

# Enforcing Language Access Rights: Trends and Strategies

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**E**qual access to governmental activities is necessary. In large part people with limited English proficiency do not have equal access. In this article we suggest some strategies and offer examples of programs working to achieve more access. We review the federal law on language access and describe some programs' advocacy to maximize such access.

Jane Perkins discusses recent federal court trends on the enforceability of federal obligations to provide language access. Mary R. Mannix describes advocacy efforts to secure language access in public benefit programs and a new Welfare Law Center project which aims to ensure that welfare agencies and private contractors delivering welfare and related services provide language access. Jack Daniel and Wanda Hasadsri describe California Rural Legal Assistance's strategies based on state law.

## I. Language Access Responsibilities Under Federal Civil Rights Laws

For over thirty years, civil rights policies at the federal level have required national-origin minorities to have meaningful language access. These policies stem from Title VI of the Civil Rights Act of 1964, which says: "No person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."<sup>1</sup>

Title VI does not address enforcement by private citizens. However, from the enactment of the law until 2001, courts, Congress, federal agencies, federal fund recipients, and private individuals assumed that victims of Title VI violations had two independent remedies: an administrative complaint filed with the relevant federal agency or a lawsuit to challenge either intentional discrimination or actions which reflect disparate treatment or have a disparate impact under the Title VI regulations.<sup>2</sup>

In 2001 the U.S. Supreme Court issued a 5-to-4 decision that upset these long-standing assumptions. The case, *Alexander v. Sandoval*, involved a challenge to the Alabama Safety Department's refusal to administer driver's examinations in a language other than English.<sup>3</sup> A majority opinion held that private individuals had no implied right of action to enforce the Title VI regulations in court.

<sup>1</sup>Civil Rights Act of 1964, tit. VI, 42 U.S.C. § 2000d (2004).

<sup>2</sup>The regulations of a number of federal agencies, issued at Title VI's enactment, prohibit federal fund recipients from "utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin." 28 C.F.R. § 42.104(b)(2) (2004) (U.S. Department of Justice); see, e.g., 45 C.F.R. § 80.3(b) (2003) (U.S. Department of Health and Human Services); 49 C.F.R. § 21.5(b)(2) (2003) (U.S. Department of Transportation).

<sup>3</sup>*Alexander v. Sandoval*, 532 U.S. 275 (2001) (Clearinghouse No. 51,706).

