Language Legislation in Iowa: Lessons Learned from the Enactment and Application of the Iowa English Language Reaffirmation Act

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ABSTRACT: The Iowa General Assembly enacted the Iowa English Language Reaffirmation Act ("IELRA") in 2002, an act that purports to make English the official language of that Iowa government's affairs. Rhetoric surrounding the debate over the Act centered on its "symbolic" meaning and frequently alluded that the IELRA would not have any real effect on the State government's actions. In 2008, Polk County District Court Judge Staskal held that non-English voter registration cards published by the Secretary of State violated the official-English mandates of the IELRA. To understand the implications of the IELRA after Judge Staskal's decision, it is appropriate to examine the history and rhetoric of the official-English debate in Iowa, as well as the implications of the IELRA after Staskal's decision. Misunderstandings about the plain language of the IELRA caused the public and the Iowa General Assembly to fail to recognize the scope of the IELRA; this Note provides a method to reconceptualize the debate about language legislation nationally.

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I. INTRODUCTION

In 2002, the Iowa General Assembly passed the Iowa English Language Reaffirmation Act ("IELRA"), proclaiming English as the official language of Iowa.[1] The official proclamation remained dormant for four years, until *King v. Mauro*,[2] when a sponsor of the bill sued the Secretary of State to remove multilingual voter registration cards from a state website. The case is a lens through which we can view the language-legislation debate in Iowa and better understand the politics and implications of official-language legislation throughout the United States.

A combination of public misunderstanding of language litigation and clever political gamesmanship resulted in a push to pass Iowa's official-language law with very little consideration as to how the plain language of the law would apply to governmental actions. Part II reviews the enactment of Iowa's official-language act by highlighting the nature of the rhetoric that surrounded the law's enactment. Part III examines *King v. Mauro* and the case's implications on the larger official-language debate. Finally, Part IV discusses the IELRA and the possible application of an official-English mandate in future state action.

II. OFFICIAL-LANGUAGE LEGISLATION IN IOWA

The history of the IELRA's enactment illuminates the political rhetoric surrounding official-language legislation and, ultimately, illustrates how public understanding of potential legislation may belie its application once enacted. Part II.A first examines the rise and ultimate success of the official-English movement in Iowa. Part II.B examines the IELRA and its exceptions, and Part II.C considers how the ambiguity in the language of the IELRA affects Iowa's governance.

A. *THE GROWTH OF IOWA'S OFFICIAL-ENGLISH MOVEMENT*

In 1997, State Senator Steve King, a Republican from Kiron, Iowa, sponsored a proposal to declare English the "common language" of Iowa.[3] King expressed his vision to create an "umbrella of communication" to strengthen state unity.[4] Claiming that a declaration of an official language was unnecessary, Senate Democrats argued that Iowa legislators should instead commit to '"teach English to all those' . . . 'who have a foreign

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1. 2002 Iowa Acts 16–17 (codified at IOWA CODE § 1.18(2009)).

2. King v. Mauro, No. CV6739, slip op. at 2 (Iowa Dist. Ct. Mar. 31, 2008), *available at* http://www.usefoundation.org/userdata/file/Ruling%20on%20Petition%20for%20Judicial%20Review.pdf.

3. *Senate OK's English as "Common Language,"* GAZETTE (Cedar Rapids, Iowa), Mar. 4, 1997, at B2.

4. *Id.*

language as their native tongue'"[5] rather than create a state-sanctioned official language. Despite this Democratic opposition, the Iowa Senate ultimately approved the bill.[6] While the bill enjoyed strong popular support at the county level, the State House faced an issue-intense schedule and did not make time to vote on the bill before the end of the legislative session, effectively killing this iteration of language legislation.[7]

The language-legislation issue reemerged in 1999 when Iowa Senate Republicans introduced a new official-English bill, citing their desire to help legal immigrants and foreign nationals adapt to the culture and realities of life in Iowa.[8] Official-English proponents asserted their intent to encourage non-English speakers to succeed economically, reasoning that some immigrants unable to speak English would be doomed to poverty.[9] The bill attempted to encourage cultural assimilation in two ways. First, it would fund the development of a center designed to help legal immigrants and foreign nationals adapt to life in Iowa.[10] Second, the bill would enact a provision in the Iowa Code declaring English the official state language.[11] Supporters of the bill argued that such a law would have little day-to-day effect on state governance, citing the twenty-nine states and eighty nations that have adopted an official language.[12] Though the attempt to recognize English as the official language spurred a large public debate about the issues surrounding language politics, this official-English iteration failed when the Iowa House narrowly voted to remove the bill's official-English provision.[13]

Even though the 1999 bill failed to garner enough political support to establish an official language, it provided the foundation for future debates about the issue. Supporters and detractors on both sides of the political aisle indicated that an official-English amendment would be merely a symbolic gesture. For example, when asked about the effect of designating a state language, Representative Philip Wise, a Democrat, said that such a law would

5. *Id.* (quoting Senator Mary Neuhauser, an Iowa City Democrat). Senator Neuhauser succeeded in amending King's bill to include a statement about a commitment to English-language education. *Id.*

6. *Id.*

7. James Q. Lynch, *"English-Only" Bill Can Wait, Say Legislators*, GAZETTE (Cedar Rapids, Iowa), Nov. 7, 1997, at A1. Iowa Speaker of the House, Ron Corbett (a Republican from Cedar Rapids), stated that the official-English provision could have had the votes to pass the House, but that the bill was not a "top-five priority." *Id.*

8. Rod Boshart, *English-Only Provision Rejected by Iowa House*, GAZETTE (Cedar Rapids, Iowa), Apr. 21, 1999, at A1.

9. Stephen Buttry, *English-Only Sends Two Messages*, DES MOINES REG., Apr. 11, 1999, at 1A.

10. Boshart, *supra* note 8.

11. *Id.*

12. *Id.*

13. *Id.* Representatives voted fifty-one to forty-eight to remove the provision that would establish English as the official state language. *Id.*

do "nil, zero, nothing, nada, zilch."[14] Republican Majority Leader Brent Siegrist—who was one of seven Republicans to join with forty-four Democrats to defeat the official-English provision—called the move to establish a state language "mostly symbolism."[15]

The argument for a symbolic message garnered strong popular support, and official-English proponents found welcoming forums for official-language laws at the county level.[16] By October 2000, eleven of Iowa's ninety-nine counties had enacted resolutions to make English the official language of county business.[17] These laws lent further credence to the interpretation of an official-language act as having a purely symbolic meaning because the county-level documents affected were, in the vast majority of instances, already exclusively published in English.[18]

Marshall County, the eleventh county to establish an official-English resolution, was home to more than three thousand Latino immigrants—making it the most ethnically diverse county to pass an official-language resolution.[19] The success of the resolution drew from a 2200-signature petition organized by the local chapter of the Veterans of Foreign Wars.[20] The resolution attracted ire from the Latino community for the racist implications of declaring an official, and perhaps impliedly superior, language.[21] U.S. Attorney Don Nickerson voiced a strong desire to challenge the constitutionality of the county provision, but he could not overcome the lack of credible discrimination complaints that would provide standing for court action.[22]

While official-English sentiment percolated in debates and legislation at the county level, the November 2000 elections ensured continued Republican control in the Iowa House and Senate.[23] This victory finally provided Iowa Republicans the political stability required to claim a

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14. *Id.*

15. Boshart, *supra* note 8.

16. Lynn Okamoto, *County Move on English Assailed*, DES MOINES REG., Oct. 22, 2000, at 1B.

17. *Id.*

18. *Id.*

19. Thomas Beaumont, *English-Only Rule Prevails Without a Fight*, DES MOINES REG., Oct. 25, 2000, at 1B. Other counties with official-language provisions are Allamakee, Bremer, Butler, Clayton, Guthrie, Ida, Jasper, Lyon, Monona, and Shelby. Okamoto, *supra* note 16.

20. Okamoto, *supra* note 16.

21. *See* Staci Hupp & Jason Clayworth, *Marshall County Says "English Only,"* DES MOINES REG., Sept. 27, 2000, at 1A ("'There's no way [the resolution] is good will. Why don't they just say "If you don't speak English, you are not welcome?"'" (quoting Elizabeth Salinas Newby, head of the Iowa Division of Latino Affairs)).

22. Beaumont, *supra* note 19.

23. *Republicans Maintain Advantage in Legislature—Same Position: Lawmakers Say the Voters Have Given Them a Mandate To Pursue Their Priorities*, TELEGRAPH HERALD (Dubuque, Iowa), Nov. 9, 2000, at A13.

mandate to pass the legislation that eluded them in 1999.[24] The Republicans also had public support to rely on: county-level language laws infused the public consciousness with language politics, and a large majority of Iowans supported legislation that would require English as the exclusive language of official state actions.[25]

An official-English bill, co-sponsored by Republicans Senator Steve King and Representative Dwayne Alons, quickly became a primary Republican legislative objective in the 2001 term.[26] To clarify the implications of adopting an official language, Senator King offered two hypothetical situations to illustrate his envisioned purpose of an official-English law.[27] First, King suggested that if the Storm Lake Chief of Police wanted to post signs in multiple languages, she could—as long as one of them was in English.[28] Second, King said that Marshalltown City Council members could hold a meeting entirely in Spanish, so long as the official minutes were available in English.[29] In so doing, King emphasized the symbolic value of an official language, claiming that the law's passage would maintain English as the standard language of State government business, as well as send a message to the federal government that Iowans believe English is the official national language of the United States.[30] On March 8, 2001, King's bill passed the Iowa Senate after a late-night debate about the meaning of an official-English law.[31] Once again, claims of racist motivations rose to the surface of the debate. State Senator Betty Soukup, a Democrat of New Hampton, said, "This bill simply stirs the pot of bigotry, hatred and racism."[32] While issues of racism lurked in the background, state legislators primarily focused on the nature of the message that an official-English law would send.[33] Senator Johnie Hammond, a Democrat of Ames, claimed that the law was "a do-nothing bill except for one thing: It hurts people."[34] Strife between representatives in the Iowa House delayed the bill as the Democratic critics of the legislation suggested a compromise to acknowledge English as the most commonly used language in Iowa, as well as to

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24. *Id.*

25. *See* David Yepsen, *Vilsack Wasn't About To Fall on His Sword for a Symbol*, DES MOINES REG., Mar. 5, 2002, at 7A (noting that eighty percent of Iowans supported an official-English bill).

26. *See* Jonathan Roos, *Attack on English Bill Stretches Past Midnight*, DES MOINES REG., Mar. 8, 2001, at 4A (explaining the debate in the Iowa Senate over the official-English bill).

27. Jennifer Dukes Lee, *Immigrants Confused, Split on "English" Bill*, DES MOINES REG., Feb. 27, 2001, at 1A.

28. *Id.*

29. *Id.*

30. *Id.*

31. Roos, *supra* note 26.

32. *Id.*

33. *Id.*

34. *Id.*

emphasize the importance of English proficiency rather than recognizing an official state language.[35]

After nearly a year of committee debate, the House Local Government Committee approved the bill thirteen votes to five, sending it to the House floor for debate.[36] House Democrats continued to stall the bill procedurally, claiming that flaws in the approval process required the committee to pass it again.[37] After a weeklong delay, the House Local Government Committee re-approved the bill thirteen to seven.[38] On February 25, 2002, after a six-hour debate on the merits of declaring an official language, the State House voted predictably, approving the bill fifty-six to forty-two.[39]

Then-Governor Tom Vilsack faced a difficult decision on whether or not to veto the official-English provision.[40] With popular support for an official-English law at eighty percent, and facing a re-election campaign, Governor Vilsack signed the bill into law on March 1, 2002, officially enacting Iowa Code section 1.18, the Iowa English Language Reaffirmation Act.[41] Once he left office, Vilsack claimed that he considered vetoing the bill and not seeking re-election, but members of his staff convinced him that, while the symbolic nature of the law was "terrible," it was not worth the political sacrifice of a veto.[42] The IELRA took effect on July 1, 2002.[43]

B. THE IOWA ENGLISH LANGUAGE REAFFIRMATION ACT

The introduction to the IELRA provides the legislature's official intention in affirming English as Iowa's official language:

1. The general assembly . . . finds and declares the following:

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35. *Iverson Declares English-Only Bill Dead*, TELEGRAPH HERALD (Dubuque, Iowa), Apr. 7, 2001, at A13. In fact, Senate Majority Leader Stewart Iverson, a Republican from Dows, suggested that this proposed amendment to the bill would have less actual effect, and that the Iowa Senate would not approve a "watered-down" bill. *Id.* If the General Assembly accepted the amendment, the IELRA would have taken the form of a symbolic law as discussed in Part III.C.1.

36. Mike Glover, *Panel OKs English-Only Measure*, HAWK EYE (Burlington, Iowa), Feb. 1, 2002.

37. Lynn Okamoto, *"English-Only" Bill Clears a Hurdle*, DES MOINES REG., Feb. 13, 2002, at 3B.

38. *Id.*

39. Mary Rae Bragg, *Iowa House Votes To Make English Official; 56–42: Democrats Call the Language Bill Divisive*, TELEGRAPH HERALD (Dubuque, Iowa), Feb. 26, 2002, at A1.

40. *See* Yepsen, *supra* note 25 (suggesting that Iowa Republicans may have leveraged the official-English issue in order to make the Governor take a stand on an issue he publicly disapproved but that garnered overwhelming electorate support).

41. *Id.*

42. *Vilsack Sorry for "English-only" Bill; Governor Said He Thought That the Legislation Was Wrong at the Time*, TELEGRAPH HERALD (Dubuque, Iowa), July 27, 2004, at A12.

43. King v. Mauro, No. CV6739, slip op. at 2 (Iowa Dist. Ct. Mar. 31, 2008), *available at* http://www.usefoundation.org/userdata/file/Ruling%20on%20Petition%20for%20Judicial%20Review.pdf.

> a. The State of Iowa is comprised of individuals from different ethnic, cultural, and linguistic backgrounds. The state of Iowa encourages the assimilation of Iowans into Iowa's rich culture.
>
> b. Throughout the history of Iowa and of the United States, the common thread binding individuals of differing backgrounds together has been the English language.
>
> c. Among the powers reserved to each state is the power to establish the English language as the official language of the state, and otherwise to promote the English language within the state, subject to the prohibitions enumerated in the Constitution of the United States and in Laws of the State.
>
> 2. *In order to encourage every citizen of this state to become more proficient in the English language, thereby facilitating participation in the economic, political, and cultural activities of this state and of the United States,* the English language is hereby declared to be the official language of the state of Iowa.[44]

The Act requires that "[a]ll official documents, regulations, orders, transactions, proceedings, programs, meetings, publications, or actions taken or issued, which are conducted or regulated by, or on behalf of, or representing the state and all of its political subdivisions shall be in the English language."[45] Further, the Act defines "official action" as any action taken by the government or its officers and agents that binds the government or is otherwise required by law, including any act that is "subject to scrutiny by either the press or public."[46] The English–requirement language is notably vague. It does not clarify whether the State of Iowa must use English exclusively in government communications, or whether merely one version of the communication must be in English.

The requirements promulgated under the IELRA exempt particular types of governmental actions from the official-English requirements that would otherwise apply. The requirements do not apply to any government actions, documents, or policies related to economic regulation, public health or safety, census compilation, or the protection of victims of crimes or criminal defendants.[47] Beyond these specific exemptions, the IELRA includes two provisions that provide potentially broad discretionary exemptions from official-English requirements. Under section 1.18(5)(h),

44. IOWA CODE § 1.18 (2009) (emphasis added).

45. *Id.*

46. *Id.* § 1.18(2).

47. *Id.* § 1.18(3). The IELRA further exempts the "[u]se of proper names, terms of art, or phrases from languages other than English," as well as "[a]ny oral or written communications, examinations, or publications produced or utilized by a driver's license station, provided public safety is not jeopardized." *Id.*

the government may use any language "necessary to secure the rights guaranteed by the Constitution and laws of the United States of America or the Constitution of the State of Iowa."[48] Additionally, the language of section 1.18(6) seemingly allows officers of state government discretion in the language they use to carry out their duties by stating: "Nothing in this section shall be construed to . . . [p]rohibit an individual member of . . . state government, while performing official business, from communication through any medium with another person in a language other than English, if that member or officer deems it necessary or desirable to do so."[49] While the IELRA provides that official government communication must occur in English, the law's broadly worded discretionary and constitutional exceptions create an ambiguity in the scope of its application that, ultimately, required judicial intervention.

C. From Symbolic Rhetoric to Legal Effect

Immediately after its passage in 2002, the IELRA had little effect on Iowa's governance, but issues surfaced regarding the law's effect on voter registration in the 2006 gubernatorial race. In 2006, Democratic Secretary of State Chet Culver ran for governor against Republican Jim Nussle. On November 2, 2006, Tom Miller, Iowa's Democratic Attorney General, declared that the plain language of section 1.18 permitted the Secretary of State to provide ballot-request forms or other documents in English as well as other languages.[50] Culver, as then-Secretary of State, agreed with Miller's assessment and provided voter registration materials in multiple languages, relying on the exceptions provided by section 1.18(5)(h) of the IELRA, which allow individual members of government to communicate in non-English languages to secure rights guaranteed by the Constitution.[51] Six days before the gubernatorial election, Congressman Steve King[52] called for

48. *Id.* § 1.18(5)(h).

49. § 1.18(6)(a). This section also provides that the IELRA should not be construed to "limit the preservation or use of Native American languages" or "disparage any language other than English." *Id.* § 1.18(6)(b)–(c). Additionally, this section indicates that the IELRA should not discourage any person from learning or using non-English languages. *Id.* § 1.18(6)(c).

50. Jane Norman, *Voting Information in Other Languages OK*, DES MOINES REG., Nov. 3, 2006, at 3B. The Attorney General focused on the language of section 1.18 that allowed individual state officials to make discretionary decisions about particular state documents and communiqués that were necessary to secure the constitutional rights of citizens guaranteed under the U.S. or state constitutions.

51. *See* Jane Norman, *Voter Information Should Be Only in English, King Says*, DES MOINES REG., Nov. 2, 2006, at 14A ("Culver pointed out that the English-language law includes a provision that allows for 'any language usage required by or necessary to secure the rights guaranteed by the Constitution and laws of the United States of America, or the Constitution of the state of Iowa.'").

52. In 2002, Iowa's Fifth Congressional District elected King to the U.S. House of Representatives. Steve King, United States Congressman Iowa's 5th Congressional District,

Culver to remove the documents from the Secretary of State's website, and threatened that Miller's decision and Culver's action would push him to take "the next logical step" in preventing non-English voting documents, alluding to the possibility of future litigation.[53] Culver responded that King's claims were a "desperate attempt" to help the Nussle campaign.[54] The non-English documents remained on the website and Culver won the election, taking the oath of office on January 12, 2007.[55]

Even though Governor-elect Culver felt King would drop his threats of litigation upon Nussle's defeat, King made good on his promise two days before the gubernatorial inauguration, suing Culver and the new Secretary of State, Michael Mauro, on the theory that they provided illegal voting forms on the Secretary of State's website.[56] King claimed that voter registration forms in Spanish, Laotian, Bosnian, and Vietnamese were in clear violation of section 1.18 because the law requires all official government communications to be in English.[57] Culver and Mauro countered by first asserting that King and his fellow petitioners did not have standing to bring a claim.[58] In the alternative, Attorney General Miller and Secretary Mauro cited Attorney General Miller's conclusion on the scope of the IELRA, arguing that publishing voter registration materials in languages other than English was necessary to ensure the constitutionally protected right to vote and, as such, was exempt from the requirements of section 1.18 under the exception in section 1.18(5)(h).[59]

By the time litigation began in the case of *King v. Mauro*, support for the official-English law had dwindled in Iowa, with polls reporting that as many as fifty-two percent of Iowa voters supported a measure to repeal the IELRA.[60] Regardless of the initial popular support for the law, King's litigation would at least partially determine the non-symbolic effect that the IELRA would have on the state government's affairs.

About Steve: Biography, http://steveking.house.gov/index.cfm?FuseAction=AboutSteve.Biography (last visited May 22, 2010).

53. Norman, *supra* note 50.

54. Dan Gearino, *King: Culver Violating State Law*, QUAD-CITY TIMES (Davenport, Iowa), Nov. 2, 2006, at A4.

55. Thomas Beaumont, *"Iowans, This Is Our Time*,*"* DES MOINES REG., Jan. 13, 2007, at 1A.

56. Jane Norman, *Iowa's King Sues over English Law*, DES MOINES REG., Jan. 11, 2007, at 1B.

57. *Id.*

58. King v. Mauro, No. CV6739, slip op. at 6 (Iowa Dist. Ct. Mar. 31, 2008), *available at* http://www.usefoundation.org/userdata/file/Ruling%20on%20Petition%20for%20Judicial%20Review.pdf.

59. Norman, *supra* note 50; *see also supra* note 48 and accompanying text (citing this exception).

60. Op-Ed., *Our View—Official English Law Continues to Need Attention*, IOWA CITY PRESS-CITIZEN, Feb. 7, 2007, at 11A (quoting a Des Moines Register Mason-Dixon poll).

III. *KING V. MAURO* AND THE REAL EFFECT OF THE IELRA

King v. Mauro represents the only judicial interpretation of the IELRA thus far, and it provides the only precedent that applies and limits the scope of the ambiguous discretionary and constitutional exceptions provided therein. In order to understand the importance of *King v. Mauro*, this Part examines: (1) the political issues that underlie the court's adjudication of standing for the group of plaintiffs; (2) the court's application of the IELRA to voter registration forms; and (3) the extent to which the Constitution allows a state to limit the languages it uses to communicate with its citizens.

A. STANDING OF THE PETITIONERS

On December 21, 2007, Judge Douglas Staskal of the Fifth Judicial District of Iowa heard oral arguments in *King v. Mauro*.[61] Before him were ten petitioners: former State Representative and current Congressman Steve King; State Senators Paul McKinley and Jerry Behn; State Representative Ralph Watts; U.S. English, Inc.; Ngu Alons; and County Auditors Scott Reneker (Jefferson County), Joni Ernst (Montgomery County), Judy Howrey (Calhoun County), and Karen Strawn (Buena Vista County).[62] Respondents were Michael Mauro, Secretary of State of the State of Iowa, and his office, the Voter Registration Commission.[63] The first issues presented to the court dealt with the interests asserted by each petitioner and whether each petitioner had valid standing to maintain the litigation.[64] The court found that several of the petitioners did not have the requisite standing to bring a complaint.[65]

To litigate an issue, a plaintiff must satisfy the standing requirement by demonstrating a "'sufficient stake in an otherwise justiciable controversy to obtain judicial resolution.'"[66] To demonstrate a sufficient stake in a controversy, each plaintiff must demonstrate an injury as well as a specific personal or legal interest in the litigation.[67] In *King v. Mauro*, the petitioners fell into three categories of standing: (1) as county auditors, with an interest based on a conflict between their prescribed governmental duty and the application of the IELRA; (2) as citizens, with a stake based on a general concern for enforcement of laws; and (3) as petitioners, with a stake derived

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61. *King*, slip op. at 1.
62. *Id.*
63. *Id.*
64. *Id.* at 6.
65. *Id.* at 16.
66. *King*, slip op. at 6 (quoting Berent v. City of Iowa City, 738 N.W.2d 193, 202 (Iowa 2007)). This statement of the rule of standing is simplistic, but the standing requirement and the jurisprudential issues associated with it are generally outside the scope of this Note.
67. *Berent*, 738 N.W.2d at 202.

from their status as taxpayers.[68] Exploring these three types of standing illuminates the petitioners' possible motivations and reveals the strategic political maneuvering surrounding Iowa's official-language legislation.[69]

1. Standing as County Auditors

County auditors in Iowa are subject to the supervision of the Secretary of State.[70] Secretary Mauro's office informed the auditors that they were required to accept and register voters using the non-English voter registration forms available at the Secretary's website.[71] The court determined that the conflict between the directive of the Secretary of State's office and the official-English requirements of the IELRA meant the county auditors faced an intractable choice to either follow the potentially illegal directives of the Secretary or refuse to follow the orders of a superior.[72] Because a subordinate agent has standing to challenge a superior's determination where "superior authority under relevant or enabling legislation is placed into question, and where the superior agency cannot authoritatively resolve the question presented," the county auditors "possesse[d] a specific, personal, and legal interest which is specifically and injuriously affected for standing purposes."[73] Therefore, the county auditors fulfilled the justiciability requirement, had sufficient standing, and proceeded to litigate based on the merits of their claim.[74]

2. Citizen Standing

Congressman Steve King, State Senators McKinley and Behn, State Representative Watts, Ngu Alons, and U.S. English, Inc.[75] claimed standing

68. *King*, slip op. at 4–5 (summarizing the interests each petitioner claimed). This Note consolidates the interests claimed by Congressman King, State Senators McKinley and Behn, and State Representative Watts because the basis for their claimed interests—a generalized concern for the political process elevated by their status as policymakers—is the same. *See id.* (discussing the interests the legislators claimed). The court did not discuss the possibility that politicians may have an elevated interest in the law's enforcement, instead evaluating the legislators' interests as based on the theories of taxpayer or, in the alternative, citizen standing. *See id.* at 6–14 (evaluating the politicians' interests).

69. The standing requirement and jurisprudential issues associated with it are generally outside the scope of this Note.

70. *King*, slip op. at 14.

71. *Id.* at 1.

72. *Id.* at 16.

73. *Id.* at 15 (citing Se. Warren Cmty. Sch. Dist. v. Dep't of Pub. Instruction, 285 N.W.2d 173, 177 (Iowa 1979)).

74. *Id.*

75. John Tanton and Senator Samuel Ichiye ("S.I.") Hayakawa co-founded U.S. English, Inc. in 1983. SUSAN J. DICKER, LANGUAGES IN AMERICA 187 (2d ed. 2003). Senator Hayakawa was a Canadian immigrant of Japanese descent who attributed his personal success and the freedom of the United States to the English language. S.I. HAYAKAWA, THE ENGLISH LANGUAGE AMENDMENT: ONE NATION . . . INDIVISIBLE? 1–2 (1987); U.S. English, Inc., About U.S. English:

in litigation based on their interest in the enforcement of the IELRA derived from their statuses as citizens or, in the alternative, as taxpayers.[76] Judge Staskal rebuked the argument for generalized citizen standing in government-enforcement cases by citing *Alons v. Iowa District Court for Woodbury County*[77] for the proposition that a petitioner must demonstrate a particularized interest in resolving the issues presented beyond a general interest in enforcing the law.[78] Thus, the petitioners did not sufficiently demonstrate standing as citizens because they "identified no interest in the issue beyond a mere desire to ensure governmental compliance with the law."[79] This holding precluded U.S. English, Inc. from proceeding in litigation,[80] but petitioners King, McKinley, Behn, Watts, and Alons continued pursuing their claim that their status as Iowa taxpayers provided them an alternative basis for standing.[81]

3. Taxpayer Standing

Iowa recognizes valid taxpayer standing to challenge governmental bodies or officers "where the actions complained of could have a direct impact on the amount of taxes the taxpayer would have to pay."[82] The petitioners alleged two particular costs associated with the alleged noncompliance with the IELRA: (1) that the creation of forms required an expense of time and effort by state personnel; and (2) that the county auditors charged with accepting voter registration materials would need training to interpret non-English forms.[83]

Judge Staskal's discussion of taxpayer standing illuminates the costs of Iowa's non-English governmental actions. Official-English advocates—including the petitioners in *King v. Mauro* and others within the general political movement—cite the costs associated with printing non-English governmental documents and administering a "multilingual" government as

Biography of Senator S.I. Hayakawa, http://www.us-english.org/view/6 (last visited May 22, 2010). Mr. Tanton had to resign his U.S. English, Inc. membership in 1988 when a racially charged memorandum he wrote surfaced in the popular press. DICKER, *supra*, at 188–89. U.S. English, Inc. is a political organization "dedicated to preserving the unifying role of the English language in the United States." U.S. English, Inc., About U.S. English, http://www.us-english.org/view/2 (last visited May 22, 2010).

76. *King*, slip op. at 5.

77. Alons v. Iowa Dist. Court for Woodbury County, 698 N.W.2d 858 (Iowa 2005).

78. *King*, slip op. at 7 (citing *Alons*, 698 N.W.2d at 864).

79. *Id.* at 14.

80. *Id.*

81. *Id.* at 16.

82. *Id.* at 6–7 (citing Richards v. Iowa Dep't of Revenue & Fin., 454 N.W.2d 573, 575–76 (Iowa 1990)).

83. *King*, slip op. at 8.

a reason to pass official-language laws.[84] As explained below, Judge Staskal found that the reality of the administrative costs of multilingual voter registrations in Iowa proves otherwise.

The State of Iowa incurred a one-time cost of $630 to prepare the non-English voter registration materials at issue.[85] The low cost was due to the fact that the Secretary of State did not print the documents in bulk or physically distribute them; the materials were only available at the Office of the Secretary of State's website.[86] Therefore, to use a non-English voter registration form, a prospective voter had to print it off herself.[87]

Judge Staskal called the petitioners' argument regarding the difficulties associated with interpreting the non-English voter forms "preposterous."[88] He rejected this theory based on conjectural training costs because the non-English forms were each "an exact replica of the standard forms provided in English," and it would "[be] impossible to mistake the questions and information sought on the form even though the headings are stated in a different language."[89] Because the cost of the non-English voter registration information was "minimal at best," it was insufficient to provide standing.[90] Having found they lacked standing as taxpayers, Judge Staskal dismissed the claims of Congressman King, State Senators McKinley and Behn, State Representative Watts, and Ngu Alons, leaving the county auditors to proceed with the claim.[91]

4. Political Gamesmanship and Petitioner Selection in *King v. Mauro*

The composition of the group of petitioners in *King v. Mauro*, when viewed in conjunction with the court's reliance on the Iowa Supreme Court decision in *Alons v. Iowa District Court for Woodbury County*, illuminates the political gamesmanship underlying Congressman King's lawsuit. In *Alons*, a lesbian couple—Ms. Kimberly Jean Brown and Ms. Jennifer Sue Perez—entered into a civil union in Vermont.[92] In 2003, Ms. Brown filed a petition in Iowa for dissolution of the civil union.[93] Initially, the district court

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84. *See* ProEnglish, Ten Reasons Why We Should Make English the Official Language of the United States, http://www.proenglish.org/issues/offeng/10reasons.htm (last visited May 22, 2010) (listing reason number nine: "To avoid the costs, burdens, and conflicts that arise in nations like Canada or international organizations like the European Union that attempt to conduct business in more than one official language.").

85. *King*, slip op. at 8.

86. *Id.* at 8.

87. *Id.*

88. *Id.* at 9.

89. *Id.*

90. *King*, slip op. at 9.

91. *Id.*

92. Alons v. Iowa Dist. Court for Woodbury County, 698 N.W.2d 858, 862 (Iowa 2005).

93. *Id.*

entered a decree dissolving the marriage.[94] The plaintiffs then entered a writ of certiorari against the "Judge of the Iowa District Court for Woodbury County" alleging that the court did not have the authority to dissolve the marriage, on the theory that Iowa law did not recognize same-sex civil unions.[95] Notably, the plaintiffs included, among others, State Representative Dwayne Alons and Congressman Steve King—the original sponsors of the IELRA.[96]

The Iowa Supreme Court rejected the plaintiffs' writ of certiorari, ruling that the State of Iowa does not recognize citizen standing or taxpayer standing[97]—theories of standing identical to the arguments King advanced two years later in *King v. Mauro*.[98] Given the decision in *Alons*, why would Congressman King, who was surely aware of his lack of standing, become a petitioner in *King v. Mauro*? Why would King allow other citizen petitioners—the State Congressmen, U.S. English, Inc., and Ngu Alons—to be named to his lawsuit? While it is impossible to crawl into King's psyche and discern his thoughts with certainty, his actions and the nature of debates surrounding the passage of official-language legislation suggest that the petitioners were aware that they would not have standing but may have wanted to nonetheless insert their names into any publicity garnered by the litigation.

a. King v. Mauro *and the Publicity Benefit of Litigation*

The *King v. Mauro* case marks the third time Congressman King has engaged in litigation to further his policy objectives. As discussed above, he was unsuccessful in using litigation to prevent the state from acknowledging civil unions in *Alons*.[99] In 2000, King was a plaintiff in a successful action to declare that an executive order signed by Governor Vilsack exceeded the

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94. *Id.*

95. *Id.*

96. *Id.*

97. *Alons*, 698 N.W.2d at 869, 871, 872–73.

98. *See supra* Part III.A.2–3 (discussing the taxpayer- and citizen-standing theories advanced in *King v. Mauro*). In *King*, the petitioners argued that, as taxpayers, the pecuniary injury associated with the additional costs of producing non-English voter forms conferred standing. King v. Mauro, No. CV6739, slip op. at 11 (Iowa Dist. Ct. Mar. 31, 2008), *available at* http://www.usefoundation.org/userdata/file/Ruling%20on%20Petition%20for%20Judicial%20Review.pdf. In *Alons*, the plaintiffs argued that, by granting dissolution of the civil union, the court opened the judicial system to a new class of petitioners creating higher administrative and judicial costs sufficient to produce standing. *Alons*, 698 N.W.2d at 872–73. In *King*, the petitioners argued that without taxpayer standing they had standing based on their "right to require the government to enforce its own laws." *King*, slip op. at 11–12. In *Alons*, the plaintiffs argued that they had a general interest to prevent the "erosion" of traditional marriage. *Alons*, 698 N.W.2d at 869.

99. *See supra* text accompanying notes 92–97 (describing *Alons*).

constitutional authority granted to the executive.[100] Because the public often misunderstands the standing requirement as a legal technicality, King has the ability to shape the public's impression of his involvement in litigation according to the message that he would like to send. For example, when the Iowa Supreme Court dismissed *Alons*, King claimed that the court used the "technical grounds" of standing as an excuse to "'shirk[] their Constitutional duty to rein in a judge who acted outside the law.'"[101]

For his involvement in *King v. Mauro*, Congressman King received significant attention within the State of Iowa—newspapers include a quote from King in nearly every article dealing with the IELRA.[102] Through his comments on his understanding of litigation, King is able to increase his exposure in the media, regardless of the success of his particular cause of action.[103] Therefore, even though King knew that he had little chance to sustain an analysis of standing, he created a group of litigants, like U.S. English, Inc. and state legislators, who could benefit from the attention that the litigation garnered.

b. King v. Mauro *and the Racial Undertones of Language Legislation*

Those who oppose official-English laws generally perceive language legislation as a reaction to the large increase in Latino immigration to the United States and suggest that racism and nativism fuel the movement.[104] The high level of visibility of immigrants in the official-English movement seems to serve two purposes. First, testimony of immigrants as to the efficacy of a state-adopted language may provide unique, emotionally framed

100. Rod Boshart, *Governor's Order on Gays Voided—Judge Rules Vilsack Exceeded His Authority with Protective Measure*, GAZETTE (Cedar Rapids, Iowa), Dec. 8, 2000, at B1. The order in question granted anti-discrimination protections to homosexuals employed by the state. *Id.* The opinion for this specific case is unreported.

101. Press Release, Representative Steve King, King Comments on Iowa Supreme Court Refusal To Rule on Same Sex Divorce Case (June 17, 2005), *available at* http://www.house.gov/list/press/ia05_king/pr_050617_iowasupremecourt.html (quoting Congressman King).

102. For examples of articles already referenced in this Note that demonstrate King's public involvement with this issue, see Bragg, *supra* note 39; Norman, *supra* note 50. *See also* William Petroski, *Web Site Welcomes in Many Languages*, DES MOINES REG., Mar. 19, 2001, at 2B (noting that King demonstrates his support for official-English laws through his belief that simply providing a translation option on a state website is not enough because it is unreliable and not always accurate).

103. Interestingly, King's litigation behavior might find a parallel with that of Israeli politicians, who use litigation as a method to solicit media attention. *See generally* Yoav Dotan & Menachem Hofnung, *Legal Defeats—Political Wins: Why Do Elected Representatives Go to Court?*, 38 COMP. POL. STUD. 75 (2005) (demonstrating empirically that Israeli politicians engage in litigation without significant deference to their chances of victory to capitalize on the opportunity for exposure).

104. *See supra* Part II.A (describing claims of racist sentiment motivating the passage of the IELRA). *See generally* RAYMOND TATALOVICH, NATIVISM REBORN? (1995) (concluding that the official-English movement is a residual derivative of the nativist movement present in the 1920s).

evidence that an official language helps assimilation and success.[105] Second, because immigrants may have concrete experience and interest in immigrant affairs, their claims may not have the color of racism that might be associated with them if non-minorities espoused the same.[106]

In *King v. Mauro*, Ms. Ngu Alons claimed standing strictly on the theories of taxpayer and citizen standing.[107] Like many of the petitioners, Ms. Alons had been involved with the official-English movement beyond *King v. Mauro*. Ms. Alons testified to the Iowa House of Representatives in favor of the IELRA, and, in 2006, another litigant in *King v. Mauro*, State Senator Paul McKinley, read Ms. Alons's testimony in front of the U.S. Senate Subcommittee on Education Reform in a hearing examining the views of official-English policy.[108] The subject of Ms. Alons's testimony was her life story. She is originally from Cambodia and immigrated to the United States at a young age with her family to escape the dangers of the Khmer Rouge.[109] Ms. Alons cited her enthusiasm to learn English as the key factor to her successful assimilation to American culture and citizenship, stating, "The English language was both a unifier and an identification that helped the assimilation process for my family."[110] Ms. Alons testified that her personal experiences with language barriers served as evidence that an English-only law would encourage more immigrants to assimilate through English proficiency.[111]

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105. The debate over whether an official language sends the message that immigrants are unwelcome or, conversely, that they should adopt English in order to experience all of the advantages available to them as Americans underpins much of the conflict between the opposing viewpoints. *Cf.* Press Release, Nat'l Educ. Ass'n, "No" to English Only Initiatives Before Congress (Nov. 1, 1995), *available at* http://www.hartford-hwp.com/archives/45/041.html ("'People who live in the United States understand and accept the economic importance of knowing English and don't need a law to force them to learn it.'"); U.S. English, Inc., Why Is Official English Necessary?, http://www.us-english.org/view/10 (last visited May 22, 2010) ("Providing multi-lingual [government] services creates dependence on 'linguistic welfare.'"). This Note does not purport to settle the debate, as it requires lengthy empirical and theoretical analysis.

106. For example, one author claims that U.S. English, Inc. tried to alleviate the claims of racism by naming Linda Chavez, who is of Latino descent, president of their organization. DICKER, *supra* note 75, at 187.

107. King v. Mauro, No. CV6739, slip op. at 5 (Iowa Dist. Ct. Mar. 31, 2008), *available at* http://www.usefoundation.org/userdata/file/Ruling%20on%20Petition%20for%20Judicial%20Review.pdf. Petitioners King, McKinley, Behn, and Watts all argued that their status as legislators elevated their interest in the issue to confer standing. *Id.* at 4–5. U.S. English, Inc. did not claim taxpayer standing. *Id.* at 5. The remaining petitioners met the standing requirement for litigation based on their positions as county commissioners of elections. *Id.* at 16.

108. *English as the Official Language: Hearing Before the Subcomm. on Educational Reform of the H. Comm. on Education and the Workforce*, 109th Cong. 11–12 (2006) (statement of State Sen. Paul McKinley, Iowa General Assembly), *available at* http://fdsys.gpo.gov/fdsys/pkg/CHRG-109hhrg10928838/pdf/CHRG-109hhrg10928838.pdf.

109. *Id.* at 10.

110. *Id.* at 12.

111. *Id.* at 15.

Though Ms. Alons did not meet the standing requirement, her involvement with *King v. Mauro* may have softened the racial undertones of the IELRA and its application to voter registration. Testimony at the Subcommittee hearing also included another litigant in *King v. Mauro*: Mr. Mauro E. Mujica, the CEO of U.S. English, Inc., another litigant in *King v. Mauro*.[112] Mr. Mujica immigrated to the United States from Chile and regularly cites his experience as providing him insight into the challenges immigrants face.[113] Successfully assimilated immigrants like Ms. Alons and Mr. Mujica do have firsthand experience in learning English, but as a matter of standing, their life stories do not create a sufficient personal interest to validate their claims. Moreover, it is hard to discern a logical connection between Ms. Alons's and Mr. Mujica's personal successes and the determination of the application of the IELRA.

B. Application of the IELRA in King v. Mauro

Due to the IELRA's numerous specific and discretionary exemptions, one possible interpretation allows government officials to disregard English-only requirements in the limited situations in which non-English languages appear in government documents or actions.[114] Conversely, the broad definition of the types of actions subject to the IELRA's requirements, including actions subject to public and journalistic scrutiny, may indicate a legislative intent to enforce English as the language required for a wide swath of governmental activities.[115] Despite the plausibility of broad interpretations of IELRA exceptions provided by sections 1.18(4)(h) and (5)(a), the plain language of the IELRA seems to contradict its purportedly symbolic intent to merely affirm English as Iowa's official language. Given the contradictions between discretionary exceptions and the potentially broad interpretations of section 1.18, it is not surprising that a dispute over the IELRA's application eventually reached an Iowa court in *King v. Mauro*.

Once the county supervisors met the standing requirement, Judge Staskal had to apply the IELRA and its exceptions to the voter-registration dispute. The first issue the court addressed was the interpretation of section 1.18, and, specifically, whether the statute required voter registration forms

112. *Id.* at 6.

113. *See* U.S. English, Inc., Biography of Chairman of the Board/CEO Mauro E. Mujica, http://www.us-english.org/view/4 (last visited May 22, 2010) ("Mr. Mujica . . . has a firsthand understanding of the obstacles facing non-English speakers upon their arrival in this country. His insight into the linguistic isolation of non-English speakers . . . [makes] him a perfect successor to the late Senator S.I. Hayakawa . . . .").

114. *See* IOWA CODE § 1.18(4)(h) (2009) (providing that any governmental action necessary to secure constitutionally guaranteed rights is an exception from official-English requirements). The statute does not explain how to determine what would constitute a "necessary" governmental action. *Id.*

115. *Id.* § 1.18(3); *see supra* notes 46–49 and accompanying text (setting forth language in the IELRA that suggests a broad scope).

to be exclusively in English.[116] Judge Staskal authoritatively rejected any possible "symbolic" interpretation of the law by finding that multilingual voter registration cards were illegal under the IELRA.[117] However, he did not directly clarify how the IELRA precludes multilingualism in state governance. To understand the precedential value of *King v. Mauro* in the interpretation of the ambiguities of the IELRA, this Section concentrates on Judge Staskal's interpretation of the IELRA and its exceptions.[118]

Judge Staskal proceeded in his analysis by stressing the importance of legislative intent as a function of the plain language of the law and "'not what it should or might have said.'"[119] In a plain-language inquiry, when the text of a statute is clear in its meaning, the court cannot search for an additional interpretation "'beyond the statute's express terms or resort to rules of statutory construction.'"[120] In light of this rule of statutory interpretation, Judge Staskal found that the mandate of section 1.18—that "[a]ll official documents . . . shall be in the English language"[121]—was unambiguous and that the purpose of the IELRA was to ensure that all official state actions are recorded in English.[122]

Secretary Mauro argued that the plain language of section 1.18 merely requires that all governmental documents be available in English.[123] Under his interpretation, as long as one version of an official government document is in English, the IELRA allows the State to produce additional non-English documents.[124] Thus, the State would meet its duty under the official-English law by offering the voter registration cards in English and in multilingual versions.[125] The court rejected this interpretation and stated that the availability of multilingual documents would substantially undermine any incentives to learn English,[126] which contradicts the stated intent of section 1.18(2): to "encourage every citizen of this state to become

116. King v. Mauro, No. CV6739, slip op. at 19 (Iowa Dist. Ct. Mar. 31, 2008), *available at* http://www.usefoundation.org/userdata/file/Ruling%20on%20Petition%20for%20Judicial%20Review.pdf.

117. *Id.*

118. Though the court dealt with the constitutionality of language legislation, this Note will discuss this issue *infra* in Part III.C.2, focusing this Section on the opinion's construction of the statute.

119. *King*, slip op. at 19 (quoting State v. Tarbox, 739 N.W.2d 850, 853 (Iowa 2007)).

120. *Id.* (quoting Iowa Dep't of Transp. v. Soward, 650 N.W.2d 569, 571 (Iowa 2002)).

121. IOWA CODE § 1.18(3) (2009).

122. *King*, slip op. at 19.

123. *Id.*

124. *Id.*

125. *Id.* at 20–21.

126. Underlying this "incentive" is the presumption that some immigrants would decide to learn the language in order to understand the otherwise incomprehensible government documents. *See id.* at 20 n.6 ("If non-English official documents were always made available to citizens of the state who are not proficient in English, there would be no incentive to learn English to understand the documents.").

more proficient in the English language."[127] Whether or not this incentive actually exists, the court's statement that the purpose of the IELRA "would be substantially undermined if the court were to accept the Respondents proposed construction"[128] is logically persuasive if one accepts the existence of a cohort of immigrants whose decision to learn English correlates positively with a desire to vote.[129] But it is not persuasive if immigrants do not make the decision to learn the English language based on a desire to vote.

Secretary Mauro argued alternatively that section 1.18(5)(a) of the IELRA provided him with a discretionary exception to communicate officially or unofficially with "another person in a language other than English" if he deemed "it necessary or desirable to do so."[130] Secretary Mauro claimed that this section authorized his office and the Voter Registration Commission to provide non-English voter registration forms.[131] In response, Judge Staskal reasoned that courts should avoid interpretations that would render a statute superfluous, as this interpretation would.[132] Mauro's broad interpretation of the section 1.18(5)(a) exception would allow state actors to disregard English-only requirements in official state actions any time they deemed it desirable to do so.[133] Therefore, the court limited section 1.18(5)(a) to exempt only informal and unofficial government communication from official-English requirements.[134] Since the Secretary of State required the county supervisors to accept multilingual registration cards, the court held that voter registration forms were official government documents and, therefore, incompatible with the section 1.18(5)(a) exception.[135]

The court did not address extensively the exception to the official-English law provided by section 1.18(4)(h)[136] because the Secretary of State did not argue that the non-English voter forms were necessary to secure the right to vote.[137] Further, Judge Staskal found nothing in the record to "support the contention that the respondents' challenged activities were

127. IOWA CODE § 1.18(2) (2009).

128. *King*, slip op. at 20.

129. The existence of such a marginal group would be impossible to prove without extensive empirical analysis.

130. § 1.18(5)(a).

131. *King*, slip op. at 20–21.

132. *Id.* at 21 (citation omitted).

133. *See id.* ("The Respondent's interpretation . . . would render the requirement that official documents be printed only in English a suggestion instead of a mandate.").

134. *Id.*

135. *Id.*

136. Iowa Code section 1.18(4)(h) excludes the official-English requirement from "[a]ny language usage required by or necessary to secure the rights guaranteed by the Constitution and laws of the United States of America . . . ." IOWA CODE § 1.18(4)(h) (2009).

137. *King*, slip op. at 30.

undertaken as a result of the determination that they were necessary or required to secure the right to vote to all citizens."[138] Because Mauro did not argue that he was protecting a constitutional right, section 1.18(4)(h) did not apply, and the multilingual ballots were illegal under the IELRA.[139] As a matter of statutory interpretation, Judge Staskal determined that the language of the IELRA reaches voter registration forms and the discretionary exception of section 1.18(5)(a) may only apply to informal, or non-official, state communication.[140] In order to avoid the requirements of the IELRA in formal state communication, *King v. Mauro* indicates that state actors must make some determination that a multilingual communication is necessary to protect a constitutional right.

C. Constitutionality of the IELRA: Toward a New Understanding of Language Legislation

Beyond the plain language and exceptions provided by the IELRA, Secretary Mauro also argued that interpreting the IELRA to prevent multilingual voter registration forms would be unconstitutional as applied.[141] Applying the presumption of constitutionality to Iowa Code section 4.4(1),[142] Judge Staskal asserted that, if a statute is amenable to two interpretations, one constitutional and one unconstitutional, a judge must construe the statute to avoid unconstitutionality.[143] As such, Staskal limited the IELRA only to "official" acts and addressed the case in a vacuum, and was able to address the constitutionality of providing official documents in only one language without addressing the broader societal implications of the ruling.[144] This begs the question: To what extent may the State of Iowa require English to be the language of all state actions without violating the Constitution?

1. A New Understanding of Language Laws

Typically, legal scholars sort language legislation into two categories: (1) simple acknowledgements of English's place as the primary language in America—a "symbolic" law; or (2) active restrictions on the languages that

138. *Id.*

139. *Id.*

140. *Id.* at 21.

141. *Id.* at 22.

142. IOWA CODE § 4.4(1) (2009).

143. *See King*, slip op. at 22 (explaining how judges must construe statutes).

144. *See id.* at 29 ("A ban on the use of non-English languages in official government documents would not prevent a state official from assisting a citizen to understand a voter registration form . . . . Consequently, the Act's prohibition on the use of non-English languages in official government documents is not unconstitutional.").

the government may use in operation—a "non-symbolic" law.[145] Illinois has enacted a symbolic law by proclaiming simply: "The official language of the State of Illinois is English."[146] The IELRA is a non-symbolic law, which provides statutory language for direct enforcement.[147]

Given that scholars would normally classify the IELRA as a "non-symbolic" law, why did the rhetoric surrounding its passage indicate that lawmakers intended it to be a law without effect and meaningful only in its message?[148] The answer lies in the fact that this symbolic–non-symbolic distinction, while useful in a cursory understanding of language legislation, is woefully inadequate when cast against a backdrop of constitutionality and cannot describe the current state of the official-English movement.

It is also important to understand that the official-English movement primarily operates within the public sphere by injecting the language-legislation debate into the public psyche and manipulating the message received by the electorate.[149] Proponents of official-language legislation call their laws "official-English" laws, while detractors call them "English-only."[150] Of course, both sides of this debate attempt to "appropriate for [their] own position the psychological power of legitimate symbols—national unity, upward mobility, equality—and to associate the opposition with repugnant images."[151] No matter which side succeeds in the semantic battle, this level

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145. *See, e.g.*, SANDRA DEL VALLE, LANGUAGE RIGHTS AND THE LAW IN THE UNITED STATES: FINDING OUR VOICES 55 (2003) ("[L]egislation can take the form of a relatively benign attempt to do no more than acknowledge the primacy of the [sic] English in the country, or may be more pernicious and actively restrict the languages in which government can operate."); John J. Louizos, *Que, Ya No Hablan Ingles en Este Pais?: A Look at the Constitutionality of English Only Provisions Under the Free Speech Clause of the First Amendment*, 3 RACE & ETHNIC ANCESTRY L. DIG. 14, 21 (1997) (the journal title is now *Washington and Lee Journal of Civil Rights & Social Justice*) (comparing the main symbolic official-English laws of most states to the restrictive English-only provision in Arizona); Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 CAL. L. REV. 321, 355 (1987) ("So far, the English-only movement has pursued highly symbolic affirmations of its values without evincing much concern about subsequent enforcement.").

146. 5 ILL. COMP. STAT. 460/20 (2008).

147. IOWA CODE § 1.18(3) (2009).

148. *See supra* Part II.A (discussing the political rhetoric surrounding the movement to pass the IELRA).

149. *See* James Stalker, *Official English or English Only*, ENG. J., Mar. 1988, at 18, 18 (comparing the implied, strategic meanings of "official English" and "English-only," respectively); *see also supra* Part II (discussing the growth of the official language debate in Iowa); Part III.A.4 (discussing the political gamesmanship of *King v. Mauro*).

150. *Cf.* GEOFF NUNBERG, LINGUISTIC SOC'Y OF AM., RESOLUTION: ENGLISH ONLY (Dec. 28, 1986), http://www.lsadc.org/info/lsa-res-english.cfm (defining the movement to declare official languages the "English-only" movement); U.S. English, Inc., Official English, Not "English Only," http://www.us-english.org/view/11 (last visited May 22, 2010) (requesting that the public "ensure that all references to U.S. English legislation and legislative efforts accurately reflect efforts to pass official English, not 'English-Only'"). In the interest of neutrality, this Note has used "official-English" to describe the IELRA.

151. Jack Citrin et al., *The 'Official English' Movement and the Symbolic Politics of Language in the United States*, 43 W. POL. Q. 535, 539 (1990).

of debate obscures the nature of legislation and tends to dumb down the public debate to a discourse on symbolic meanings and buzzwords.[152]

In *King v. Mauro*, Judge Staskal faced an admittedly difficult task of squaring the plain language of the IELRA with Secretary of State Mauro's interpretations of its exceptions and intent.[153] Throughout the history of the IELRA, advocates on both sides of the aisle, but especially those in opposition to its enactment, discussed the IELRA's effect as a mere method to send a message that English is a necessary tool for cultural assimilation and socioeconomic success in Iowa.[154] This perception fundamentally misunderstood the plain language of the statute and ignored the sweeping scope of its implications that a reasonable reading of the IELRA would illuminate. At its heart, any surprise surrounding the decision in *King v. Mauro* represents a failure both to understand the IELRA and to educate the public about the effect that such a law could have on governmental actions.[155]

It is not surprising that the public and legislative understandings of language laws have become an amalgamation of the two categories of political rhetoric, English-only versus official-English, and the two categories of legal distinction, symbolic versus non-symbolic.[156] This public understanding of language legislation as an officially recognized symbol created the observable schizophrenia between the public's conception of the IELRA and its application in *King v. Mauro*.[157] Strict language legislation

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152. *See supra* Part II (discussing the rhetoric concerning the IELRA in Iowa and its focus on "symbolic" messages).

153. *See* King v. Mauro, No. CV6739, slip op. at 19–22 (Iowa Dist. Ct. Mar. 31, 2008), *available at* http://www.usefoundation.org/userdata/file/Ruling%20on%20Petition%20for%20Judicial%20Review.pdf (discussing Congressman King and Secretary of State Mauro's diverging interpretations of the language of the IELRA and its exceptions); *see also supra* Part III.B (discussing Judge Staskal's attempt to resolve the conflicts between application of the plain language of the IELRA and the constitutionally imposed limit on the reach of the definition of "official action").

154. *See* Boshart, *supra* note 8 (quoting State Representative Brent Siegrist, a Republican, as saying "[t]his bill is mostly symbolism"); Lee, *supra* note 27 ("English Legislation would be *largely symbolic*, but it would probably include provisions making English the official language in government records and proceedings." (emphasis added)); Yepsen, *supra* note 25 (calling Iowa's official-English law "more symbol than substance").

155. *See supra* Parts II.B, III (discussing the plain language of the IELRA and the judicial struggle with the meaning, purpose, and application of the statute).

156. Lee, *supra* note 27. While still serving in the state senate, Congressman Steve King stated: "This [bill] is not 'English only.' The people who gave it that moniker are trying to get people against it, and that's wrong." *Id.*; *see supra* Part II (illustrating the popular perception of the IELRA as a symbolic law).

157. *See* Jason Clayworth, *Push To Repeal Iowa's English-Only Law Widens*, DES MOINES REG., Jan. 23, 2009, at 1A. The author stated:

> Lawmakers . . . said [the IELRA] was mostly symbolic and would have little actual impact on state business. Even strong supporters of the official English law, such as

totally restricts any official or unofficial government communications in languages other than English. We can understand this kind of rule as an "English-only" law. On the other end of the spectrum, more liberal "symbolic-English" laws, such as the law in Illinois,[158] simply declare English as the official language, like a declaration of an official bird or tree. This kind of law does not restrict government speech. Of course, no spectrum would be complete without the middle ground; here represented by official-English laws that attempt, through discretionary exceptions, to ensure that the laws do not infringe on constitutional rights and judicial caveat, to restrict "official" speech to English but allow multilingual communication when necessary. Using this "English-only," "official-English," and "symbolic-English" scheme provides a more thorough understanding of the constitutionality of language legislation.

2. Language Legislation and the Constitution

As a general proposition, English-only laws no longer exist. Arizona and Alaska both attempted to provide very restrictive English-only laws, only to have courts rule them unconstitutional in *Yniguez v. Arizona*[159] and *Ruiz v. Hull*[160] in Arizona, and *Alaskans for a Common Language v. Kritz* in Alaska.[161] These cases, while specifically addressing English-only laws, provide the foundation for an understanding of the constitutional limits of official-English laws.

Arizona's English-only law provided that "English is 'the language of . . . *all* government functions and actions'" and, further, that government employees had to act exclusively in English, subject to exclusions for federal law and to protect the rights of criminal defendants.[162] Due to the law's potential to restrict governmental communication, the court analyzed the

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> Rep. Dwayne Alons . . . said it was more of a "philosophical statement" that brought the state unity through a common language.

Id.; *see also Official-English Law Undercuts Voting Rights*, DES MOINES REG., Apr. 12, 2008, at 12A ("When the Iowa General Assembly declared English the state's official language in 2002, the law was believed to have been larded with enough loopholes to make it merely a symbolic statement.").

158. 5 ILL. COMP. STAT. 460/20 (2008).

159. The Ninth Circuit overruled Arizona's law in *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 947–48 (9th Cir. 1995), *rev'd on other grounds sub nom.*, Arizonans for Official English v. Arizona, 520 U.S. 43, 80 (1997). After the U.S. Supreme Court reversed the Ninth Circuit's decision on the grounds of mootness, the Arizona Supreme Court invalidated the law in *Ruiz v. Hull*, 957 P.2d 984, 1003 (Ariz. 1998) (en banc). This Note uses the reasoning of the Ninth Circuit, as it provides a strong foundation for the constitutional analysis of language legislation.

160. *Ruiz*, 957 P.2d at 1003.

161. Alaskans for a Common Language, Inc. v. Kritz, 170 P.3d 183, 215 (Alaska 2007).

162. *Yniguez*, 69 F.3d at 928 (emphasis added) (quoting ARIZ. CONST. art. XXVIII, § 1(1)–(2)).

rule against the First Amendment's guarantee of freedom of speech.[163] The court rejected the argument that the choice of a communicative language is a nonverbal mode of expression and held that "[l]anguage is by definition speech, and the regulation of any language is the regulation of speech."[164] The court went on to recognize that the First Amendment creates both a positive right, which allows free expression, and a negative right that, in this case, prevented the state from prohibiting employees from communicating with certain citizens in order to preclude large populations from receiving information that was previously available to them.[165] Therefore, the court analyzed any limitations on the ability to receive information "within the confines of traditional free speech doctrine."[166]

The Ninth Circuit next turned to the question of how much a government may limit the speech, or specifically the language, used by its employees in their official capacities.[167] In this analysis, the court recognized that the government-as-speaker doctrine[168] could operate to determine the validity of the English-only restriction.[169] Here, the court determined that the state might limit the speech of its employees in furtherance of its governmental interest to operate as effectively and efficiently as possible.[170] Though the state may limit an employee's speech, the state cannot limit situations when an employee speaks personally on matters of general concern to citizens.[171] The government-as-speaker doctrine, however, was not dispositive as to Arizona's restrictive English-only rule because, while the rule would surely hinder personal employee speech, it would do so only when the employee was carrying out her duties as an official of the state.[172] The question was whether the government could limit all possible interactions between the official carrying out her duties and the public.[173]

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163. *Id.* at 923.

164. *Id.* at 934–35.

165. *Id.* at 935–37.

166. *Id.* at 937.

167. *Yniguez*, 69 F.3d at 938.

168. *Id.* at 938–39. Defined by *Pickering v. Board of Education*, 391 U.S. 563 (1968), and its progeny, *Connick v. Myers*, 461 U.S. 138 (1983), *Waters v. Churchill*, 511 U.S. 661 (1994), and *Garcetti v. Ceballos*, 547 U.S. 410 (2006), the doctrine essentially recognizes that states assume a dual role as a government entity subject to the constraints of the First Amendment and as an employer and provider of public services. *Garcetti*, 547 U.S. at 420. "The First Amendment limits the ability of a public employer to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens." *Id.* at 419. When employees speak as citizens about matters of public concern, the state may only impose speech restrictions that are necessary to operate efficiently and effectively. *Id.* (citing *Connick*, 461 U.S. at 147).

169. *Yniguez*, 69 F.3d at 937–38.

170. *Id.* at 938–39.

171. *Id.* at 939 (citing *Connick*, 461 U.S. at 147).

172. *Id.*

173. *Id.*

To resolve this issue, the Arizona court recognized the reciprocal nature of government speech that lies at the heart of any language legislation. When a government employee speaks, her expression is not only a product of the demands her duty places on her, but also a product of the demand of the public, which needs the information to both interact with the state and effectively contribute to a democratic society.[174] In *Ruiz v. Hull*, the Arizona Supreme Court detached the government-as-speaker doctrine from this analysis through its acknowledgement that the First and Fourteenth Amendments protect this public demand through the right to participate in the political process, as well as the right to petition the government for redress of grievances.[175] These fundamental rights combine to create a general fundamental right of access to government.[176] The *Ruiz* court found that the Arizona law infringed on this fundamental right, triggering a strict-scrutiny analysis and a presumption of unconstitutionality.[177] The State could not meet the heavy presumption of unconstitutionality, and the court found the Arizona law—the strictest English-only law in the country[178]—unconstitutionally overbroad.[179]

In *Alaskans for a Common Language, Inc. v. Kritz*, the Alaska Supreme Court faced the issue of whether an English-only ballot initiative, which included several nondiscretionary exceptions,[180] was unconstitutional.[181] The court accepted the fundamental-rights reasoning expounded in *Ruiz* to strike the initiative down.[182] The *Kritz* opinion clarified the exact nature of the rights involved with language legislation by emphasizing the delineation between formal and informal government acts.[183] A law may limit formal state expression to the English language, but limits on informal government communication begin to infringe on the fundamental right of non-English speakers to access government and participate in the political process.[184] Essentially, the *Kritz* court held that the government could not suppress state

174. *See Yniguez*, 69 F.3d at 938 ("Indeed, it is most often the recipient, rather than the public employee, who initiates the dialogue in the language other than English.").

175. Ruiz v. Hull, 957 P.2d 984, 1001 (Ariz. 1998).

176. *Id.*

177. *Id.*

178. *Yniguez*, 69 F.3d at 927.

179. *Ruiz*, 957 P.2d at 1002.

180. The Alaskan initiative did not have a discretionary exception like the IELRA. Alaskans for a Common Language, Inc. v. Kritz, 170 P.3d 183, 191 (Alaska 2007). The exceptions allowed non-English government communication when necessary for health and safety, to teach languages, to promote economic policies, to serve the needs of the judicial system, to comply with federal law, for religious ceremonies, for terms of art, or for politicians to communicate with constituents, if the official was already fluent in English. *Id.*

181. *Id.* at 187.

182. *Id.* at 191.

183. *Id.* at 194.

184. *Id.*

actors' formal and informal communications because such a restriction would severely limit, or possibly completely preclude, participation in government.

A picture of constitutional language legislation emerges from *Yniguez*, *Ruiz*, and *Kritz*. Based on these precedents, a state may not attempt to limit all governmental expression to one language.[185] On the other hand, a state can limit formal government expression so long as non-English speakers may still access the political system.[186] Therefore, unlike English-only laws, official-English laws, like the IELRA, will likely survive facial attacks because they allow discretionary exceptions to the otherwise applicable monolingual requirements, avoiding the constitutional concerns present when a state totally prohibits the use of non-English languages, like the English-only laws without discretionary- or unofficial-conduct exceptions formerly found in Arizona and Alaska.

The particular problem implicated by official-English laws is their definition of "official action." Indeed, the relative breadth of this definition, along with the enumerated exceptions provided, distinguish official-English laws from English-only mandates. The IELRA defines "official action" broadly to include "official documents, regulations, orders, transactions, proceedings, programs, meetings, publications, or actions taken or issued, which are conducted or regulated by, or on behalf of, or representing the state and all of its political subdivisions."[187] This definition encompasses "any action subject to scrutiny by either the press or the public."[188] This language lends itself to an interpretation of "official action" that would limit nearly all government actions to English, thereby implicating the right to government access.[189] Iowa Code section 4.4(1) mitigates this concern by requiring courts to presume that the legislature intended all laws to pass constitutional muster as long as the constitutional interpretation is amenable to the legislature's intent.[190] Therefore, the IELRA's scope must be determined through judicial limitation of its "official acts" definition.[191]

Unlike the IELRA, most official-English laws are slightly more liberal in that they explicitly provide an "escape-valve" exception to their language

185. *Alaskans for a Common Language, Inc.*, 170 P.3d at 193.

186. *See* King v. Mauro, No. CV6739, slip op. at 24–25 (Iowa Dist. Ct. Mar. 31, 2008), *available at* http://www.usefoundation.org/userdata/file/Ruling%20on%20Petition%20for%20Judicial%20Review.pdf (stating that the laws in the Alaska and Arizona cases constituted nearly complete communication barriers between the public and the government, and distinguishing the IELRA by pointing out its exceptions and flexible definition of "official" acts).

187. *Id.* at 25 (quoting IOWA CODE § 1.18(3) (2007)).

188. § 1.18(4)(c).

189. *Id.*

190. *King*, slip op. at 22 (quoting § 4.4(1)).

191. *See id.* at 29 ("[T]he Act could probably never be interpreted to preclude communication through [all] channels because such a blanket prohibition on communication would almost certainly be deemed unconstitutional . . . .").

mandates that explicitly allows unofficial multilingual communication. For example, Arizona's new official-English law provides that it "shall not be construed to prohibit any representative of government, including a member of the legislature, while performing official duties, from communicating unofficially through any medium with another person in a language other than English if official action is conducted in English."[192] Georgia's official-English law forbids the government from subverting fundamental rights guaranteed by the Constitution and allows government agencies to print official non-English forms where necessary.[193] These laws differ from the IELRA in their explicit exceptions to the official-English mandates designed to ensure constitutional application of the law, but the mandate of Iowa Code section 4.4(1) requiring constitutional interpretation of Iowa law where reasonable and the discretionary exception of section 1.18(4)(h) effectively reach the same result. Therefore, these restrained official-English laws are all likely to sustain facial challenges. Furthermore, purely symbolic laws, like Illinois's, are certainly acceptable because they do not provide mandates to limit governmental expression and do not restrict governmental speech.[194]

IV. THE FUTURE OF THE IELRA

Judge Staskal gave the IELRA effect, but the limited nature of his opinion did not clarify just how far the official-English law could reach.[195] It is necessary to consider potential multilingual government actions in light of the IELRA's plain language in order to predict how the law may operate in the future. Conveniently, Congressman King provided two illuminating examples of how the IELRA would operate when the legislature was still debating the law: (1) the Storm Lake Chief of Police posting signs in multiple languages; and (2) the Marshalltown City Council conducting a meeting in Spanish.[196] King claimed that multilingual signs would be acceptable as long as one sign was in English and that the council could conduct a meeting in a non-English language as long as the minutes were available in English.[197]

It is safe to say that after *King v. Mauro*, the IELRA will not operate as King ostensibly intended. Since the Chief of Police of Storm Lake is an "authorized officer or agent of the government,"[198] her actions would be

192. ARIZ. CONST. art. XXVIII, § 5.

193. GA. CODE ANN. § 50-3-100(b)–(c) (2009).

194. 5 ILL. COMP. STAT. 460/20 (2008) (stating only that "[t]he official language of the State of Illinois is English").

195. *See supra* Part III.B.1 (discussing the application of the IELRA).

196. Lee, *supra* note 27.

197. *Id.* Notably, King's view parallels Secretary Mauro's arguments in *King v. Mauro*. *See supra* text accompanying notes 123–24 (discussing Mauro's coincidental "symbolic" argument).

198. IOWA CODE § 1.18(3) (2009).

subject to the IELRA. Because a sign posted by a police officer is typically an official document representing a political subdivision of the State under the meaning of Iowa Code section 1.18(3), the official-English mandate would apply to the sign. Judge Staskal's opinion solidifies that any official action performed by the Chief must be in the English language, absent an exception.[199] In this example, the applicability of the official-English mandate depends on the nature of the sign posted. If, for example, the sign said "Welcome to Storm Lake" in six different languages, the Chief could claim an exception necessary for trade, tourism, or commerce under section 1.18(5)(c). On the other hand, the IELRA's section (5)(c) exception states that the document must be "necessary" for trade, so the Chief could be required to demonstrate that her actions were truly necessary and did not subvert the IELRA's stated intent—to provide an incentive to learn English.[200]

The "Welcome to Storm Lake" example seems innocuous, but one can conjure all kinds of signs leading to morally questionable applications of the IELRA. For example, the Police Chief could create a new parking-ticket scheme for the city in order to increase revenues. To notify the public as to this change, the Chief could post signs explaining the new program at every street corner. Such signs would have nothing to do with public health or safety, making them ineligible for the section 5(d) exemption. In order to post multilingual signs, the Chief would have to argue that she qualified for the section 6(a) discretionary exemption because she determined that it was necessary or desirable to communicate in a non-English language and that such communication did not undermine the meaning of the law. While this discretionary exception reasonably fits this hypothetical situation, one can certainly imagine that such a decision would chill the speech between the Chief and her non-English speaking constituents, as well as add to the complications of the Police Chief's day-to-day decision making.[201] On the other hand, if the Chief did not make an effort to provide multilingual notification, the burden of a new parking scheme could fall disproportionately on the city's immigrant population.

The example of a city council conducting a meeting completely in Spanish provides a stark example of an action that would likely violate the IELRA. A city-council meeting binds the government and is subject to scrutiny by the press and the public under the meanings of the IELRA sections 4(b) and (c). Thus, the meeting would be an official action

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199. *See supra* Part III.B (discussing Judge Staskal's holdings in *King v. Mauro*).

200. *See supra* Part II (discussing the incentive created to learn English when official documents are unintelligible to non-English speakers).

201. Judge Staskal admitted that the IELRA could "have a chilling effect on speech by causing government employees to refrain from non-English communication." King v. Mauro, No. CV6739, slip op. at 26 (Iowa Dist. Ct. Mar. 31, 2008), *available at* http://www.usefoundation.org/userdata/file/Ruling%20on%20Petition%20for%20Judicial%20Review.pdf.

restricted by the official-English mandate of section 1.18. Furthermore, Judge Staskal specifically rejected an interpretation of the IELRA that would allow publication of voter registration cards in multiple languages because one version existed in English.[202] The fact that the meeting's minutes would be available in English would have no bearing on the official-English mandate.

King's examples of the application of his official-English law indicate a misunderstanding of the statute and do not give any indication about the ability of the State of Iowa to respond to a growing Spanish-speaking population through the creation of multilingual services. Currently, any decision to conduct official state business must undergo a thorough evaluation with section 1.18 and its exceptions. After *King v. Mauro*, state officials are likely reluctant to accept any kind of multilingual form without an individual, discretionary determination that acceptance would be desirable.[203] While the IELRA may not radically change the way the Iowa government currently operates, *King v. Mauro* could severely limit the state government's abilities to respond to its largest growing population: Latino immigrants.[204]

Possible future applications of the IELRA could limit the efficacy of the state government, but only if government officials apply the IELRA broadly. The exceptions to the IELRA, including the discretionary exception provided by section 1.18(6)(a), provide ample opportunity to provide multilingual services so long as all official non-English activities are couched in reference to a particular exception of the IELRA. In reality, the standing requirement would provide a strong barrier against anyone seeking judicial enforcement of the IELRA's official mandates.[205] Furthermore, the government seems unlimited in its discretion to use multiple languages in unofficial, non-binding ways. For example, Secretary Mauro could post his multilingual ballots on a state website as an unofficial translation guide. Even if a court defined official action broadly, thereby including these non-official guides—which is unlikely[206]—litigation to enforce the mandates is improbable due to difficulties in sustaining the standing requirement.

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202. *Id.* at 11.

203. *See supra* Part III.B (discussing the application of the IELRA).

204. The Iowa Division of Latino Affairs estimates that Iowa's Latino population will increase from four percent of total population in 2008, to ten percent in 2040. IOWA DIV. LATINO AFFAIRS, LATINOS IN IOWA: 2009, at 1, http://latinoaffairs.iowa.gov/Data/LatinosInIowa2009.pdf.

205. *See supra* Part III.A (discussing standing).

206. *See supra* Part III.C.2 (discussing how Iowa law would require courts to interpret "official action" narrowly in order to pass constitutional muster).

V. CONCLUSION

Iowa's foray into language legislation provides a valuable lesson for other legislatures considering declaring an official language. Primarily, a more legalistic understanding of the types of language laws by both the members of Iowa's General Assembly and the public could encourage a comprehensive public understanding of an official-English law that would account for the fact that such a law may limit the government's ability to deal effectively with immigrant populations.[207] Underlying this understanding is the knowledge that political game playing, rhetorical sleight-of-hand, and possible nativist motivations permeate the official-language debate.[208] Perhaps most importantly, it is vital for state leaders to recognize that this debate can be elevated so that the electorate can adequately understand the politics and symbolic meaning of an official language *as well as* the practical effect of such a law.

The future of the IELRA is unclear.[209] The Iowa General Assembly may address its official-English requirements, especially in light of waning public support for the law.[210] To avoid further litigation over the IELRA's application, the Iowa General Assembly should seize this opportunity to elevate the rhetoric surrounding the official-English debate and either further clarify the application of the IELRA or repeal it altogether.

207. *See supra* Part III.C.1 (providing a broader understanding of language legislation).

208. *See supra* Parts II, III.A.4 (discussing the political motivations of the IELRA).

209. *See supra* Part IV (discussing the scope and future application of the IELRA).

210. *See* Op-Ed., *supra* note 60 (discussing how polls show Iowa's support for official-English laws at forty-five percent as of February 2007).