



TO: House State Government & Elections Committee
FROM: Carrie L. Davis, Staff Attorney, ACLU of Ohio
DATE: May 1, 2008
RE: HB 477 – Opponent Testimony

Representatives:

My name is Carrie Davis. I am the Staff Attorney and Legislative Counsel for the American Civil Liberties Union of Ohio (“ACLU of Ohio”), the Ohio Affiliate of the ACLU, the oldest and largest civil liberties organization in the world with over 500,000 members nationwide and nearly 30,000 members and supporters across Ohio. The ACLU and ACLU of Ohio are non-profit, non-partisan membership organizations devoted to protecting basic civil rights and civil liberties for all Americans and all Ohioans.

The ACLU opposes adopting English-only policies and urges this Committee to not report HB 477. This legislation is ill-conceived, will lead to costly litigation, and will hurt Ohio’s ability to attract innovative companies and good jobs.

English-only policies are not needed, because immigrants want to learn and improve their English.

English is not under attack. On the contrary, statistics indicate that most Americans speak English. Further, most immigrants recognize they need to learn English to thrive. Census data shows that 98% of Hispanics think it is “essential” that their children learn English.

Unfortunately, sufficient educational resources for learning English are not available to meet the enormous demand for English classes by immigrants and others with limited English skills. For example, a report by the National Association of Latino Elected and Appointed Officials points out that the demand for ESL classes far outpaces their availability, leading to long waiting lists for those wanting to learn or improve their English. (“The ESL Logjam: Waiting Times for Adult ESL Classes and the Impact on English Learners”, October 2006, available at <http://www.naleo.org/downloads/ESLReportLoRes.pdf>)

English-only laws do not increase resources to promote English learning. If this legislative body truly wants to improve immigrants’ use of English, then we should make English language education widely available and affordable for all, rather than passing divisive legislation that does not help promote English language learning.

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English-only laws are divisive. They harm Ohio's ability to compete for jobs, to ensure public safety, and to comply with citizens' constitutional rights.

Proponents of English-only legislation claim they seek to unite all Americans, but in fact they are encouraging division by excluding and stigmatizing people who comprise an important part of our communities.

Passage of this legislation will send a bad message to international businesses and others thinking of locating facilities in Ohio. Why would such companies want to be in a state where there is an official expression of hostility to people who don't speak English? Why would such companies choose to come here when they could locate in another state, where the government is open to people who speak other languages? This bill will hurt Ohio's ability to create jobs.

Being able to communicate with ALL Ohio residents improves public safety. English-only laws may prevent community members from accessing important governmental information and services, including vital emergency information. In some instances, such as interactions with police and the courts, language assistance is required by law. But in other instances, such as interviewing witnesses and patrolling a community, language assistance can be very helpful even though it is not required by law.

English-only policies can also have a detrimental impact on national security. The 9/11 Commission found that the U.S. lacks sufficient translators and it urged the government to emphasize the learning of languages other than English. In contrast, English-only restrictions devalue proficiency in languages other than English and alienate communities that can help law enforcement.

There is also the concern that English-only laws are inconsistent with the free speech protections of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, as well as the civil rights laws requiring equal access to government services regardless of race or national origin. Such restrictions encourage isolation and discrimination, and deny Americans who have limited English skills, both citizens and immigrants, some of their most basic rights.

A small number of other states have passed English-only bills, many of which have been challenged in court. In at least one state so far, Arizona, the court found the law to be unconstitutional because it violates the free speech rights of citizens and state employees. *See, Ruiz v. Hull, 957 P2d 984 (Arizona 1998).*

House Bill 477 will cause confusion, place government employees in a no-win situation, and subject government entities to an avalanche of costly litigation.

House Bill 477 contemplates that there may be situations in which a government entity may need to use a language other than English. These many exceptions are listed under Section 5.151(B), at lines 28 through 46. They include obvious situations, such as when required by federal or state law (at lines 32-33). However, they also include numerous situations that are left to the government employee's discretion, such as to "protect or

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promote the public health, safety, or welfare” (at line 34) and to “engage in informal and nonbinding translations or communications” (at line 45-46).

Such a long list of exceptions, left entirely to the individual employee’s discretion, invites trouble. Some employees may view the list of broadly worded exceptions as rendering the English-only requirement meaningless, allowing them to converse in other languages as they see fit. On the other hand, other employees may view the English-only requirement as the rule and ignore the allowable exceptions unless they are explicitly required.

The vagueness of the English-only requirement and exceptions will no doubt cause confusion among employees and headaches for their supervisors. It also creates a looming specter of legal liability.

HB 477 establishes a private right of action in mandamus for any Ohio resident who believes that a government entity is not abiding by the English-only requirement and exceptions.

Given the aforementioned vagueness of the English-only requirement and exceptions, the average government employee and the average government-watching resident cannot readily know what is allowed and what is not.

Thus, we’ll have residents suing (and forcing government entities to defend) against allowable exceptions, such as when federal law requires a translator in court or jail or what have you. Similarly, we’ll have government employees who don’t want to be sued and so they only do things in English, even though other law or policy may require a translator - and then they’ll be sued by the folks whose civil rights were violated.

In the end, it’s a no-win situation for the government if this bill is enacted. Government employees will be confused about what they can and cannot say, and in what circumstances. Members of the public are invited to sue for anything they suspect might be a violation – whether refusing to provide services in another language or refusing to speak anything but English when legally required to offer language assistance.

In sum, this is a very costly bill in search of a non-existent problem.

For all of these reasons, the ACLU of Ohio encourages this Committee to avoid the morass of bad policies and costly litigation by refusing to report HB 477. If this committee and this legislature truly want to improve English usage, then the solution is to address the deficit in English learning classes.

Respectfully submitted,

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