

STATEMENT OF

**K.C. McALPIN
EXECUTIVE DIRECTOR**

PROENGLISH

FOR THE

**CONSTITUTION SUBCOMMITTEE
OF THE HOUSE JUDICIARY COMMITTEE**

Hearing on
Wednesday, November 9, 2005

This statement is to convey ProEnglish's concerns regarding extension of Sections 4(f)(4) and 203 of the Voting Rights Act of 1965, as Amended.

“Cultural and religious diversity does not pose a threat to the national interest as long as public policies insure civic unity. Such policies should help people learn to speak, read, and write English effectively.” – The Honorable Barbara Jordan

INTRODUCTION

Chairman Chabot, Representative Nadler, and distinguished members of the Committee: thank you for the opportunity to present ProEnglish's views on Section 203 and Section 4(f)(4), the language minority provisions of the Voting Rights Act of 1965, as amended.

My name is K.C. McAlpin and I am the executive director of ProEnglish. ProEnglish is a national public interest organization whose goal is to make English the official language at all levels of government and protect its historic role as the common unifying language of our country. ProEnglish relies on voluntary contributions from its members for its support, and receives no federal grants or financial assistance of any kind.

Mr. Chairman let me take this opportunity to thank you for your leadership in the important struggle to preserve our nation's unity in the English language, and for giving ProEnglish this opportunity to explain why we think the minority language provisions of the Voting Rights Act ("the Act") should not be renewed.

BACKGROUND & TERMS

For simplicity I will refer to Section 203 and Section 4(f)(4) of the Voting Rights Act, as amended, as the "bilingual ballot" provisions of the Act. But we recognize that these provisions may require ballots to be printed in several languages – not just two – and that the requirement extends far beyond the printing of ballots to include all voting notices, forms, instructions, assistance, and information printed or otherwise provided in English.

The Voting Rights Act of 1965 was enacted to eliminate barriers to voter registration that historically had been used to prevent black citizens from registering and voting. Ten years later, in 1975, Congress expanded the scope of the Act by adding the bilingual ballot provisions. These provisions require covered jurisdictions to provide bilingual ballot materials for specified language minorities. These language minorities are American Indians, Asian Americans, Alaskan Natives, and Americans of "Spanish Heritage." Although originally intended to be temporary, Congress renewed these provisions in 1982 and again in 1992. They are now scheduled to expire in August 2007.

Political jurisdictions such as states and counties are required to provide bilingual election materials if:

- More than 5 percent of the jurisdiction's voting age citizens are limited English proficient members of one of the language minority groups, or
- More than 10,000 of the jurisdiction's voting age citizens are limited English proficient members of one of the language minority groups, and
- The illiteracy rate of the language minority group citizens is higher than the national illiteracy rate.

Mr. Chairman, the following are the reasons why we think Congress should not renew the bilingual ballot provisions of the Act.

1. THE RATIONALE FOR PROVIDING BILINGUAL BALLOTS IS NO LONGER VALID

It is clear that Congress originally intended bilingual ballots to be a temporary remedy. They were meant to redress the unequal educational opportunities that advocates claimed had been provided to certain language minority groups and which had resulted in lower than average English literacy rates among those groups. This is the reason the law covers only designated language minority groups whose literacy rate is lower than the national average.

Mr. Chairman today, thirty years after this temporary remedy was adopted, the situation has changed dramatically. Except for American Indians, the driving force behind the lower than average English literacy rates of the Act's designated language minority groups is the large percentage of these populations that is of non-native origin, and whose first language is not English.

In fact if educational opportunities correlate with data on dropout rates, recent research by the Pew Hispanic Center and others show that school drop out rates for various immigrant groups including Asian and Caribbean immigrants are actually lower than the U.S. average.¹ The studies also found that poor academic performance among immigrant students is closely tied to the lack educational opportunities they experienced in their country of origin, and the immigrants' tendency to settle in overcrowded inner city school districts rather than any intentional or unintentional failure to provide them with equal educational opportunities in the U.S.²

So the reasons that persuaded Congress to adopt bilingual ballots as a remedy thirty years ago are out of date and no longer apply. Voting is both a right and a responsibility of citizenship. It is simply unfair to impose the burden of providing ballots in multiple languages on state and local governments because of the voluntary decisions of millions of people to immigrate to this country.

2. BILINGUAL BALLOTS SHOULD NOT BE NECESSARY

The United States is an English-speaking country in which virtually all of its citizens speak, read, and understand the English language. Since 1907 the United States has required immigrants to learn English in order to naturalize and acquire the rights of citizenship, including the right to vote in federal elections. We believe this is entirely correct and appropriate for a nation whose constitution and founding documents are written entirely in English, whose legislative, administrative, and judicial branches

¹ Pew Hispanic Center, "The Higher Rate of Foreign-born Teens: The Role of Schooling Abroad," and "The High Schools Hispanics Attend: Size and Other Key Characteristics," Nov. 1, 2005. See also Public Policy Institute of California, "Educational Progress Across Immigrant Generations in California," 2005.

² Ibid.

operate almost exclusively in English, and whose political life is conducted almost entirely in the English language.

Local jurisdictions should not be required to print foreign-language ballots for naturalized citizens who are already required by law to be able to read and understand English. If, despite the law, people are naturalizing without learning English well enough to read and understand a ballot in English, then that is their fault and not the public's. It is the responsibility of every naturalized U.S. citizen to learn English. Those who choose not to have a personal responsibility to accept the consequences of their decision.

Bilingual ballots are also an affront to millions of naturalized American citizens who have made great sacrifices to study and learn English, and play by the rules.

3. THE INHERENT COMPLEXITY OF LANGUAGES MAKES IT DIFFICULT TO IMPLEMENT BILINGUAL BALLOTS IN PRACTICE

Justice Department regulations implementing the bilingual ballot provisions have to deal with daunting problems due to the inherent complexity of language. In many countries there is no majority language. For example, a designated language minority group such as “Filipino” may meet the law’s numerical threshold, but the population itself may speak any one of a number of mutually unintelligible languages. India, for example has fifteen official languages, no one of which is spoken by more than 30 percent of the nation’s population. Other language groups like “Chinese” include speakers of a number of distinct and mutually unintelligible dialects. So a significant proportion, or even a majority of a language minority group that qualifies for bilingual ballot coverage, may derive no actual benefit from bilingual ballots at all.

Some languages like Japanese can be written using different character sets – each of them legitimate. Other languages have no written form at all. All these characteristics of language can result in mind-numbing translation and proof reading problems for local election officials charged with administering the law, as well as add to their overall cost and difficulty. They also increase the risk of making serious mistakes and errors.

In addition, ballot translations add significantly to the length of ballots that are often already formidable in terms of their length and complexity. Even with electronic voting machines election officials in cities like Denver have found it difficult to find space on their electronic screens for translations into Spanish alone.³ The Census Bureau reports that there are now 324 languages being spoken in the United States.⁴ Trying to cope with the complexities of this enormous linguistic diversity with solutions like bilingual ballots is going to become an increasingly impossible job to do.

³ *Associated Press*, “30 states have multilingual ballots,” 2002

⁴ U.S. Census, 2000 data files.

4. BILINGUAL BALLOTS ARE WASTEFUL

By a 10-1 ratio, jurisdictions covered under Section 203 said that the language assistance “was not needed” in a 1986 GAO report about the cost and use of bilingual ballots.⁵ Fifty-three percent of the 49 jurisdictions that responded – more than half – said that *no one in their jurisdictions* used the language assistance.

Yuba County, California spent \$17,411 for Spanish language ballot materials for a 1996 primary election despite the fact that the county’s registrar of voters reported receiving only one request for voter information in Spanish during his 16 years on the job.⁶

This pattern of gross under-utilization of bilingual ballot materials has not changed. King County, Washington (Seattle), reported that after printing 3,600 Chinese language ballots only 24 people requested them for a September 2002 primary election.⁷ The number of Chinese ballots subsequently used in the County’s general election increased to 119 – 90 absentee ballots that were returned and 29 cast at the polls.⁸

In addition to under-utilization, bilingual ballot requirements impose significant logistical problems. Election officials that are often hard pressed to recruit sufficient numbers of English-speaking poll workers due to long hours and low pay are now being forced to search for bilingual poll workers or risk lawsuits by the Justice Department. As Representative Clay Shaw noted on the floor of the House, 150 Broward County, Florida poll workers failed to report for work in the 2002 primary election.⁹ Arlington County, Virginia’s voter registrar expressed relief that her county was not included in the list of covered counties issued by the Justice Department in time for the 2002 elections because she noted there was not enough space to translate the ballot into Spanish on the voting machines the county uses.¹⁰

The law also requires all municipalities and smaller subdivisions of a larger political entity that is covered by the law, to provide the same bilingual ballot materials – even if almost everyone in the smaller subdivision speaks English.

In 2004 the Justice Department ordered Briny Breezes, Florida to print notices for a local election in Spanish, because the town happens to be in a county covered by Section 203. The Justice Department required this despite the fact that Census data showed that 98 percent of the town’s residents are life-long U.S. citizens and 99 percent speak English “very well.”¹¹

⁵ GAO Report to the U.S. Senate: *Bilingual Voting Assistance*, Sept. 1986, p. 39 [GAO / GGD-86-134BR].

⁶ *Policy Review*, “English is broken here,” Sept.-Oct., 1996.

⁷ *Seattle Post-Intelligencer*, “Bilingual ballots draw protests,” Oct. 18, 2002.

⁸ *Seattle Post-Intelligencer*, “Use of Chinese ballots grows,” Nov. 23, 2002.

⁹ Congressional Record, September 18, 2002.

¹⁰ *The Washington Post*, “Montgomery ordered to offer Spanish ballots,” July 27, 2002.

¹¹ *The Washington Times*, February 25, 2004.

The Section 203 coverage formula is overbroad and wasteful. A state may be covered and force thousands of municipalities and political subdivisions to provide bilingual election materials in languages that almost nobody in the local area speaks.

5. BILINGUAL BALLOTS ARE AN UN-FUNDED MANDATE THAT FUNCTION LIKE A TAX ON ENGLISH-SPEAKING CITIZENS

No federal funds are appropriated to pay the cost of bilingual voting materials, which must be paid for by state and local taxpayers. The cost is often a substantial portion of a local government's election costs. A GAO study found that the cost of providing multilingual election materials accounted for 55 percent of Suffolk County, New York's total election costs in 1996.¹² In San Juan County, Utah the percentage was 64 percent.¹³

And the cost of providing bilingual voting materials continues to escalate. The same GAO report found that Los Angeles County taxpayers spent \$1.1 million to provide election materials in five languages in 1996.¹⁴ But by March 2002, the County was spending \$3.3 million out of a total of \$22.6 million to provide voting materials in seven languages.¹⁵ Bingham County, Utah reported that its cost of providing multilingual voting assistance increased 41 percent in four years.

Even though electronic voting machine technology advances have greatly reduced or eliminated the cost of printing ballots, including bilingual ballots in many jurisdictions, the cost of providing and carefully proofreading translations of sometimes lengthy ballots remains, as well as the cost of printing and distributing absentee ballots, and election notices, posters, and materials of numerous kinds.

The heavy burden of paying for bilingual ballot materials in as many as seven languages functions as a tax on English-speaking American citizens for the benefit of citizens who are required by law to learn English in order to naturalize and have the right to vote. Bilingual ballots would not be necessary if immigrants had fulfilled their responsibility to learn English in the naturalization process in the first place. It is simply unfair to tax English-speaking Americans to remedy that failure.

6. BILINGUAL BALLOTS INCREASE THE RISK OF ERRORS AND FRAUD

Introducing multiple languages into the voting booth increases the likelihood of errors and election fraud. In a 1993 election, New York City officials mistakenly printed Chinese language ballots with the character for "no" in place of "yes."¹⁶ During the 2000 general election six polling places located in heavily Chinese populated areas of Queens, New York had "Democratic" translated in Chinese as "Republican" for party labels and

¹² GAO Report to House of Representatives: *Bilingual Voting Assistance*, May 1997, pp.20-21 [GAO/GGD-97-81].

¹³ Ibid.

¹⁴ Ibid.

¹⁵ *Associated Press*, "30 states have multilingual ballots," 2002.

¹⁶ *New York Times*, "Bilingual ballot law fails to help Chinese-American voters," Aug. 14, 1994.

vice versa on election day ballots. And the Chinese characters on the ballots were often too tiny to read without magnifying glasses.¹⁷ In 2003, Stockton California mistakenly transposed sections of separate Spanish translations of ballot questions that escaped the notice of proofreaders and resulted in a ballot question that made no sense.¹⁸

The presence of bilingual poll workers who can communicate in languages that cannot be understood by election officials, supervisors, and poll watchers increases the likelihood of voter intimidation, vote steering, and deliberate election fraud. It is an indisputable fact that language can be used to conceal illegal activity. From the departments of motor vehicles in states like Colorado, Pennsylvania, and Illinois, to the U.S. prison at Guantanamo Bay, Cuba, interpreters have been caught breaking the law, and even compromising U.S. national security.

In recent years there have been a growing number of instances in which non-citizens have been caught registering and casting votes in federal, state, and local elections. U.S. Department of Justice says it has conducted over 200 investigations, prosecuted more than 90 individuals, and secured more than 50 convictions for election fraud in the past three years.¹⁹

The widespread availability of voter pamphlets, voter outreach materials, absentee ballot forms, and similar information in foreign languages increases the likelihood that non-citizens will register and vote illegally – a felony offense that directly threatens the integrity of our election process. Bilingual ballot materials, and the use of languages other than English in the polls not only increase the risk of these infractions, they also add to the difficulty of detecting and successfully prosecuting those that commit such offenses. This should be a serious concern to anyone interested in preserving the reality of fair elections on which our democracy ultimately depends.

7. BILINGUAL BALLOTS CONTRADICT OUR NATURALIZATION LAWS AND UNDERMINE OUR NATIONAL UNITY

Bilingual ballots and government efforts to put foreign languages on an equal plane with English at the polls contradict our naturalization laws and undermine our national unity. The United States is experiencing the largest flow of immigration in its history. As the late Barbara Jordan, the distinguished Chair of the U.S. Commission on Immigration Reform and a former member of the House of Representatives pointed out in testifying to Congress, “Cultural and religious diversity does not pose a threat to the national interest as long as public policies insure civic unity.”²⁰

¹⁷ *The Village Voice*, “Chinatown ballot shows Republican as Democrat,” Nov. 13, 2000

¹⁸ *The Stockton Record*, “Sample S.J. ballot contains error – Spanish translation doesn’t make sense,” Feb. 27, 2003.

¹⁹ U.S. Attorney General Albert Gonzalez, Ballot Access and Voting Integrity Symposium, Oct. 4, 2005.

²⁰ Professor Barbara Jordan, Chair, U.S. Commission on Immigration Reform, testimony before the House Subcommittee on Immigration and Claims and the Senate Subcommittee on Immigration, June 28, 1995.

Providing ballots and voting materials in languages other than English clearly remove a major incentive for immigrants to learn English during the naturalization process. It also demeans the effort and sacrifice made by millions of our naturalized citizens to acquire English fluency. Removing the incentive to learn English harms our nation by discouraging assimilation and encouraging the formation of linguistically isolated immigrant communities that are outside the mainstream of American cultural and political life.

Language barriers exacerbate cultural, religious, and ethnic differences and the likelihood of misunderstanding and conflict between immigrants and natives, and between different immigrant groups. There are so many examples of such inter-group conflict related to language in the world that a complete list would fill a book. We are all familiar with the conflict over language that continues to cause problems for our Canadian neighbor to the north. But most Americans probably are not aware that there were very serious and bloody riots over language in Belgium last May.²¹ I could cite many other examples.

Removing incentives to learn English not only harms our nation, it harms the interests of immigrants themselves. When immigrants learn to speak English they greatly enhance their job skills and their potential value to employers. Census data shows that immigrants who speak English “well,” earn 43 percent higher incomes on average than immigrants who don’t.²² If they speak English “very well” they earn twice as much as those don’t.²³ Learning English is key to our ‘Melting Pot’ tradition that has enabled generations of immigrants to successfully assimilate and has helped make our country the most successful nation in the world.

The effort to force a reversal of roles and compel Americans to accommodate the languages of an immigrant stream more diverse than at any time in American history, is certain to undermine the foundation of our national unity with the passage of time.

8. THE UNIQUE CASE OF AMERICAN INDIANS

There are about 550 recognized American Indian tribes located within the United States. All are guaranteed the sovereign right to run their own affairs within their territories under treaties negotiated with the United States. Some of these tribes have unwritten languages and conduct elections using pictures and symbols for various candidates and propositions.

Because of their unique history and status in the United States, their rights should not be confused or conflated with those of non-English speaking naturalized American citizens. The rights of these tribes and their individual members should be a matter of treaty negotiation. Non-English speaking members of these tribes who live outside their reservation are subject to U.S. laws. But they enjoy the same alternatives for casting a vote available to English-speaking blind and illiterate voters that are described below.

²¹ *The London Times*, “War of words explodes as Flemish and French clash,” May 9, 2005.

²² U.S. Census, PUMS files, 1999.

²³ *Ibid.*

9. ADEQUATE ALTERNATIVES ALREADY EXIST

Citizens who cannot read or understand English already have the same remedies available to them that millions of English-speaking American illiterates have. They can request an absentee ballot and get assistance to translate it. They can also take a crib sheet or a pre-marked paper ballot to the poll with them. They also have the right to bring an interpreter into the poll with them: “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or officer or agent of the voter’s union (42 USC, Section 1973 aa-6, as added in 1982). As interpreted by the Department of Justice, the law specifically allows non-English speaking voters to bring interpreters into the polls with them and allows such interpreters to assist more than one voter.

Mr. Chairman, these remedies are available for non-English speaking voters regardless of whether they live in a covered jurisdiction or not. They are more than adequate to protect the right of qualified voters who cannot read and understand English to cast a ballot.

Many of the organizations and individuals that advocate for bilingual ballots also advocate for non-citizens having the right to vote. Under these circumstances, it is hard to resist the conclusion that bilingual ballots really exist to facilitate encourage voting by non-citizens, which is a crime.

10. CONCLUSION

Bilingual ballots are a wasteful, contradictory, and heavy-handed remedy to address a problem that no longer exists. Americans taxpayers should not be held responsible because some of their fellow citizens have not learned English well enough to read and understand a ballot written in English. Reasonable alternatives to providing bilingual ballots already exist that protect the right of every non-English speaking voter to cast an informed ballot. Bilingual ballots increase the risk of election fraud and undermine the linguistic unity of the United States by removing an important incentive to learn English.

Mr. Chairman, we urge the members of this Committee to heed the words of a distinguished former member of the House of Representatives, the late Barbara Jordan, and vote against the renewal of Section 4(f)(4) and Section 203. These policies clearly do not serve our national interest in preserving our civic and linguistic unity. Thank you for the opportunity to present our views.