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Official Language A, B, Cs: Why the Canadian Experience with Official Languages Does Not Support Arguments to Declare English the Official Language of the United States

Marla B. Somerstein*

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I. INTRODUCTION

Language is a sensitive and contentious issue in every civilized society.¹ Language touches the very essence of how individuals define themselves and can determine their social status. For more than twenty years, Canada and the United States have each experienced substantial conflict with official language declara-

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1. See *The English Language Amendment: Hearing on S.J. Res. 167 Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 98th Cong., 2d Sess. (1984) (statement of S.I. Hayakawa, Co-Founder, U.S.English, Inc.) (stating that bilingual education is a new threat to our society, introduced by self-interested Hispanic leaders seeking to secure employment for bilingual teachers); cf. *Thongvanh v. Thalacker*, 17 F. 3d 256, 259 (8th Cir. 1994) (holding that not allowing an inmate to communicate in Lao to family violated his rights to Due Process, Equal Protection and Free Speech).

tion.² In 1988, Canada declared both English and French as official languages, therefore establishing a fully operative and official vernacular bilingualism for its residents.³ The United States, on the other hand, has no legally mandated or nationally recognized language, although many people assume it is English.⁴

The famous French social philosopher Alexis de Tocqueville once stated, “[t]he tie of language is perhaps the strongest and the most durable that can unite mankind.”⁵ It is clear that declaring English as the United States’s official language has substantial societal and legal consequences. U.S.English, Inc. (“U.S.E.”), a leading organization advocating a national language, found that “[d]eclaring English the official language means that official government business at all levels must be conducted solely in English. This includes all public documents, records, legislation, and regulations, as well as hearings, official ceremonies and public meetings.”⁶ The official English-only movement in the United States, however, is counterproductive to de Tocqueville’s conception of tying languages together to unify society.

U.S.E. is dedicated to the United States’ movement to declare English as its official language. U.S.E. has stated that “[d]eclaring English [the official language] unites Americans, who speak more than 322 languages . . . by providing a common means of communication; it encourages immigrants to learn English in order to use government services and participate in the democratic process; and it defines a much-needed common sense language policy.”⁷ Moreover, a recent poll by Zogby International found that 84% of Americans and 77% of Hispanics agree that English should be the official language of government operations.⁸

2. C. Michael Macmillan & Raymond Tatalovich, *Judicial Activism vs. Restraint: The Role of the Highest Courts in Official Language Policy in Canada and the United States*, 33 AM. REV. OF CAN. STUDIES 239 (2003).

3. See Official Languages Act, 1988, Ch. 38, as reprinted in R.S.C., Ch. 31 (4th Supp. 1988), available at <http://lois.justice.gc.ca/en/O-3.01/253512.html>.

4. See Brian L. Porto, “English Only” Requirement for Conduct of Public Affairs, 94 A.L.R.5TH 537 (2001) (“Numerous American institutions conduct their activities in English only, even though the Federal Government has not recognized English as the official language of the United States under the Constitution or federal law.”).

5. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA, Vol. 1, at 33 (Harvey C. Mansfield & Delba Winthrop eds., Univ. of Chi. Press 2001) (1831).

6. U.S.English, Inc., <http://www.us-english.org/inc/official/about> (last visited Oct. 31, 2006) [hereinafter U.S.E.].

7. *Id.* at <http://www.us-english.org/inc/official/about/why.asp> (last visited Oct. 31, 2006).

8. Charles Hurt, *Reid Calls Language Proposal Racist*, WASH. TIMES, May 31, 2006, § Nation, at A14.

Many Americans relate English to their national identity.⁹ Therefore some Americans fear that officially recognizing a minority language in the United States, and subsequently becoming a bilingual nation, “will corrode our national unity.”¹⁰ A major concern for some Americans is that large minority groups in the United States may soon be powerful enough to insist that the country implement a national bilingual policy, similar to that adopted in Canada.¹¹

In 1984, Samuel Ichiye Hayakawa, a United States Senator from California and former English professor, stated that

[f]or the first time in our history, our nation is faced with the possibility of the kind of linguistic division that has torn apart Canada in recent years; that has been a major feature of the unhappy history of Belgium, split into speakers of French and Flemish; that is at this very moment a bloody division between the Sinhalese and Tamil populations of Sri Lanka.¹²

Similarly, Senator Richard Shelby of Alabama stated, “[j]ust as sure as life, if we have more and more diversity in this country without the English language unifying us, we’re going to have trouble and we’re going to have splits.”¹³

This threat to national unity is, at first glance, a reasonable fear. In Canada, the rise of a population that spoke French, a minority language in the country, became so powerful that Canada was essentially forced to declare it as an official language.¹⁴ “[Although] French-Canadians make up only about one-quarter of the Canadian population, [they] succeeded in forcing the entire country to recognize and use French as an official language.”¹⁵ With Hispanic’s comprising approximately one-third of the United States population,¹⁶ some members of the United

9. John E. Petrovic, *Balkanization, Bilingualism, and Comparisons of Language Situations at Home and Abroad*, 21 BILINGUAL RES. J. 103 (1997), available at <http://brj.asu.edu/brjv2/petrovic.pdf>.

10. *Id.* at 104 (citing ARTHUR M. SCHLESINGER, JR., *THE DISUNITING OF AMERICA: REFLECTIONS ON A MULTICULTURAL SOCIETY* (W.W. Norton & Company 1998) (1991)).

11. *Id.*

12. Sen. S.I. Hayakawa, *The Case for Official English* (1985), in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 94, 99 (James Crawford, ed., 1992).

13. Petrovic, *supra* note 9, at 104.

14. *Id.*

15. *Id.* at 103.

16. ANNALISA SCHMIDT, POPULATION RES. CTR., EXECUTIVE SUMMARY: A POPULATION PERSPECTIVE OF THE UNITED STATES (2000), <http://www.prcdc.org/summaries/uspopperspec/uspopperspec.html>.

States government are working now to ensure that what occurred in Canada does not happen in the United States.¹⁷

Yet, this fear that the United States will experience a similar language identity situation similar to that in Canada is misplaced.¹⁸ In regard to Canada's language conflict, former Speaker of the United States House of Representatives Newt Gingrich stated that this fear hardly results into a "clear warning to Americans about the threat that bilingualism poses to unity in the United States."¹⁹ The linguistic situation in Canada is distinct from that in the United States in that it is unlikely that its citizens would ever demand the declaration of two languages.²⁰ If there is an important lesson to learn from a bilingual Canada, however, it is that the dominance of one group over another breeds resentment towards the government and its people.

Recently, the United States Congress has attempted to pass legislation, at both the state and federal levels, that declare English the official governmental language.²¹ Efforts have been more successful at the state level than at the federal level.²² This comment will explore the most recent legislative efforts, in the wake of President George W. Bush's comprehensive immigration reform initiative, to establish English as the United States' national language. Most recently on May 18, 2006, the United States Senate approved, by a margin of 63 to 34, an amendment offered by Senator James Inhofe that would declare English the national language of the United States.²³

The United States Constitution, originally published in English, German, and French,²⁴ is silent on the issue of a declared

17. LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARD A NEW POLITICS OF HISPANIC ASSIMILATION* 88-89 (1991).

18. Petrovic, *supra* note 9, at 103.

19. *Id.* at 104 (quoting E. Shogren, *Quebec Votes 'Non': Gingrich Sees Lesson for U.S.*, THE DENV. POST, Oct. 31, 1995, at A1).

20. *Id.*

21. Carmen B. Tigreros, *Constitutional Challenges to Official English Legislation*, 12 ST. JOHN'S J. LEGAL COMMENT. 295, 296 (1996).

22. *Id.*

23. See Carl Hulse, *Senate Passes a Bill That Favors English*, N.Y. TIMES, May 19, 2006, at A18.

24. See *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 928 (9th Cir. 1995) (stating that "early political leaders recognized the close connection between language and religious/cultural freedoms, and they preferred to refrain from proposing legislation which might be construed as a restriction on these freedoms") (quoting Shirley Brice Heath, *Language and Politics in the United States*, in LINGUISTICS AND ANTHROPOLOGY: GEORGETOWN UNIVERSITY ROUNDTABLE ON LANGUAGES AND LINGUISTICS 267, 270 (Muriel Saville-Troike ed., 1977)).

national language.²⁵ English-only laws may actually impose substantive and procedural Constitutional infringements in a variety of contexts, including judicial process, prisons, social welfare agencies, public schools, the electoral process, and the consumer marketplace.²⁶ Consequently, declaring English as the United States's official language would negatively affect its citizens and may infringe on procedural due process and equal protection rights.

This article will also analyze why the United States has not yet declared an official language. Additionally, it will show why the United States would not benefit from declaring English or any other language as its national language. This is supported by analysis of the impact in Canada as a result of it establishing dual official languages and will focus on how the linguistic division of Canada and of the United States are inherently dissimilar.

II. OFFICIAL LANGUAGE DEVELOPMENT IN CANADA AND THE UNITED STATES

A. *The Canadian Language Policy*

In 1867, Canada passed the British North American Act, which permitted the use of French or English during Parliament debates including judicial proceedings before the federal courts.²⁷ From 1963-1970, Canada's Royal Commission on Bilingualism and Biculturalism met²⁸ and ultimately drafted the first Official Languages Act adopted in 1969.²⁹ In 1982, Canada established the Canadian Charter of Rights and Freedoms,³⁰ which contained Constitutional guarantees in federal institutions to respect the

25. See *Harris v. Rivera Cruz*, 710 F. Supp. 29, 31 (D.P.R. 1989) (stating that there is no official language in United States and "if prudence and wisdom (and possibly the Constitution) prevail there never shall be").

26. Porto, SUPRA note 4.

27. The Constitution Act, 1867, 30 & 31 Vict. Ch. 3, § 133 (U.K.), available at http://lois.justice.gc.ca/en/const/c1867_e.html. Section 133 provides that Parliament's records, journals, and laws shall be in English and French. *Id.*

28. Dept. of Canadian Heritage, http://www.pch.gc.ca/progs/lo-ol/biling/hist_e.cfm (last visited Oct. 31, 2006) [hereinafter Canadian Heritage].

29. Official Languages Act, 1988, Ch. 38, § 2, as reprinted in R.S.C., Ch. 31 (4th Supp. 1988), available at <http://lois.justice.gc.ca/en/O-3.01/253512.html>.

30. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982, ch. 11 (U.K.), available at <http://lois.justice.gc.ca/en/charter> [hereinafter Canadian Charter of Rights and Freedoms]. The Canadian Charter of Rights and Freedoms is the "Bill of Rights" portion of the Canadian Constitution.

use of both English and French.³¹ In addition, Section 23 of the Charter provides that the provinces and territories of Canada were required to offer primary and secondary schooling to their official language minorities in their "mother tongue."³² Accordingly, students learn English in Quebec where the language is primarily French, and French throughout all of Canada.³³

Canada formally established the official languages of both English and French in the 1988 Official Language Act (the "Canadian Language Act").³⁴ The Canadian Language Act reiterated and enforced the obligations under the 1982 Charter regarding the use of the two official languages in Canadian government services and institutions. The Canadian Language Act had three main objectives: (1) to establish the equality of English and French in Parliament, within the Government of Canada, the federal administration and institutions subject to the Act; (2) to preserve and develop official language communities in Canada; and (3) to achieve equality of English and French in Canadian society.³⁵

In 2003, Canada's federal government announced its Action Plan for Official Languages, which aimed to provide a "new momentum for Canada's linguistic duality, through increased inter-departmental co-ordination, and new investments in education, community development and the public service."³⁶ As stated by Stéphane Dion, President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs, "Canadians have so much to say to one another, and so much to say to others. More and more, they want to say it in both official languages."³⁷

With regard to equal protection and fairness concerning language, Prime Minister Lester B. Pearson stated, "[i]n a diverse federal state such as Canada it is important that all citizens should have a fair and equal opportunity to participate in the national administration and to identify themselves with, and feel

31. *See id.* § 16.

32. *See* Government of Canada Privy Council Office, The Action Plan for Official Languages, http://www.pco-bcp.gc.ca/olo/default.asp?Language=&Page=action&Doc=preface_e.htm#msgPCO (last visited Oct. 31, 2006) [hereinafter Canada's Official Language Plan].

33. *Id.*

34. Canadian Heritage, *supra* note 28.

35. *See* Official Languages Act, 1988, Ch. 38, § 2, as reprinted in R.S.C., Ch. 31 (4th Supp. 1988), available at <http://lois.justice.gc.ca/en/O-3.01/253512.html>.

36. Canadian Heritage, *supra* note 28.

37. Canada's Official Language Plan, *supra* note 32.

at home in, their own national capital.”³⁸ Canada’s official dual-language policy has a variety of positive implications that are copacetic with the political and historical structure of Canada.³⁹ For example, constituents can communicate with, and receive services from, federal institutions in either English or French.⁴⁰ Citizens may speak English or French in Parliament and all laws are enacted in both languages.⁴¹ Furthermore, an accused person in a criminal proceeding has the right to be tried in either English or French.⁴² Within federal institutions, employees can speak either language.⁴³

This choice between speaking French or English ensures equal opportunity for employment and advancement for both English and French speaking Canadians, regardless of ethnic origin or primary language.⁴⁴ Bilingualism is not imposed on employees by the federal government where most federal government employees are monolingual.⁴⁵ Canadians look favorably upon the fact that their children are learning either English or French as a second language.⁴⁶ There is an array of economic advantages associated with Canadians’ ability to speak two languages within a world of increased global competition. Specifically, more than 43% of Canada’s Gross National Product is dependent on export trade, for which bilingualism is beneficial.⁴⁷ “From an economic point of view, Canada’s ‘linguistic wealth’

38. *Id.*

39. Office of the Commissioner of Official Language Frequently Asked Questions, <http://www.ocol-clo.gc.ca/faq.asp?Lang=english> (last visited Oct. 31, 2006).

40. Canadian Charter of Rights and Freedoms, *supra* note 30, at §16.

41. *Id.* § 17.

42. *Id.*

43. *Id.*

44. Office of the Commissioner of Official Language Frequently Asked Questions, <http://www.ocol-clo.gc.ca/faq.asp?Lang=english> (last visited Oct. 31, 2006).

45. Canada’s Official Language Plan, *supra* note 32 (“In a 1990 survey by the Professional Institute of the Public Service of Canada (a public servants’ union) only 6.6 percent of its members felt that the English and French language policy had a negative implications on their ability to get a public service job.”).

46. Ctr. for Research and Info. on Can. [CRIC], *Portraits of Canada 2001*, THE CRIC PAPERS, Dec. 2001, at 32. http://www.cric.ca/pdf/cahiers/cricpapers_dec2001.pdf (“86% of Canadians (including 82% of Anglophones) think that it is important for their children to learn to speak a second language. Among Anglophones wishing their children to learn a second language, 75% say that it should be French. 90% of Francophones who wish their children to learn a second language say that it should be English.”).

47. Foreign Affairs and International Trade Canada, http://w01.international.gc.ca/minpub/Publication.aspx?isRedirect=true&FileSpec=/Min_Pub_Docs/103030.htm (last visited Oct. 31, 2006).

greatly contributes to its prosperity.”⁴⁸ Worldwide, forty-five countries have declared English as its official language⁴⁹ and twenty-eight countries have French as one of its official languages.⁵⁰ This expansive utilization of both English and French in the global economic arena greatly benefits Canadians fluent in both languages.⁵¹

B. The United States’ Language Policy

When the founding fathers drafted the United States Constitution, a variety of languages were spoken throughout the United States.⁵² This linguistic array included German, Dutch, French, Spanish, Italian, Portuguese, Greek, Yiddish, Arabic, in addition to hundreds of American Indian languages and African-based creoles.⁵³ As evidence of the plethora of languages spoken in the early United States, the Articles of Confederation were printed in both German and English.⁵⁴ Notwithstanding this diversity of languages, John Jay, in the Federalist Papers, described the United States as “one united people—a people descended from the same ancestors, speaking the same, professing the same religion . . . very similar in their manners and customs.”⁵⁵ This was an unrealistic conception of American culture, “whereby the influential elite envisioned a nation whereby the ‘normal’ American excluded many Americans — the non-English, non-White, non-

48. WASH. D.C. CAN. EMBASSY, FOREIGN AFFAIRS AND INT’L TRADE CANADA, CULTURE IN CANADA, www.dfait-maeci.gc.ca/can-am/washington/studies/culture-en.doc (last visited Oct. 31, 2006).

49. See English Language, THE COLUM. ELECTRONIC ENCYCLOPEDIA (6th ed. 2003), available at <http://www.infoplease.com/ce6/society/A0817376.html>.

50. See French Language, BRITANNICA CONCISE ENCYCLOPEDIA (2006), available at <http://www.answers.com/topic/french-language>.

51. According to award-winning Canadian writer Antonine Maillet, “[l]earning another language makes you bigger, gives you a wider vision, makes you feel subtleties that you don’t get in just one language.” Canadian Forces Pers. Support Agency, *Around the World in Two Languages*, 4 APROPOS, Fall 2005, http://www.cfpsa.com/en/services/media/apropos/volume4/issue3/aroundtheworld_e.asp.

52. Am. Civ. Liberties Union, ACLU Briefing Paper 6: “English Only” (1996), <http://www.lectlaw.com/files/con09.htm> [hereinafter ACLU Paper].

53. Thomas Ricento, *A Brief History of Language Restrictionism in the United States*, in OFFICIAL ENGLISH? NO!: TESOL’S RECOMMENDATIONS FOR COUNTERING THE OFFICIAL ENGLISH MOVEMENT IN THE U.S. (1996), available at <http://www.usc.edu/dept/education/CMMR/PolicyPDF/OfficialEnglishRicento.pdf>.

54. ACLU Paper, *supra* note 52.

55. THE FEDERALIST NO. 2 (John Jay), Oct. 5, 1787, available at <http://www.constitution.org/fed/federa02.htm>.

Protestant, and non-English-speaking.”⁵⁶

Despite many attempts by Congress, the United States has never declared English, or any other language, as an official language for the nation.⁵⁷ The battle surrounding declaration of an official language in the United States dates back to the beginning of the twentieth century.⁵⁸ Individual states implemented laws that declared English, sometimes with additional languages, as the states’ official language or languages.⁵⁹ For example, Nebraska’s constitutional amendment declaring English as the official language dates back to 1920, a time in history when the United States was experiencing anti-German hostility triggered by World War I.⁶⁰

In 1979, the President’s Commission on Foreign Language and International Studies released a report on Americans’ “scandalous lack of foreign language ability.”⁶¹ At the time of the Commission’s report, no state had foreign language standards for graduating high-school students, and states did not require schools to provide foreign language classes.⁶² This sparked great attention to the lack of foreign language education in the United States.⁶³ Federal funding had previously been available for programs that developed foreign language curriculums, as established by the Bilingual Education Act of 1968.⁶⁴ When Congress attempted to eliminate funding for foreign language maintenance and education, civil rights groups aggressively battled against the

56. JAMES CRAWFORD, *HOLD YOUR TONGUE: BILINGUALISM AND THE POLITICS OF “ENGLISH ONLY”* 33-34 (1992) [Hereinafter *HOLD YOUR TONGUE*].

57. James Crawford, *The Official English Question*, in *ISSUES IN U.S. LANGUAGE POLICY* (1997), <http://ourworld.compuserve.com/homepages/JWCRAWFORD/question.htm>.

58. James B. Draper & Martha Jiminez, *A Chronology of the Official English Movement*, in *OFFICIAL ENGLISH? NO!: TESOL’S RECOMMENDATIONS FOR COUNTERING THE OFFICIAL ENGLISH MOVEMENT IN THE U.S.* (1996), at 1, <http://www.usc.edu/dept/education/CMMR/PolicyPDF/OfficialEnglishDraperJimenez.pdf>.

59. See U.S.E., <http://www.us-english.org> (last visited Oct. 31, 2006). The following states have existing official language laws: Alabama, Alaska, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wyoming. *Id.* at <http://www.us-english.org/inc/official/states.asp>.

60. See NEB. REV. STAT. CONST. art. I, § 27.

61. Draper & Jiminez, *supra* note 58, at 1.

62. *Id.*

63. Leon E. Panetta, *Foreign Language Education: If ‘Scandalous’ in the 20th Century, What Will It Be In the 21st Century*, STAN. LANGUAGE CTR., May 7, 1999, <http://language.stanford.edu/about/conferencepapers/panettapaper.pdf>.

64. Draper & Jiminez, *supra* note 58, at 1.

deprivation of Americans' opportunity to learn foreign languages.⁶⁵ These civil rights leaders strived to enforce the then recent ruling of the United States Supreme Court,⁶⁶ which established the right of students with limited proficiency in English to obtain special assistance in competency in English. "Still, many school districts resented the federal insistence on bilingual instruction. The stage was set for a decade of debate on language in American society."⁶⁷

In 1981, the current movement to declare English the official language of the United States began when the late Senator Hayakawa introduced a Constitutional amendment to Congress aimed at implementing English-only legislation.⁶⁸ The proposed amendment never became law, but it managed to generate English-only initiatives in eighteen states that subsequently passed laws declaring English as their official language.⁶⁹

Current efforts to establish English as the United States' official language are driven by the large influx of immigrants from Spanish-speaking countries and Eastern nations, such as China and Vietnam.⁷⁰ These immigrants brought an incursion of non-English speaking residents to the United States, which subsequently sparked alarm that this will be detrimental to the integrity of English in the United States.⁷¹ "Amidst this uncertainty and relatively rapid increase in immigrant populations, English became a symbol, and its protection a cause around which disgruntled citizens could rally."⁷²

In almost all legislative sessions since the 1980s, Congress has proposed a Constitutional amendment to to adopt English as the official language of the United States.⁷³ Other efforts towards English-only initiatives have attempted to change the United

65. *Id.*

66. *See Lau v. Nichols*, 414 U.S. 563, 564 (1974) (stating that the San Francisco school system neglecting to provide English language education to roughly 1,800 students of Chinese ancestry who are not proficient in English, or to provide them with supplemental education, denies them the opportunity to participate in the public educational program and violates the Civil Rights Act of 1964).

67. *Draper & Jimenez*, *supra* note 58, at 1.

68. *Id.* at 1-2.

69. *See Ricento*, *supra* note 53, at 1.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Constitutional Topic: Official Language*, The U.S. Constitution Online, http://www.usconstitution.net/consttop_lang.html (last visited Oct 31, 2006).

States Code.⁷⁴ Following an emotional debate on May 18, 2006 “fraught with symbolism,” the United States Senate voted to declare English the national language of the United States.⁷⁵ This Bill proposed that “no one has a right to federal communications or services in a language other than English except for those already guaranteed by law.”⁷⁶

The Senate also approved a “weaker, less-binding option,” as proposed by Senator Ken Salazar of Colorado, which declared English the “common and unifying” language of the nation, by a vote of 58 to 39.⁷⁷ “[T]he proposal declares that no one has a right, entitlement or claim to have the government of the United States or any of its officials or representatives act, communicate, perform or provide services or provide materials in any language other than English.”⁷⁸ The question of which version survives will be decided after negotiations in the House of Representatives.⁷⁹ The efforts of the Senate shows the current aggressive efforts of Congress to implement laws aimed at establishing English as the official language of the United States.

III. ARGUMENTS AGAINST AND FOR AN OFFICIAL LANGUAGE IN THE UNITED STATES

A. *Arguments Against the Declaration of English as the Official Language of the United States*

The American Civil Liberties Union (“ACLU”), one of the leading organizations opposed to establishing a national official language, published a paper detailing its fervent opposition to the official language movement.⁸⁰ The ACLU paper highlighted past English-only laws that abridged the rights of, or made life more difficult for, non-English speaking individuals.⁸¹ As an example of the hardships that can occur with English-only laws, the ACLU

74. See, e.g., H.R. 123, 102d Cong., 1st Sess. (1991); S. 434, 102d Cong., 1st Sess. (1991). As of February 1992, neither Bill has been enacted.

75. David Espo, *Senate Sends Mixed Signals on English*, ASSOCIATED PRESS, May 18, 2006, available at <http://www.breitbart.com/news/2006/05/18/D8HMGLG81.html>.

76. Jonathan Weisman & Jim VandeHei, *Senate Votes English as ‘National Language’*, WASH. POST, May 19, 2006, at A01.

77. Hulse, *Senate Passes a Bill That Favors English*, *supra* note 23, at A18.

78. *Id.*

79. Carl Hulse, *Senate Votes to Set English as National Language*, N.Y. TIMES, May 19, 2006, available at <http://www.nytimes.com/2006/05/19/washington/19immig.html?ex=1305691200&en=ba019a0b7f448a43&ei=5088&partner=rssnyt&emc=rss>.

80. See ACLU Paper, *supra* note 52.

81. HOLD YOUR TONGUE, *supra* note 56, at 32.

document outlined a 1980 law passed in Dade County, Florida where multicultural events, bilingual services, medical services, and public transit system were barred from public funding as to anything that involved the use of languages other than English.⁸²

The ACLU argues that English-only laws violate the United States Constitution's Due Process Clause because, at a minimum, court system translation services would not be offered to non-English speaking litigants were English declared the national language.⁸³ Early United States Supreme Court decisions have held that prohibitions on the use or teaching of non-English languages constitutes deprivations of liberty under substantive due process.⁸⁴

The ACLU also considers English-only laws to be violative of the Equal Protection Clause under the Fourteenth Amendment.⁸⁵ The following are ways in which English-only laws might violate the Constitution: elimination of courtroom translation services would jeopardize the ability of non-English speaking individuals to understand court proceedings;⁸⁶ elimination of bilingual ballots that would make voting impossible to non-English speaking citizens;⁸⁷ and discrimination in the workplace where employers could impose English-only rules on non-English speaking workers.⁸⁸

This violation of Equal Protection argument stems from the argument that discrimination is a proxy for national origin discrimination.⁸⁹ In *Hernandez v. New York*,⁹⁰ Justice Kennedy stated "a policy of striking all who speak a given language without regard to the particular circumstances of the trial or the individ-

82. ACLU Paper, *supra* note 52 ("Passage of an English Only ordinance by Florida's Dade County in 1980, barring public funding of activities that involved the use of languages other than English, resulted in the cancellation of all multicultural events and bilingual services, ranging from directional signs in the public transit system to medical services at the county hospital.").

83. *Constitutional Topic*, *supra* note 73.

84. *See, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390 (1923) (finding a violation of the Fourteenth Amendment and invalidating a state law that barred the teaching of any language other than English to a child who had not completed the eighth grade); *Yu Cong Eng v. Trinidad*, 271 U.S. 500 (1926) (finding a violation of Equal Protection and invalidating a law that prohibited Chinese merchant immigrants from keeping their financial books in Chinese).

85. *See* ACLU Paper, *supra* note 52.

86. *Constitutional Topic*, *supra* note 73.

87. *Id.*

88. *Id.*

89. *See generally* Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 305 (1992).

90. *Hernandez v. New York*, 500 U.S. 352 (1991).

ual responses of the jury, may be found by the trial judge to be a pretext for racial discrimination.”⁹¹ In a series of “English-only” cases brought under the Equal Protection clause, the Supreme Court upheld the right of individuals to speak in their foreign languages despite English-only requirements imposed by statutes.⁹² These cases protected minority languages by applying the Fourteenth Amendment’s Equal Protection Clause to invalidate laws prohibiting the use of languages other than English. In *Meyer v. Nebraska*, the Supreme Court stated

[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.⁹³

In order for a law to survive judicial scrutiny under an Equal Protection analysis, the court must determine a legitimate state interest for enacting a law.⁹⁴ Yet, it is clear that

removing bilingual ballots, enforcing English-only [submersion] education for all students, . . . discontinuing public service announcements and important health and safety information in non-English languages, removal of non-English signs in public offices, withdrawing of public monies for non-English media services . . . would not be in *anyone’s* interest. . . .⁹⁵

There is a great threat to equal protection rights when the government punishes non-English speakers by limiting their access to public services, voting, and education based on language restrictions. The consequences that would result from the establishment of English-only laws would “further stigmatize non-English speakers, rather than help them acquire the language. . . . To deliberately fortify the status of English by making if the official language will merely add insult to injury for the vast majority of non-English speakers struggling to learn the language.”⁹⁶

91. *See id.* at 371-72.

92. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Bartels v. Iowa*, 262 U.S. 404 (1923); *Yu Cong Eng v. Trinidad*, 271 U.S. 500 (1926).

93. *Meyer*, 262 U.S. at 391.

94. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (establishing constitutional standards of review).

95. Ricento, *supra* note 53, at 7.

96. *Id.*

English-only laws greatly disadvantage non-English speaking people in the United States and deprive them of opportunities to strengthen and enrich their national identities. Different cultural groups are effectively coerced, through the assimilation process into American culture, to learn English in ways that may undervalue their ancestral languages and cultures.⁹⁷ "Speaking English was no guarantee of upward mobility for generations of members of these groups; today, many groups, including many Native American tribes, have realized that reestablishing and reconnecting to their cultural/linguistic roots is a necessary prerequisite to being valued by, and integrating with, the dominant society."⁹⁸

In the United States, there have been numerous successful attempts, by way of elections and court decisions, to strike down initiatives aimed at establishing English-only policies. Despite these efforts, a majority of Americans assume that English is already the nation's official language.⁹⁹ Furthermore, a substantial percentage of Americans erroneously think that everyone in the United States, and even people encountered while traveling abroad, should speak English.¹⁰⁰

To declare English as the United States' official language would require the government to provide more opportunities, resources, and access for immigrants to learn English. Those that support an official language in the United States argue that without an official policy, we can expect to see higher levels of unemployment among language minorities, more disparity between the positions employers wish to fill and workers seek to gain, and higher costs of remedial training and reeducation on the part of employers.¹⁰¹ Previous English-only proposals presented at the federal and state levels, however, have failed to require the government to provide opportunities to learn English to those who do not speak it well.¹⁰²

The Language for All People Initiative ("H.R. 124"),¹⁰³ presented to Congress in 1993, encouraged the most instruction of

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* at 4.

101. FERNANDO DE LA PEÑA, DEMOCRACY OR BABEL? THE CASE FOR OFFICIAL ENGLISH IN THE UNITED STATES (1991).

102. Ricento, *supra* note 53.

103. See H.R. 124, 104th Cong. (1995) (amending the Internal Revenue Code to allow employers a credit for 50% of expenses incurred in English language training for their employees).

English to non-English speaking citizens of all of the legislation introduced thus far.¹⁰⁴ While this may give some employers an incentive to offer English instruction, it will not affect those immigrants most in need of help learning English: those who are unemployed and those who work in low-wage jobs which require no English. Employers of the latter group take advantage of the fact that their workers speak no English because it makes the workers dependent on their bosses, subject to exploitation, and makes them unable to find better jobs elsewhere. These employers are unlikely to offer English classes, regardless of the tax credit.¹⁰⁵

Thus, there are consequences associated with implementing English-only laws because many individuals will not have the opportunity to learn adequate English in an officially English-only nation. English-only advocates have generally failed to urge the federal government to build teaching facilities and resources geared towards non-English speaking populations.¹⁰⁶ Fortunately, H.R. 124 passed notwithstanding U.S.E.'s lack of support for efforts to teach English to the non-English speaking populations.¹⁰⁷ Compared to the massive amounts of money U.S.E. spends on lobbying at the state and national level to support their English-only agenda, these contributions fail to provide any necessary resources for teaching English as a second language.¹⁰⁸

Activists that support an English-only movement argue that other foreign languages pose a threat to the integrity of the English language.¹⁰⁹ This argument is unfounded, and one way to rebut this assumption is to focus on the meaning of bilingualism.

104. *Id.* (amending the Internal Revenue Code to allow employers a credit for 50% of expenses incurred in English language training for their employees).

105. Susan Dicker, *Ten Official Arguments and Counter-Arguments*, in OFFICIAL ENGLISH? NO!: TESOL'S RECOMMENDATIONS FOR COUNTERING THE OFFICIAL ENGLISH MOVEMENT IN THE U.S. (1996), <http://www.ncela.gwu.edu/pubs/tesol/official/arguments.htm>.

106. *Id.* ("U.S.E. failed to support a 1986 bill calling for more federal subsidies for adult ESL instruction.").

107. U.S.E. awarded \$2,000, space heaters, and two used computers to a Washington, D.C. organization that provided English instruction. It also gave \$5,000 to 'Project Citizenship' in Santa Cruz that would pay for 12 part-time teachers and basic teaching materials for 550 students. *Id.*

108. Antonio J. Califa, *Language is Not the Barrier*, THE WASH. POST, May 11, 1991, at A19 (reporting that U.S.E. only spends between 1% and 7% of its budget on literacy programs).

109. According to 2000 U.S. Census data, "[a]mong the 262.4 million people aged 5 and over, 47.0 million (18 percent) spoke a language other than English at home." Hyon B. Shin & Rosalind Bruno, *Language Use and English-Speaking Ability: 2000*, U.S. CENSUS BUREAU, 2003, at 1, available at <http://www.census.gov/prod/2003pubs/c2kbr-29.pdf> [hereinafter Shin, *Language Use and English-Speaking Ability*].

"Many opponents of bilingualism actually interpret it as the sole or major use of a language other than English, rather than the use of two languages."¹¹⁰ Speaking only one language, however, has never been the intent of immigrants who are eager to learn and use English.¹¹¹ As shown by the benefits of official bilingualism in Canada, there are numerous advantages to bilingualism in a globally competitive market.¹¹² Yet, substantial evidence exists that English is a greater threat to the integrity of other minority languages in the United States than minority languages are to the English language.¹¹³ Results from a study of 5,000 eighth and ninth grade immigrant students of Cuban, Haitian, Filipino, Mexican, and Vietnamese heritage illustrated that a large percentage of these students preferred English over their native tongues.¹¹⁴

The United States is not threatened by allowing the acceptance of other languages by its citizens by the fact that English is *the* dominant globally accepted language.¹¹⁵ Studies show that the English language has "300 million native speakers, is now regularly used as an additional language by at least as many nonnative speakers throughout the world, [is used] in nearly 40 nations [] in an official capacity within their own borders," and is studied by a large number of native speakers of other languages all over the world.¹¹⁶

Bilingual ballots, authorized by the 1975 amendment to the Voting Rights Act,¹¹⁷ are among the most controversial issues in the arena of language rights. "Efforts to disenfranchise minority members of society have been the scourge of our democratic society."¹¹⁸ Throughout American history, poll taxes and literacy tests were established to intimidate black voters and discourage them

110. Dicker, *supra* note 105.

111. More than twenty-eight million United States residents age 5 and older speak Spanish at home. Among all those who speak Spanish at home, more than one-half say they speak English 'very well.' *Id.* at 2.

112. *Id.*

113. Deborah Sontag, *A Fervent 'No' to Assimilation in New America*, N.Y. TIMES, June 29, 1993, at A10.

114. Dicker, *supra* note 105 (citing Sontag, *supra* note 103).

115. *Id.*

116. NESSA WOLFSON, PERSPECTIVES: SOCIOLINGUISTICS AND TESOL 275 (1989).

117. See 42 U.S.C. § 1973aa-1a(b) (1988) (prohibiting states from providing voting materials only in the English language).

118. Dicker, *supra* note 105; see also *Castro v. State of Ca.*, 466 P. 2d 244, 250 (1970); *P.R. Org. for Pol. Action v. Kusper*, 490 F. 2d 575, 580 (7th Cir. 1973) (finding that literacy tests were utilized throughout American history to disenfranchise language minorities).

from involvement in the political process.¹¹⁹ Immigrants with broken English were also discriminated against while attempting to vote.¹²⁰ The federal government has passed laws protecting the use of bilingual ballots in districts with significant populations of non-native English-speakers and with low levels of literacy in an effort to eliminate discrimination against foreign-language speakers.¹²¹ Critics of this practice argue that permitting ballots in a variety of languages dissuades people from learning and speaking English.¹²²

English-only advocates expect people seeking naturalization in the United States under the age of fifty to demonstrate competence in English as a condition of receiving their citizenship.¹²³ The test for citizenship in the United States is based on English proficiency reading on a third to fourth-grade level.¹²⁴ These advocates argue that our government should heighten the requirement of English adeptness for naturalization purposes.¹²⁵ In addition, they preach that natural citizens should have to pass literacy tests to vote or substantiate their patriotism.¹²⁶ "We value literacy, and we encourage native-born Americans who are illiterate to learn to read and write. We recognize literacy as important for full participation in society and the full realization of personal goals. But we don't demand it as a qualification for citizenship."¹²⁷

Contrary to the views held by English-only advocates that ballots in other languages detract from English education, voting in one's native language is unlikely to deter immigrants from adopting English as their speaking language. In choosing to live in the United States, "there are many incentives for learning English that far outweigh the ability to conduct some necessary tasks in the native language."¹²⁸ Additionally, some studies of voting results have shown that bilingual ballots are most often utilized by a specific target group of individuals.¹²⁹ For example, a

119. See Dicker, *supra* note 105.

120. *Id.*

121. *Id.*

122. *Id.*

123. See Rep. N. Shumway, *Preserve the Primacy of English* (1988), in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* (James Crawford ed., 1992), cited in Dicker, *supra* note 105.

124. See Dicker, *supra* note 105.

125. Califa, *Language is Not the Barrier*, *supra* note 108.

126. See Dicker, *supra* note 105.

127. *Id.*

128. *Id.*

129. *Id.*

Mexican American Legal Defense and Education Fund determined that the people most likely to use Spanish-language ballots "were over 65, had a low level of education, and had low incomes."¹³⁰ Without bilingual ballots, this specific group of voters would be removed from the voting process.¹³¹ This illustrates the importance of providing bilingual ballots to avoid discrimination against non-English speaking citizens, especially ones in the targeted bracket, who are typically elderly and have a harder time learning English later in life. Although bilingual voting services may require additional funds to produce, "[i]t is the mandate of a democracy to give access to the ballot to as many citizens as possible. Doing so inevitably costs money."¹³²

B. Arguments For the Declaration of English as the Official Language of the United States

U.S.E. and other English-only advocates¹³³ believe their agenda to promote the passage of constitutional amendments, federal, and state laws declaring English as the official language of the United States is essential and beneficial for the United States government and its citizens. English-only advocates assert English unites Americans, who speak more than 322 languages.¹³⁴ This sense of unity "provid[es] a common means of communication; it encourages immigrants to learn English in order to use government services and participate in the democratic process; and it defines a much-needed common sense language policy."¹³⁵

U.S.E.'s national motto is "*E pluribus unum*," which translates to "out of many, one."¹³⁶ The organization believes that while immigrants of many different nationalities built America, the "melting pot" of America melded the United States into one peo-

130. *Id.* (citing J.G. Avila, *The Case for Bilingual Ballots*, S.F. SUNDAY EXAMINER & CHRON., October 16, 1983, at 9-11).

131. *Id.*

132. *Id.* ("Voter registration drives take time and money. Allowing access to voting places to people in wheelchairs takes money. Special provisions for blind voters cost money. Absentee balloting costs money. Inclusion versus exclusion is the desired goal, one which is deemed worth the dollar price.")

133. See Ricento, *supra* note 53 ("Other [English-only] groups with similar agendas include English First and the American Ethnic Coalition.")

134. See generally U.S.E., FACT SHEETS: LANGUAGES SPOKEN IN THE UNITED STATES ACCORDING TO THE 2000 U.S. CENSUS, http://www.us-english.org/inc/official/fact_sheet/us_languages.asp (last visited Oct. 31, 2006).

135. U.S.E., <http://www.us-english.org/inc/official/about/why.asp> (last visited Oct. 31, 2006).

136. *Id.*

ple, so one language is required to achieve unity.¹³⁷ “Unfortunately, the proliferation of multilingual government sends the opposite message to non-English speakers [that] it is not necessary to learn English because the government will accommodate them in other languages.”¹³⁸ To defend their beliefs, these advocacy groups utilize a study published by the U.S. Department of Labor showing that immigrants are slower to learn English when they receive support for their native language instead of encouragement to speak English.¹³⁹ As such, “[m]ultilingual government services actually encourage the growth of linguistic enclaves” in the United States.¹⁴⁰ English-only advocates also fear that “this division of the United States into separate language groups contributes to racial and ethnic conflicts. Designating English as the official language will help reverse this harmful process.”¹⁴¹

Additionally, English-only advocacy groups argue that immigrants will greatly benefit socially by declaring English as an official language.¹⁴² “Instead of the mixed message government sends by making it possible to file tax returns, vote, become U.S. citizens and receive a host of other services in a variety of languages, immigrants will understand that they must know English to fully participate in the process of government.”¹⁴³ According to U.S.E., it is imperative to a functioning society that its citizens are proficient in English or America will become a nation with low-skilled employees and low-paying jobs.¹⁴⁴ Census data also shows that English proficiency directly correlates to economic success. A 2000 Census report shows that an immigrant’s income rises 30% as a result of communicating in English.¹⁴⁵

Another popular argument is that the designation of English-only laws eliminates needless duplication of governmental services, saving strained resources such as time and money.¹⁴⁶ Monetary benefits would result in the establishment of one official language because the government could save money by publishing

137. *Id.*

138. *Id.*

139. See Joseph R. Meisenheimer II, *How Do Immigrants Fare in the U.S Labor Market?*, 115 MONTHLY LABOR REV. 10-11 (1992).

140. U.S.E., <http://www.us-english.org/inc/official/about/why.asp> (last visited Oct. 31, 2006).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

official documents in a single language, which could reduce translation and printing costs.¹⁴⁷ The government could use this money on multilingual services that would provide immigrants with the educational resources necessary to learn how to speak English.¹⁴⁸

IV. A COMPARISON BETWEEN LANGUAGE POLICIES IN CANADA AND THE UNITED STATES

Many advocacy groups cite countries with more than one official language, such as Canada, as examples of what could occur in the United States if there is not one exclusive official language.¹⁴⁹ These advocacy groups argue the political and social conflicts historically associated with the dual declared languages.¹⁵⁰ Yet, the dual language issues in Canada are vastly different than any language-related issues in the United States.¹⁵¹

Canada . . . [is] distinguishable from the United States in that it has developed with specific geographic regions where different languages have been spoken; the same cannot be said of the United States — a country founded on a 'melting pot' theory where immigrants and their different cultures and languages were traditionally welcomed and, for the most part, spread out throughout the country.¹⁵²

English and French have always been two distinct language groups in Canada.¹⁵³ In Quebec, the French-speaking population wanted to have their country officially declare French as the national language to distinguish themselves from the English-speaking Canadians and to declare their national identity.¹⁵⁴ In the United States, no single minority group is declaring such a right.

Some English-only advocates also argue that the increase of Hispanics in America, coupled with the increased use of Spanish, threatens the integrity of the English language.¹⁵⁵ In rebuttal to this argument, 'Chicano militant' George Ramos has stated that

147. *Id.*

148. *Id.*

149. Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293, 296 (1989).

150. *Id.* at 322.

151. *Id.* at 323.

152. Peña Maritza, *English-Only Laws and the Fourteenth Amendment: Dealing with Pluralism in a Nation Divided by Xenophobia*, 29 U. MIAMI INTER-AM. L. REV. 349, 368 (1998).

153. Petrovic, *supra* note 9, at 115.

154. *Id.*

155. *Id.*

Spanish speakers in the United States "accept the speaking of English as an essential tool for success where the aspirations of Chicanos and other Latinos are in no way similar to those of the separatists in Quebec."¹⁵⁶ Canada's language battle, which predates any language issue in the United States, led to the necessity of implementing dual official languages in Canada.¹⁵⁷ Problems within the United States with the influx of foreign language speaking immigrants are historically and culturally different from those faced by Canada.

In Canada, dominant language policies have historically been the providence of the English-speaking population, which was the coercive force over French-speaking Canadians.¹⁵⁸ "French Canadian separatism comes from two centuries of second-class citizenship in their own land."¹⁵⁹ While early Canada recognized French as an important role in the country, French developed "in an era of English superiority and bigotry and of British imperialism, a time in which the rights of the French outside Quebec were trampled on with impunity."¹⁶⁰

Even today, although Canada is officially a bilingual country, statistics show that may not actually be the case.¹⁶¹ Canada is better described as an English-speaking country, with French considered a second (or minority) language.¹⁶² Although all government-run organizations have both English and French speaking employees, French is not necessarily used outside certain geographical areas.¹⁶³ English-speaking citizens in Canada dominate

156. G. Ramos, *Wrong Thinking Links Bilingualism and Separatism*, L.A. TIMES, Nov. 6, 1995, § Metro, at B3.

157. Petrovic, *supra* note 9, at 115.

158. See Shalom Endleman, *The Politics of Language: The Impact of Language Legislation on French and English Speaking Citizens of Quebec*, 116 INT'L J. SOC. LANG. 81 (1995).

159. Petrovic, *supra* note 9, at 114 (quoting Gregory R. Guy, *International Perspectives on Linguistic Diversity and Language Rights*, 13 LANGUAGE PROBLEMS AND LANGUAGE PLANNING 52 (1989)).

160. Petrovic, *supra* note 9, at 116 (quoting RONALD WARDHAUGH, *LANGUAGE AND NATIONHOOD: THE CANADIAN EXPERIENCE* 62 (1983)).

161. See Karen Bond, *French as a Minority Language in Bilingual Canada*, KAREN'S LINGUISTIC ISSUES, Oct. 2001, <http://www3.telus.net/linguisticsissues/french.html> ("Canada is officially a bilingual country but, with nearly 60% of the population speaking English as their mother-tongue, and only 24% speaking French as their first language, some people are questioning whether Canada is truly a bilingual nation or rather, a bilingual nation on paper only.").

162. *Id.*

163. "Only 9% of Anglophones outside Québec can communicate in French. In contrast, one-third of Québec Francophones can communicate in English." *Id.* (citing Marc Chevrier, *The Rationale for Québec's Language Policy*, ESPOIR, Sept. 1997).

in the areas of administration, politics, and the economy.¹⁶⁴

Most Canadians also give employment preferences to those applicants who have proficiency in English, thus giving preferential treatment to a particular language.¹⁶⁵ The disadvantaged group, in this case French-speaking Canadians, are thereby forced from their national identity and must either adapt to the English-speaking society or resist demands to learn English.¹⁶⁶ This illustrates that even if the United States declared an official national language, it does not necessarily mean that people will abide by the mandated language.

The Canadian Language Act was implemented to counteract extreme Anglocentrism¹⁶⁷ and a historical dominance of English by officially recognizing French as a national language.¹⁶⁸ However, the Act failed in achieving its intended goal and is now subsequently unhelpful in Canada.¹⁶⁹ In fact, the majority of Canadians speak English and delegate French as the minority language.¹⁷⁰ By the time the Canadian Language Act passed, "the rest of Canada found the Act to be unrealistic; whereby the Act did little to prevent the decay of French outside Quebec; and it angered other linguistic groups who felt neglected and suddenly cast as second-class citizens."¹⁷¹ Canada's language policy has not resulted in increased unity, but rather increased resentment and division among Canadians. Dominance by English-speaking Canadians over the French-speaking Canadians has resulted in two groups fighting for political power, instead of the ideal situation with both groups working effectively together.¹⁷²

The historical adverse impact of two competing languages in Canada is not part of the United States's history. Steve Symms, an Idaho Republican Senator and sponsor of the English Language Amendment, blames Canada's troubles on the 1867 British

164. Bond, *supra* note 161.

165. Peter Hans Nelde, *Language in Contact and Conflict: The Belgian Experience and the European Union*, 1 CURRENT ISSUES IN LANGUAGE AND SOCIETY 165-182 (S. Wright ed., 1994).

166. *Id.* at 168.

167. Anglocentric means "entered on or giving priority to England or things English." Anglocentric, MERRIAM-WEBSTER ONLINE, <http://www.m-w.com/cgi-bin/dictionary?va=anglocentric> (last visited Oct. 31, 2006).

168. Petrovic, *supra* note 9.

169. *Id.*

170. *Id.*

171. RONALD WARDHAUGH, LANGUAGE AND NATIONHOOD: THE CANADIAN EXPERIENCE 62 (1983).

172. Petrovic, *supra* note 9.

North American Act, which gave coequal status to English and French.¹⁷³ Symms stated, “[m]ore than a hundred years later [after the British North American Act], the Canadian people suffer from a tragic split as a result of this legislated language difference.”¹⁷⁴ Symms believes that problems created by bilingual practices in Canada would have naturally resolved itself in time without the invasive intervention of the government.¹⁷⁵ The Senator furthers his argument of implementing English-only laws and avoiding official bilingualism in the United States by stating, “[c]ountless hundreds of thousands have lost their lives in the language riots of India. Real potential exists for a similar situation to be replayed in the United States.”¹⁷⁶

It is this “fear of balkanization – that bilingualism [or multilingualism] will divide and disrupt, fostering tribal loyalties and misunderstanding between groups,” that has created a great amount of support for the English-only movement in the United States.¹⁷⁷ For example, the steadily increasing Hispanic population is creating concern in the United States that some members of this group may one day demand that Spanish become an official language.¹⁷⁸ Many Americans and English-only advocates look at bilingual Canada and see a country with bilingual language laws that have created hostility among its people.¹⁷⁹ Canada’s language policy actually shows how “divisiveness and discord is more likely to result in a nation when one language is declared official to the disadvantage of speakers of another language.”¹⁸⁰ Furthermore,

sanctioning discrimination against an entire language group in the name of national unity will only serve to label

173. JAMES CRAWFORD, *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 395 (James Crawford ed., 1992) (citing CONG. REC. S12643 (Sept. 21, 1983)) [hereinafter CRAWFORD, *LANGUAGE LOYALTIES*].

174. *Id.*

175. *Id.*

176. See *The English Language Amendment: Hearing on S.J. Res. 167 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 98th Cong., 2d Sess. (1984).

177. CRAWFORD, *LANGUAGE LOYALTIES*, *supra* note 173.

178. The estimated Hispanic population of the United States as of July 1, 2004 was 41.3 million people. See U.S. CENSUS BUREAU, *ANNUAL ESTIMATES OF THE POPULATION BY SEX, RACE AND HISPANIC OR LATINO ORIGIN FOR THE UNITED STATES: APRIL 1, 2000 TO JULY 1, 2005* (2005), available at <http://www.census.gov/popest/national/asrh/NC-EST2005-srh.html>. This makes people of Hispanic origin the nation’s largest race or ethnic minority, constituting more than 14 percent of the nation’s total population. *Id.*

179. CRAWFORD, *LANGUAGE LOYALTIES*, *supra* note 173.

180. Califa, *Declaring English the Official Language*, *supra* note 149, at 323.

immigrants as being inferior and un-American, and will only be to the disadvantage of them; it is this type of high sentiment, prejudice, and statements that have led to the civil discontent of countries like Canada. The fact that we live in a society with many forms of expressing ourselves is not a sign of bilingual separatism, and it never will be; it is a form of lingual and cultural pluralism.¹⁸¹

"To do away with lingual and cultural pluralism via language restrictions in the name of national unity will beget social discontent among non-English speakers, and it is those precise movements to quash one language for the benefit of another that have caused all the problems in Canada."¹⁸²

Although ultimately Canadians benefit from its dual official language policy, it is not a perfect system. "The current situation does not satisfy either the Anglophone minority in Quebec . . . or the Anglophone majority in the rest of the country, who resent bearing the costs of providing bilingual federal government for a French-speaking minority."¹⁸³ Both English and French-speaking Canadians have made significant compromises to achieve peace for the greatest portion of the population with regard to language issues.¹⁸⁴ This foray at harmony, with regard to linguistic and cultural rights, will eventually promote peace in Canada in the future.

Yet, Canada's experiences should also serve as a warning to United States language policymakers before the United States government declares one official language.¹⁸⁵ Language is important in all aspects of society.¹⁸⁶ The United States should address and consider all groups effected before making the decision of enforcing a radical English-only policy.

Both proponents of English-only and minority language groups are concerned with a possible loss of their language rights. Rather than implement an official language policy, which would strengthen the role of English to the detriment of other languages, the United States should follow the Canadian example and provide greater guarantees of language rights. The roles of both sides of the English-only

181. Maritza, *supra* note 152, at 369.

182. Califa, *Declaring English the Official Language*, *supra* note 149, at 369.

183. Gregory Balmer, *Does the United States Need an Official Language?*, 2 *IND. INT'L & COMP. L. REV.* 433, 446 (1992).

184. *Id.*

185. *Id.*

186. *Id.*

movement would thereby be strengthened.¹⁸⁷

The United States should also take into account the example of Quebec, where people would have rather chosen the language they preferred to communicate in for themselves.¹⁸⁸

In addition, English-only legislation may have a negative impact on minority children in their educational opportunities. "Because of the federal courts' refusal to recognize a definite right to bilingual education, not all states have enacted statutes guaranteeing at least a basic right to bilingual education."¹⁸⁹ In Canada, the government has implemented a variety of educational opportunities aimed to help language minorities learn both English and French.¹⁹⁰ This education is afforded by the Constitution Act of 1982¹⁹¹ where the Canadian Charter of Rights and Freedoms were codified.¹⁹² These collective rights require the Canadian government to assist ethnic minorities in preserving and enhancing their culture and language¹⁹³ while promoting unity between the two diverse cultural groups living in Canada.¹⁹⁴

Although Canada shows us both benefits and drawbacks to declaring official languages, certain aspects of Canadian language policy simply would not apply to the United States. Even though the United States does not have an officially bilingual federal government,¹⁹⁵ even if one existed it will not protect the rights of non-English speaking minorities in the United States. "What is needed instead are legislation and policies that ensure language minorities' greater access to the government and services that are their right. Minority language services where warranted would provide this access without overburdening the government as a whole."¹⁹⁶ Thus, the United States should not recognize any minority language as the official language of the nation.¹⁹⁷

187. *Id.*

188. *Id.*

189. *Id.* at 447-8.

190. *Id.* at 446.

191. See Canadian Charter of Rights and Freedoms, *supra* note 30.

192. *Id.*

193. Jose Woehrling, *Minority Cultural and Linguistic Rights and Equality Rights in the Canadian Charter of Rights and Freedoms*, 31 MCGILL L.J. 50 (1985).

194. Peter H. Russell, *The Political Purposes of the Canadian Charter of Rights and Freedoms*, 61 CAN. BAR. REV. 30, 31 (1983).

195. See Balmer, *supra* note 184.

196. *Id.* at 447.

197. *Id.*

V. CONCLUSION

The United States must look to Canada's experience with declaring an official language to ensure that language is never a tool to discriminate. Establishing the connection between language, race, and the Fourteenth Amendment, Justice Kennedy wrote, "[i]t 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."¹⁹⁸ The English-only laws "are based on the contention that statutes calling for governmental monolingualism are based on unconstitutional motivations such as nativism, and lead to the creation of a second-class citizenship for all Americans whose primary language is not English."¹⁹⁹

To avoid discrimination based on national origin or race, the United States should avoid language policies that make it more difficult for minority groups to participate in, and be productive members of, society. In addition, "[n]ational unity is best promoted when cultural and linguistic diversity is not discouraged."²⁰⁰ If the United States implements a federal English-only law, the repression of non-English speaking minorities may result in severe repercussions, such as a backlash by non-English speaking individuals against the United States government.

The generally amicable and favorable results achieved in Canada from the bilingual national languages will not likely occur in the United States if it were to declare English as its official language. English in the United States is not threatened as French once was in Canada due to the dominance of English-speaking Canadians. "[T]he United States is truly a multilingual society."²⁰¹ The United States is a nation where minorities strive to continually learn and speak English, especially because society requires English as a means to achieve social mobility and success.²⁰²

Studies show that minority language citizens in the United States are eager and willing to learn English.²⁰³ "Immigrants around the country are swamping English language classes, which are full beyond capacity and have waiting lists of

198. *Hernández v. New York*, 500 U.S. 352, 371 (1991).

199. *Maritza*, *supra* note 152, at 357.

200. *Balmer*, *supra* note 184, at 447.

201. *Id.*

202. *Petrovic*, *supra* note 9, at 116.

203. *See Shin*, *Language Use and English-Speaking Ability*, *supra* note 109.

thousands. Furthermore, language minority children quickly make English their language of choice, which is unlikely to change.”²⁰⁴ “The greatest threat to this voluntary assimilation is policies which repress those who have not yet achieved it, because the unity of a nation stems from the will of its people and their need to act in concert, not from an official language.”²⁰⁵ “[E]ngaging in international voyeurism to predict our own domestic affairs is sketchy business.”²⁰⁶ Due to the serious Equal Protection and Due Process violations that would result from declaring English as the United States’ official language, the United States should not elect English as its official language.

204. Petrovic, *supra* note 9, at 116.

205. Balmer, *supra* note 184, at 448.

206. Petrovic, *supra* note 9, at 118.