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VIA FACSIMILIE AND U.S. MAIL

April 21, 2010

Alan Brown
Town Supervisor
28 Main Street
Greenwich, NY 12834

Alan Wrigley
Town Attorney
P.O. Box 255
Cambridge, NY 12816

Re: Jackson-English-only Ordinance

Dear Mr. Brown and Mr. Wrigley:

We write concerning the English-only Ordinance passed by Jackson's Town Board on March 3, 2010. TOWN OF JACKSON, N.Y., LOCAL LAWS no.1 (2010). This Ordinance prohibits constitutionally protected speech in a vast array of settings, including public school classrooms, town hall discussions, and judicial proceedings. An appointed or elected Town education official can no longer communicate with a student's mother in a language that both of them speak if that language is not English. A Town resident can no longer report a hazardous safety condition on his street to an appointed or elected Town official if the resident does not speak English, even if the relevant town official could communicate with him in another language. A Town officiant will no longer be able to say "Mazel Tov" when performing a marriage ceremony. Even more concerning, the Ordinance contains no exception for critical situations such as medical emergencies, police investigations, or criminal defense, where both individual health and the public interest are at stake.

Jackson's Ordinance clearly infringes the speech rights of elected representatives, public employees, citizens, and visitors. As a result, the Ordinance violates the U.S. Constitution, the New York State Constitution, Title VI of the Civil Rights Act of 1964, and New York State's Municipal Home Rule Law, among other statutes. We therefore ask the Town of Jackson to rescind its English-only Ordinance.

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Jackson's Ordinance Violates the Federal and State Constitutions

Jackson's English-only Ordinance violates the First Amendment of the U.S. Constitution and Art. 1, § 8 of the New York State Constitution. It stops the Town's elected officials and appointees from communicating with their constituents, keeps citizens from accessing vital government information, and even impedes passing tourists from obtaining necessary information from Town officials. For these reasons, among others, the only three states that have attempted to pass and/or enforce restrictive English-only ordinances similar to Jackson's —Arizona, Oklahoma, and Alaska—have had their ordinances invalidated by courts for violating constitutionally-protected speech rights. *See Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183 (Alaska 2007); *Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998); *In re Initiative Petition No. 366*, 46 P.3d 123 (Okla. 2002); *see also Yniguez v. Arizonans for Official English*, 69 F.3d 920 (9th Cir. 1995), *vacated on other grounds, Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997).

Jackson's English-only Ordinance also violates the due process clauses of the United States and New York State Constitutions. The provision that English shall be spoken in "all official meetings and business" provides insufficient guidance as to when covered individuals are subject to the strictures of the Ordinance. As a result of its excessive vagueness, the Ordinance threatens to deter constitutionally protected conduct and therefore violates due process rights. *See Initiative Petition*, 46 P.3d at 128.

Finally, Jackson's English-only Ordinance violates the equal protection clauses of the United States and New York State Constitutions. Because the Ordinance discriminates against all non-English-speaking persons, it violates the equal protection clause of the New York State Constitution, Art. 1, § 11. *Yellen v. Baez*, 676 N.Y.S.2d 724, 726 (Civ. Ct. 1997). In addition, the Ordinance is invalid under the U.S. Constitution's Equal Protection Clause because it infringes on the fundamental individual rights to free speech and choice of language. *See Ruiz v. Hull*, 957 P.2d 984, 1000–02 (Ariz. 1998) (citing *Meyer v. State of Nebraska*, 262 U.S. 390 (1923)).

Jackson's Ordinance Violates Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*, prohibits municipal governments such as Jackson's from discriminating against non-English-speaking people in their provision of federally funded programs and activities. Jackson's English-only Ordinance violates this prohibition by excluding citizens, residents, or visitors who are not fluent in English from accessing vital federally funded Town services, such as medical aid and police protection.

Title VI provides that no person shall "on the 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." Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2006). The United States Department of Justice has issued regulations pursuant to Title VI requiring all "recipients of federal financial assistance . . . to ensure meaningful access to their programs and

activities by [limited English proficient, or] LEP persons.” Letter from Loretta King, Acting Assistant Attorney Gen., U.S. Dep’t of Justice, to Drew Edmondson, Attorney Gen. of Okla. (Apr. 14, 2009), http://www.justice.gov/crt/lep/whats_new/Oklahoma_letter.pdf. Failure to ensure meaningful participation by LEP individuals in all federally-funded programs and activities violates Title VI’s prohibition on national origin discrimination. *Id.*

The English-only Ordinance passed by Jackson’s Town Board fails to ensure that all “business” conducted by Town agencies or departments receiving federal funds will not exclude non-English-speaking persons, including visitors or temporary residents. Indeed, it purposefully excludes non-English-speaking persons from meaningful access to Jackson’s federally funded programs and activities. Therefore, it violates the Town’s Title VI obligations.

Jackson’s Ordinance Violates New York State’s Municipal Home Rule Law

Finally, the English-only Ordinance is unlawful because the Town of Jackson does not have the authority to regulate the choice of language of its elected officials and their appointees. New York State has a vital interest in promoting intra-state commerce and tourism. These interests rely on the free flow of communication between localities, which would be severely impeded by restrictive language ordinances such as Jackson’s. In the words of a New Jersey court that struck down a proposed ordinance similar to Jackson’s, “If one municipality were to adopt English as its official language, while another adopted Spanish and yet another Japanese, the wheels of government could come to a halt.” *Borough of Bogota v. Donovan*, 907 A.2d 433, 437 (N.J. Super. Ct. App. Div. 2006).

New York State’s Municipal Home Rule Law permits towns to adopt laws governing their local affairs. N.Y. MUN. HOME RULE LAW § 1(ii)(a) (McKinney 2010). However, a town’s home rule powers are tightly circumscribed by the preemption doctrine, which prohibits localities from passing laws that expressly or impliedly conflict with State laws. *Albany Area Builders Ass’n v. Town of Guilderland*, 546 N.E.2d 920, 922 (N.Y. 1989). Even in the absence of an express legislative statement of preemption, New York courts will find local legislation to be preempted if it undermines “the need for State-wide uniformity in a given area” of law. *Id.* Local laws have been invalidated on preemption grounds where they prohibit something that would be permissible under State law or impose restrictions that inhibit the operation of the State’s general laws. *Ba Mar, Inc. v. County of Rockland*, 566 N.Y.S.2d 298, 304 (App. Div. 2d Dep’t 1991). For this reason, Jackson’s English-only Ordinance is an impermissible use of its home rule powers.

In consideration of the above, we ask the Town of Jackson to rescind its English-only Ordinance. If the Town does not take concrete steps to rescind the Ordinance, we will contact the United States Department of Justice to notify them of the Town’s Title VI violations. We also believe that the Ordinance invites individual litigation from citizens and organizations whose constitutional rights are affected by the Ordinance.

We hope to hear from you soon and will follow up with you within two weeks if we do not receive a response to this letter. If you wish to discuss this matter with us in the interim, please contact us at (212) 607-3366. Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Corey Stoughton".

Corey Stoughton
Senior Staff Attorney

A handwritten signature in cursive script, appearing to read "Katherine Greenberg".

Katherine Greenberg
Legal Intern