

March 31, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SECRETARY RILEY
BRUCE REED

SUBJECT: California Proposition 227 (Unz Initiative) to End Bilingual Education

On June 2, California voters will consider Proposition 227, otherwise known as the Unz Initiative, which proposes to eliminate all bilingual education. This is California's third potentially divisive race-related initiative in four years, following on the heels of Proposition 187, which barred public benefits for illegal immigrants, and Proposition 209, which ended affirmative action.

Polls show that the initiative is popular and is likely to pass, although a strong opposition campaign could make this election close. Many Latino voters currently favor the initiative, although the polls show that Latino support has declined considerably as voters become more familiar with the details of the proposal. Latino activists are strongly opposed to Unz, and are looking to the White House to support their efforts to defeat it.

Over the past several months DPC and Education Department staff worked with Maria Echaveste, Mickey Ibarra, Karen Skelton, and Janet Murguia to study the Unz Initiative, including extensive outreach to both opponents and supporters in California, in the Congress and among the advocacy community. Despite legitimate concerns over the effectiveness of some bilingual education programs, your advisors strongly believe that the Unz initiative is bad education policy and will harm students who need help the most.

We recommend that you publicly oppose the Unz Initiative because it deprives local educators of the ability to make educationally sound choices about how to meet the needs of limited English proficient children they serve and almost certainly will result in widespread violations of federal civil rights law. Your opposition to Unz should be coupled with a statement of the principles you support for strengthening programs to help Limited English Proficient students become proficient in English.

I. The Unz Initiative and Bilingual Education in California

A. Overview of the Unz Initiative

This initiative, authored and backed by Silicon Valley millionaire Ron Unz, is designed to end all bilingual education programs in California. More specifically, it would:

- Require that all public school instruction be conducted in English.
- Permit this requirement to be waived only if parents or guardians can show that the child already knows English, has special needs, or would learn English faster through an alternative instructional technique.
- Provide initial placement for Limited English Proficient (LEP) students in "sheltered English immersion" programs for one year. Instruction in these programs would be conducted in English, with some accommodations in the curriculum to take into account the limited English language skills of the students.
- Appropriate \$50 million per year over 10 years to fund adult education programs designed to teach English to LEP adults who in turn pledge to provide English language tutoring to LEP students.
- Make teachers, administrators and school board members subject to suits and personally liable for failure to implement the provisions of the initiative.

Unz and other backers of this initiative regard the existing system of bilingual education in the state as a complete failure. They argue that because bilingual education relies so heavily on use of the students' native language and only slowly introduces English, the approach delays or prevents, rather than promotes, the acquisition of English. Further, they point out that although California's bilingual education law expired a decade ago, the legislature has been unable to enact legislation to reform a broken program. This initiative, they argue, will break the legislative impasse and dramatically change bilingual education policy for the better.

B. Bilingual Education in California

Demographics. There are approximately 1.3 million Limited English Proficient (LEP) students in California, approximately one quarter of California's K-12 students. This number has nearly doubled in less than a decade, and represents some 43% of the national total. Seventy nine percent of California's LEP students are native Spanish speakers. Hispanics have a 50% dropout rate, and by most indicators their academic performance lags behind most other population groups in the state.

Educational Services. LEP students receive a wide variety of services intended to help them learn English and academic subjects. In 1997, only about 30% received what is conventionally considered bilingual education -- programs which make significant use of the student's primary language to teach academics while phasing in ever greater amounts of English language instruction. More than half participate in specially designed instructional programs that

help students learn English through a combination of approaches such as direct instruction in grammar, vocabulary and communications, while teaching other subjects in a way designed to be accessible to LEP students. (The Unz Initiative would eliminate these programs as well as conventional bilingual programs.) Approximately 16% of all LEP students are not receiving any language instruction services at all.

California Legal Framework. The legal framework for providing services to LEP students in California is murky. California's Bilingual Education Act sunsetted in 1987, but the State Board of Education regulations implementing the act have remained in effect. Under this framework, school districts are required to help students become fluent in English and competent in other academic subjects, and are given a significant amount of flexibility in determining how to achieve these goals. Neither bilingual education nor any other specific approach to teaching LEP students is required.

There have been a number of unsuccessful attempts in the past decade to enact new legislation, but bilingual education reformers and advocates have been unable to agree on an approach. There has been a fresh attempt over the past month to craft compromise legislation, partly to take the steam out of Unz and to give Unz opponents something to support. This effort, however, is likely to end in failure.

Early in March the State Board of Education took the first step toward eliminating the state bilingual education regulations. This process should be completed shortly before the vote on Unz. The effect of this action will be to eliminate any state requirement for the provision of specific services to LEP students, and to give local school districts even greater flexibility in this area.

II. Political Context

The Unz initiative is currently the most serious threat to bilingual education, but it is not likely to be the last. Earlier this year Speaker Gingrich proposed eliminating bilingual education, and some conservative education experts (e.g., Diane Ravitch) have also called for its elimination. Last week, Rep. DeLay introduced a bill that would eliminate the federal bilingual education program, and House Republicans have included a \$75 million rescission of FY98 funding for bilingual education in the emergency supplemental bill. Especially if Unz passes, we are likely to see energized opposition to the federal program, and increased opposition in other states and localities.

The Unz initiative presents a political dilemma in California. If we oppose it, we risk alienating a majority of California Anglo voters. If we fail to oppose it, we risk alienating a vocal and increasingly influential group of Latino leaders, and possibly Latino voters.

Current polls show that a large majority of California Anglo voters support Unz. For Anglos, bilingual education may become a hot button issue similar to immigrant services and

affirmative action. In contrast, Latino voters are split on the issue. While many continue to support Unz largely out of frustration at the public schools' failure to help their children, polls show that Latino support is eroding as they become more aware of the particulars of the initiative. And the polls tended to underestimate Latino opposition to Prop. 187 and Prop. 209.

Latino activists and elected officials oppose Unz. To some of the Latino leaders, Unz is a litmus issue, like Propositions 187 and 209. Latino leaders are looking to the White House to become actively involved in the opposition to Unz, and are fearful that we will choose to sit on the sidelines.

More organizations and elected officials are taking positions on Unz. The California education community -- including the California Teachers Association and the California School Boards Association -- is strongly opposed to Unz. Key Democratic officeholders (including Sen. Boxer, Rep. Becerra and most Democrats in the California delegation, State Superintendent Delaine Eastin, and Speaker Villaraigosa) have also announced their opposition to the Unz initiative. All three Democratic gubernatorial candidates have come out against Unz. Sen. Feinstein has not taken a public stance yet, though she appears likely to support Unz. A list of organizations, elected officials, and other leaders that have taken positions on Unz is attached.

The Republican state party has supported Unz, though many Republican officials, including Gov. Wilson, have not yet taken a position. Dan Lungren has not taken a position yet, but has recently said that the recent action by the State Board of Education has eliminated the need for Unz. There is always a chance that White House opposition to Unz could polarize the situation and push Gov. Wilson and other Republicans to support Unz, but at least some Republican leaders are afraid to support another initiative viewed as anti-Hispanic.

The political dilemma can be resolved with a "Mend it / Don't End it" response. We believe the best approach to this issue is to strike a middle ground by admitting that bilingual education needs mending, but asserting that Unz is not the way to do it. More specifically, we can:

- Start by reiterating the overriding importance of helping every child become proficient in English;
- Oppose Unz on the merits because it is too extreme;
- Remind voters what we are for, including both our overall approach to strengthening public education and our Hispanic initiative;
- Articulate the fundamental principles that you believe should be used by local communities to strengthen their efforts to educate LEP students. These principles include helping children become proficient in English as quickly as possible, holding schools accountable for results, providing local flexibility, and emphasizing quality in any approach used.

III. Specific Recommendations

I. Oppose Unz Initiative on educational and legal grounds.

Educational. While evaluations of bilingual education in California and elsewhere have identified some promising efforts, few believe that the services now provided to LEP students are effective on a large scale basis. In many cases, shortages of qualified teachers and poor implementation of limited the effectiveness of existing programs. However, these bilingual education programs should be "mended, not ended." A one-size-fits-all State prescription for how to educate limited English proficient children and demanding that it be done within one year will, in our view, be counter-productive to achieving the goal of helping LEP students learn English and participate effectively in classrooms where English is the language of instruction. Experience and research, including a 1997 report of the National Academy of Sciences, indicate that no one approach is the answer for all limited English proficient children.

Rather -- whether the approach is bilingual education, English as a second language, structured immersion, or some variation or hybrid of them -- the success of programs turns on the quality and commitment of the school and teacher. The Unz Initiative is likely to impair chances for success by limiting the discretion of schools and teachers to determine what works best for their LEP students. In fact, the Unz Initiative is an extreme form of overregulation that prevents teachers and parents from exercising common sense and professional judgment of how to serve individual children. Exceptions can be made only by bureaucrats far removed from the classroom, and personal liability of teachers increases the prospect of court intrusions in educational matters to new and alarming levels.

A National Academy of Sciences study released March 18 shows that LEP children with no English proficiency are best taught to read English by first being taught reading in their native language, if teachers and instructional materials in their native language are available. Thus, while a structured English immersion approach may be effective for some limited English proficient children, it is likely to be ineffective for many others. In addition, our experience in administering the Bilingual Education Act and in reviewing programs for possible violations of Title VI of the Civil Rights Act indicates that one year of special instruction -- whether in Bilingual Education or an English immersion approach -- rarely is sufficient to enable a child who starts the program with almost no proficiency in English to become proficient enough to participate in regular classes.

Legal. Based on the educational problems described above, the Unz Initiative implicates federal civil rights laws. In the seminal 1974 case of Lau v. Nichols, the Supreme Court interpreted Title VI of the Civil Rights Act to require school districts to take steps to ensure that national origin minority students with limited English proficiency can effectively participate in the regular educational program. Similarly, the Equal Educational Opportunity Act, enacted in 1974, requires public educational agencies to take appropriate action to

overcome language barriers that impede student participation in the instructional programs. Neither Lau nor the subsequent cases addressing Title VI or the Equal Educational Opportunity Act mandate a particular approach to meeting these needs, but they require that sound educational approaches be implemented and evaluated.

Assuming that some educational experts will vouch for the soundness of the sheltered English immersion approach mandated by the Unz Initiative, we do not believe that a legal challenge asserting that the Unz Initiative on its face violates Title VI or the Equal Educational Opportunity Act would succeed. However, the Unz Initiative is certain to cause widespread violations of Title VI and the Equal Educational Opportunity Act if it is interpreted and applied in accordance with its intent to eliminate the choices of local educators when providing the appropriate instruction for limited English proficient students. Realistically, the only way that widespread violations will be avoided is if the State or local educational agencies broadly use loopholes in the Proposition to extend services well beyond a year and to provide bilingual education for students who need it.

It is evident that the Unz Initiative inevitably will create legal confrontations between California agencies and this Department, as well as the Department of Justice, over violations of civil rights laws and will divert resources and attention that should be focused on educating children to investigations and litigation.

Recommendation: For these reasons we recommend that you or another senior Administration official (the Vice President or Secretary Riley) announce the Administration's opposition to the Unz initiative within the next 2 weeks. Taking a position soon will allow us to frame the debate and set a constructive tone, rather than get sucked into an already inflammatory debate. We could turn this initiative into an opportunity to fit bilingual education into our overall framework for ensuring effective education in the 21st century.

_____ Agree _____ Disagree _____ Discuss Further

2. Couple opposition to Unz with a clear statement of how local school districts can strengthen education for LEP students.

In accord with our recommendation for a "mend, don't end" approach to bilingual education, we believe that opposition to Unz should be coupled with a strong statement recognizing the importance of helping LEP students learn English and succeed, and a set of principles that should guide local efforts to strengthen rather than end these programs. The intent here is to underscore that while there is a place for bilingual education (and other ways to help LEP students become proficient in English), bilingual education programs in particular and the schools that serve LEP students must do a better job.

Specifically, we recommend the following principles:

LEP students must become proficient in English as quickly as possible. They must also master challenging academic standards in other subjects, just as other students are expected to. This is a universal goal--shared especially by parents and students who have come to this country for greater opportunity and who are eager to fully participate in the life of their community and country. Yet one of the most frequent criticisms of bilingual education programs is that they are open-ended--that they prolong the time it takes for students to learn English. School districts should establish clear goals that will tell parents how quickly they can expect their children to master English and to participate in regular classrooms where English is the language of instruction. Participation in bilingual education should not be open-ended or never-ending.

Federally funded bilingual education programs are required to ensure that students master English within 3-5 years. You could challenge every district to meet that standard, and urge them to do better. You could also direct Secretary Riley to develop guidelines for local school districts reflecting the best knowledge of how quickly LEP students can be expected to become proficient in English, and identifying approaches, strategies and programs that can help shorten the time it takes.

Local school districts must be accountable for performance and results. School districts must be held accountable for helping students become proficient in English as rapidly as possible. They should report publicly how well they are meeting the timelines they have established. They should test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress, and to provide additional services or take other corrective actions as appropriate when students are not making adequate progress. School districts should evaluate their bilingual education programs regularly as well. If a program is not helping its students progress rapidly enough, the school district should strengthen it, or use another approach research shows will work.

There must be local flexibility. As discussed above, no one-size-fits-all prescription for how to educate limited English proficient children will work. Rather than state mandates that either prescribe or proscribe particular approaches, local schools must have the flexibility to design programs that meet its particular needs, mix of students and resources. So long as the goal is clear--that students learn English as rapidly as possible--and there is accountability for results, parents and educators should be free to work together to fashion programs that work for them.

The focus must be on strengthening quality, regardless of approach. The research on instruction for LEP students does not identify any approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as particularly effective. Rather, it suggests that effective programs have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. In short, if LEP students are to learn

English and succeed in school, they must be in schools that work for all students--schools with high standards, good teachers, smaller classes, challenging curriculum and accountability for results. Because of this, any discussion of the steps required to strengthen local quality provides an opportunity to discuss your overall agenda for strengthening public schools

_____ Agree _____ Disagree _____ Discuss Further

Elected Officials, Associations, Activists are Taking positions on Unz:

Oppose Unz:

Senator Barbara Boxer
Lt. Gov. Grey Davis
Congressman Xavier Becerra
Congressman Cal Dooley
Congressman Bob Filner
Congressman Lucile Roybal-Allard
Congresswoman Zoe Lofgren
Congresswoman Ellen Tauscher
Congressman Vic Fazio
Congressman Marty Martinez
Delaine Eastin, Superintendent of Public Instruction
Assemblyman Cruz Bustamante (former Speaker)
Speaker Antonio Villaraigosa
Senator President John Burton
Supervisor Gloria Molina
CTA
MALDEF
Republican Assemblyman Bill Leonard
Republican Assemblyman Rod Pacheco (only R Latino Assemblyman)
CABE

Support Unz:

Ron Unz
Gloria Matta Tuchman
Jaime Escalante
Fernando Vega
Mayor Richard Riordan
Darrell Issa, Republican Senate Candidate opposing Barbara Boxer

Draft #2 3/27/98

MEMORANDUM FOR THE PRESIDENT

FROM: RICHARD W. RILEY

SUBJECT: California Proposition 227 (Unz Initiative) to End Bilingual Education

On June 2, California voters will consider Proposition 227, otherwise known as the Unz Initiative, which proposes to eliminate bilingual education for most limited English proficient students. Proposition 227 would provide for placement of limited English proficient children in "sheltered English immersion" programs for a period "normally not to exceed one year." It would require virtually all public school instruction to be provided in English. This requirement could be waived only if the parent or guardian personally visits the school, provides written consent, and can show that the child already knows English, (in the case of older students) would learn English faster through an alternative instructional technique, or has special needs, in which case the waiver must be approved by the district superintendent. The Proposition also subjects teachers to personal liability in litigation by parents if they fail to comply with its requirements in educating children.

I recommend that you publicly oppose the Unz Initiative because it deprives local educators of the ability to make educationally sound choices about how to meet the needs of limited English proficient children they serve and almost certainly will result in widespread violations of federal civil rights laws. To make our position credible and positive, I also recommend that you --

--emphasize in the strongest possible terms, both through the content of your statement and the event at which it is delivered, the critical importance to this Nation, to our fundamental historic values, and to the future competitiveness of our workforce of providing effective education for limited English proficient children.

-- combine the statement of opposition to the Unz Initiative with a commitment to revise the Bilingual Education Act to address the principles of local flexibility, targeting funds on research-based programs that effectively meet the needs of limited English proficient children, and creating incentives for school districts to move limited English proficient children into regular classrooms taught in English as quickly as possible.

-- indicate that the Administration will address these statutory changes and examine fundamental issues related to the education of limited English proficient students by appointing and obtaining advice from a broadly based commission in advance of the reauthorization of the Bilingual Education Act, which is expected in 1999. However, simply announcing a commission, in my view, is an insufficient positive response to the Unz gauntlet. I believe you should state the fundamental principles that will guide this exercise and also state which

legislative proposals you would be prepared to support if amendment of the Act were to occur this year.

I. Oppose Unz Initiative on educational and legal grounds.

Educational. I think we all share the general goal of the Unz Initiative to help limited English proficient children become proficient in English -- and participate effectively in regular classrooms where English is the language of instruction -- as quickly as possible. And there certainly are bilingual education programs, as well as alternative programs for these children, in California and elsewhere that are ineffective in reaching these goals. However, I believe these bilingual education programs should be "mended, not ended." A one-size-fits-all State prescription for how to educate limited English proficient children and demanding that it be done within one year will, in our view, be counter-productive to achieving these goals. Experience and research, including a 1997 report of the National Academy of Sciences, indicate that no one approach is the answer for all limited English proficient children.

Rather -- whether the approach is bilingual education, English as a second language, structured immersion, or some variation or hybrid of them -- the success of programs turns on the quality and commitment of the school and teacher. The Unz Initiative is likely to impair chances for success by limiting the discretion of schools and teachers to determine what works best for their LEP students. In fact, the Unz Initiative is an extreme form of overregulation that prevents teachers and parents from exercising common sense and professional judgment of how to serve individual children. Exceptions can be made only by bureaucrats far removed from the classroom, and personal liability of teachers increases the prospect of court intrusions in educational matters to new and alarming levels.

A National Academy of Sciences study released March 18 shows that LEP children with no English proficiency are best taught to read English by first being taught reading in their native language, if teachers and instructional materials in their native language are available. Thus, while a structured English immersion approach may be effective for some limited English proficient children, it is likely to be ineffective for many others. In addition, our experience in administering the Bilingual Education Act and in reviewing programs for possible violations of Title VI of the Civil Rights Act indicates that one year of special instruction -- whether in Bilingual Education or an English immersion approach -- rarely is sufficient to enable a child who starts the program with almost no proficiency in English to become proficient enough to participate in regular classes.

Legal. Based on the educational problems described above, the Unz Initiative implicates federal civil rights laws. In the seminal 1974 case of Lau v. Nichols, the Supreme Court interpreted Title VI of the Civil Rights Act to require school districts to take steps to ensure that national origin minority students with limited English proficiency can effectively participate in the regular educational program. Similarly, the Equal Educational Opportunity Act, enacted in 1974, requires public educational agencies to take appropriate action to

overcome language barriers that impede student participation in the instructional programs. Neither Lau nor the subsequent cases addressing Title VI or the Equal Educational Opportunity Act mandate a particular approach to meeting these needs, but they require that sound educational approaches be implemented and evaluated.

Assuming that some educational experts will vouch for the soundness of the sheltered English immersion approach mandated by the Unz Initiative, we do not believe that a legal challenge asserting that the Unz Initiative on its face violates Title VI or the Equal Educational Opportunity Act would succeed. However, the Unz Initiative is certain to cause widespread violations of Title VI and the Equal Educational Opportunity Act if it is interpreted and applied in accordance with its intent to eliminate the choices of local educators when providing the appropriate instruction for limited English proficient students. Realistically, the only way that widespread violations will be avoided is if the State or local educational agencies broadly use loopholes in the Proposition to extend services well beyond a year and to provide bilingual education for students who need it.

It is evident that the Unz Initiative inevitably will create legal confrontations between California agencies and this Department, as well as the Department of Justice, over violations of civil rights laws and will divert resources and attention that should be focused on educating children to investigations and litigation.

II. Couple Opposition to the Unz Initiative with a Commitment to Propose Revisions to the Bilingual Education Act to Reflect Fully Our Principles for Effective Education Programs for Limited English Proficient Children.

The Bilingual Education Act administered by this Department is a competitive grant program that is funded in this fiscal year at \$199 million. The Act supports not only bilingual education programs, but also special alternative programs such as English immersion. The central purpose of the Act is to assist school districts in developing and implementing programs at the district and school levels that help limited English proficient children achieve proficiency in English and progress in their overall school program.

The Act directly touches only a small proportion of limited English proficient children and, unlike Title VI of the Civil Rights Act, imposes requirements only on federally funded bilingual education programs, not on school districts generally. Nevertheless, the Act embodies federal policy on educating limited English proficient children and, we believe, has an important symbolic effect in influencing other programs initiated and funded by State and local educational agencies.

Principles for Amendments

To make our position on the Unz Initiative credible and positive, I recommend that you combine opposition to the Unz Initiative with a commitment to propose strengthening the

Bilingual Education Act. The principles for strengthening the Act would include local flexibility, targeting funds on research-based programs that effectively meet the needs of limited English proficient children, and creating incentives for school districts that apply for or receive grants to move limited English proficient children into regular classes taught in English as quickly as possible, based on reliable assessments of their ability to participate effectively in those classes.

Possible Specific Amendments

As described below, in light of the complexity of the political and programmatic issues, I believe it is desirable to announce that you will appoint a broadly representative commission to address fundamental issues related to the education of limited English proficient children and advise us in preparing our legislative proposal. However, simply announcing the formation of a commission, in my view, is an insufficient positive action to frame the continuing debate on these issues and show that we are prepared to act, not merely talk. First, I recommend that you articulate the above principles as the framework for the Commission's work. Second, while stating that the Commission should be allowed to do its work and amendments should await the completion of that work, I believe you also should signal the specific types of amendments that you are prepared to entertain. This is especially important because we expect efforts in the Congress this year to amend the Bilingual Education Act in ways similar to the Unz Initiative. There is a risk that addressing such specifics may further fuel these efforts at amendments, but the value of staking out your position and principles exceeds the incremental effect on the possibility that legislative changes would be pursued this year. Amendments that I recommend be supported include --

--Eliminating the 25% cap on non-bilingual education programs such as English immersion. This cap creates a federal preference for funding bilingual education programs and sends a signal that we disfavor alternative programs that may be effective in meeting the needs of limited English proficient children. Our consistent position, based on research results, should be that no one approach is by definition better than others. The purpose is to develop English proficiency in limited English proficient children while they are learning to high academic standards, and any school district should be able to compete and address the effectiveness of its approach. Local flexibility to choose the approaches that work best for their students should not be constrained by a national priority for one pedagogical approach. Members of the Congressional Hispanic Caucus and Hispanic advocacy groups are likely to be critical of a proposal to eliminate the cap, but I believe that it is appropriate to make this change.

--State a goal that student placement in bilingual education or alternative programs should be for no more than 3 years, subject to evaluations that would permit extensions for individual students who are not prepared to participate effectively in regular classes. Such an amendment would send a strong signal that districts need to focus on the ultimate

purpose of these programs. It would be consistent with language in our 1998 Appropriations Act, which provides, "... That the Department of Education should only support instructional programs which ensure that students completely master English in a timely fashion (a period of three to five years) while meeting rigorous achievement standards in the academic content areas." To give this goal practical effect, the amendment could provide that districts that have an established record of meeting this goal -- or, in the case of new programs, clear and realistic plans to meet it -- would receive preference for funding.

I believe we should oppose any required time limit (as opposed to a goal) for serving limited English proficient students. Such a requirement is not supported by our experience or research results and would likely lead to civil rights compliance problems. A 3-year requirement may be more reasonable than the 1-year requirement in the Unz Initiative but would be flawed in adopting the same arbitrary approach, to the detriment of assessing and meeting the needs of individual children. Members of the Congressional Hispanic Caucus and Hispanic advocacy groups are likely to be very critical of a 3-year time frame, even stated as a goal, but I believe that it can stimulate program improvements and is appropriate, so long as there is always flexibility to meet the needs of individual children.

III. Appoint a Commission to Develop Specific Recommendations for Amending the Bilingual Education Act.

The Commission would be constituted as an advisory committee and would include broad representation of educators, researchers, parents, and others with a variety of viewpoints on bilingual education. Indeed, we might consider inviting Mr. Unz to participate. The Commission would be charged with the responsibility to obtain public input and develop recommendations for reauthorizing the Act, based on the key principles (not necessarily the specifics) described above. Proceeding in this way will give us the benefit of broad input from stakeholders and provide an opportunity to push the political discussion towards a focus on the implications of educational research for policy in this area.

IV. The content of your announcement, and the event at which it is delivered, should stress the critical importance of providing effective education for limited English proficient children, and doing that based on educational research, not based on politics or ideology.

There are 3.2 million limited English proficient students in our schools. Immigrant children are the fastest growing group in our schools. The language problems they face are compounded by the fact that about three-fourths of these students are in high poverty schools. The vast majority of limited English proficient children are Hispanic. Over the last 20 years, there has been little progress in closing the achievement gap between Hispanic and non-Hispanic white students in reading, math, and science. These problems are at the core of

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the 20% drop-out rate for Hispanic students enrolled in the Nation's elementary and secondary schools. Accordingly, many young Hispanic adults do not have the basic level of education necessary to participate in today's or our future economy, which demands high level skills. To ensure that our nation's workforce is competitive, limited English proficient students must succeed.

I recommend that your announcement highlight these themes. Also, it would be vital to have students from many ethnic groups at the event from both immersion and bilingual educational experiences who have successfully learned English to a level that allows them to participate fully in the instructional program.

THE WHITE HOUSE
WASHINGTON

March 19, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SECRETARY RILEY
BRUCE REED

SUBJECT: California Proposition 227 (Unz Initiative) to End Bilingual Education

On June 2, California voters will consider Proposition 227, otherwise known as the Unz Initiative, which proposes to eliminate all bilingual education. This is California's third potentially divisive race-related initiative in four years, following on the heels of Proposition 187, which barred public benefits for illegal immigrants, and Proposition 209, which ended affirmative action.

Polls consistently show that the initiative is popular and is likely to pass, although a strong opposition campaign could make this election close. Many Latino voters currently favor the initiative, although the polls show that Latino support has declined considerably as voters become more familiar with the details of the proposal. Latino activists are strongly opposed to Unz, and are looking to the White House to support their efforts to defeat it.

Over the past several months DPC and Education Department staff worked with Maria Echaveste, Mickey Ibarra, Karen Skelton, and Janet Murguia to study the Unz Initiative, including extensive outreach to both opponents and supporters in California, in the Congress and among the advocacy community. Despite legitimate concerns over the effectiveness of some bilingual education programs, your advisors strongly believe that the Unz initiative is bad education policy and will harm students who need help the most. We also believe that you may be able to turn this issue to your political advantage if you combine opposition to Unz with proposals to reform bilingual education programs.

I. The Unz Initiative and Bilingual Education in California

A. Overview of the Unz Initiative

This initiative, authored and backed by Silicon Valley millionaire Ron Unz, is designed to end all bilingual education programs in California. More specifically, it would:

- Require that all public school instruction be conducted in English.

- Permit this requirement to be waived only if parents or guardians can show that the child already knows English, has special needs, or would learn English faster through an alternative instructional technique.
- Provide initial placement for Limited English Proficient (LEP) students in "sheltered English immersion" programs for one year. Instruction in these programs would be conducted in English, with some accommodations in the curriculum to take into account the limited English language skills of the students.
- Appropriate \$50 million per year over 10 years to fund adult education programs designed to teach English to LEP adults who in turn pledge to provide English language tutoring to LEP students.
- Make teachers, administrators and school board members subject to suits and personally liable for failure to implement the provisions of the initiative.

Unz and other backers of this initiative regard the existing system of bilingual education in the state as a complete failure. They argue that because bilingual education relies so heavily on use of the students' native language and only slowly introduces English, the approach delays or prevents, rather than promotes, the acquisition of English. Further, they point out that although California's bilingual education law expired a decade ago, the legislature has been unable to enact legislation to reform a broken program. This initiative, they argue, will break the legislative impasse and dramatically change bilingual education policy for the better.

Opponents criticize the Unz Initiative on a number of counts. Critics argue that the initiative is harmful to children, because it relies on a single, unproven approach that provides an unrealistic time period in which to learn English. They argue that this one-size-fits-all approach eliminates parents' right to choose the best approach for their child (given that the waiver provisions are very complicated and burdensome). They point out that the Unz initiative provides no accountability, because it lacks any requirements for assessing students' academic progress. They also charge that the Unz Initiative undermines local control and the ability of local school boards to determine important education policies, and wrongly subjects educators to lawsuits.

B. Bilingual Education in California

Demographics. There are approximately 1.3 million Limited English Proficient (LEP) students in California, approximately one quarter of California's K-12 students. This number has nearly doubled in less than a decade, and represents some 43% of the national total. Seventy nine percent of California's LEP students are native Spanish speakers. Hispanics have a 50% dropout rate, and by most indicators their academic performance lags behind most other population groups in the state.

Educational Services. LEP students receive a wide variety of services intended to help them learn English and academic subjects. In 1997, only about 30% received what is conventionally considered bilingual education -- programs which make significant use of the

student's primary language to teach academics while phasing in ever greater amounts of English language instruction. More than half participate in specially designed instructional programs that help students learn English through a combination of approaches such as direct instruction in grammar, vocabulary and communications, while teaching other subjects in a way designed to be accessible to LEP students. (The Unz Initiative would eliminate these programs as well as conventional bilingual programs.) Approximately 16% of all LEP students are not receiving any language instruction services at all.

Almost no one believes that the services now provided to LEP students are effective on a large scale basis. While program evaluations have identified some promising efforts, shortages of qualified teachers and poor implementation has limited the effectiveness of existing programs. Of course, the poor academic performance and high dropout rate of Hispanic students reflects a wide range of school deficiencies, but poor language services for LEP students contribute to this problem.

The research on instruction for LEP students does not identify any approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as particularly effective. Rather, it suggests that effective programs are those that fit the needs and resources of the local community; have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. Consequently, while much of the debate about educating LEP students centers on the relative merits of one program over another, research and experience suggest that attention to program quality regardless of program type is more important.

California Legal Framework. The legal framework for providing services to LEP students in California is murky. California's Bilingual Education Act sunsetted in 1987, but the State Board of Education regulations implementing the act have remained in effect. Under this framework, school districts are required to help students become fluent in English and competent in other academic subjects, and are given a significant amount of flexibility in determining how to achieve these goals. Neither bilingual education nor any other specific approach to teaching LEP students is required.

There have been a number of unsuccessful attempts in the past decade to enact new legislation, but bilingual education reformers and advocates have been unable to agree on an approach. There has been a fresh attempt over the past month to craft compromise legislation, partly to take the steam out of Unz and to give Unz opponents something to support. This effort, however, is likely to end in failure.

In early March
~~Last week~~ the State Board of Education took the first step toward eliminating the state bilingual education regulations. This process should be completed shortly before the vote on Unz. The effect of this action will be to eliminate any state requirement for the provision of

specific services to LEP students, and to give local school districts even greater flexibility in this area.

Federal Legal Framework. Federal requirements originate in the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and provisions of the Equal Educational Opportunities Act which require educational agencies to take appropriate action to overcome language barriers that impede equal participation by students in instructional programs.

As interpreted by the courts, these provisions do not require any specific form of services, such as Bilingual Education or English as a Second Language. ^{The Law and subsequent decisions} They Instead require the provision of supplemental language instruction that is based on sound educational theory, is adequately resourced and implemented, and is evaluated and modified as necessary.

If Unz is enacted, many expect that it will be challenged as a violation of federal law. Department of Education lawyers believe that the success of such suits will depend on whether the services mandated by Unz are implemented effectively. Absent implementation problems, federal law appears to provide sufficient flexibility to allow California to approve this approach. However, there will be a strong basis for a legal challenge in districts that do not provide help to students whose limited English proficiency interferes with their ability to master the school curriculum.

The federal Bilingual Education program (Title VII of the Elementary and Secondary Education Act) similarly does not preclude the adoption of the Unz approach. This competitive grant program provides local school districts with considerable discretion in the kind of services provided to students.

II. Political Context

The Unz initiative is currently the most serious threat to bilingual education, but it is not likely to be the last. Earlier this year Speaker Gingrich proposed eliminating bilingual education, and some conservative education experts (e.g., Diane Ravitch) have also called for its elimination. Especially if Unz passes, we are likely to see energized opposition to the federal program, and increased opposition in other states and localities.

The Unz initiative presents a political dilemma in California. If we oppose it, we risk alienating a majority of California Anglo voters. If we fail to oppose it, we risk alienating a vocal and increasingly influential group of Latino leaders, and possibly Latino voters.

Current polls show that a large majority of California Anglo voters support Unz. For Anglos, bilingual education may become a hot button issue similar to immigrant services and affirmative action. In contrast, Latino voters are split on the issue. While many continue to support Unz largely out of frustration at the public schools' failure to help their children, polls show that Latino support is eroding as they become more aware of the particulars of the

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initiative. And the polls tended to underestimate Latino opposition to Prop. 187 and Prop. 209.

Latino activists and electeds oppose Unz. To some of the Latino leaders, Unz is a litmus issue, like Propositions 187 and 209. Latino leaders are looking to the White House to become actively involved in the opposition to Unz, and are fearful that we will choose to sit on the sidelines.

More organizations and elected officials are taking positions on Unz. The California education community -- including the California Teachers Association and the California School Boards Association -- is strongly opposed to Unz. Key Democratic officeholders (including Sen. Boxer, Rep. Becerra and most Democrats in the California delegation, State Superintendent Delaine Eastin, and Speaker Villaraigosa) have also announced their opposition to the Unz initiative. All three Democratic gubernatorial candidates have come out against Unz. Sen. Feinstein has not taken a public stance yet, though she appears likely to support Unz. A list of organizations, elected officials, and other leaders that have taken positions on Unz is attached.

The Republican state party has supported Unz, though many Republican officials, including Gov. Wilson, have not yet taken a position. Dan Lungren has not taken a position yet, but has recently said that the recent action by the State Board of Education has eliminated the need for Unz. There is always a chance that White House opposition to Unz could polarize the situation and push Gov. Wilson and other Republicans to support Unz, but at least some Republican leaders are afraid to support another initiative viewed as anti-Hispanic.

The political dilemma can be resolved with a "Mend it / Don't End it" response. We believe the best approach to this issue is to strike a middle ground by admitting that bilingual education needs mending, but asserting that Unz is not the way to do it. More specifically, we can:

- Start by reiterating the overriding importance of helping every child become proficient in English;
- Oppose Unz on the merits because it is too extreme;
- Remind voters what we are for, including both our overall approach to public education and our Hispanic initiative;
- Propose to "mend" the federal bilingual education program through steps that will create expectations for learning English within a fixed period of time; strengthen accountability for students and programs alike by testing for English proficiency; strengthen local control and flexibility; and promote our efforts to strengthen program quality by increased investments in teacher training.

III. Specific Recommendations

1. **Announce opposition to Unz within next 4 weeks**

We recommend that you or another senior Administration official (the Vice President or

Secretary Riley) announce the Administration's opposition to the Unz initiative within the next 4 weeks. Taking a position in the next month will allow us to frame the debate and set a constructive tone, rather than get sucked into an already inflammatory debate. We could turn this initiative into an opportunity to fit bilingual education into our overall framework for ensuring effective education in the 21st century.

_____ Agree _____ Disagree _____ Discuss Further

2. Specific recommendations for changing federal bilingual education program

In accord with our recommendation for a "mend, don't end" approach to bilingual education, we believe that opposition to Unz should be coupled with specific proposals to change the federal bilingual education program. This approach will lend credibility to our position, and give us a basis for framing the debate over bilingual education. Specifically, we recommend the following changes:

Strengthen local control by lifting the existing cap on English programs. The current federal bilingual program contains a ceiling that permits only 25% of all funds to be used to support English-only programs. In fact, the cap has not prevented local districts from using the approaches they want, but conservative critics perceive it as having that effect. Lifting the cap would add credibility to our call for local control (rather than the Unz one-size-fits-all approach), and would help address the concerns of these critics. This action, however, would be unpopular with the bilingual advocacy community.

Create expectations for students to learn English within 3 years. One of the most powerful criticisms of bilingual education programs is that they in fact prolong the time it takes for students to learn English. This criticism resonates with many opponents as well as supporters of Unz. We should propose amending the federal bilingual education program to require that students learn English within 3 years, with additional time and services provided to students facing unusual circumstances. (Practically, this would mean that individual students could only participate in the federally funded program for 3 years unless there were unusual circumstances.) Setting clear expectations for how quickly students will master English (i.e., well enough to learn other subjects in English) will appropriately focus the efforts of schools and students and help more students become proficient in English. This action, however, would be criticized by Hispanic elected leaders nationally and in Congress, as well as bilingual advocates. Advocates and researchers will argue that there is no clear research base to establish a 3-year time frame--and, indeed that more time is necessary for students to master English and other subjects.

Because of these concerns Maria Echaveste feels that learning English within 3 years should be a goal, rather than a requirement, of federal programs.

Strengthen testing and accountability for students and programs. Programs should be required to test students periodically for English proficiency (as well as achievement in other

subjects) to determine if they are making adequate progress toward the 3-year deadline, and to provide additional services or take other corrective actions as appropriate when students are not making adequate progress. There should also be additional accountability for school districts participating in the bilingual education program. Programs are already required to undergo evaluations; this requirement can be strengthened by establishing consequences, such as possible withholding of funds, from programs that fail to make adequate progress as measured by student achievement.

Underscore efforts to strengthen the quality of programs that provide services to LEP students. We should highlight your budget request to increase funding for teacher training within the bilingual education program. The Education Department should also undertake a vigorous effort, through technical assistance and effective dissemination approaches, to emphasize that any program for LEP students must be based on fundamental principles of quality: ensuring well-trained teachers, high standards and a quality curriculum, testing and accountability measures. The Education Department should also help the programs it funds work more effectively to engage parents in their children's learning.

_____ Agree _____ Disagree _____ Discuss Further

Elected Officials, Associations, Activists are Taking positions on Unz:

Oppose Unz:

Senator Barbara Boxer
Lt. Gov. Grey Davis
Congressman Xavier Becerra
Congressman Cal Dooley
Congressman Bob Filner
Congressman Lucile Roybal-Allard
Congresswoman Zoe Lofgren
Congresswoman Ellen Tauscher
Congressman Vic Fazio
Congressman Marty Martinez
Delaine Eastin, Superintendent of Public Instruction
Assemblyman Cruz Bustamante (former Speaker)
Speaker Antonio Villaraigosa
Senator President John Burton
Supervisor Gloria Molina
CTA
MALDEF
Republican Assemblyman Bill Leonard
Republican Assemblyman Rod Pacheco (only R Latino Assemblyman)
CABE

Support Unz:

Ron Unz
Gloria Matta Tuchman
Jaime Escalante
Fernando Vega
Mayor Richard Riordan
Darrell Issa, Republican Senate Candidate opposing Barbara Boxer

March 18, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SECRETARY RILEY
BRUCE REED

SUBJECT: California Proposition 227 (Unz Initiative) to End Bilingual Education

On June 2, California voters will consider Proposition 227, otherwise known as the Unz Initiative, which proposes to eliminate all bilingual education. This is California's third potentially divisive race-related initiative in four years, following on the heels of Proposition 187, which barred public benefits for illegal immigrants, and Proposition 209, which ended affirmative action.

Polls consistently show that the initiative is popular and is likely to pass. Even Latino voters currently favor the initiative, although many expect Latino support to decline considerably as voters become more familiar with the details of the proposal. Latino activists are strongly opposed to Unz, and are looking to the White House to support their efforts to defeat Unz.

Despite legitimate concerns over the effectiveness of some bilingual education programs, your advisors strongly believe that the Unz initiative is bad education policy and will harm students who need help the most. We also believe that you may be able to turn this issue to your political advantage if you combine opposition to Unz with proposals to reform bilingual education programs. Despite some tricky politics, we believe that it is both good policy and good politics to oppose Unz, coupled with proposals to "mend, not end" bilingual education. This memo lays out such a "mend, not end" approach.

I. The Unz Initiative and Bilingual Education in California

A. Overview of the Unz Initiative

This initiative, authored and backed by Silicon Valley millionaire Ron Unz, is designed to end all bilingual education programs in California. More specifically, it would:

- Require that all public school instruction be conducted in English.
- Permit this requirement to be waived only if parents or guardians can show that the child already knows English, has special needs, or would learn English faster through an alternative instructional technique.
- Provide initial placement for Limited English Proficient (LEP) students in "sheltered English immersion" programs for one year. Instruction in these programs would be

- conducted in English, with some accommodations in the curriculum to take into account the limited English language skills of the students.
- Appropriate \$50 million per year over 10 years to fund adult education programs designed to teach English to LEP adults who in turn pledge to provide English language tutoring to LEP students.
- Makes teachers, administrators and school board members subject to suit and personally liable for failure to implement the provisions of the initiative.

Unz and other backers of this initiative regard the existing system of bilingual education in the state as a complete failure. They argue that because bilingual education relies so heavily on use of the students' native language and only slowly introduces English, the approach delays or prevents, rather than promotes, the acquisition of English. Further, they point out that though California's bilingual education law expired a decade ago, the legislature has been unable to enact legislation to reform a broken program. This initiative, they argue, will break the legislative impasse and dramatically change bilingual education policy for the better.

Opponents criticize the Unz Initiative on a number of counts. Critics argue that the initiative is harmful to children, because it relies on a single, unproven approach that provides an unrealistic time period in which to learn English. They argue that this one-size-fits-all approach eliminates parents' right to choose the best approach for their child (given that the waiver provisions are very complicated and burdensome). They point out that the Unz initiative provides no accountability, because it lacks any requirements for assessing students' academic progress. They also charge that the Unz Initiative undermines local control and the ability of local school boards to determine important education policies, and wrongly subjects educators to lawsuits.

B. Bilingual Education in California

Demographics. There are approximately 1.3 million Limited English Proficient (LEP) students in California, approximately one quarter of California's K-12 students. This number has nearly doubled in less than a decade, and represents some 43% of the national total. Seventy nine percent of California's LEP students are native Spanish speakers. Hispanics have a 50% dropout rate, and by most indicators their academic performance lags behind most other population groups in the state.

Educational Services. LEP students receive a wide variety of services intended to help them learn English and academic subjects. In 1997, only about 30% received what is conventionally considered bilingual education--programs which make significant use of the student's primary language to teach academics while phasing in greater amounts of English language instruction. More than half participate in specially designed instructional programs that help students learn English through a combination of approaches such as direct instruction in grammar, vocabulary and communications, while teaching other subjects in a way designed to be accessible to LEP students. The Unz Initiative would eliminate these programs as well as conventional bilingual programs. Approximately 16% are not receiving any language instruction

services at all.

Almost no one believes that the services now provided to LEP students are effective on a large scale basis. While program evaluations have identified some promising efforts, shortages of qualified teachers and poor implementation has limited the effectiveness of existing programs. In addition, most observers agree that the overall poor academic performance and high dropout rate of Hispanic students reflects serious weaknesses in schools that extend well beyond language services for LEP students.

The research on instruction for LEP students does not identify any approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as particularly effective. Rather, it suggests that effective programs are those that fit the needs and resources of the local community; have well-prepared teachers who know how to teach reading and who are knowledgeable about second language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. Consequently, while much of the debate about educating LEP students centers on the relative merits of one program over another, research and experience suggest that attention to program quality regardless of program type is more important.

California Legal Framework. The legal framework for providing services to LEP students in California is particularly murky. California's Bilingual Education Act sunsetted in 1987, but the State Board of Education regulations implementing the act have remained in effect. Under this framework, school districts are required to help students become fluent in English and competent in other academic subjects, and are given a significant amount of flexibility in determining how to achieve these goals. Neither bilingual education nor any other specific approach to teaching LEP students is required.

There have been a number of unsuccessful attempts in the past decade to enact new legislation, but bilingual education reformers and advocates have been unable to agree on an approach. There has been a fresh attempt over the past month to craft compromise legislation, partly to take the steam out of Unz and to give Unz opponents something to support. This effort, however, is likely to end in failure.

Last week the State Board of Education took the first step toward eliminating the state bilingual education regulations. This process should be completed shortly before the vote on Unz. The effect of this action will be to eliminate any state requirement for the provision of specific services to LEP students, and to give local school districts even greater flexibility in this area.

Federal Legal Framework. Federal requirements originate in the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and provisions of the Equal Educational Opportunities Act which require educational agencies to take appropriate action to overcome

language barriers that impede equal participation by students in instructional programs.

As interpreted by the courts, these provisions do not require any specific form of services, such as Bilingual Education or English as a Second Language. They instead require the provision of supplemental language instruction that is based on sound educational theory, is adequately resourced and implemented, and is evaluated and modified as necessary.

If Unz is enacted, many expect that it will be challenged as a violation of federal law. Department of Education lawyers believe that the success of such suits will depend on whether the services mandated by Unz are implemented effectively. Absent implementation problems, federal law appears to provide sufficient flexibility to allow California to approve this approach. However, if services mandated by Unz are not implemented effectively, there is likely to be a strong basis for a legal challenge.

The federal Bilingual Education program (Title VII of the Elementary and Secondary Education Act) similarly does not preclude the Unz approach. This competitive grant program also provides local school districts with considerable discretion in the kind of services provided to students.

II. Political Context

The Unz initiative is currently the clearly the most serious threat to bilingual education, but it is not likely to be the last. Earlier this year Speaker Gingrich proposed eliminating bilingual education, and some conservative education experts (e.g., Diane Ravitch) have also called its elimination. Especially if Unz passes, we are likely to see energized opposition to the federal program, and increased opposition in other states and localities.

The Unz initiative presents a political dilemma in California. If we oppose it, we risk alienating a majority of California Anglo voters. If we fail to oppose it, we risk alienating a vocal and increasingly influential group of Latino leaders, and possibly Latino voters.

Current polls show that a large majority of California Anglo voters support Unz. For Anglos, bilingual may become a hot button issue similar to immigrant services and affirmative action. In contrast, Latino voters are split on the issue of bilingual education. While many continue to support Unz largely out of frustration at the public schools' failure to help their children, that support is eroding as they become more aware of the particulars of the initiative.

Latino activists and electeds oppose Unz. To some of the Latino leaders, Unz is a litmus issue, like Propositions 187 and 209. Latino leaders are looking to the White House to become actively involved in the opposition to Unz, and are fearful that we will choose to sit on the sidelines.

More organizations and elected officials are taking positions on Unz. The California

education community -- including the California Teachers Association and the California School Boards Association -- is strongly opposed to Unz. Key Democratic officeholders (including Sen. Boxer, Rep. Becerra and most Democrats in the California delegation, State Superintendent Delaine Eastin, and Speaker Villagraigosa) have also announced their opposition to the Unz initiative. Sen. Feinstein has not taken a public stance yet, though she appears likely to support Unz. A list of organizations, elected officials and other leaders that have taken positions on Unz is attached.

The Republican state party has supported Unz, though many Republican officials, including Gov. Wilson, have not yet taken a position. There is a chance that White House opposition to Unz could polarize the situation, and push Gov. Wilson and other Republicans to support Unz.

[Note: We need to determine the positions of the Dem. Gubernatorial candidates, and Feinstein]

The political dilemma can be resolved with a "Mend it / Don't End it" response. We believe the best approach to this issue is to strike a middle ground by admitting that bilingual education needs mending, but asserting that Unz is not the way to do it. More specifically, we can:

- Start by reiterating the overriding importance of helping every child become proficient in English;
- Oppose Unz on the merits because it is too extreme;
- Remind voters what we are for, including both our overall approach to public education and our Hispanic initiative;
- Propose to "mend" the federal bilingual education program through steps that will create expectations for learning English within a fixed period of time; strengthen accountability for students and programs alike by testing for English proficiency; strengthen local control and flexibility; and promote our efforts to strengthen program quality by increased investments in teacher training.

III. Specific Recommendations

1. Announce opposition to Unz within next 4 weeks

We recommend that you or another senior Administration official (the Vice President or Secretary Riley) announce the Administration's opposition to the Unz initiative within the next 4 weeks. Taking a position in the next month will allow us to frame the debate and set a constructive tone, rather than get sucked into an already inflammatory debate. We could turn this initiative into an opportunity to fit bilingual education into our overall framework for ensuring effective education in the 21st century.

2. Specific recommendations for changing federal bilingual education program

In accord with our recommendation for a “mend, don’t end” approach to bilingual education, we believe that opposition to Unz should be coupled with specific proposals to change the federal bilingual education program. This approach will lend credibility to our position, and give us a basis for framing the debate over bilingual education. Specifically, we recommend the following changes:

Strengthen local control by lifting the existing cap on English programs. The current federal bilingual program contains a ceiling that permits only 25% of all funds to be used to support English-only programs. Since most participating school districts use a variety of approaches, the cap has not limited local approaches--though it is perceived as having that effect. Lifting the cap would add credibility to our call for local control (rather than the Unz one-size-fits-all approach) in California, and would help address the concerns of conservative critics. This action, however, would be unpopular with the bilingual advocacy community.

Create expectations for students to learn English within 3 years. One of the most powerful criticisms of bilingual education programs is that they in fact prolong the time it takes for students to learn English. This criticism resonates with many opponents as well as supporters of Unz. We should propose amending the federal bilingual education program to require that students learn English within 3 years, with additional time and services provided to students facing unusual circumstances. Setting clear expectations for how quickly students will master English will appropriately focus the efforts of schools and students and help more students become proficient in English. This action would be unpopular with the bilingual advocacy community. Advocates and researchers will argue that there is no clear research base to establish a 3-year time frame--and, indeed that more time is necessary for students to master English and other subjects.

Strengthen testing and accountability for students and programs. Programs should be required to test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress toward the 3-year deadline, and to provide additional services or take other corrective actions as appropriate when students not making adequate progress. There should also be additional accountability for school districts participating in the bilingual education program. Programs are already required to undergo evaluations; this requirement can be strengthened by establishing consequences, such as possible withholding of funds, from programs that fail to make adequate progress as measured by student achievement.

Underscore efforts to strengthen the quality of programs that provide services to LEP students. We should highlight your budget request to increase funding for teacher training within the bilingual education program. The Education Department should also undertake a vigorous effort, through technical assistance and effective dissemination approaches, to emphasize that any program for LEP students must be based on fundamental principles of quality: ensuring well-trained teachers, high standards and a quality curriculum, testing and accountability measures.

Elected Officials, Associations, Activists are Taking positions on Unz:

Oppose Unz:

Senator Barbara Boxer
Congressman Xavier Becerra
Congressman Cal Dooley
Congressman Bob Filner
Congressman Lucile Roybal-Allard
Congresswoman Zoe Lofgren
Congresswoman Ellen Tauscher
Congressman Vic Fazio
Congressman Marty Martinez
Delaine Eastin, Superintendent of Public Instruction
Former Speaker Cruz Bustamante
Speaker Antonio Villaraigosa
Senator President John Burton
Supervisor Gloria Molina
CTA
MALDEF
Republican Assemblyman Bill Leonard
Republican Assemblyman Rod Pacheco (only R Latino Assemblyman)
CABE

Support Unz:

Ron Unz
Gloria Matta Tuchman
Jaime Escalante
Fernando Vega
Mayor Richard Riordan
Darrell Issa, Republican Senate Candidate opposing Barbara Boxer

Draft

Principles for Bilingual Education

There are 3.2 million limited English proficient students in our schools. Immigrant children are the fastest growing group in our schools. The language problems they face are compounded by the fact that about three-fourths of these students are in high poverty schools. The vast majority of limited English proficient children are Hispanic. Over the last 20 years, there has been little progress in closing the achievement gap between Hispanic and non-Hispanic white students in reading, math, and science. These problems are at the core of the 20% drop-out rate for Hispanic students enrolled in the Nation's elementary and secondary schools. Accordingly, many young Hispanic adults do not have the basic level of education necessary to participate in today's or our future economy, which demands high level skills. To ensure that our nation's workforce is competitive, limited English proficient students must succeed. As a Nation, our efforts to accomplish this must be based on a clear understanding of what works best, not on politics or ideology.

1. Our goal must be to help all students become proficient in English as quickly as possible, and meet academic standards in all subjects.

- This is a universal goal--shared especially by parents and students who have come to this country for greater opportunity and who are eager to fully participate in the life of their community and country
- Every school district should establish and make public clear timelines for LEP students to become proficient in English and to participate in regular classrooms where English is the language of instruction.
- *Federal law now requires that federally funded bilingual education programs ensure that students master English within 3-5 years. No district should set a longer timeline, and I believe we can do better in many cases.* Issue directive to Riley to issue guidelines to local school districts reflecting the best knowledge of how quickly it is reasonable and appropriate for LEP students to become proficient in English, and identifying approaches, strategies and programs that can help speed things up.

2. Schools/Districts must be accountable for performance and results

- School districts must be held accountable for performance, and must help students become proficient in English as rapidly as possible.
- School districts must assess students periodically (annually) to measure progress. If a student is not making adequate progress, the school/district must provide additional help. If programs are not helping students progress rapidly enough, they should be strengthened or another approach tried.

3. There must be local flexibility in how to reach the goal

- No one-size-fits-all prescription for how to educate limited English proficient children will work.
- Experience and research, including a 1997 report of the National Academy of Sciences, indicate that no one approach is the answer for all limited English proficient children.
- Rather -- whether the approach is bilingual education, English as a second language, structured immersion, or some variation or hybrid of them -- the success of programs turns

on the needs of the students, the resources available to the community, and the quality and commitment of the school and teacher.

- A National Academy of Sciences study released March 18 shows that LEP children with no English proficiency are best taught to read English by first being taught reading in their native language, if teachers and instructional materials in their native language are available. Thus, while a structured English immersion approach may be effective for some limited English proficient children, it is likely to be ineffective for many others.

4. Regardless of approach, our focus must be on quality

- Students must be taught by well-prepared teachers; no approach will work well if its implemented by teachers who lack the knowledge and skills to get the job done effectively. That is why the Administration has proposed \$xx million to invest in teacher training in its bilingual education program
- All students must be expected to meet challenging academic standards. Academic instruction in bilingual education programs must be aimed at preparing LEP students to meet the same academic standards all other students are expected to meet--and they must be exposed to the same challenging curriculum. We must not accept watered down expectations for LEP students
- To improve the academic performance of LEP students, and to help them master English as quickly as possible, we must strengthen the public schools they attend, as well as strengthening the language acquisition programs that serve them. That is why the President's agenda of higher standards, smaller classes, greater choice and accountability, etc....is so important.

CONFIDENTIAL

TO: Mike Cohen

NUMBER OF PAGES (INCLUDING COVER): 10

MESSAGE: WE ARE IN CALIFORNIA

(AMANDA - 205-5463) PAGE HER.

Thus! J.V.

CONFIDENTIAL

FAX COVER

TO: MIKE COHEN

OF: WHITE HOUSE

DATE: 04/03/99

TIME: 9:45 a.m.

FAX: (202) 456 - 5581

PHONE: () _____

RE: _____

NUMBER OF PAGES (INCLUDING COVER): 10

FROM: DELIA POMPA

OF: _____

FAX: _____

PHONE: () _____

MESSAGE: WE ARE IN CALIFORNIA

TODAY. IF YOU NEED TO REACH

DELIA, PLEASE HAVE HER SECRETARY

(AMANDA - 205-5463) PAGE HER.

Thw! JV.

*to state that
input for school*

March 31, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SECRETARY RILEY
BRUCE REED

SUBJECT: California Proposition 227 (Unz Initiative) to End Bilingual Education

On June 2, California voters will consider Proposition 227, otherwise known as the Unz Initiative, which proposes to eliminate all bilingual education. This is California's third potentially divisive race-related initiative in four years, following on the heels of Proposition 187, which barred public benefits for illegal immigrants, and Proposition 209, which ended affirmative action.

Polls show that the initiative is popular and is likely to pass, although a strong opposition campaign could make this election close. Many Latino voters currently favor the initiative, although the polls show that Latino support has declined considerably as voters become more familiar with the details of the proposal. Latino activists are strongly opposed to Unz, and are looking to the White House to support their efforts to defeat it.

Over the past several months DPC and Education Department staff worked with Maria Echaveste, Mickey Ibarra, Karen Skelton, and Janet Murguia to study the Unz Initiative, including extensive outreach to both opponents and supporters in California, in the Congress and among the advocacy community. Despite legitimate concerns over the effectiveness of some bilingual education programs, your advisors strongly believe that the Unz initiative is bad education policy and will harm students who need help the most.

We recommend that you publicly oppose the Unz Initiative because it deprives local educators of the ability to make educationally sound choices about how to meet the needs of limited English proficient children they serve and almost certainly will result in widespread violations of federal civil rights law. Your opposition to Unz should be coupled with a statement of the principles you support for strengthening programs to help Limited English Proficient students become proficient in English.

I. The Unz Initiative and Bilingual Education in California

A. Overview of the Unz Initiative

This initiative, authored and backed by Silicon Valley millionaire Ron Unz, is designed to end all bilingual education programs in California. More specifically, it would:

- Require that all public school instruction be conducted in English.
- Permit this requirement to be waived only if parents or guardians can show that the child already knows English, has special needs, or would learn English faster through an alternative instructional technique.
- Provide initial placement for Limited English Proficient (LEP) students in "sheltered English immersion" programs for one year. Instruction in these programs would be conducted in English, with some accommodations in the curriculum to take into account the limited English language skills of the students.
- Appropriate \$50 million per year over 10 years to fund adult education programs designed to teach English to LEP adults who in turn pledge to provide English language tutoring to LEP students.
- Make teachers, administrators and school board members subject to suits and personally liable for failure to implement the provisions of the initiative.

Unz and other backers of this initiative regard the existing system of bilingual education in the state as a complete failure. They argue that because bilingual education relies so heavily on use of the students' native language and only slowly introduces English, the approach delays or prevents, rather than promotes, the acquisition of English. Further, they point out that although California's bilingual education law expired a decade ago, the legislature has been unable to enact legislation to reform a broken program. This initiative, they argue, will break the legislative impasse and dramatically change bilingual education policy for the better.

B. Bilingual Education in California

Demographics. There are approximately 1.3 million Limited English Proficient (LEP) students in California, approximately one quarter of California's K-12 students. This number has nearly doubled in less than a decade, and represents some 43% of the national total. Seventy nine percent of California's LEP students are native Spanish speakers. Hispanics have a 50% dropout rate, and by most indicators their academic performance lags behind most other population groups in the state.

Educational Services. LEP students receive a wide variety of services intended to help them learn English and academic subjects. In 1997, only about 30% received what is conventionally considered bilingual education -- programs which make significant use of the student's primary language to teach academics while phasing in ever greater amounts of English language instruction. More than half participate in specially designed instructional programs that

help students learn English through a combination of approaches such as direct instruction in grammar, vocabulary and communications, while teaching other subjects in a way designed to be accessible to LEP students. (The Unz Initiative would eliminate these programs as well as conventional bilingual programs.) Approximately 16% of all LEP students are not receiving any language instruction services at all.

California Legal Framework. The legal framework for providing services to LEP students in California is murky. California's Bilingual Education Act sunsetted in 1987, but the State Board of Education regulations implementing the act have remained in effect. Under this framework, school districts are required to help students become fluent in English and competent in other academic subjects, and are given a significant amount of flexibility in determining how to achieve these goals. Neither bilingual education nor any other specific approach to teaching LEP students is required.

There have been a number of unsuccessful attempts in the past decade to enact new legislation, but bilingual education reformers and advocates have been unable to agree on an approach. There has been a fresh attempt over the past month to craft compromise legislation, partly to take the steam out of Unz and to give Unz opponents something to support. This effort, however, is likely to end in failure.

Early in March the State Board of Education took the first step toward eliminating the state bilingual education regulations. This process should be completed shortly before the vote on Unz. The effect of this action will be to eliminate any state requirement for the provision of specific services to LEP students, and to give local school districts even greater flexibility in this area. *The latest ruling takes us back to "bilingual education when necessary"*

II. Political Context

The Unz initiative is currently the most serious threat to bilingual education, but it is not likely to be the last. Earlier this year Speaker Gingrich proposed eliminating bilingual education, and some conservative education experts (e.g., Diane Ravitch) have also called for its elimination. Last week, Rep. DeLay introduced a bill that would eliminate the federal bilingual education program, and House Republicans have included a \$75 million rescission of FY98 funding for bilingual education in the emergency supplemental bill. Especially if Unz passes, we are likely to see energized opposition to the federal program, and increased opposition in other states and localities.

The Unz Initiative presents a political dilemma in California. If we oppose it, we risk alienating a majority of California Anglo voters. If we fail to oppose it, we risk alienating a vocal and increasingly influential group of Latino leaders, and possibly Latino voters.

Current polls show that a large majority of California Anglo voters support Unz. For Anglos, bilingual education may become a hot button issue similar to immigrant services and

affirmative action. In contrast, Latino voters are split on the issue. While many continue to support Unz largely out of frustration at the public schools' failure to help their children, polls show that Latino support is eroding as they become more aware of the particulars of the initiative. And the polls tended to underestimate Latino opposition to Prop. 187 and Prop. 209.

Latino activists and elected officials oppose Unz. To some of the Latino leaders, Unz is a litmus issue, like Propositions 187 and 209. Latino leaders are looking to the White House to become actively involved in the opposition to Unz, and are fearful that we will choose to sit on the sidelines.

More organizations and elected officials are taking positions on Unz. The California education community -- including the California Teachers Association and the California School Boards Association -- is strongly opposed to Unz. Key Democratic officeholders (including Sen. Boxer, Rep. Becerra and most Democrats in the California delegation, State Superintendent Delaine Eastin, and Speaker Villaraigosa) have also announced their opposition to the Unz initiative. All three Democratic gubernatorial candidates have come out against Unz. Sen. Feinstein has not taken a public stance yet, though she appears likely to support Unz. A list of organizations, elected officials, and other leaders that have taken positions on Unz is attached.

The Republican state party has supported Unz, though many Republican officials, including Gov. Wilson, have not yet taken a position. Dan Lungren has not taken a position yet, but has recently said that the recent action by the State Board of Education has eliminated the need for Unz. There is always a chance that White House opposition to Unz could polarize the situation and push Gov. Wilson and other Republicans to support Unz, but at least some Republican leaders are afraid to support another initiative viewed as anti-Hispanic.

The political dilemma can be resolved with a "Mend it / Don't End it" response. We believe the best approach to this issue is to strike a middle ground by admitting that bilingual education needs mending, but asserting that Unz is not the way to do it. More specifically, we can:

- Start by reiterating the overriding importance of helping every child become proficient in English; and achieving academic excellence or achieving high standards
- Oppose Unz on the merits because it is too extreme;
- Remind voters what we are for, including both our overall approach to strengthening public education and our Hispanic initiative;
- Articulate the fundamental principles that you believe should be used by local communities to strengthen their efforts to educate LEP students. These principles include helping children become proficient in English as quickly as possible, holding schools accountable for results, providing local flexibility, and emphasizing quality in any approach used.

The "mend it / don't end it" language is too negative.
Why not talk about strengthening bilingual education?

III. Specific Recommendations

I. Oppose Unz Initiative on educational and legal grounds.

reach high standards

Educational. While evaluations of bilingual education in California and elsewhere have identified some promising efforts, few believe that the services now provided to LEP students are effective ~~on a large-scale basis~~. In many cases, shortages of qualified teachers and poor implementation of limited the effectiveness of existing programs. However, these bilingual education programs should be "mended, not ended." A one-size-fits-all State prescription for how to educate limited English proficient children and demanding that it be done within one year will, in our view, be counter-productive to achieving the goal of helping LEP students learn English and participate effectively in classrooms where English is the language of instruction. Experience and research, including a 1997 report of the National Academy of Sciences, indicate that no one approach is the answer for all limited English proficient children.

Rather -- whether the approach is bilingual education, English as a second language, structured immersion, or some variation or hybrid of them -- the success of programs turns on the quality and commitment of the school and teacher. The Unz Initiative is likely to impair chances for success by limiting the discretion of schools and teachers to determine what works best for their LEP students. In fact, the Unz Initiative is an extreme form of overregulation that prevents teachers and parents from exercising common sense and professional judgment of how to serve individual children. Exceptions can be made only by bureaucrats far removed from the classroom, and personal liability of teachers increases the prospect of court intrusions in educational matters to new and alarming levels.

A National Academy of Sciences study released March 18 shows that LEP children with no English proficiency are best taught to read English by first being taught reading in their native language, if teachers and instructional materials in their native language are available. Thus, while a structured English immersion approach may be effective for some limited English proficient children, it is likely to be ineffective for many others. In addition, our experience in administering the Bilingual Education Act and in reviewing programs for possible violations of Title VI of the Civil Rights Act indicates that one year of special instruction -- whether in Bilingual Education or an English immersion approach -- rarely is sufficient to enable a child who starts the program with almost no proficiency in English to become proficient enough to participate in regular classes.

Legal. Based on the educational problems described above, the Unz Initiative implicates federal civil rights laws. In the seminal 1974 case of Lau v. Nichols, the Supreme Court interpreted Title VI of the Civil Rights Act to require school districts to take steps to ensure that national origin minority students with limited English proficiency can effectively participate in the regular educational program. Similarly, the Equal Educational Opportunity Act, enacted in 1974, requires public educational agencies to take appropriate action to

overcome language barriers that impede student participation in the instructional programs. Neither Lau nor the subsequent cases addressing Title VI or the Equal Educational Opportunity Act mandate a particular approach to meeting these needs, but they require that sound educational approaches be implemented and evaluated.

Assuming that some educational experts will vouch for the soundness of the sheltered English immersion approach mandated by the Unz Initiative, we do not believe that a legal challenge asserting that the Unz Initiative on its face violates Title VI or the Equal Educational Opportunity Act would succeed. However, the Unz Initiative is certain to cause widespread violations of Title VI and the Equal Educational Opportunity Act if it is interpreted and applied in accordance with its intent to eliminate the choices of local educators when providing the appropriate instruction for limited English proficient students. Realistically, the only way that widespread violations will be avoided is if the State or local educational agencies broadly use loopholes in the Proposition to extend services well beyond a year and to provide bilingual education for students who need it.

It is evident that the Unz Initiative inevitably will create legal confrontations between California agencies and this Department, as well as the Department of Justice, over violations of civil rights laws and will divert resources and attention that should be focused on educating children to investigations and litigation.

Recommendation: For these reasons we recommend that you or another senior Administration official (the Vice President or Secretary Riley) announce the Administration's opposition to the Unz initiative within the next 2 weeks. Taking a position soon will allow us to frame the debate and set a constructive tone, rather than get sucked into an already inflammatory debate. We could turn this initiative into an opportunity to fit bilingual education into our overall framework for ensuring effective education in the 21st century.

_____ Agree _____ Disagree _____ Discuss Further

2. Couple opposition to Unz with a clear statement of how local school districts can strengthen education for LEP students.

In accord with our recommendation for a "mend, don't end" approach to bilingual education, we believe that opposition to Unz should be coupled with a ~~strong statement~~ recognizing the importance of helping LEP students learn English and succeed, and a set of principles that should guide local efforts to strengthen rather than end these programs. The intent here is to underscore that while there is a place for bilingual education (and other ways to help LEP students become proficient in English), bilingual education programs in particular and the schools that serve LEP students must do a better job.

Specifically, we recommend the following principles:

and master academic content

of what?

Research already indicates they are learning English. We could say "do a better job of helping students reach high academic standards and learn English."

LEP students must become proficient in English as quickly as possible. They must also master challenging academic standards in other subjects, just as other students are expected to. This is a universal goal--shared especially by parents and students who have come to this country for greater opportunity and who are eager to fully participate in the life of their community and country. Yet one of the most frequent criticisms of bilingual education programs is that they are open-ended--that they prolong the time it takes for students to learn English. School districts should establish clear goals that will tell parents how quickly they can expect their children to master English and to participate in regular classrooms where English is the language of instruction. Participation in bilingual education should not be open-ended or never-ending. We have no evidence that it is never ending. Also in '12 way bilingual programs popular with Anglo middle class parents, it needs to be never ending

Federally funded bilingual education programs are required to ensure that students master English within 3-5 years. You could challenge every district to meet that standard, and urge them to do better. You could also direct Secretary Riley to develop guidelines for local school districts reflecting the best knowledge of how quickly LEP students can be expected to become proficient in English, and identifying approaches, strategies and programs that can help shorten the time it takes.

Local school districts must be accountable for performance and results. School districts must be held accountable for helping students become proficient in English as rapidly as possible. They should report publicly how well they are meeting the timelines they have established. They should test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress, and to provide additional services or take other corrective actions as appropriate when students are not making adequate progress. School districts should evaluate their bilingual education programs regularly as well. If a program is not helping its students progress rapidly enough, the school district should strengthen it, or use another approach research shows will work.

There must be local flexibility. As discussed above, no one-size-fits-all prescription for how to educate limited English proficient children will work. Rather than state mandates that either prescribe or proscribe particular approaches, local schools must have the flexibility to design programs that meet its particular needs, mix of students and resources. So long as the goal is clear--that students learn English as rapidly as possible--and there is accountability for results, parents and educators should be free to work together to fashion programs that work for them.

The focus must be on strengthening quality, regardless of approach. The research on instruction for LEP students does not identify any approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as particularly effective. Rather, it suggests that effective programs have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. In short, if LEP students are to learn

there are states that mandate or proscribe particular approaches, e.g. NY, Texas, Florida, Illinois etc. They just offer more than one approach for one year. We need to be careful when talking about state mandates. more effective than others

Research
refutes
this

English and succeed in school, they must be in schools that work for all students--schools with high standards, good teachers, smaller classes, challenging curriculum and accountability for results. Because of this, any discussion of the steps required to strengthen local quality provides an opportunity to discuss your overall agenda for strengthening public schools

_____ Agree _____ Disagree _____ Discuss Further

Elected Officials, Associations, Activists are Taking positions on Unz:**Oppose Unz:**

Senator Barbara Boxer
Lt. Gov. Grey Davis
Congressman Xavier Becerra
Congressman Cal Dooley
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Congressman Lucile Roybal-Allard
Congresswoman Zoe Lofgren
Congresswoman Ellen Tauscher
Congressman Vic Fazio
Congressman Marty Martinez
Delaine Eastin, Superintendent of Public Instruction
Assemblyman Cruz Bustamante (former Speaker)
Speaker Antonio Villaraigosa
Senator President John Burton
Supervisor Gloria Molina
CTA
MALDEF
Republican Assemblyman Bill Leonard
Republican Assemblyman Rod Pacheco (only R Latino Assemblyman)
CABE

Support Unz:

Ron Unz
Gloria Matta Tuchman
Jaime Escalante
Fernando Vega
Mayor Richard Riordan
Darrell Issa, Republican Senate Candidate opposing Barbara Boxer

April 8, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SECRETARY RILEY
BRUCE REED

SUBJECT: California Proposition 227 (Unz Initiative) to End Bilingual Education

On June 2, California voters will consider Proposition 227, otherwise known as the Unz Initiative, which proposes to eliminate virtually all bilingual education. This is California's third potentially divisive race-related initiative in four years, following on the heels of Proposition 187, which barred public benefits for illegal immigrants, and Proposition 209, which ended affirmative action.

Polls show that the initiative is popular and is likely to pass, although a strong opposition campaign could make the election close. Many Latino voters currently favor the initiative, but the polls show that Latino support has declined considerably as voters become more familiar with the details of the proposal. Latino activists are strongly opposed to Unz, and are looking to the White House to support their efforts to defeat it.

Over the past several months DPC and Education Department staff worked with Maria Echaveste, Mickey Ibarra, Karen Skelton, and Janet Murguia to study the Unz Initiative, consulting widely with both opponents and supporters in California, in Congress, and in the advocacy community. Although concerned about the effectiveness of some bilingual education programs, your advisors strongly believe that the Unz initiative is bad education policy and will harm students who need help the most.

We therefore recommend a strategy that Rahm has termed "reform, not revoke." Under this strategy, you would oppose the Unz Initiative because it deprives local educators of the ability to make educationally sound choices about how to meet the needs of Limited English Proficient (LEP) children. At the same time, you would articulate the principles you support for reforming and strengthening programs to help LEP students become proficient in English.

I. The Unz Initiative and Bilingual Education in California

A. Overview of the Unz Initiative

This initiative, authored and backed by Silicon Valley millionaire Ron Unz, is designed to end all bilingual education programs in California. More specifically, it would:

- Require that all public school instruction be conducted in English.
- Permit this requirement to be waived only if parents or guardians can show that the child already knows English, has special needs, or would learn English faster through an alternative instructional technique.
- Provide initial placement for LEP students in "sheltered English immersion" programs for a period normally not to exceed one year. Instruction in these programs would be conducted in English, with some accommodations in the curriculum to take into account the limited English language skills of the students.
- Appropriate \$50 million per year over 10 years to fund adult education programs designed to teach English to LEP adults who in turn pledge to provide English language tutoring to LEP students.
- Make teachers, administrators, and school board members subject to suits and personally liable for failure to implement the provisions of the initiative.

Unz and other backers of this initiative regard the existing system of bilingual education as a complete failure. They argue that because bilingual education relies so heavily on use of the students' native language and only slowly introduces English, the approach delays or prevents, rather than promotes, the acquisition of English. Further, they point out that although California's bilingual education law expired a decade ago, the legislature has been unable to enact legislation to reform a broken program. This initiative, they argue, will break the legislative impasse and dramatically improve educational opportunities for LEP students..

B. Bilingual Education in California

Demographics. There are approximately 1.3 million LEP students in California, approximately one quarter of California's K-12 students. This number has nearly doubled in less than a decade, and represents some 43% of the national total. Seventy nine percent of California's LEP students are native Spanish speakers. As you know, Hispanics have a 50% dropout rate, and by most indicators their academic performance lags behind most other population groups in the state.

Educational Services. LEP students receive a wide variety of services intended to help them learn English and academic subjects. In 1997, only about 30% received what is conventionally considered bilingual education -- programs that make significant use of the student's primary language to teach academics while phasing in ever greater amounts of English language instruction. More than half participate in specially designed instructional programs that help students learn English, while teaching other subjects in a way designed to be accessible to LEP students. (The Unz Initiative would eliminate these programs as well as conventional

bilingual programs.) Approximately 16% of all LEP students are not receiving any language instruction services at all.

California Legal Framework. The legal framework for providing services to LEP students in California is murky. California's Bilingual Education Act expired in 1987, but the State Board of Education regulations implementing the act have remained in effect. Under this framework, school districts are required to help students become fluent in English and competent in other academic subjects, and are given a significant amount of flexibility in determining how to achieve these goals. Neither bilingual education nor any other specific approach to teaching LEP students is required.

There have been a number of unsuccessful attempts in the past decade to enact new legislation, but bilingual education reformers and advocates have been unable to agree on an approach. A fresh attempt to craft legislation has arisen in the past month, partly to take the steam out of Unz and to give Unz opponents something to support. This effort, however, is likely to end in failure.

Early in March the State Board of Education decided to eliminate the state bilingual education regulations. This process should be completed shortly before the vote on Unz. The effect of this action will be to eliminate any state requirement for the provision of specific services to LEP students, and to give local school districts even greater flexibility.

II. Political Context

The Unz initiative is currently the most serious threat to bilingual education, but it is not likely to be the last. Earlier this year Speaker Gingrich proposed eliminating bilingual education, and some conservative education experts (e.g., Diane Ravitch) have also called for its end. Last week, Rep. DeLay introduced a bill that would eliminate the federal bilingual education program, and House Republicans have included a \$75 million rescission of FY98 funding for bilingual education in the emergency supplemental bill. Especially if Unz passes, we are likely to see energized opposition to the federal program, and increased opposition to bilingual education in other states and localities.

The Unz initiative presents a political dilemma in California. If we oppose it, we risk alienating a majority of California Anglo voters. If we fail to oppose it, we risk alienating a vocal and increasingly influential group of Latino leaders, and possibly Latino voters.

Current polls show that a large majority of California Anglo voters support Unz. For Anglos, bilingual education may become a hot button issue similar to immigrant services and affirmative action. In contrast, Latino voters are split on the issue. While many continue to support Unz largely out of frustration at the public schools' failure to help their children, polls show that Latino support is eroding as voters become more aware of the particulars of the initiative. It is likely that current polls overestimate Latino support for Unz, just as polls overestimated Latino support for Propositions 187 and 209.

Latino activists and elected officials oppose Unz. To some of the Latino leaders, Unz is a litmus issue, like Propositions 187 and 209. Latino leaders are looking to the White House to become actively involved in the opposition to Unz, and are fearful that we will choose to sit on the sidelines.

More organizations and elected officials are taking positions on Unz. The California education community -- including the California Teachers Association and the California School Boards Association -- is strongly opposed to Unz. Key Democratic officeholders (including Sen. Boxer, Rep. Becerra and most Democrats in the California delegation, State Superintendent Delaine Eastin, and Speaker Villaraigosa) have also announced their opposition to the Unz initiative. All three Democratic gubernatorial candidates have come out against Unz. Sen. Feinstein has not taken a public stance yet, though she appears likely to support Unz. A list of organizations, elected officials, and other leaders that have taken positions on Unz is attached.

The Republican state party has supported Unz, though many Republican officials, including Gov. Wilson, have not yet taken a position. Dan Lungren has not taken a position yet, but has recently said that the recent action by the State Board of Education has eliminated the need for Unz. There is always a chance that White House opposition to Unz could polarize the situation and push Gov. Wilson and other Republicans to support Unz, but at least some Republican leaders are afraid to support another initiative viewed as anti-Hispanic.

The political dilemma can be resolved with a "Reform, not Revoke" response. We believe the best approach to this issue is to strike a middle ground by admitting that bilingual education needs reforming, but asserting that Unz is not the way to do it. More specifically, we can:

- Start by reiterating the overriding importance of helping every child become proficient in English;
- Oppose Unz on the merits because it is too extreme;
- Remind voters what we are for, including both our overall approach to strengthening public education and our Hispanic initiative;
- Articulate the fundamental principles that you believe should be used by local communities to reform and strengthen their efforts to educate LEP students. These principles include setting a goal for school districts to help LEP students learn English within three years, holding schools accountable for results, providing local flexibility, and emphasizing quality in any approach used.

III. Specific Recommendations

I. Oppose Unz Initiative on educational and legal grounds.

Educational. There is little doubt that current programs for LEP students leave much room for improvement. While some promising efforts have emerged, the services now provided are not effective on a large-scale basis. Even when programs themselves are good, shortages of qualified teachers and poor implementation often limit the ineffectiveness

We believe, however, that the Unz Initiative would only make matters worse. A one-size-fits-all State prescription for how to educate LEP children -- and a demand that all special services cease in one year will retard progress toward the goal of helping LEP students learn English, reach high standards, and participate effectively in classrooms. Experience and research indicate that no one approach is the answer for all limited English proficient children. By limiting the discretion of schools and teachers to determine what works best for their LEP students, the Unz Initiative prevents teachers and parents from exercising common sense and professional judgment regarding how to serve individual children.

And even assuming we should pick a single method of educating LEP students, there is little to recommend the Unz "sink or swim" model. While a structured English immersion approach may be effective for some limited English proficient children, it is likely to be ineffective for many others. One year of special instruction -- whether in Bilingual Education or an English immersion approach -- rarely is sufficient to enable a child who starts the program with almost no proficiency in English to become proficient enough to participate in regular English-language classes.

Legal. Based on the educational problems described above, the Unz Initiative will raise serious issues under federal civil rights laws. In the seminal 1974 case of Lau v. Nichols, the Supreme Court interpreted Title VI of the Civil Rights Act to require school districts to take steps to ensure that national origin minority students with limited English proficiency can effectively participate in the regular educational program. Similarly, the Equal Educational Opportunity Act, enacted in 1974, requires public educational agencies to take appropriate action to overcome language barriers that impede student participation in instructional programs. Neither Lau nor subsequent cases addressing Title VI or the Equal Educational Opportunity Act mandate a particular approach to meeting these needs, but they require that sound educational approaches be implemented and evaluated.

Assuming (as we probably should) that some educational experts will vouch for the soundness of the sheltered English immersion approach mandated by the Unz Initiative, Department of Education lawyers believe that a legal challenge asserting that the Unz Initiative on its face violates Title VI or the Equal Educational Opportunity Act probably would not succeed. But they believe that the Unz Initiative will cause widespread violations of Title VI and the Equal Educational Opportunity Act once it is applied to cut off services to students who need them. The only way that such violations will be avoided is if the State or local educational agencies use loopholes in the Proposition to extend services to LEP students

beyond the year specified in the initiative. The Unz Initiative thus will create legal confrontations between California agencies and the Departments of Education and Justice over violations of civil rights laws, and will divert resources and attention that should be focused on educating children to conducting investigations and litigation.

Recommendation: For these reasons, we recommend that the Administration publicly oppose the Unz Initiative. Taking a position soon will allow us to help frame the debate and set a constructive tone, rather than get drawn into an already inflammatory debate. A prompt announcement will also allay concerns in the advocacy community that we may sit this battle out until it is too late to have an impact on the outcome. We think that Secretary Riley should make the initial announcement of the Administration's position within the next week to ten days.

We also believe that you should express opposition to the Unz Initiative during your visit to California in early May. We will also work with the Vice President's office to create an appropriate opportunity for him to state his opposition to Unz.

_____ Agree _____ Disagree _____ Discuss Further

2. Couple opposition to Unz with a clear statement of how local school districts can strengthen education for LEP students.

We believe that you should couple your opposition to Unz with a strong statement about the importance of helping LEP students learn English and the need for reforming and strengthening bilingual education. This statement would articulate principles to guide local educators in providing services to LEP students.

We seriously considered but rejected the idea of underscoring your commitment to improve bilingual education by also proposing statutory changes to the federal Bilingual Education Program. After consultation with members of the California Congressional delegation, the Hispanic Caucus and others, we concluded that this step would be premature since Congress is unlikely to pass or even consider your proposals until next year, when the bilingual education is scheduled for reauthorization. An Administration proposal now also would fuel other, potentially dangerous Congressional proposals to alter or eliminate bilingual education. Further, proposing changes to the federal program now would place members of the California Congressional delegation in a difficult position, because they would be forced to take a position on both the Unz Initiative and your legislative proposal.

We recommend a statement articulating the following principles:

Set a goal for school districts to help LEP students learn English within 3 years. All participants in this debate -- and especially parents of Hispanic and other LEP students -- want children to learn English as rapidly as possible. Bilingual education programs that prolong rather than speed the process of learning English, and are open-ended rather than transitional, do harm to students. But currently, few school districts establish clear time lines or goals for LEP students to learn English.

Challenging school districts to set and meet a clear goal of helping LEP students become proficient in English within 3 years will ensure that your opposition to Unz is not -- and is not taken as -- as an endorsement of the status quo. Setting a clear goal is the first step toward reducing the length of time it takes for students to master English. It will send a clear message to teachers and administrators to adopt educational strategies that will help students acquire English proficiency as rapidly as possible. In this context, you should also urge school districts to set the same academic standards and expectations for LEP students as for all others; notify parents of every LEP student of these goals when the student is first enrolled; assess student progress in English and other academic subjects annually and; identify early, and provide extra help, to students who are not making progress.

This proposal will be very unpopular with the Hispanic Caucus and the bilingual advocacy community. They will argue that there is no clear research base to establish a 3-year time frame, that individuals vary in how long they need to master English, and that pushing students to learn English early will slow down their ability to master other academic subjects. They will also argue that advocating a 3-year time frame -- or any other time limit -- plays into the hands of Unz and his supporters by weakening the ability of Unz opponents to make the case against the 1-year cut-off of services in his proposal. Further, they and many educators will argue that if it is necessary to set time lines for learning English, local educators and communities ought to take responsibility for determining the appropriate length of time.

We believe that you can mitigate these concerns by making clear that you are calling for a goal rather than a strict time limit, by emphasizing that accountability for meeting the goal rests primarily on local schools, and by not proposing to end language services to students who have not yet mastered English within 3 years. These responses may not fully satisfy the bilingual community, but the three-year goal is important enough, from both an educational and a political perspective, to take this risk of disagreement.

Local school districts must be accountable for performance and results. School districts must be held accountable for helping students become proficient in English as rapidly as possible. They should report publicly how well they are doing to meet the timelines they have established. They should test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress, and they should provide additional services or take other corrective actions as appropriate when students are not making adequate progress. School districts should evaluate their bilingual education

programs regularly as well. If a program is not helping its students progress rapidly enough, the school district should strengthen it, or use another approach that research shows will work.

There must be local flexibility. As discussed above, no one-size-fits-all prescription for how to educate limited English proficient children will work. Local schools must have the flexibility to design programs that meet their particular needs, mix of students, and resources. So long as the goal is clear -- that students learn English as rapidly as possible -- and there is accountability for results, parents and educators should be free to work together to fashion programs that work for them.

The focus must be on strengthening quality, regardless of approach. The research on instruction for LEP students does not identify any particular approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as more effective than others. Rather, it suggests that effective programs have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. In short, if LEP students are to learn English and succeed in school, they must be in schools that work for all students--schools with high standards, good teachers, smaller classes, challenging curriculum and accountability for results. Because of this, any discussion of the steps required to strengthen local quality provides an opportunity to discuss your overall agenda for strengthening public schools

_____ Agree _____ Disagree _____ Discuss Further

Elected Officials, Associations, Activists are Taking positions on Unz:**Oppose Unz:**

Senator Barbara Boxer
Lt. Gov. Grey Davis
Congressman Xavier Becerra
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Support Unz:

Ron Unz
Gloria Matta Tuchman
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Darrell Issa, Republican Senate Candidate opposing Barbara Boxer

THE WHITE HOUSE
WASHINGTON

From the Office of:

The Domestic Policy Council

**Elena Kagan
Deputy Assistant to the President
for Domestic Policy**

TO: Mike Cohen

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April 8, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SECRETARY RILEY
BRUCE REED

SUBJECT: California Proposition 227 (Unz Initiative) to End Bilingual Education

On June 2, California voters will consider Proposition 227, otherwise known as the Unz Initiative, which proposes to eliminate virtually all bilingual education. This is California's third potentially divisive race-related initiative in four years, following on the heels of Proposition 187, which barred public benefits for illegal immigrants, and Proposition 209, which ended affirmative action.

Polls show that the initiative is popular and is likely to pass, although a strong opposition campaign could make this election close. Many Latino voters currently favor the initiative, but although the polls show that Latino support has declined considerably as voters become more familiar with the details of the proposal. Latino activists are strongly opposed to Unz, and are looking to the White House to support their efforts to defeat it.

Over the past several months DPC and Education Department staff worked with Maria Echaveste, Mickey Ibarra, Karen Skelton, and Janet Murguia to study the Unz Initiative, consulting widely with including extensive outreach to both opponents and supporters in California, in the Congress, and among the advocacy community. Despite legitimate concerns over the effectiveness of some bilingual education programs, your advisors strongly believe that the Unz initiative is bad education policy and will harm students who need help the most.

We recommend that you publicly oppose the Unz Initiative because it deprives local educators of the ability to make educationally sound choices about how to meet the needs of Limited English proficient children, they serve and almost certainly will result in widespread violations of federal civil rights law. Your opposition to Unz should be coupled with a statement of the principles you support for strengthening programs to help Limited English Proficient students become proficient in English.

I. The Unz Initiative and Bilingual Education in California

A. Overview of the Unz Initiative

This initiative, authored and backed by Silicon Valley millionaire Ron Unz, is designed to end all bilingual education programs in California. More specifically, it would:

We therefore recommend a strategy that Rahm has termed "reform, not revoke." Under this strategy,

At the same time, you would articulate ~~We also want that you couple~~

- Require that all public school instruction be conducted in English.
- Permit this requirement to be waived only if parents or guardians can show that the child already knows English, has special needs, or would learn English faster through an alternative instructional technique.
- Provide initial placement for ~~Limited English Proficient~~ (LEP) students in "sheltered English immersion" programs for a period normally not to exceed one year. Instruction in these programs would be conducted in English, with some accommodations in the curriculum to take into account the limited English language skills of the students.
- Appropriate \$50 million per year over 10 years to fund adult education programs designed to teach English to LEP adults who in turn pledge to provide English language tutoring to LEP students.
- Make teachers, administrators, and school board members subject to suits and personally liable for failure to implement the provisions of the initiative.

Unz and other backers of this initiative regard the existing system of bilingual education in the state as a complete failure. They argue that because bilingual education relies so heavily on use of the students' native language and only slowly introduces English, the approach delays or prevents, rather than promotes, the acquisition of English. Further, they point out that although California's bilingual education law expired a decade ago, the legislature has been unable to enact legislation to reform a broken program. This initiative, they argue, will break the legislative impasse and dramatically change bilingual education policy for the better.

B. Bilingual Education in California

Demographics. There are approximately 1.3 million ~~Limited English Proficient~~ (LEP) students in California, approximately one quarter of California's K-12 students. This number has nearly doubled in less than a decade, and represents some 43% of the national total. Seventy nine percent of California's LEP students are native Spanish speakers. Hispanics have a 50% dropout rate, and by most indicators their academic performance lags behind most other population groups in the state.

Educational Services. LEP students receive a wide variety of services intended to help them learn English and academic subjects. In 1997, only about 30% received what is conventionally considered bilingual education -- programs which make significant use of the student's primary language to teach academics while phasing in ever greater amounts of English-language instruction. More than half participate in specially designed instructional programs that help students learn English through a combination of approaches such as ~~direct instruction in grammar, vocabulary and communications~~, while teaching other subjects in a way designed to be accessible to LEP students. (The Unz Initiative would eliminate these programs as well as conventional bilingual programs.) Approximately 16% of all LEP students are not receiving any language instruction services at all.

California Legal Framework. The legal framework for providing services to LEP

students in California is murky. California's Bilingual Education Act ~~sunsetted~~^{expired} in 1987, but the State Board of Education regulations implementing the act have remained in effect. Under this framework, school districts are required to help students become fluent in English and competent in other academic subjects, and are given a significant amount of flexibility in determining how to achieve these goals. Neither bilingual education nor any other specific approach to teaching LEP students is required.

There have been a number of unsuccessful attempts in the past decade to enact new legislation, but bilingual education reformers and advocates have been unable to agree on an approach. ~~There has been a fresh attempt over the past month~~^{has arisen in the past month} to craft compromise legislation, partly to take the steam out of Unz and to give Unz opponents something to support. This effort, however, is likely to end in failure.

Early in March the State Board of Education took the ~~first step toward~~^{decided} eliminating the state bilingual education regulations. This process should be completed shortly before the vote on Unz. The effect of this action will be to eliminate any state requirement for the provision of specific services to LEP students, and to give local school districts even greater flexibility ~~in this area~~^{in this area}.

II. Political Context

The Unz initiative is currently the most serious threat to bilingual education, but it is not likely to be the last. Earlier this year Speaker Gingrich proposed eliminating bilingual education, and some conservative education experts (e.g., Diane Ravitch) have also called for its ~~end~~^{elimination}. Last week, Rep. DeLay introduced a bill that would eliminate the federal bilingual education program, and House Republicans have included a \$75 million rescission of FY98 funding for bilingual education in the emergency supplemental bill. Especially if Unz passes, we are likely to see energized opposition to the federal program, and increased opposition in other states and localities.

The Unz initiative presents a political dilemma in California. If we oppose it, we risk alienating a majority of California Anglo voters. If we fail to oppose it, we risk alienating a vocal and increasingly influential group of Latino leaders, and possibly Latino voters.

Current polls show that a large majority of California Anglo voters support Unz. For Anglos, bilingual education may become a hot button issue similar to immigrant services and affirmative action. In contrast, Latino voters are split on the issue. While many continue to support Unz largely out of frustration at the public schools' failure to help their children, polls show that Latino support is eroding as they become more aware of the particulars of the initiative. ~~And the polls tended to underestimate Latino opposition to Prop. 187 and Prop. 209.~~^{voters}

Latino activists and elected officials oppose Unz. To some of the Latino leaders, Unz is a litmus issue, like Propositions 187 and 209. Latino leaders are looking to the White House to

It is also likely that current polls overestimate Latino support for Unz, just as polls overestimated Latino support for Propositions

become actively involved in the opposition to Unz, and are fearful that we will choose to sit on the sidelines.

More organizations and elected officials are taking positions on Unz. The California education community -- including the California Teachers Association and the California School Boards Association -- is strongly opposed to Unz. Key Democratic officeholders (including Sen. Boxer, Rep. Becerra and most Democrats in the California delegation, State Superintendent Delaine Eastin, and Speaker Villaraigosa) have also announced their opposition to the Unz initiative. All three Democratic gubernatorial candidates have come out against Unz. Sen. Feinstein has not taken a public stance yet, though she appears likely to support Unz. A list of organizations, elected officials, and other leaders that have taken positions on Unz is attached.

The Republican state party has supported Unz, though many Republican officials, including Gov. Wilson, have not yet taken a position. Dan Lungren has not taken a position yet, but has recently said that the recent action by the State Board of Education has eliminated the need for Unz. There is always a chance that White House opposition to Unz could polarize the situation and push Gov. Wilson and other Republicans to support Unz, but at least some Republican leaders are afraid to support another initiative viewed as anti-Hispanic.

The political dilemma can be resolved with a "~~Mend it / Don't End it~~" response. We believe the best approach to this issue is to strike a middle ground by admitting that bilingual education needs ~~mending~~, but asserting that Unz is not the way to do it. More specifically, we can:

- Start by reiterating the overriding importance of helping every child become proficient in English;
- Oppose Unz on the merits because it is too extreme;
- Remind voters what we are for, including both our overall approach to strengthening public education and our Hispanic initiative;
- Articulate the fundamental principles that you believe should be used by local communities to strengthen their efforts to educate LEP students. These principles include ~~helping children become proficient in English as quickly as possible~~, holding schools accountable for results, providing local flexibility, and emphasizing quality in any approach used.

III. Specific Recommendations

I. Oppose Unz Initiative on educational and legal grounds.

Educational. ~~While evaluations of bilingual education in California and elsewhere have identified some promising efforts, few believe that the services now provided to LEP students are effective on a large-scale basis. In many cases, shortages of qualified teachers and poor implementation have limited the effectiveness of existing programs. However, these~~

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Even when programs themselves are good,

There is little doubt that current programs for LEP students leave much room for improvement. While some promising efforts have emerged,

Refuse, not Revoke

Mend it / Don't End it

returning

return and

a goal for school districts to help LEP students learn English within three years,

New 9/

We believe, however, that the Unz Initiative would only make matters worse. bilingual education programs should be "mended, not ended." A one-size-fits-all State prescription for how to educate limited English proficient children and demanding that it be done within one year will, in our view, be counter-productive to achieving the goal of helping LEP students learn English, reach high standards, and participate effectively in classrooms where English is the language of instruction. Experience and research, including a 1997 report of the National Academy of Sciences, indicate that no one approach is the answer for all limited English proficient children. By ^{LEP} ~~retard progress toward~~ English-language

all special services cease in

www

Rather -- whether the approach is bilingual education, English as a second language, structured immersion, or some variation or hybrid of them -- the success of programs turns on the quality and commitment of the school and teacher. The Unz Initiative is likely to impair chances for success by limiting the discretion of schools and teachers to determine what works best for their LEP students. In fact, the Unz Initiative is an extreme form of overregulation that prevents teachers and parents from exercising common sense and professional judgment of regarding how to serve individual children. Exceptions can be made only by bureaucrats far removed from the classroom, and personal liability of teachers increases the prospect of court intrusions in educational matters to new and alarming levels.

And even assuming we should pick a single method of educating LEP students, there is little to recommend the Unz "style or swim" model. A National Academy of Sciences study released March 18 shows that LEP children with no English proficiency are best taught to read English by first being taught reading in their native language, if teachers and instructional materials in their native language are available. Thus, while a structured English immersion approach may be effective for some limited English proficient children, it is likely to be ineffective for many others. In addition, our experience in administering the Bilingual Education Act and in reviewing programs for possible violations of Title VI of the Civil Rights Act indicates that one year of special instruction -- whether in Bilingual Education or an English immersion approach -- rarely is sufficient to enable a child who starts the program with almost no proficiency in English to become proficient enough to participate in regular classes. English-language

Way too
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Legal. Based on the educational problems described above, the Unz Initiative will ~~raise serious issues~~ implicates federal civil rights laws. In the seminal 1974 case of Lau v. Nichols, the Supreme Court interpreted Title VI of the Civil Rights Act to require school districts to take steps to ensure that national origin minority students with limited English proficiency can effectively participate in the regular educational program. Similarly, the Equal Educational Opportunity Act, enacted in 1974, requires public educational agencies to take appropriate action to overcome language barriers that impede student participation in the instructional programs. Neither Lau nor the subsequent cases addressing Title VI or the Equal Educational Opportunity Act mandate a particular approach to meeting these needs, but they require that sound educational approaches be implemented and evaluated.

(as we probably should)
Assuming that some educational experts will vouch for the soundness of the sheltered English immersion approach mandated by the Unz Initiative, we do not believe that a legal challenge asserting that the Unz Initiative on its face violates Title VI or the Equal Educational

probably not But they believe that ~~once~~ ^{to cut off services to students who need them.} ~~will~~ Opportunity Act ~~would~~ succeed. However, the Unz Initiative is certain to cause widespread violations of Title VI and the Equal Educational Opportunity Act if it is interpreted and applied in accordance with its intent to eliminate the choices of local educators when providing the appropriate instruction for limited English proficient students. Realistically, the only way that such ~~that widespread~~ violations will be avoided is if the State or local educational agencies broadly use loopholes in the Proposition to extend services well beyond a year and to provide bilingual education for students who need it. ^{to LEP students} ^{the year specified in the Initiative.}

It is evident that the Unz Initiative ^{thus} inevitably will create legal confrontations between California agencies and this Department, as well as the Department of Justice, over violations of civil rights laws and will divert resources and attention that should be focused on educating children to investigations and litigation. ^{conducting the} ^{s of Education and}

Recommendation: For these reasons, we recommend that the Administration publicly oppose the Unz Initiative. Taking a position soon will allow us to help frame the debate and set a constructive tone, rather than get drawn into an already inflammatory debate. An immediate prompt announcement will also allay concerns in the advocacy community that we may sit this battle out until it is too late to have an impact on the outcome. Neither you nor the Vice President are ^{We think} scheduled to be in California in the immediate future. Therefore, we believe that Secretary Riley should make the initial announcement of the Administration's position in California within the next week to ten days.

express opposition to the Unz Initiative during

We also believe that you should use your visit to California in early May to personally make the case against the Unz Initiative. We will also work with the Vice President's office to create an appropriate opportunity for him to ^{state} express his opposition to Unz.

_____ Agree _____ Disagree _____ Discuss Further

2. Couple opposition to Unz with a clear statement of how local school districts can strengthen education for LEP students.

^{We} ^{you should couple your} In accord with our recommendation for a "mend, don't end" approach to bilingual education, we believe that opposition to Unz should be coupled with a strong statement about recognizing the importance of helping LEP students learn English and succeed, and a set of principles that should guide local efforts to strengthen rather than end these programs. The intent here is to underscore that while there is a place for bilingual education (and other ways to help LEP students become proficient in English), bilingual education programs in particular and the schools that serve LEP students must do a better job. ^(negotiation)

^{space} We seriously considered but rejected the idea of underscoring your commitment to improve bilingual education by also proposing statutory changes to the federal Bilingual Education Program. After consultation with members of the California Congressional

the importance of helping LEP students learn English and the need for retaining and strengthening bilingual education. This statement would ^{articulate} ~~like the~~ former principles to guide local educators in providing services to LEP students.

delegation, the Hispanic Caucus and others, we concluded that this step would be premature since Congress is unlikely to pass or even consider your proposals until next year, when the bilingual education is scheduled for reauthorization. An Administration proposal now would fuel other Congressional proposals to ~~dramatically~~ alter or eliminate bilingual education. Further, proposing changes to the federal program now would also place members of the California Congressional delegation in a difficult position, because they would be forced to take a position on both the Unz Initiative and your legislative proposal.

~~We recommend a statement articulating the approach to improving bilingual education proposed below will be further developed into specific legislative proposals in the coming months, as the Education Department prepares for the reauthorization of the Elementary and Secondary Education Act. Specifically, we recommend the following principles:~~

Participants in

Set a goal for school districts to help LEP students learn English within 3 years. All sides of this debate, ~~including particularly parents of Hispanic and other LEP students, want children to learn English as rapidly as possible. However, Bilingual education programs are often portrayed as prolonging rather than speeding the process of learning English, and are often perceived to be open-ended rather than transitional programs. The best available evidence suggests that it currently takes LEP students 4-5 years to become proficient in English.~~ But ~~Currently, few school districts establish clear time lines or goals for LEP students to learn English.~~

Challenging school districts to set and meet a clear goal of helping LEP students become proficient in English within 3 years will clearly ensure that your opposition to Unz is not seen as an endorsement of the status quo. Setting a clear goal is the first step in reducing the length of time it takes for students to master English. It will send a clear message to teachers and administrators to adopt curriculum and instructional strategies that are designed to help students acquire English proficiency as rapidly as possible. In this context, you should also urge school districts to set the same academic standards and expectations for LEP students as all other students; ~~students are expected to meet~~ notify parents of every LEP student of these goals when the student is first enrolled; assess student progress in English and ~~toward meeting standards in other academic subjects annually; identify early and provide extra help to students who are not making progress.~~

This proposal will be very unpopular with the Hispanic Caucus and the bilingual advocacy community. They will argue that there is no clear research base to establish a 3-year time frame, that individuals vary in how long they need to master English, and that pushing students to learn English early will slow down their ability to master other academic subjects. They will also argue that advocating a 3-year time frame for any other arbitrary time limit plays into the hands of Unz and his supporters and weakens the ability of Unz opponents to make the case against the 1-year arbitrary time limit in his proposal. Further, they and many educators will argue that if it is necessary to set time lines for learning English, local educators and communities ought to take responsibility for determining the appropriate length of time.

cut-off of services

you can mitigate
We believe that these concerns can be reduced somewhat by making clear that you are calling for a goal rather than a strict time limit, by emphasizing accountability for meeting the goal rests primarily on local schools, and by not proposing to end language services to students who have not yet mastered English within 3 years.

have not
Local school districts must be accountable for performance and results. School districts must be held accountable for helping students become proficient in English as rapidly as possible. They should report publicly how well they are meeting the timelines they have established. They should test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress, and to provide additional services or take other corrective actions as appropriate when students are not making adequate progress. School districts should evaluate their bilingual education programs regularly as well. If a program is not helping its students progress rapidly enough, the school district should strengthen it, or use another approach research shows will work.

that
There must be local flexibility. As discussed above, no one-size-fits-all prescription for how to educate limited English proficient children will work. Local schools must have the flexibility to design programs that meet *their* particular needs, mix of students, and resources. So long as the goal is clear that students learn English as rapidly as possible and there is accountability for results, parents and educators should be free to work together to fashion programs that work for them.

particular
The focus must be on strengthening quality, regardless of approach. The research on instruction for LEP students does not identify any approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as more effective than others. Rather, it suggests that effective programs have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. In short, if LEP students are to learn English and succeed in school, they must be in schools that work for all students—schools with high standards, good teachers, smaller classes, challenging curriculum and accountability for results. Because of this, any discussion of the steps required to strengthen local quality provides an opportunity to discuss your overall agenda for strengthening public schools.

_____ Agree _____ Disagree _____ Discuss Further

These responses may not fully satisfy the bilingual community, but the three-year goal is important enough, from both an educational and a political perspective, to take this risk of disagreement.

Elected Officials, Associations, Activists are Taking positions on Unz:**Oppose Unz:**

Senator Barbara Boxer
Lt. Gov. Grey Davis
Congressman Xavier Becerra
Congressman Cal Dooley
Congressman Bob Filner
Congressman Lucile Roybal-Allard
Congresswoman Zoe Lofgren
Congresswoman Ellen Tauscher
Congressman Vic Fazio
Congressman Marty Martinez
Delaine Eastin, Superintendent of Public Instruction
Assemblyman Cruz Bustamante (former Speaker)
Speaker Antonio Villaraigosa
Senator President John Burton
Supervisor Gloria Molina
CTA
MALDEF
Republican Assemblyman Bill Leonard
Republican Assemblyman Rod Pacheco (only R Latino Assemblyman)
CABE

Support Unz:

Ron Unz
Gloria Matta Tuchman
Jaime Escalante
Fernando Vega
Mayor Richard Riordan
Darrell Issa, Republican Senate Candidate opposing Barbara Boxer

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BRUCE REED

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Over the past several months DPC and Education Department staff worked with Maria Echaveste, Mickey Ibarra, Karen Skelton, and Janet Murguia to study the Unz Initiative, consulting widely with both opponents and supporters in California, in Congress, and in the advocacy community. Although concerned about the effectiveness of some bilingual education programs, your advisors strongly believe that the Unz initiative is bad education policy and will harm students who need help the most.

We therefore recommend a strategy that Rahm has termed "reform, not revoke." Under this strategy, you would oppose the Unz Initiative because it deprives local educators of the ability to make educationally sound choices about how to meet the needs of Limited English Proficient (LEP) children. At the same time, you would articulate the principles you support for reforming and strengthening programs to help LEP students become proficient in English.

I. The Unz Initiative and Bilingual Education in California

A. Overview of the Unz Initiative

This initiative, authored and backed by Silicon Valley millionaire Ron Unz, is designed to end all bilingual education programs in California. More specifically, it would:

- Require that all public school instruction be conducted in English.
- Permit this requirement to be waived only if parents or guardians can show that the child already knows English, has special needs, or would learn English faster through an alternative instructional technique.
- Provide initial placement for LEP students in "sheltered English immersion" programs for a period normally not to exceed one year. Instruction in these programs would be conducted in English, with some accommodations in the curriculum to take into account the limited English language skills of the students.
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II. Political Context

The Unz initiative is currently the most serious threat to bilingual education, but it is not likely to be the last. Earlier this year Speaker Gingrich proposed eliminating bilingual education, and some conservative education experts (e.g., Diane Ravitch) have also called for its end. Last week, Rep. DeLay introduced a bill that would eliminate the federal bilingual education program, and House Republicans have included a \$75 million rescission of FY98 funding for bilingual education in the emergency supplemental bill. Especially if Unz passes, we are likely to see energized opposition to the federal program, and increased opposition to bilingual education in other states and localities.

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Latino activists and elected officials oppose Unz. To some of the Latino leaders, Unz is a litmus issue, like Propositions 187 and 209. Latino leaders are looking to the White House to become actively involved in the opposition to Unz, and are fearful that we will choose to sit on the sidelines.

More organizations and elected officials are taking positions on Unz. The California education community -- including the California Teachers Association and the California School Boards Association -- is strongly opposed to Unz. Key Democratic officeholders (including Sen. Boxer, Rep. Becerra and most Democrats in the California delegation, State Superintendent Delaine Eastin, and Speaker Villaraigosa) have also announced their opposition to the Unz initiative. All three Democratic gubernatorial candidates have come out against Unz. Sen. Feinstein has not taken a public stance yet, though she appears likely to support Unz. A list of organizations, elected officials, and other leaders that have taken positions on Unz is attached.

The Republican state party has supported Unz, though many Republican officials, including Gov. Wilson, have not yet taken a position. Dan Lungren has not taken a position yet, but has recently said that the recent action by the State Board of Education has eliminated the need for Unz. There is always a chance that White House opposition to Unz could polarize the situation and push Gov. Wilson and other Republicans to support Unz, but at least some Republican leaders are afraid to support another initiative viewed as anti-Hispanic.

The political dilemma can be resolved with a "Reform, not Revoke" response.

We believe the best approach to this issue is to strike a middle ground by admitting that bilingual education needs reforming, but asserting that Unz is not the way to do it. More specifically, we can:

- Start by reiterating the overriding importance of helping every child become proficient in English;
- Oppose Unz on the merits because it is too extreme;
- Remind voters what we are for, including both our overall approach to strengthening public education and our Hispanic initiative;
- Articulate the fundamental principles that you believe should be used by local communities to reform and strengthen their efforts to educate LEP students. These principles include setting a goal for school districts to help LEP students learn English within three years, holding schools accountable for results, providing local flexibility, and emphasizing quality in any approach used.

III. Specific Recommendations

I. Oppose Unz Initiative on educational and legal grounds.

Educational. There is little doubt that current programs for LEP students leave much room for improvement. While some promising efforts have emerged, the services now provided are not effective on a large-scale basis. Even when programs themselves are good, shortages of qualified teachers and poor implementation often limit the ineffectiveness

We believe, however, that the Unz Initiative would only make matters worse. A one-size-fits-all State prescription for how to educate LEP children -- and a demand that all special services cease in one year will retard progress toward the goal of helping LEP students learn English, reach high standards, and participate effectively in classrooms. Experience and research indicate that no one approach is the answer for all limited English proficient children. By limiting the discretion of schools and teachers to determine what works best for their LEP students, the Unz Initiative prevents teachers and parents from exercising common sense and professional judgment regarding how to serve individual children.

And even assuming we should pick a single method of educating LEP students, there is little to recommend the Unz "sink or swim" model. While a structured English immersion approach may be effective for some limited English proficient children, it is likely to be ineffective for many others. One year of special instruction -- whether in Bilingual Education or an English immersion approach -- rarely is sufficient to enable a child who starts the program with almost no proficiency in English to become proficient enough to participate in regular English-language classes.

Legal. Based on the educational problems described above, the Unz Initiative will raise serious issues under federal civil rights laws. In the seminal 1974 case of Lau v. Nichols, the Supreme Court interpreted Title VI of the Civil Rights Act to require school districts to take steps to ensure that national origin minority students with limited English proficiency can effectively participate in the regular educational program. Similarly, the Equal Educational Opportunity Act, enacted in 1974, requires public educational agencies to take appropriate action to overcome language barriers that impede student participation in instructional programs. Neither Lau nor subsequent cases addressing Title VI or the Equal Educational Opportunity Act mandate a particular approach to meeting these needs, but they require that sound educational approaches be implemented and evaluated.

Assuming (as we probably should) that some educational experts will vouch for the soundness of the sheltered English immersion approach mandated by the Unz Initiative, Department of Education lawyers believe that a legal challenge asserting that the Unz Initiative on its face violates Title VI or the Equal Educational Opportunity Act probably would not succeed. But they believe that the Unz Initiative will cause widespread violations of Title VI and the Equal Educational Opportunity Act once it is applied to cut off services to students who need them. The only way that such violations will be avoided is if the State or local educational agencies use loopholes in the Proposition to extend services to LEP students

beyond the year specified in the initiative. The Unz Initiative thus will create legal confrontations between California agencies and the Departments of Education and Justice over violations of civil rights laws, and will divert resources and attention that should be focused on educating children to conducting investigations and litigation.

Recommendation: For these reasons, we recommend that the Administration publicly oppose the Unz Initiative. Taking a position soon will allow us to help frame the debate and set a constructive tone, rather than get drawn into an already inflammatory debate. A prompt announcement will also allay concerns in the advocacy community that we may sit this battle out until it is too late to have an impact on the outcome. We think that Secretary Riley should make the initial announcement of the Administration's position within the next week to ten days.

We also believe that you should express opposition to the Unz Initiative during your visit to California in early May. We will also work with the Vice President's office to create an appropriate opportunity for him to state his opposition to Unz.

_____ Agree _____ Disagree _____ Discuss Further

2. Couple opposition to Unz with a clear statement of how local school districts can strengthen education for LEP students.

We believe that you should couple your opposition to Unz with a strong statement about the importance of helping LEP students learn English and the need for reforming and strengthening bilingual education. This statement would articulate principles to guide local educators in providing services to LEP students.

We seriously considered but rejected the idea of underscoring your commitment to improve bilingual education by also proposing statutory changes to the federal Bilingual Education Program. After consultation with members of the California Congressional delegation, the Hispanic Caucus and others, we concluded that this step would be premature since Congress is unlikely to pass or even consider your proposals until next year, when the bilingual education is scheduled for reauthorization. An Administration proposal now also would fuel other, potentially dangerous Congressional proposals to alter or eliminate bilingual education. Further, proposing changes to the federal program now would place members of the California Congressional delegation in a difficult position, because they would be forced to take a position on both the Unz Initiative and your legislative proposal.

We recommend a statement articulating the following principles:

Set a goal for school districts to help LEP students learn English within 3 years. All participants in this debate -- and especially parents of Hispanic and other LEP students -- want children to learn English as rapidly as possible. Bilingual education programs that prolong rather than speed the process of learning English, and are open-ended rather than transitional, do harm to students. But currently, few school districts establish clear time lines or goals for LEP students to learn English.

Challenging school districts to set and meet a clear goal of helping LEP students become proficient in English within 3 years will ensure that your opposition to Unz is not -- and is not taken as -- as an endorsement of the status quo. Setting a clear goal is the first step toward reducing the length of time it takes for students to master English. It will send a clear message to teachers and administrators to adopt educational strategies that will help students acquire English proficiency as rapidly as possible. In this context, you should also urge school districts to set the same academic standards and expectations for LEP students as for all others; notify parents of every LEP student of these goals when the student is first enrolled; assess student progress in English and other academic subjects annually and; identify early, and provide extra help, to students who are not making progress.

This proposal will be very unpopular with the Hispanic Caucus and the bilingual advocacy community. They will argue that there is no clear research base to establish a 3-year time frame, that individuals vary in how long they need to master English, and that pushing students to learn English early will slow down their ability to master other academic subjects. They will also argue that advocating a 3-year time frame -- or any other time limit -- plays into the hands of Unz and his supporters by weakening the ability of Unz opponents to make the case against the 1-year cut-off of services in his proposal. Further, they and many educators will argue that if it is necessary to set time lines for learning English, local educators and communities ought to take responsibility for determining the appropriate length of time.

We believe that you can mitigate these concerns by making clear that you are calling for a goal rather than a strict time limit, by emphasizing that accountability for meeting the goal rests primarily on local schools, and by not proposing to end language services to students who have not yet mastered English within 3 years. These responses may not fully satisfy the bilingual community, but the three-year goal is important enough, from both an educational and a political perspective, to take this risk of disagreement.

Local school districts must be accountable for performance and results. School districts must be held accountable for helping students become proficient in English as rapidly as possible. They should report publicly how well they are doing to meet the timelines they have established. They should test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress, and they should provide additional services or take other corrective actions as appropriate when students are not making adequate progress. School districts should evaluate their bilingual education

programs regularly as well. If a program is not helping its students progress rapidly enough, the school district should strengthen it, or use another approach that research shows will work.

There must be local flexibility. As discussed above, no one-size-fits-all prescription for how to educate limited English proficient children will work. Local schools must have the flexibility to design programs that meet their particular needs, mix of students, and resources. So long as the goal is clear -- that students learn English as rapidly as possible -- and there is accountability for results, parents and educators should be free to work together to fashion programs that work for them.

The focus must be on strengthening quality, regardless of approach. The research on instruction for LEP students does not identify any particular approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as more effective than others. Rather, it suggests that effective programs have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. In short, if LEP students are to learn English and succeed in school, they must be in schools that work for all students--schools with high standards, good teachers, smaller classes, challenging curriculum and accountability for results. Because of this, any discussion of the steps required to strengthen local quality provides an opportunity to discuss your overall agenda for strengthening public schools

_____ Agree _____ Disagree _____ Discuss Further

Elected Officials, Associations, Activists are Taking positions on Unz:**Oppose Unz:**

Senator Barbara Boxer
Lt. Gov. Grey Davis
Congressman Xavier Becerra
Congressman Cal Dooley
Congressman Bob Filner
Congressman Lucile Roybal-Allard
Congresswoman Zoe Lofgren
Congresswoman Ellen Tauscher
Congressman Vic Fazio
Congressman Marty Martinez
Delaine Eastin, Superintendent of Public Instruction
Assemblyman Cruz Bustamante (former Speaker)
Speaker Antonio Villaraigosa
Senator President John Burton
Supervisor Gloria Molina
CTA
MALDEF
Republican Assemblyman Bill Leonard
Republican Assemblyman Rod Pacheco (only R Latino Assemblyman)
CABE

Support Unz:

Ron Unz
Gloria Matta Tuchman
Jaime Escalante
Fernando Vega
Mayor Richard Riordan
Darrell Issa, Republican Senate Candidate opposing Barbara Boxer



Delia_Pompa @ ed.gov
03/19/98 06:34:00 PM

Record Type: Record

To: Michael Cohen

cc:

Subject: Memo

Mike,

You covered lots of ground, and you've mastered the tricky nuances of what bilingual ed is, BUT I do have three concerns about the memo:

1. TONE - I continue to be concerned about the "mend it; don't end it" approach. I understand where we're going with this, but it conveys an impression that bilingual ed is really broken. It is no more broken than reading, math, and science. Although we talk about ways to improve math, eg. in response to TIMMS, we do so in a less inflammatory tone. The comment on page 3, "Almost no one believes that the services now provided to LEP students are effective on a large scale basis.", is an example of the perspective from which we appear to view bilingual education. Many, many educators would disagree with you from the perspective of their daily experience with these programs.

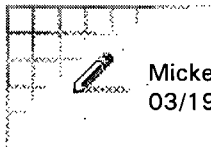
2. TIME LIMITS - Requiring students to learn English in three years is not educationally sound, unclear in its intent, and may be illegal. Most of the research in this area points to a much longer period of time--4 to 7 years--necessary for students to be proficient enough in English to be able to function successfully in academic settings. Individual circumstances--age, education, literacy in the native language, language spoken in the home, program of instruction, etc.--must be considered in determining how long a student will require to become proficient in English. My point about clarity of intent refers to what we mean by "learn English." Do we mean learn to speak English, read and write English, learn in English, and how well? Finally, I think Norma Cantu may have information on whether a three year limit is legal under Lau. Regardless of legality, requiring students to learn English in three years seems to be dangerously close to mandating curriculum. We already have clear expectations that students should learn English, both in law and in practice. The "additional time...in unusual circumstances" would be the rule, not the exception.

3. REQUIRING TESTING PERIODICALLY - Explicitly requiring programs to test students periodically for English proficiency and academic achievement is too prescriptive. Programs already do this because they must provide this information in their biennial evaluations for Title VII and because of Title I requirements (there is tremendous overlap in the programs.) Requiring more testing will bring out critics from both sides. We should

also tread lightly when it comes to withholding funds. A better approach would be to talk about technical assistance around evaluation, assessment, and program improvement.

Thanks for the opportunity to comment. I'll be glad to help with any specific language or with necessary backup information.

Delia



Mickey Ibarra
03/19/98 05:21:34 PM

Record Type: Record

To: Michael Cohen/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: Re: Unz memo

Good memo Mike. Please consider the following comments/suggestions:

-I think adding a paragraph to describe the outreach effort and internal WH process we used is important for the President to know. In fact, a vigorous coordinated outreach effort by OPL, IGA, POL, and LEG, with DPC and Education was conducted to help us prepare this memo. The President should know we met with Mr. Unz, national advocacy groups, California elected officials, and others both in California and Washington, DC. I think it is relevant that Maria, Mickey, Janet, Karen, and Michael all spent time personally on the issue.

-I'm not comfortable with the second paragraph which describes current public opinion. I think we have polls (see Ross poll) now that are showing support for Unz dropping and this is BEFORE any real opposition campaign has begun. Also, I think that while we all remember the initial 84% Latino support figure from an LA Times poll, we have not put this one poll in the context of the longstanding support of bilingual education in previous polls and voter exit interviews contained in the Andy Hernandez memo of February 16. I just think we need to soften the lead on this paragraph a bit.

-In the third paragraph I think we should insert the opportunity this issue provides us to advocate for our comprehensive action plan of research-based solutions to raising education attainment of Latino children the President has proposed. You do get to it later in the memo; I just think you should mention it earlier too.

-Mention that Ron Unz challenged Pete Wilson for the Republican nomination in 1994 for governor.

-On page five at the top talking about polls again, please insert "currently". It should read "Latino voters are CURRENTLY split...." I also think it is fair to remind folks that the LA Times and Field polls did not accurately predict the Latino vote in the end for either prop 187 nor 209. 77% of Latinos opposed 187 and 70% opposed 209 according to voter exit interviews in contrast to some polls which showed a split Latino vote.

-Jane Harman is opposed. Al Checchi is opposed. Dan Lungren (R), candidate and likely California nominee for Gov. is undecided. He has stated that he has concerns and will decide soon.

-We should add that a well financed campaign is expected by Unz for his initiative while the opposition campaign is struggling to raise the money necessary to conduct a credible campaign. Richie Ross is the lead consultant/organizer of the opposition effort. He is very good.

Message Copied To: _____

March 18, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: SECRETARY RILEY
BRUCE REED

SUBJECT: California Proposition 227 (Unz Initiative) to End Bilingual Education

On June 2, California voters will consider Proposition 227, otherwise known as the Unz Initiative, which proposes to eliminate all bilingual education. This is California's third potentially divisive race-related initiative in four years, following on the heels of Proposition 187, which barred public benefits for illegal immigrants, and Proposition 209, which ended affirmative action.

Polls consistently show that the initiative is popular and is likely to pass, ^{although} ~~However~~, a strong opposition campaign could make this election close. Many Latino voters currently favor the initiative, although the polls show that Latino support has declined considerably as voters become more familiar with the details of the proposal. Latino activists are strongly opposed to Unz, and are looking to the White House to support their efforts to defeat ~~Unz~~ ^{it}.

Despite legitimate concerns over the effectiveness of some bilingual education programs, your advisors strongly believe that the Unz initiative is bad education policy and will harm students who need help the most. We also believe that you may be able to turn this issue to your political advantage if you combine opposition to Unz with proposals to reform bilingual education programs. ~~Despite some tricky politics, we believe that it is both good policy and good politics to oppose Unz, coupled with proposals to "mend, not end" bilingual education.~~ ^{redundant + overbalancing} This memo lays out such a "mend, not end" approach.

I. The Unz Initiative and Bilingual Education in California

A. Overview of the Unz Initiative

This initiative, authored and backed by Silicon Valley millionaire Ron Unz, is designed to end all bilingual education programs in California. More specifically, it would:

- Require that all public school instruction be conducted in English.
- Permit this requirement to be waived only if parents or guardians can show that the child already knows English, has special needs, or would learn English faster through an alternative instructional technique.
- Provide initial placement for Limited English Proficient (LEP) students in "sheltered

English immersion" programs for one year. Instruction in these programs would be conducted in English, with some accommodations in the curriculum to take into account the limited English language skills of the students.

- Appropriate \$50 million per year over 10 years to fund adult education programs designed to teach English to LEP adults who in turn pledge to provide English language tutoring to LEP students.
- Makes teachers, administrators and school board members subject to suits and personally liable for failure to implement the provisions of the initiative.

Unz and other backers of this initiative regard the existing system of bilingual education in the state as a complete failure. They argue that because bilingual education relies so heavily on use of the students' native language and only slowly introduces English, the approach delays or prevents, rather than promotes, the acquisition of English. Further, they point out that although California's bilingual education law expired a decade ago, the legislature has been unable to enact legislation to reform a broken program. This initiative, they argue, will break the legislative impasse and dramatically change bilingual education policy for the better.

Opponents criticize the Unz Initiative on a number of counts. Critics argue that the initiative is harmful to children, because it relies on a single, unproven approach that provides an unrealistic time period in which to learn English. They argue that this one-size-fits-all approach eliminates parents' right to choose the best approach for their child (given that the waiver provisions are very complicated and burdensome). They point out that the Unz initiative provides no accountability, because it lacks any requirements for assessing students' academic progress. They also charge that the Unz Initiative undermines local control and the ability of local school boards to determine important education policies, and wrongly subjects educators to lawsuits.

B. Bilingual Education in California

Demographics. There are approximately 1.3 million Limited English Proficient (LEP) students in California, approximately one quarter of California's K-12 students. This number has nearly doubled in less than a decade, and represents some 43% of the national total. Seventy nine percent of California's LEP students are native Spanish speakers. Hispanics have a 50% dropout rate, and by most indicators their academic performance lags behind most other population groups in the state.

Educational Services. LEP students receive a wide variety of services intended to help them learn English and academic subjects. In 1997, only about 30% received what is conventionally considered bilingual education—programs which make significant use of the student's primary language to teach academics while phasing in greater amounts of English language instruction. More than half participate in specially designed instructional programs that help students learn English through a combination of approaches such as direct instruction in grammar, vocabulary and communications, while teaching other subjects in a way designed to be

accessible to LEP students. (The Unz Initiative would eliminate these programs as well as conventional bilingual programs.) Approximately 16% are not receiving any language instruction services at all.

Of course, the
Almost no one believes that the services now provided to LEP students are effective on a large scale basis. While program evaluations have identified some promising efforts, shortages of qualified teachers and poor implementation has limited the effectiveness of existing programs. ~~In addition, most observers agree that the overall poor academic performance and high dropout rate of Hispanic students reflects serious weaknesses in schools that extend well beyond language services for LEP students.~~ *a wide range of school deficiencies, but poor language services for LEP students contribute to this problem.*

The research on instruction for LEP students does not identify any approach (e.g. bilingual education, English immersion, English as a Second Language, or dual-language immersion) as particularly effective. Rather, it suggests that effective programs are those that fit the needs and resources of the local community; have well-prepared teachers who know how to teach reading and who are knowledgeable about second-language acquisition; provide students with a challenging curriculum and high academic standards; and regularly assess student progress and make adjustments in the instructional program accordingly. Consequently, while much of the debate about educating LEP students centers on the relative merits of one program over another, research and experience suggest that attention to program quality regardless of program type is more important.

California Legal Framework. The legal framework for providing services to LEP students in California is ~~particularly~~ murky. California's Bilingual Education Act sunsetted in 1987, but the State Board of Education regulations implementing the act have remained in effect. Under this framework, school districts are required to help students become fluent in English and competent in other academic subjects, and are given a significant amount of flexibility in determining how to achieve these goals. Neither bilingual education nor any other specific approach to teaching LEP students is required.

There have been a number of unsuccessful attempts in the past decade to enact new legislation, but bilingual education reformers and advocates have been unable to agree on an approach. There has been a fresh attempt over the past month to craft compromise legislation, partly to take the steam out of Unz and to give Unz opponents something to support. This effort, however, is likely to end in failure.

Last week the State Board of Education took the first step toward eliminating the state bilingual education regulations. This process should be completed shortly before the vote on Unz. The effect of this action will be to eliminate any state requirement for the provision of specific services to LEP students, and to give local school districts even greater flexibility in this area.

Federal Legal Framework. Federal requirements originate in the Due Process and

Equal Protection Clauses of the Fourteenth Amendment, and provisions of the Equal Educational Opportunities Act which require educational agencies to take appropriate action to overcome language barriers that impede equal participation by students in instructional programs.

As interpreted by the courts, these provisions do not require any specific form of services, such as Bilingual Education or English as a Second Language. They instead require the provision of supplemental language instruction that is based on sound educational theory, is adequately resourced and implemented, and is evaluated and modified as necessary.

If Unz is enacted, many expect that it will be challenged as a violation of federal law. Department of Education lawyers believe that the success of such suits will depend on whether the services mandated by Unz are implemented effectively. Absent implementation problems, federal law appears to provide sufficient flexibility to allow California to approve this approach.

But However, if services mandated by Unz are not implemented effectively, there *will* be a strong basis for a legal challenge.

The federal Bilingual Education program (Title VII of the Elementary and Secondary Education Act) similarly does not preclude the Unz approach. This competitive grant program *also* provides local school districts with considerable discretion in the kind of services provided to students. *adoption of*

II. Political Context

The Unz initiative is currently the most serious threat to bilingual education, but it is not likely to be the last. Earlier this year Speaker Gingrich proposed eliminating bilingual education, and some conservative education experts (e.g., Diane Ravitch) have also called for its elimination. Especially if Unz passes, we are likely to see energized opposition to the federal program, and increased opposition in other states and localities.

The Unz initiative presents a political dilemma in California. If we oppose it, we risk alienating a majority of California Anglo voters. If we fail to oppose it, we risk alienating a vocal and increasingly influential group of Latino leaders, and possibly Latino voters.

education Current polls show that a large majority of California Anglo voters support Unz. For Anglos, bilingual *may* become a hot button issue similar to immigrant services and affirmative action. In contrast, Latino voters are split on the issue *of bilingual education*. While many continue to support Unz largely out of frustration at the public schools' failure to help their children, polls show that Latino support is eroding as they become more aware of the particulars of the initiative. And the polls tended to underestimate Latino opposition to Prop. 187 and Prop. 209. *209*

Latino activists and electeds oppose Unz. To some of the Latino leaders, Unz is a litmus issue, like Propositions 187 and 209. Latino leaders are looking to the White House to become

actively involved in the opposition to Unz, and are fearful that we will choose to sit on the sidelines.

More organizations and elected officials are taking positions on Unz. The California education community -- including the California Teachers Association and the California School Boards Association -- is strongly opposed to Unz. Key Democratic officeholders (including Sen. Boxer, Rep. Becerra and most Democrats in the California delegation, State Superintendent Delaine Eastin, and Speaker Villaraigosa) have also announced their opposition to the Unz initiative. All three Democratic gubernatorial candidates have come out against Unz. Sen. Feinstein has not taken a public stance yet, though she appears likely to support Unz. A list of organizations, elected officials and other leaders that have taken positions on Unz is attached.

The Republican state party has supported Unz, though many Republican officials, including Gov. Wilson, have not yet taken a position. Dan Lungren has not taken a position yet, but has recently said that the recent action by the State Board of Education has eliminated the need for Unz. There is always a chance that White House opposition to Unz could polarize the situation and push Gov. Wilson and other Republicans to support Unz, yet some Republican leaders are afraid to support another initiative viewed as anti-Hispanic.

but at least some

The political dilemma can be resolved with a "Mend it / Don't End it" response. We believe the best approach to this issue is to strike a middle ground by admitting that bilingual education needs mending, but asserting that Unz is not the way to do it. More specifically, we can:

- Start by reiterating the overriding importance of helping every child become proficient in English;
- Oppose Unz on the merits because it is too extreme;
- Remind voters what we are for, including both our overall approach to public education and our Hispanic initiative;
- Propose to "mend" the federal bilingual education program through steps that will create expectations for learning English within a fixed period of time; strengthen accountability for students and programs alike by testing for English proficiency; strengthen local control and flexibility; and promote our efforts to strengthen program quality by increased investments in teacher training.

III. Specific Recommendations

1. Announce opposition to Unz within next 4 weeks

We recommend that you or another senior Administration official (the Vice President or Secretary Riley) announce the Administration's opposition to the Unz initiative within the next 4 weeks. Taking a position in the next month will allow us to frame the debate and set a constructive tone, rather than get sucked into an already inflammatory debate. We could turn this initiative into an opportunity to fit bilingual education into our overall framework for

ensuring effective education in the 21st century.

2. Specific recommendations for changing federal bilingual education program

In accord with our recommendation for a "mend, don't end" approach to bilingual education, we believe that opposition to Unz should be coupled with specific proposals to change the federal bilingual education program. This approach will lend credibility to our position, and give us a basis for framing the debate over bilingual education. Specifically, we recommend the following changes:

Strengthen local control by lifting the existing cap on English programs. The current federal bilingual program contains a ceiling that permits only 25% of all funds to be used to support English-only programs. ~~Since most participating school districts use a variety of approaches, the cap has not limited local approaches though it is perceived as having that effect.~~ Lifting the cap would add credibility to our call for local control (rather than the Unz one-size-fits-all approach) ~~in California~~, and would help address the concerns of conservative critics. This action, however, would be unpopular with the bilingual advocacy community.

Create expectations for students to learn English within 3 years. One of the most powerful criticisms of bilingual education programs is that they ~~in fact~~ prolong the time it takes for students to learn English. This criticism resonates with many opponents as well as supporters of Unz. We should propose amending the federal bilingual education program to ~~require that~~ ~~students learn English well enough to then learn other subjects in English within 3 years, with~~ additional time and services provided to students facing unusual circumstances. Setting clear expectations for how quickly students will master English will appropriately focus the efforts of schools and students and help more students become proficient in English. This action would be unpopular with the bilingual advocacy community. Advocates and researchers will argue that there is no clear research base to establish a 3-year time frame--and, indeed that more time is necessary for students to master English and other subjects.

Because of these concerns, ~~some of your advisors feel~~ that learning English within 3 years should be a goal, rather than a requirement, of federal programs.

Strengthen testing and accountability for students and programs. Programs should be required to test students periodically for English proficiency (as well as achievement in other subjects) to determine if they are making adequate progress toward the 3-year deadline, and to provide additional services or take other corrective actions as appropriate when students not making adequate progress. There should also be additional accountability for school districts participating in the bilingual education program. Programs are already required to undergo evaluations; this requirement can be strengthened by establishing consequences, such as possible withholding of funds, from programs that fail to make adequate progress as measured by student achievement.

Underscore efforts to strengthen the quality of programs that provide services to LEP students. We should highlight your budget request to increase funding for teacher training within the bilingual education program. The Education Department should also undertake a vigorous effort, through technical assistance and effective dissemination approaches, to emphasize that any program for LEP students must be based on fundamental principles of quality: ensuring well-trained teachers, high standards and a quality curriculum, testing and accountability measures. The Education Department should also help the programs it funds work more effectively to engage parents in their children's learning.

Elected Officials, Associations, Activists are Taking positions on Unz:

Oppose Unz:

Senator Barbara Boxer
Lt. Gov. Grey Davis
Congressman Xavier Becerra
Congressman Cal Dooley
Congressman Bob Filner
Congressman Lucile Roybal-Allard
Congresswoman Zoe Lofgren
Congresswoman Ellen Tauscher
Congressman Vic Fazio
Congressman Marty Martinez
Delaine Eastin, Superintendent of Public Instruction
Assemblyman Cruz Bustamante (former Speaker)
Speaker Antonio Villaraigosa
Senator President John Burton
Supervisor Gloria Molina
CTA
MALDEF
Republican Assemblyman Bill Leonard
Republican Assemblyman Rod Pacheco (only R Latino Assemblyman)
CABE

Support Unz:

Ron Unz
Gloria Matta Tuchman
Jaime Escalante
Fernando Vega
Mayor Richard Riordan
Darrell Issa, Republican Senate Candidate opposing Barbara Boxer