



Report on Public Policy Position

Name of Committee:

Committee on Justice Initiatives

Contact Person:

Hon. Cynthia D. Stephens

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Bill Number:

HB 4406 (Hoogendyk) State; symbol; English; establish as the official state language. Creates new act.

Date position was adopted:

April 12, 2007

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

19

Number who voted in favor and opposed to the position:

10 Voted for position

0 Voted against position

1 Abstained from vote

8 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The proposed legislation weakens our efforts to enhance diversity in the legal system. Access to justice work in Michigan has included the translation of court forms, the creation of the certified court interpreters program, the inclusion in the legal profession and its leadership of those for whom English is not a first language, and other efforts to demonstrate respect for the 780,000 non-English speaking people in Michigan.

It will negatively affect access to courts because it will erect communication barriers for non-English speaking people.

Others who have opposed similar language based restrictions have noted constitutional violations, including the denial of equal access to educational opportunities, thus constituting national origin discrimination under Title VI of the Civil Rights Act of 1964, *Lau v. Nichols*, 414 US 563 (1974). In some cases, language-based discrimination should be treated as race discrimination (*Hernandez v. New York*, 500 US 352 (1991) *Yu Cong Eng v. Trinidad*, 271 US 500 (1926)). In overturning a constitutional amendment of the same language adopted by voters in Arizona, the court held it to violate the First Amendment to the US 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. It also violates the Equal Protection Clause of

the Fourteenth Amendment because it unduly burdens core First Amendment rights of a specific class without materially advancing a legitimate state interest. *Ruiz v. Arizona*, 191 Ariz. 441, 957 P.2d 984 (1996).

The legislation is a subterfuge for discrimination based on race and ethnicity. Language is not a suspect classification in constitutional terms, and the less stringent rational basis standard will be used to review discrimination claims that will arise from the legislation. It can be used to discriminate in employment and other arenas. Additionally, federal statutes require providers of Medicaid health care and other benefits to provide language interpreters when necessary, and this law will interfere with those requirements

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2007-HB-4406>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

List any arguments against the position:

Making English the official U.S. language would enable everyone to communicate with each other, which would: ease communications and racial conflicts; unite the people of America; simplify and expedite matters in education, government, business and other areas. English-only advocates say that native-language accommodations discourage immigrants from learning English. Approximately twenty states have laws establishing English as the official language.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

The State Bar has previously supported this type of legislation in principle. The Committee on Justice Initiatives urges that the Bar reconsider its position. Instead we request that the Bar either not take a position at all, or authorize entities within the bar to argue their positions directly with the legislature.

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

The regulation and discipline of attorneys

✓ **The improvement of the functioning of the courts**

✓ **The availability of legal services to society**

The regulation of attorney trust accounts

The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller-permissible explanation:

Access to courts will be limited because non-English speaking people will be provided with English documents summoning them to court for cases or jury duty. If the information cannot be read or understood, access is limited. The legislation will encourage lawsuits and impede the functioning of the courts.