendment would not only renew intercultural hostilities and cause unnecessary hardships, but it would legitimize the idea of language exclusion. In a state such as Florida, where the Spanish-speaking voting population has increased so dramatically, the legitimized idea of legalized language exclusion could someday be turned against the advocates of the Official English amendment themselves.

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