

Pennsylvania Immigration and Citizenship Coalition PICC

c/o HIAS and Council Migration Service

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Member organizations include:

African Cultural Alliance of North America (ACANA)
American Immigration Lawyers Association (Philadelphia Chapter)
Arab American Community Development Corporation
Archdiocese of Philadelphia, Office for Pastoral Care for Refugees and Migrants
Asian Americans United
Cambodian Association
Camden Center for Law and Social Justice
Catholic Social Services, Archdiocese of Philadelphia, Immigration Program
Center for Advocacy for the Rights and Interest of the Elderly (CARIE)
Center for Literacy
Community Legal Services
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Jewish Educational and Vocational Services, Center for New Americans
Jewish Labor Committee
Lutheran Children and Family Services
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PRIME - Ecumenical Commitment to Refugees
Project SHINE, Center for Intergenerational Learning, Temple University
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Southeast Asian Mutual Assistance Associations Coalition
United Communities South Philadelphia
Victim/Witness Services of South Philadelphia
Welcoming Center for New Pennsylvanians
YMCA Education and Technology Center

Testimony May 17, 2004 of Arthur N. Read Concerning SB669 Before the Judiciary Committee of the Senate of Pennsylvania

My name is [Arthur N. Read](#) and I am the General Counsel of a legal services organization, [Friends of Farmworkers, Inc.](#), which works to improve the living and working conditions of indigent farmworkers, mushroom workers, food processing workers, and workers from immigrant and migrant communities in Pennsylvania.

I appear before you as a representative of the [Campaign for Litigants' Equal Participation](#) which was formed by the [Pennsylvania Immigration and Citizenship Coalition \(PICC\)](#) to advocate for the prompt implementation of the March 2003 [recommendations](#) of the [Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System](#) to the Pennsylvania Supreme Court for litigants' equal access to the judicial system of Pennsylvania without regard to their English language proficiency *or* hearing disabilities.

PICC is a broad based Coalition of more than 30 Pennsylvania organizations advocating for the interests of immigrants, migrants, refugees and other new Americans living in Pennsylvania. Friends of Farmworkers is a member of PICC.

PICC has been joined in the [Campaign for Litigants' Equal Participation](#) by 12 additional advocacy groups and bar associations. Additional participants in the Campaign are: the Philadelphia Bar Association, the Asian American Bar Association of the Delaware Valley, American Civil Liberties Union of Pennsylvania, Asian Americans United, Disabilities Law Project, Hispanic Bar Association of Pennsylvania, Legal Clinic for the Disabled, Inc., National Lawyers Guild Philadelphia Chapter, Pennsylvanians for Modern Courts, the Philadelphia Folklore Project, the Public Interest Law Center of Philadelphia, and the Women's Law Project.

After [testifying](#) before the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System in its first public hearings in Philadelphia in December 2000, I was asked to join the Committee's [Litigants with Limited English Proficiency Workgroup](#).

As a workgroup one of the issues which we reached agreement on early was that it was preferable to refer to persons with "limited English proficiency" rather than the alternative phrasing of "non-English speaking persons." The reason for this was that we believed it was important to emphasize that many persons whose native language was other than English might be able to speak some English, but not to have sufficient proficiency in English to be able to participate in judicial or administrative proceedings with sufficient English proficiency to understand what was occurring without assistance from an interpreter. While amended SB669 in proposed 42 PA CS §4401 defines "[non-English-speaking person](#)" as "...a principal party in interest or a witness who has limited ability to speak or understand English" the phrase limited English proficient person more quickly conveys the scope of the need for interpretation services.

Fundamentally, the [recommendations](#) as to limited English proficient persons of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System can be grouped into two areas:

1. The need for an effective system of court interpreter certification to avoid the very real possibility that incomplete, ineffective and untrained interpretation will prevent limited English proficient persons from being able to communicate and understand in judicial and administrative proceedings.
2. The need for equality in access to judicial and administrative proceedings for litigants with limited English proficiency.

The strong support shown for the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System final March 2003 [recommendations](#) on litigants with limited English proficiency by the Supreme Court itself in seeking funding for the specific recommendation to enroll the Pennsylvania Unified Judicial System as a member of the State

Court Interpreter Certification Consortium of the National Center for State Courts is very gratifying and encouraging.

It is also our understanding that the [Ethnic and Racial Task Group](#) appointed in March 2003 by the Supreme Court and chaired by former Philadelphia City Solicitor Hon. Nelson Diaz and lead as to this issue by Chester County Court of Common Pleas Judge Hon. Juan R. Sanchez also strongly supported implementation of recommendations by the Supreme Court Committee on Racial and Gender Bias as to Limited English proficient populations.

SB669 addresses several of the key recommendations from the final report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System as to litigants with limited English proficiency. Specifically, SB669 *at least partially* addresses the following aspects of the report's [recommendations](#):

1. Establish for all courts of the Commonwealth of Pennsylvania a policy that all persons, including parties to judicial proceedings, witnesses appearing therein, victims in criminal proceedings, *and members of the public seeking information from offices of the courts*, shall have equal access to justice in the judicial system of Pennsylvania without regard to their English language proficiency.
2. Require that all courts provide qualified interpreters to litigants *at no charge*, in order that LEP parties and witnesses may fully and fairly participate in court proceedings and obtain reasonable access to the court system.
4. Require that all court interpreters obtain certification pursuant to a recognized statewide certification program, *maintain their proficiency through continuing education*, and adhere to standards of professional conduct.
5. Require the adoption of a code of professional responsibility for judicial interpreters together with mechanisms

to assure that all interpreters are familiar with the code and are subject to discipline for any violation.

6. Establish within the Administrative Office of the Pennsylvania Courts (AOPC) a Language Services Office, similar to those established by other states, staffed by professional administrative personnel experienced with issues related to court interpretation and translation, and funded sufficiently to carry out its mission.

On behalf of the Campaign for Litigants' Equal Participation, I would like to thank the sponsors of SB669 and HB2181 as well as the majority and minority staffs in both the Senate and House Judiciary Committees for the serious attention give in the past year to meeting the need of both persons with limited English proficiency and hearing disabilities.

It was the belief of the Litigants with Limited English Proficiency Workgroup of the Pennsylvania Supreme Court Committee on Racial and Gender Bias that the Pennsylvania Supreme Court had inherent constitutional authority to implement the recommendations as to limited English proficiency without legislative authorization.

However, it is absolutely clear that the political support that HB2181 and SB669 have added to this process and to designing effective implementation procedures as to administrative agencies as well as the judiciary have greatly contributed to the process of advancing the goal of implementing the recommendations of the Supreme Court Committee on Racial and Gender Bias in the judicial system as to persons with limited English proficiency.

It remains important to provide appropriate scope for the Pennsylvania Supreme Court through the Administrative Office of Courts and through rulemaking to further guide implementation of these recommendations.

For example, recommendation No. 3 of the Supreme Court Committee on Racial and Gender Bias in the Judicial System as to litigants with limited English proficiency can be directly implemented by the Unified Judicial System under direction of the Supreme Court without judicial intervention. That recommendation is that the Supreme Court should:

Require that the courts translate forms and other documents to the extent necessary to provide access to the court system to those unable to read English.

Additionally, the Campaign for Litigants' Equal Participation would suggest that the Pennsylvania Supreme Court could appoint a Language Access Committee with a diverse composition of persons knowledgeable as to these issues to guide the Administrative Office of Courts in administering a court interpreter system in Pennsylvania. See, [footnote 30](#) to the Supreme Court Committee on Racial and Gender Bias recommendations as to persons with limited English proficiency as to the appropriate responsibilities of a Language Services Office within the Administrative Office of Pennsylvania Courts. See also, [letter April 28, 2003](#) to Hon. Nelson A. Diaz and Judicial Council of Pennsylvania Ethnic and Racial Task Group.

http://www.friendsfw.org/PICC/Campaign_LEP_May03.pdf

Application of Proposed SB669 to Judicial Proceedings

If its promised was to be realized, the legislative finding and policy declaration proposed as 42 PA CS § 4411 in amended SB669 and HB2181 would be truly a major advance for limited English proficient litigants. That section provides:

42 PA CS § 4411. LEGISLATIVE FINDINGS AND DECLARATION.

It is hereby declared to be the policy of this Commonwealth to secure the rights, constitutional and otherwise, of persons, who because of a non-English-speaking cultural background, are unable to understand or communicate adequately in the English language when they appear in court or are involved in judicial proceedings. *It is the intent of this subchapter* to provide for the certification, appointment and use of interpreters *to secure the rights of non-English-speaking persons in all judicial proceedings.*

Such a legislative policy can appropriately be viewed as implementing the **Pennsylvania Constitution, Article I, Section 11**, “Courts to Be Open” providing in the first sentence thereof:

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

A legal services colleague, Donald Marritz of Mid-Penn Legal Services, has explored the history of usage of Article I, Section 11 of the Pennsylvania Constitution by Pennsylvania Courts including its early recognition of the need to waive costs for persons who could not afford to incur such costs. Mr. Marritz has suggested that this provision of the Pennsylvania Constitution could be read as requiring the provision of interpreters for limited English proficient persons in civil proceedings in courts throughout the Commonwealth.

Similarly, proposed 42 PA CS §4413, appears to enact the promise of the legislative declaration of policy through provisions requiring:

...if the presiding judicial officer determines that a principal party in interest [in a civil or criminal proceeding] or a witness [in a civil or criminal proceeding] or the defendant or direct victim in a criminal case has a limited ability to speak or understand English, then a[n] ... interpreter shall be appointed.

Unfortunately, a careful reading of proposed 42 PA CS §§4417 and 4418 makes it appear that the promises of equal access to the judicial system for limited English proficient persons in civil proceedings may in many cases in reality be denied. Although proposed 42 PA CS §4417(d) would appropriately require the payment of court interpretation fees for limited English proficient indigent principal parties in civil proceedings, it appears that there is no intention to require the provision without cost of such interpretation services for non-indigent parties.

The practical effect of this can be demonstrated in landlord tenant proceedings where a low-income but not “indigent” tenant facing eviction

would face a considerable potential economic penalty if such a party required interpretation services during the course of a landlord tenant proceeding.

It is also unclear from the proposed statutory language how the costs for interpretation services would be born in such proceedings as protection from abuse proceedings.

Although the provision of these interpretation services involves real costs to the Commonwealth Judicial system in a time of scarce resources, the imposition of such costs on limited English proficient persons will in reality deny such persons their equal right of access to the courts.

Application of Proposed SB669 to Administrative Proceedings

The Campaign for Litigants' Equal participation particularly welcomes the proposed amendments at proposed 2 PA CS §561 *et seq.* for the provision of certified court interpreters in administrative proceedings consistent with the recommendations of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System.

However, the bi-frication of responsibility for certification of language interpreters between administrative agencies and judicial proceedings is unnecessarily duplicative and could be practically confusing in implementation. While proposed 2 PA CS §§562(A)(1)(II) and 562(A)(2) appears to contemplate the possibility of the Department of Labor and Industry deferring to the Court Administrator's office as to certification decision, it would be preferable to establish the primacy of the Court Administrator's office as to interpreters in proceedings which are subject to judicial review on the record. This would leave the Department of Labor and Industry with a more limited technical role in implementation of the system.

The requirement for provision of interpretation services appears generally consistent with guidelines under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* See, Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency and related federal departmental interpretations at: <http://www.usdoj.gov/crt/cor/13166.htm>.

Conclusion

There are many practical and financial hurdles in full implementation of a system of effective assistance to persons with limited English proficiency in judicial and administrative proceedings that need to be met.

Proposed SB669 needs some critical refinement, but this proposal greatly advances the recognition of the need for thousands of Pennsylvania residents for language assistance in judicial and administrative proceedings.

Despite its likely undercount of immigrant communities, Pennsylvania was estimated in the 2000 Census to have an estimated 368,257 persons who speak English “less than very well” and 40 of Pennsylvania’s 67 counties were estimated to have more than 1,000 persons who speak English “less than very well.” *See:* http://friendsfw.org/LEP/census/Ranked_Summary.htm

This population is an important and economically productive element of Pennsylvania’s economy that requires appropriate interpretation and language assistance services in judicial and administrative proceedings.

Thank you for your attention to this issue.

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For more information on this issue go to:
http://friendsfw.org/LEP/LEP_Main.htm