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ENGLISH AS THE “OFFICIAL LANGUAGE” IN WISCONSIN

INTRODUCTION

On July 17, 2002, the Brown County Board of Supervisors adopted the “Brown County Diversity Resolution” to make English the official language of county government. Controversy about the proposal, both within the community and across the state, has been heated. Brown County Executive Nancy Nusbaum vetoed the measure on August 20 – her first veto in seven years in office – but the board overrode the veto on August 21.

The Brown County action has promoted statewide debate about the possible effects if “English as the official language” proposals are widely adopted. To date, the Wisconsin Counties Association reports that 11 counties, including Brown County, have passed such resolutions, but notes that not all of the 72 counties have responded to its survey.

Both sides of the debate agree that proficiency in English is important for achieving economic success in the United States, but they differ on the impact of making English the official language. Many proponents argue a common language unifies a people and that recognizing English as the official language will encourage new immigrants to learn English more quickly, thereby speeding their social and economic integration. Opponents argue that the policy is divisive because it excludes and discriminates against racial, ethnic, and cultural minorities. They contend it is also unnecessary because most new residents who are not native English speakers already have ample incentive to learn English and are, in fact, doing so more rapidly than earlier generations of immigrants.

BACKGROUND

Issues relating to multilingualism are not new to Wisconsin. In 1848 the new state published its constitution in English, Norwegian, and German to meet the needs of Wisconsin’s immigrant population. Although English has always been the predominant language in Wisconsin, German and other languages remained in common usage well into the early 20th century.

What is widely described as Wisconsin’s first official language law was actually designed to strengthen compulsory school attendance. A compulsory attendance law, enacted in 1879, had not been effective in promoting literacy and school attendance due to various obstacles, including the long distances to schools, shortages of qualified teachers, and the need to have children working on the farms.

Governor William Dempster Hoard, who began his first term in office in 1889, made literacy and school attendance a priority in his first annual message to the legislature:

The child that is, the citizen that is to be, has a right to demand of the State that it be provided as against all contingencies, with a reasonable amount of instruction in common English branches. Especially has it a right to demand that it be provided with the ability to read and write the language of this country. In this connection I would recommend such legislation as would make it the duty of county and city superintendents to inspect all schools for the purpose and with the authority to require that reading and writing in English be daily taught therein.

Michael John Bennett of Iowa County, chair of the assembly education committee and author of the Bennett Law, introduced the bill at the request of the governor. Although it did not call for inspection of public and parochial schools, it did require that every child between the age of 7 and 14 attend school in the district of residence for at least 12 weeks each year, subject to penalties to be imposed on the parents for noncompliance. The bill also had provisions relating to truancy and child labor. Its definition of “school” stated: “[N]o school shall be regarded as a school unless there shall be taught therein, as part of elementary education of children, reading, writing, arithmetic and United States history, in the English language.”

Although the Bennett Law passed and became law without controversy, the English language provisions generated opposition among German-speaking Wisconsiners who educated their children in parochial schools using the German language and teaching German culture and traditions. The Bennett Law united German Catholics and Lutherans in opposition to what they saw as an attack on their language, schools, churches, press, and freedom.

The Bennett Law was the basis for campaigns against local officials who did not pledge their support for repeal. Ultimately, it resulted in the defeat of Republican Governor Hoard by Democrat George W. Peck. The English language requirement was repealed in the 1891 legislative session, and, in time, the parochial schools increased their instruction in English without the state mandate.

WISCONSIN LEGISLATION

Proposed English Legislation. Except for the current 2001 session, the Wisconsin Legislature has had at least one bill or constitutional amendment proposal introduced in every session since 1985, in an effort to make English the state’s official language. None of the 11 proposals was reported out of committee for consideration in its house of origin.

The proposals that were introduced in the legislature would have statutorily or constitutionally declared English to be the official language of the state for all governmental written expression. Many of the proposals included exceptions for various situations as authorized or required by law, as appropriate to the circumstances of an individual case, or to discharge a responsibility in a particular situation. Some of the specified exceptions recognized in the various bills and resolutions included government programs promoting international trade; the teaching of foreign languages or English to non-English-speaking students; elections for public office; protection of physical health and safety; and law enforcement actions or legal proceedings.

Current English Language Laws. Even without an “official” language, a number of provisions in the Wisconsin Statutes already specify the use of the English language for various purposes, although not in all instances to the exclusion of other languages being used in addition to English. For example, Section 35.35 (3), Wisconsin Statutes, requires that printing of legal notices in newspapers be in the English language, but Section 59.14 requires under some circumstances that certain notices be published also in a language other than English if the non-English population is sufficient and there is a local newspaper published in that language. Section 7.30 (2) requires that election officials must be able to read and write in the English language, but federal laws may require assistance to voters with limited English proficiency.

Section 757.18 requires that court proceedings and records be in the English language, with exceptions for certain foreign words in common usage describing process or technical terms. Section 756.02 makes the ability to understand the English language a qualification to be a juror. The law also, however, requires courts to provide interpreters for witnesses and parties to court proceedings. (See, for example, Sections 885.37 and 887.26.) In Milwaukee (i.e., either in cities of the first class or counties having a population of 500,000 or more), certain forms must be made available both in English and Spanish.

Wisconsin has a number of laws dealing with the use of the English language in commerce. For example, consumer loans must be explained to a borrower by a printed statement describing the terms in English (Section 138.09 (8)) and real estate brokers and salespersons must have a “fair knowledge of English” to be licensed. But merchants who regularly use a language other than English in advertising, the solicitation of customers, or otherwise in the course of business must provide an applicable notice of consumer rights in both English and the primary language of the customer to those customers whose principal language is other than English (Section 423.203). Warning statements on pesticides and other hazardous substances must be printed in English, but Wisconsin law also provides for training, testing, and certification of persons of limited English language to use and apply pesticides.

The state’s “informed consent” law for abortion requires that printed information to women considering abortion be provided not only in English, but also in Spanish and other languages as appropriate.

Public schools in Wisconsin are required to provide bilingual education if the district is home to specified numbers of students with limited English proficiency in the various grade levels. The goal is to provide bilingual education for a student only as long as needed for a transition to English language proficiency in a society where English is the primary language. (See Sections 115.95 through 115.996, Wisconsin Statutes.)

“ENGLISH AS OFFICIAL LANGUAGE” LAWS OUTSIDE WISCONSIN

Other States. U.S. English, Inc., an interest group established in 1983 to advocate English as the official language in federal and state government, reports that 27 states, mostly located in the Southeastern and Plains regions, now have such legal requirements.

Federal Legislation. At the federal level, Congress has considered legislation to make English the official national language. Former U.S. Representative Toby Roth, who represented Wisconsin’s 8th Congressional District, sponsored official language bills in both the 103rd and 104th Congresses (1993-94 and 1995-96). In the 104th Congress, the House of Representatives did pass an official English bill, introduced by Rep. Bill Emerson of Missouri, but the Senate took no action on the measure.

At least four proposals have been introduced in the current 107th Congress to make English the official language, and one of them would involve creation of a constitutional amendment. Among other provisions, these bills would repeal bilingual education programs and bilingual election ballots. In addition to these restrictive bills, there is one proposal that takes an inclusive approach by promoting “English-Plus” (as distinguished from English only), which would encourage full proficiency in English along with the learning or maintenance of skills in other languages.

None of the current proposals has been considered on the floor of either house of Congress.

FEDERAL PROTECTIONS FOR THOSE WITH LIMITED ENGLISH PROFICIENCY

Another aspect of the “English only” question is the federal government’s protection of the rights of U.S. citizens and residents whose ability to speak and understand English is limited. A variety of federal antidiscrimination laws and executive orders require that federal programs provide service to persons with limited English proficiency. Coverage extends to federally funded services administered by state and local governments. Therefore, state or local laws promoting “English only” cannot be used to violate the requirements of federal antidiscrimination programs.

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on national origin in programs that receive federal funding. Included among the prohibitions is failing to afford meaningful access to people who have limited proficiency in English. In 2000, President Bill Clinton signed Executive Order 13166, titled Improving Access to Services for Persons with Limited English Proficiency (LEP). It directs those federal agencies providing services to “examine the services and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency.” The order also requires recipients of federal financial assistance to assure that they are providing meaningful access to their LEP applicants and beneficiaries. The Clinton executive order also reinforces the government’s commitment to programs that help people learn the English language. The Bush administration continues to observe the policy.

Other major federal protections for those with limited English proficiency are contained in the Voting Rights Act, which requires that voting materials and assistance be provided so that language minorities can be informed of and participate in elections and related activities. Other provisions include requirements that ballots and other election materials be printed in languages other than English and that oral translation services be made available at polling places in areas where needed.