WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

"H. R. 997, the English Language Unity Act of 2011"

Submitted to the House Judiciary Subcommittee on the Constitution

August 2, 2012

ACLU Washington Legislative Office
Laura W. Murphy, Director
Deborah J. Vagins, Senior Legislative Counsel
Joanne Lin, Legislative Counsel
Gabriel Rottman, Legislative Counsel/Policy Advisor
Christopher Rickerd, Policy Counsel

I. Introduction

The ACLU is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The Washington Legislative Office (WLO) represents the interests of the ACLU before Congress and the executive branch of the federal government. The ACLU submits this statement to express its strong opposition to Representative Steve King's proposed H.R. 997, the English Language Unity Act of 2011.

H.R. 997 would require all "official functions of the Government of the United States," including "laws, public proceedings, regulations, publications, orders, actions, programs, and policies" to be conducted in English, with narrow designated exceptions such as protection of "public health and safety."[1] H.R. 997 would require all naturalization applicants to "be able to read and understand generally the English language text of the Declaration of Independence, the Constitution, and the laws of the United States made in pursuance of the Constitution," an open-ended test so onerous that many current U.S. citizens could not satisfy it. And H.R. 997 would allow anyone "injured" by a violation of the Act to sue the federal government, turning bona fide mistakes by federal employees resulting from the law's vague prohibitions into damages paid out of taxpayer funds.

H.R. 997 is:

•unwise and dangerous policy with negative ramifications for a wide range of federal functions ranging from tax collection to voting access to naturalization procedures;

•clearly contrary to civil rights laws protecting language minorities from discrimination based on national origin;

•unconstitutional under the First Amendment and the Fifth Amendment's Equal Protection Clause; and

•based on false premises about immigrants' and language minorities' English proficiency and assimilation (unfairly targeting, in particular, Latinos and Asian Americans).

[1] As written, H.R. 997 appears to focus on state governments, as it defines "the term 'United States' [to] mean[] the several States and the District of Columbia" (excluding the federal government). As this drafting is inconsistent with the bill's discussion of *federal* government functions, and with its findings' statement that "[a]mong the powers reserved to the States respectively is the power to establish the English language as the official language of the respective States," this statement assumes that state government functions are in fact not part of H.R. 997's purview.

H.R. 997 does nothing constructive to increase English proficiency for Limited English Proficient ("LEP") individuals. H.R. 997 simply discriminates against those who have not yet learned English or those perceived not to be proficient in English, with damaging consequences for society as a whole. The House Judiciary Committee should reject H.R. 997 as contrary to established law – including the Constitution – and as unsound policy.

II. H.R. 997 would interfere with efficient federal governance, including tax collection, voter registration and ballot access, and naturalization procedures.

a. Core federal functions such as tax collection

H.R. 997 would mandate English-only usage throughout the federal government's "official functions," including all federal "laws, public proceedings, regulations, publications, orders, actions, programs, and policies." For example, the Internal Revenue Service ("IRS") would be prohibited from publishing guidance on tax return filing in other languages. As a result, LEP individuals would face added difficulties in determining their tax obligations, with negative consequences for the Treasury. The IRS website proudly announces: "Buenos dias! Did you know that the IRS has tax forms, publications, and information available in Spanish? It's amazing just how many resources are available in Spanish now."[2] Any accounting of H.R. 997's costs must therefore include reduced tax revenue after this assistance disappears.

The IRS is only one of numerous federal agencies that would be hampered by H.R. 997. Executive Order 13166, issued by President Clinton in 2000, states that the "Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons . . . ."[3] Attorney General Holder in 2011 reaffirmed that "the success of government efforts to effectively communicate with members of the public depends on the widespread and nondiscriminatory availability of accurate, timely, and vital information."[4] Twelve years of progress for LEP persons would be cast aside and erased by H.R. 997, at great monetary and humanitarian cost.

b. Voter registration and ballot access

H.R. 997 would, moreover, impose an undue burden on language-minority voters and damage implementation of Section 203 of the Voting Rights Act (VRA). It is crucial that every citizen in our democracy have the right to vote. Yet that right is meaningless if certain groups of

[2] Available at http://www.irs.gov/newsroom/article/0,,id=206260,00.html (Aug. 30, 2011).
[3] Available at http://www.justice.gov/crt/about/cor/Pubs/eolep.php
[4] Memorandum from the Attorney General to Heads of Federal Agencies, General Counsels, and Civil Rights Heads re: Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166 (Feb. 17, 2011), available at http://www.justice.gov/crt/about/cor/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf

people are unable to cast their ballots accurately at the polls. Voters may be well-informed about the issues and candidates, but, to make sure their vote is accurately cast, language assistance is necessary. When Congress amended the VRA in 1975 by adding Section 203, it found that through the use of various practices and procedures, such as English-only ballots, "citizens of language minorities have been effectively excluded from participation in the electoral process . . . .The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices."[5]

H.R. 997 guarantees voter suppression in contravention of these principles. For example, the U.S. Election Assistance Commission established by the Help America Vote Act of 2002 now offers a National Mail Voter Registration Form in Spanish, Chinese, Japanese, Korean, Tagalog, and Vietnamese.[6] H.R. 997 would turn back the clock on this sort of progress toward inclusive voting by mandating a regime of second-class citizenship whereby access to the polls depends on English proficiency.

c. Naturalization Procedures

Ever since the Immigration and Nationality Act of 1952, naturalization applicants must demonstrate elementary-level reading, writing, and comprehension of the English language, as well as knowledge and comprehension of the fundamentals of U.S. history and government.[7] In creating the general English language requirements, Congress chose to exempt older lawful permanent residents (over age 50) who have lived in the U.S. as permanent residents for an extended period (20 years for applicants older than 50, supplemented in 1990 by a provision specifying 15 years for applicants older than 55).[8]

By proposing an unnecessary, unrealistic naturalization test of being "able to read and understand generally the English language text of the Declaration of Independence, the Constitution, and the laws of the United States made in pursuance of the Constitution," H.R. 997 would prevent nearly every applicant from becoming a U.S. citizen.[9] Indeed, with the exception of legal scholars, it is questionable whether even highly educated U.S. citizens would be able to pass such a rigorous test. The door to U.S. citizenship should not be shut based on an unfair and arbitrary pop quiz about what federal statutes mean.

---

[5] 42 U.S.C. § 1973aa-1a(a).
[6] Available at http://www.eac.gov/voter_resources/register_to_vote.aspx
[7] See 8 U.S.C. § 1423(a); 8 C.F.R. §§312.1-312.2
[8] See 8 U.S.C. § 1423; 8 C.F.R. §§ 312.1(b) & 312.2(b).
[9] Perhaps the Internal Revenue Code is the model "law of the United States" envisioned by H.R. 997's author for this test; although language assistance by the IRS will be eliminated, LEP individuals should still have no trouble "understanding generally" subjects such as the mortgage interest deduction.

III. H.R. 997 conflicts with venerable civil rights protections of language minorities from discrimination on the basis of national origin, and violates the Constitution's First and Fifth Amendments.

Federal civil rights protections include a prohibition on discrimination based on national origin. For example, implementing Title VI of the Civil Rights Act of 1964[10] which prohibits discrimination in federal programs based on national origin and other protected classes, "both Supreme Court precedent and longstanding congressional provisions and federal agency regulations have repeatedly instructed state entities for decades that a nexus exists between language and national origin."[11] Further, the bill's impact on the Equal Employment Opportunity Commission's (EEOC) effective administration of Title VII[12] in the private sector is far from clear—as are the implications for discrimination based on national origin in public employment and federal contracting under Title VII. The EEOC has, since 1980, notified state entities that English-only rules constrain "opportunities on the basis of national origin" and constitute a prima facie case of national origin discrimination.[13] H.R. 997 is wholly inconsistent with this body of anti-discrimination law, and also with the Equal Protection guarantee of the Fifth Amendment.[14]

H.R. 997 is, in addition, squarely contrary to the First Amendment. When the Alaska Supreme Court invalidated a government communications restriction in an English-only statute enacted by the state legislature, it noted that the provision failed the First Amendment's narrow tailoring test. Like H.R. 997, which creates "an affirmative obligation to preserve and enhance the role of English as the official language of the Federal Government," the Alaska law's principal goal was "promoting, preserving and strengthening the use of English." The court held that the means asserted by the state statute in furtherance of this goal were unconstitutional because "prohibiting the use of other languages in most instances . . . is considerably broader than other available alternatives. For example, the state could create and fund programs promoting English as a second language. The goal of arming non-English speakers with knowledge of English could directly be achieved by teaching English to non-English speakers."[15]

---

[10] 42 U.S.C. § 2000d et seq.
[11] *Sandoval v. Hagan*, 197 F.3d 484 (11th Cir. 1999), (rev'd on other grounds sub nom. *Alexander v. Sandoval*, 532 U.S. 275 (2001)).
[12] 42 U.S.C. § 2000e et seq.
[13] 29 C.F.R. § 1606.7(a).
[14] See, e.g., *Hernandez v. New York*, 500 U.S. 352, 371 (1991) ("It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis").
[15] *Alaskans for a Common Language v. Kritz*, 170 P.3d 183, 208 (Alaska 2007); *see also In re: Initiative Petition No. 366, State Question No. 689*, 46 P.3d 123 (Okla. 2002) (initiative petition requiring all official documents, transactions, proceedings, meetings and publications of the State of Oklahoma and its political subdivisions to be in English only "unconstitutionally infringes upon the freedom of speech [and] upon the freedom to petition the government for redress"); *Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998) (holding that a state constitutional amendment providing that all government officials and employees performing government business must act only in English

H.R. 997 also violates the First Amendment's protection of the right to petition the federal government. "The right to petition for redress of grievances is a fundamental First Amendment right lying at the core of our democracy," "among the most precious of the liberties safeguarded by the Bill of Rights."[16] The petition right bars interference with access to the legislature, the executive branch and its various agencies, and the judicial branch.[17] By erecting a permanent linguistic barrier between non-English speakers and every branch and agency of their federal government on an almost limitless variety of subjects, H.R. 997 unquestionably infringes the non-English speaking public's right to petition. It severely impairs that public's right "to receive information and ideas."[18]

Access to government information is particularly important for the proper functioning of a democracy. "Governments have an almost unique capacity to acquire and disseminate information in the modern state."[19] Accordingly, the principle that "the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his [or her] own rights of speech, press, and political freedom,"[20] applies with particular force to government information. H.R. 997 violates the free flow of information between non-English speakers and their federal government, a conduit safeguarded by the First Amendment.

IV. H.R. 997 makes government services and programs inaccessible to millions of Americans, while doing nothing constructive to address the dearth of ESL instruction opportunities.

Immigrant assimilation now takes place very quickly across generations; for example, "virtually 100 percent of [a sample of] second-generation Latino Americans have mastered the English language, thus overcoming any barriers their parents suffered."[21] A study of 2000 Census data found that "English is almost universally accepted by the children and

---

"violates the First Amendment to the United States Constitution because it adversely impacts the constitutional rights of non-English-speaking persons with regard to their obtaining access to their government and limits the political speech of elected officials and public employees. We also hold that the Amendment violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it unduly burdens core First Amendment rights of a specific class without materially advancing a legitimate state interest.").

[16] *McDonald v. Smith*, 472 U.S. 479, 482-83, 485 (1985); *United Mine Workers v. Illinois State Bar Assn.*, 389 U.S. 217, 222 (1967).

[17] *See Eastern R. Pres. Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137-38 (1961) (legislature); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965) (executive); *Cal. Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972) (administrative agencies); *Illinois State Bar*, 389 U.S. at 221 (courts).

[18] *Va. State Bd. of Pharmacy v. Va. Consumer Council*, 425 U.S. 748, 757 (1976) (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972)).

[19] Mark Yudof, *When Government Speaks* 9-10 (1983); *see also* Alexander Meiklejohn, *Free Speech and its Relation to Self-Government* 65-66 (1948) (First Amendment protects right of people intelligently to discuss issues of public concern for purpose of self-government).

[20] *Bd. of Ed. v. Pico*, 457 U.S. 853, 867 (1982).

[21] Dowell Myers and John Pitkin, *Assimilation Today: New Evidence Shows the Latest Immigrants to America Are Following in Our History's Footsteps*. Center for American Progress (Sept. 2010), 20, available at http://www.americanprogress.org/issues/2010/09/pdf/immigrant_assimilation.pdf

grandchildren" of immigrant groups that have come to the U.S. since the 1960s. Among second-generation "Hispanics, 92 percent speak English well or very well, even though 85 percent speak at least some Spanish at home."[22] Similar assimilation has occurred for other language groups like second-generation Asian Americans, of whom "96 percent are proficient in English."[23]

Language minorities who aspire to learn English would be punished rather than assisted by H.R. 997, precisely the wrong way to encourage national unity. Creating second-class citizenship for language minorities is not an effective means of encouraging English proficiency. A recent report observed that "[n]umerous recommendations on expanding access to English learning programs are made to Congress every year, such as combining ESL with workplace training—to no avail."[24] Charles S. Amorosino, Jr., executive director of Teachers of English to Speakers of Other Languages, testified in 2009 to the House Committee on Education and the Workforce's Subcommittee on Higher Education, Lifelong Learning, and Competitiveness that "[o]ther English-speaking countries such as Canada and Australia have comprehensive national policies that address integration of new immigrants; however the United States lacks any such policy or system."[25] H.R. 997 does nothing to address these gaps.

H.R. 997 contains no provisions to expand access to English-language education, which is the best route to "English Language Unity." Instead, the bill substitutes empty rhetoric, calling on unidentified federal government "representatives" to "encourage[e] greater opportunities for individuals to learn the English language." Immigrants are eager and willing to learn English, but lack adequate educational resources. The Migration Policy Institute reported that "there is substantial unmet demand for ESL [English as a second language] services across the country. Most ESL programs have waiting lists with thousands of LEP adults in major cities like New York, Boston, and Chicago."[26] Indeed, "language classes are not evenly provided across all states and have lost funding in recent years."[27]

Moreover, Congress has in the past recognized the "crucial" contribution multilingualism makes to "our nation's economic competitiveness and national security," as well as to the United States' "global perspective" and "understanding of diverse people and cultures."[28] H.R. 997 is out-of-touch with the global recognition that all people should learn and embrace other languages. H.R. 997 offers no solutions to the twin needs of English-language instruction and

---

[22] Richard Alba, Lewis Mumford Center for Comparative Urban and Regional Research, University of Albany, *Language Assimilation Today: Bilingualism Persists More Than in the Past, but English Still Dominates* (Dec. 2004), 2, available at http://mumford.albany.edu/children/reports/language_assimilation/language_assimilation_brief.pdf

[23] Id.

[24] Myers and Pitkin, *supra*, at 21.

[25] Id.

[26] Randy Capps et al., *Taking Limited English Proficient Adults into Account in the Federal Adult Education Formula* Migration Policy Institute, National Center on Immigrant Integration Policy (June 2009), 4, available at http://www.migrationpolicy.org/pubs/WIA-LEP-June2009.pdf

[27] Myers and Pitkin, *supra*, at 2.

[28] Foreign Language Assistance Act of 1994, Pub. L. 103-382 (1994).

the fostering of a competitive American workforce in the global marketplace. Rather, it divides Americans into officially approved English speakers and second-class others.

V. Conclusion

While claiming to promote the English language, H.R. 997 would harm a vast array of federal government functions, including tax collection, voter access, and naturalization procedures. H.R. 997 also contravenes a half-century of civil rights law by promoting discrimination based on national origin, and is unconstitutional as an infringement of the First and Fifth Amendments. The House Judiciary Committee should oppose H.R. 997 as an unsound policy and an unconstitutional law.