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The Right to Language

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I. Introduction

We argue for the existence of a state constitutional legal right to language. Our purpose here is to develop a legal framework for protecting the civil rights of the deaf child, with the ultimate goal of calling for legislation that requires all levels of government to fund programs for deaf children and their families to learn a fully accessible language: a sign language. While our discussion regards the United States, the argument we make is based on human rights and the nature of law itself, and can likely be adapted to any country.

We begin with an introduction to the biological facts surrounding language acquisition and how these facts impact the deaf child, where lack of language has devastating effects on individuals and negative effects on society in general.

Next we turn to the evidence for a legal right to language. Although federal law and international treaties focus on anti-discrimination and adequate access to education and language, a stronger right to access to education and language can be found in state law, which is underpinned by corresponding state constitutions' guarantees of education.

Finally, we outline the benefits that the deaf child would gain if we were to recognize a right to language. We then argue that to protect the right to language, we need legislation regarding funding programs for deaf children and their families learn a sign language.

II. Language Development and the Deaf Child

For proper language development, children must be exposed regularly and frequently to accessible language before the age of five years old - that is, while brain plasticity still allows for the develop-

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ment of fluent language. Evidence for this claim comes from studies on the language learning of immigrant children¹ of children with brain injuries,² of children raised in the "wild"³ or an abusive environment,⁴ and, overwhelmingly, of deaf children.

For many deaf children, exposure to spoken language alone does not result in language fluency,⁵ and this includes children with cochlear implants (CI), even with substantial rehabilitative training.⁶ That is, spoken language cannot be counted on as an accessible language for deaf children, and without an accessible language, these children experience linguistic deprivation. The child does not develop sufficient language and cannot communicate with others beyond gestures and largely unintelligible speech (which combination does not form a system comprehensive enough to call language). Accordingly, linguistically deprived people, to varying degrees, cannot learn to read, cannot do mathematical calculations, are isolated socially, are disadvantaged economically, show a range of cognitive deficits, and suffer psychological damage,⁷ result-

transmitted it across time. In effect, sign language is ideally designed for deaf children by the generations of deaf children before them who learned it and passed it along. As an evolved visual-manual language, deaf children acquire it just as children who hear acquire spoken language.¹⁵

III. State Law and the Right to Language

a) Introduction

The goal of the state laws discussed below is to facilitate and protect the child's access to language, to protect the child's access to education via language, and, finally, to protect everyone's access to health care via language. Hence, these laws recognize the right to language, regardless of its modality.

b) Language Per Se

In 1993 the National Institutes of Health Consensus Development Program recommended that all newborns be screened for hearing loss before leaving the birth

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ing in harm to both the individual and society, from disproportionate use of emergency medical resources to increased incarceration.⁸

Sign languages, in contrast to spoken languages, are fully accessible to deaf children, even blind-deaf, since there are tactile versions,⁹ and exposure to any accessible language before the critical period of five, a spoken language or a sign language, allows ordinary linguistic development and enables the child to acquire additional languages, both spoken and sign ones, simultaneously or later on in life.¹⁰ Deaf children who learn a sign language can perform well academically¹¹ and are as likely to be psycho-socially healthy as hearing children.¹² Learning a sign language is the only reliable way of ensuring that a deaf child gains language and thus is protected with respect to equal opportunities.¹³

Sign languages are natural languages which makes learning of a sign language biologically compatible for deaf children. When the deaf child is exposed to sign language, the child is absorbing the language of a social group of individuals who are deaf as well. In other words, sign language is accessible because it is an artifact of generations of deaf people who have

hospital. The next year a position statement of the Joint Committee on Infant Hearing recommended that "all infants with hearing loss should be identified before 3 months of age and receive intervention by 6 months of age."¹⁵ These recommendations led to newborn hearing screening laws state by state.¹⁶ Thirty-six states, Guam, Puerto Rico, and the District of Columbia require hearing screening for newborns. Seventeen states (of which fourteen require hearing screening for newborns) plus Guam, Puerto Rico, and the District of Columbia require specified or all health insurers to cover the costs of this screening. At least three states (Massachusetts, Ohio, and West Virginia) have laws specifying who will cover the cost of screening if insurers do not and parents are unable to pay. The goal of the newborn screening laws is to identify hearing loss and prescribe interventions so that the child gains language as early as possible. If there were no mandated early diagnosis, then the child would have no meaningful access to language until much later when the hearing loss was finally identified.

c) Access to Education Requires Language

Most state constitutions include language that guarantees a fundamental right to public education. This guarantee implicitly includes a right to equal access

would it be possible to add "5 years old" to the critical period of five years?

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to education and to language. In general, all state constitutions include a right to public education by directing the legislature to provide and fund a public school system that is open (and accessible) to all school age residents.¹⁷ In addition to these state constitutional rights, subsequent state statutes and court rulings have served to clarify and extend these rights.¹⁸ In most states, this constitutional language on public education is interpreted not merely as an aspirational goal, but as a basic right. Most state judiciaries have granted substantive rights to students and impose substantial legal requirements on the public school system. Therefore, legislation or regulations that impact access to public education for special populations that lack full access to regular education, including deaf children, must undergo strict scrutiny review to be constitutional in these states.

Most state constitutions include a clause stating that the state shall provide, by taxation and otherwise, for a general and uniform system of free public schools, which shall be maintained every year, and wherein equal opportunities shall be provided for all students. These state constitutions typically also declare a universal educational right and the duty of the State to guard and maintain that right. In Pennsylvania a consent decree was approved that found "... under the Equal Protection Clause of the United States Constitution, having undertaken to provide free public education, Pennsylvania must educate all children, including those with disabilities. Moreover, [i]t is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity."¹⁹ The court applied *Brown v. Board of Education of Topeka*²⁰ that found separate education is inherently unequal and, therefore, applied a presumption that "placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training."²¹ Similarly, in *Mills v. Board of Education of District of Columbia*²² summary judgment was granted to a class of children with disabilities, finding that the Equal Protection Clause required inclusion of children with disabilities in public education and, further, that the additional cost of such education was not a defense. Most states implement federal law, especially Individuals with Disabilities Education Act (IDEA), through their own educational laws to ensure linguistic access to education. With respect to access to education for deaf children, most states have regulations governing the certification of educational interpreters.²³

Since information in schools is conveyed via language (whether spoken, signed, or written), access to education is impossible without language. Therefore, these laws are founded on the premise that everyone has a right to language.

d) Access to Health Care Requires Language

As of January 2006, at least 43 states had enacted legislation to provide language access to all in health care settings.²⁴

e) Conclusion

The goals of these state laws in these three areas entail the protection of the child's language development. Hence, these laws recognize the right to language, regardless of its modality.

In sum, states have taken the lead in affirming the right to language.

IV. Federal Law and the Right to Language

a) Introduction

The goal of the federal laws discussed below is to ensure equal protection to access in federally funded areas, including education and health care, with respect to the language issues involved in such access. Some of the laws that have been taken to apply to education access address the needs of individuals with disabilities, while others address the needs of individuals not fluent in English. Some of the laws that have been taken to apply to health care access also address the needs of individuals not fluent in English as well as the needs of all people. Once again, these laws recognize the right to language, regardless of its modality.

b) Access to Education for Disabled Individuals

The absence of an educational or communication mandate in the federal constitution shapes the reach and direction of federal law. The courts have refused to read an implied fundamental right to education or communication. Neither access to public education nor communication in general is a "fundamental right" under the U.S. constitution.²⁵ Nevertheless, *Plyler v. Doe* used an equal protection analysis to strike down the exclusion of undocumented immigrant children from school as not meeting the intermediate scrutiny standard the Court applied. Further, in *City of Cleburne v. Cleburne Living Ctr.*,²⁶ the Court applied a rational basis standard to strike down a zoning exclusion of a group home for the mentally retarded as not justified by any legitimate state purpose, but instead by irrational prejudice against the mentally retarded. While the Court has made clear in subsequent cases that laws about disability are not given any protected status, these two cases lend some viability to an equal

protection argument where the discrimination rests on disability. Indeed, this was the theory behind the cases that were predecessors to the IDEA²⁷ and its successor, Individuals with Disabilities Improvement Act in 2004.²⁸

The U.S. constitution's Equal Protection clause (14th Amendment) states that no state shall deny equal protection to its citizens. The legislature has passed several laws focusing on the principle of equality and anti-discrimination for people with disabilities. As such, although there is no fundamental right to public education, consistent with the equal protection clause, Congress passed IDEA to require public school systems to provide a "free, appropriate public education" to children who need specialized services because of a disability.²⁹ It requires that the disabled child be provided with individualized curriculum and with qualified service providers for identified needs related to their education. For deaf children, clause IV explicitly states that the team must "[c]onsider the communication needs of the child, and in the case of the child who is deaf or hard of hearing, consider the language and communication needs, opportunities for direct communication with peers and professionals in the child's language and communication mode, academic level, and full range of needs including opportunities for direct instruction in the child's language and communication mode, and (v) Consider whether the child requires assistive communication devices and services."³⁰ This clause underscores Congress' concern with the value of communication in school, and the unique, individual needs specific to each deaf or hard of hearing student. It acknowledges the need for individual communication exigencies, particularly for direct communication with peers and direct instruction from professionals. This focus on communication modes assumes language communication is needed by the deaf child and that the child has a right to language.

Additionally, the Rehabilitation Act of 1973 states that people with disabilities cannot "solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service."³¹ Among the listed activities we find "a college, university, or other post-secondary institution, or a public system of higher education" as well as "a local educational agency (as defined in section 8801 of Title 20), system of vocational education, or other school system." This act, by ensuring the right to education, implicitly ensures the right to language, since language is a requirement for

education. Indeed it explicitly requires covered agencies to provide interpreters or other auxiliary aids to handicapped people when necessary to allow them access to language so that they can have equal access to the program.³²

Further, the Americans with Disability Act (ADA) of 1990, as amended in 2008,³³ requires equivalent support by all state and local government programs, even if they do not receive federal assistance. Specific language in ADA strongly supports the existence of a right to language. With regard to public accommodations and services operated by private entities, it explicitly ensures access to education and health care, where "the key is effective communication access: 'A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.'"³⁴ With regard to telecommunications, it says that "the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."³⁵ It also ensures closed captioning for television public service announcements that are "produced or funded in whole or in part by any agency or instrumentality of Federal Government."³⁶ With regard to miscellaneous provisions, it prohibits discrimination of persons with disabilities in many areas, including education.³⁷ Since one cannot get an education without language, again, the right to language is implied. Further, much of the ADA ensures the right of individuals to be informed about various matters and repeatedly mentions "communication"; such informing and such communication implies access to language.

Finally, IDEA of 1975, as amended in 2004, with final regulations published in 2006 and 2011 offers strong support for the existence of a right to language. The stated purpose of Part D is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living."³⁸ Section 300 of the IDEA ensures that interpreting services be provided in school for deaf or hard of hearing children and for children who are deaf-blind, that hearing-aids worn in school be functioning properly, and that deaf or hard-of-hearing parents be provided interpreting services at IEP meetings if such is necessary for the parents to understand the meetings. Many of the comments and discussions of the IDEA concern protecting overall communication rights of deaf children and adults.³⁹

Taken together, Section 504, the ADA, and the IDEA supplement state constitutional guarantees to a free and appropriate education for deaf and hard of hearing children. They establish a robust foundation for a right to language in that they provide not only equal access to students with disabilities, but entitlement to appropriate special education and related services. These laws, like the state statutes discussed earlier, are founded on the presumption that everyone has a right to language.

*c) Access to Education for Individuals
Not Fluent in English*

In 1968 President Johnson signed into law the Bilin-

coming to school. This in itself is recognizing that even when English education is the ideal, there is the expectation that children will have language while the school educates them in a new one. It is premised on the idea that schools teach another language on the basis of the children already having one at the time they begin school. Once again we find confirmation of the right to access language.

*d) Access to Health Care for Individuals
(Not Fluent in English)*

Federal laws support the right to access government services in one's native (i.e. accessible) language. Title

Taken together, Section 504, the ADA, and the IDEA supplement state constitutional guarantees to a free and appropriate education for deaf and hard of hearing children. They establish a robust foundation for a right to language in that they provide not only equal access to students with disabilities, but entitlement to appropriate special education and related services. These laws, like the state statutes discussed earlier, are founded on the presumption that everyone has a right to language.

gual Education Act (BEA), as Title VII, an amendment to the Elementary and Secondary Education Act (ESEA). This was the first federal policy aiding limited English proficiency (LEP) students, although many states already had such local and state policies. The BEA was to provide federal funds (in the form of matching grants) for establishing school programs to meet the needs of limited English speaking ability (LESA) students. In *Lau v. Nichols* (1974), Chinese American students in San Francisco argued that in order to protect their civil right to an equal education, they were entitled to special help in school due to their inability to speak English.⁴⁰ The Supreme Court ruled in favor of the students and thus expanded the rights of LESA students, laying the ground work for bilingual education nationwide. Indeed, the Equal Education Opportunity Act was passed that same year, and specifically stated that instructional programs were a means for breaking language barriers, and required all school districts to have special programs for LESA students. This effectively extended the *Lau v. Nichols* ruling to all students in all school districts.

The fact that there is bilingual education in school systems, even transitional bilingual education, is recognition that children who begin education need to be taught using a language they learned at home before

VI of the 1964 Civil Rights Act protects against discrimination based on race, color, or national origin.⁴¹ The Supreme Court has interpreted Title VI to protect against discrimination based on language; that is, in federally funded programs and activities, speakers of any language are entitled to treatment equal to that of English speakers. However, a private right of action is guaranteed only insofar as that discrimination is intentional.⁴²

One area where Title VI has had a great impact is health care. Thus, for example, Title VI provides LEP patients the legal right to language assistance services in health care settings. The Department of Health and Human Services Office for Civil Rights has repeatedly upheld this law with respect to the issue of language access in health care settings.⁴³

In 2000, President Clinton issued Executive Order (EO) 13166, *Improving Access to Services for Persons with Limited English Proficiency*,⁴⁴ which upholds Title VI with respect to LEP individuals and directs federal agencies to ensure that their programs provide equal access to LEP individuals. The Office of Civil Rights then issued a Policy Guidance (revised and reissued in 2003) to assist federal fund recipients in meeting their obligations to LEP individuals.⁴⁵

Title VI of the 1964 Civil Rights Act, when taken together with the ADA, extends the principle of lan-

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guage access in health care by establishing the concept of communication-related rights, a concept that holds regardless of the issue of national origin. Further, since the right to use a language is founded on the right to have a language in the first place, Title VI and EO 13166 affirm the existence of the right to language, and that right extends to deaf people.

e) Access to Decision Aids in Health Care for All

Finally, let us consider the fact that the Patient Protection and Affordable Care Act (ACA) of 2010 mandates the establishment of a program to award grants and contracts to develop decision aids in preference-sensitive health care matters. The stated purpose of these decision aids is to facilitate collaboration "between patients, caregivers or authorized representatives, and clinicians that engages the patient, caregiver or authorized representative in decision making, provides patients, caregivers or authorized representatives with information about trade-offs among treatment options, and facilitates the incorporation of patient preferences and values into the medical plan."⁴⁶

While these grants were not in fact funded, the very goal of facilitating collaboration between patients and clinicians takes as a given that that collaboration will proceed via language, whether it be spoken, signed, or written. Thus, the ACA assumed the right of patients to have a language in which such collaboration could take place.

f) Conclusion

Some federal statutes protecting equal access in the areas of education and health care explicitly address the role of language in attaining that access. But the goals of all of them entail the protection of everyone's right to language. Indeed, the various statutes related to health care are founded on patient communication; effective communication allows access to important health information. In particular, "...the ACA treats language access as a foundational element of high quality healthcare."⁴⁷ Hence, these laws recognize the right to language, regardless of its modality.

V. International Law and the Right to Language

a) Introduction

In the past forty years, many international legal agreements on disabilities have been passed by the United Nations. The goal of these agreements is to ensure equalization of opportunities, something that is possible only with language. We discuss these agreements below in chronological order, where we can see gradual sharpening of the focus on the right to language

for deaf people. Then we turn to the import of these agreements for the United States.

b) Early History of Agreements on Disabilities

At the United Nations, the earliest agreement on disabilities is the 1971 "Declaration of the Rights of Mentally Retarded Persons,"⁴⁸ followed by the 1975 "Declaration on the Rights of Disabled Persons."⁴⁹ The General Assembly of the UN proclaimed 1981 as the International Year of Disabled Persons and called for aspirational programs of action,⁵⁰ and proclaimed 1983 to 1992 as the "Decade of Disabled Persons," during which governments and organizations could implement activities recommended in the World Programme of Action Concerning Disabled Persons.⁵¹

c) United Nations Standard Rules of 1993

The earlier programs resulted in the 1993 Vienna Declaration and Programme of Action,⁵² which was endorsed by the General Assembly of the United Nations, and the United Nations Standard Rules of the Equalization of Opportunities for Persons with Disabilities.⁵³

The Standard Rules represent a strong moral obligation and a political commitment of governments to take appropriate action to ensure equalization of opportunities, with the ideal being full equalization, participation, and enjoyment of all human rights by persons with disabilities. Towards this goal, the Standard Rules specify accommodation models and rules for political decision-making.

There are three main rules of relevance to deaf people.

1. Standard Rule 5

Standard Rule 5 recommends the use of appropriate technologies to provide access to spoken information, and consideration of providing sign language in the education of deaf children in their families and communities, and, finally, the provision of sign language interpretation to facilitate deaf people's communication with others.⁵⁴

2. Standard Rule 6

Standard Rule 6 recommends that deaf students be provided with educational access to the various levels of education either in special residential or mainstream schools, where the latter would necessitate interpreters and other appropriate support services.⁵⁵

3. Standard Rule 18

Standard Rule 18 recommends that member states recognize the significant role that organi-

zations of persons with disabilities may play in the promotion of self-help, the development of various skills, mutual support, and information sharing.⁵⁶

These three rules concern the transmission of information via language, thus they implicitly recognize a right to language.

d) World Conference on Special Needs Education of 1994

In 1994 the World Conference on Special Needs Education: Access and Quality met in Spain and adopted *The Salamanca Statement and Framework for Action on Special Needs Education, published by UNESCO and the Ministry of Education and Science of Spain. It states*, "Educational policies should take full account of individual differences and situations. The importance of sign language as the medium of communication among the deaf, for example, should be recognized and provision made to ensure that all deaf persons have access to education in their national sign language. Owing to the particular communication needs of deaf and deaf/blind persons, their education may be more suitably provided in special schools or special classes and units in mainstream schools."⁵⁷

e) Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) was first drafted in 2006 and became one of the most quickly supported human rights instrument in history. 55 States signed the Convention upon its opening in 2007 and 126 States ratified Convention within five years. Though the United States signed the treaty, it has not been ratified yet, due to parts of it (especially those concerning children and education) being controversial among social conservatives in the United States.⁵⁸ This treaty, as well, aims to protect the rights of deaf people, where four articles in particular are of relevance to language access for deaf people.

1. Article 9

Article 9, which pertains to accessibility, part 2 includes the recommendation that live assistance be provided, with specific mention of "sign language interpreters."

In the United States, this provision is already covered by IDEA and ADA.

2. Article 21

Article 21, which pertains to freedom of expression and opinion and access to information,

recommends that the use of sign languages be accepted and facilitated in official interactions and in general be recognized and promoted.

Although the United States Constitution has no educational mandate, under the spending power, Congress can pass provisions to facilitate the learning of sign language or to promote it.

3. Article 24

Article 24, which pertains to education, part 3 includes the recommendation that states facilitate sign language learning and promote the linguistic identity of deaf communities, and ensure that education is delivered in the "most appropriate languages and modes and means of communication for the individual", all of this occurring in environments that "maximize academic and social development." Part 4 further includes the recommendation that states employ teachers qualified in sign language and train professionals in both disability awareness and the use of appropriate "means and formats of communication" to support the relevant students.

In the United States, state right to education access laws plus federal equal access and antidiscrimination laws together can provide the basis for promoting the linguistic identity of deaf communities and to ensure that education and communication is delivered optimally.

4. Article 30

Article 30, which pertains to participation in cultural life, leisure, and sport, part 4 includes the recommendation that cultural and linguistic identity be recognized, "including sign languages and deaf culture."

f) Conclusion

Repeatedly, the standard rules or the articles of the new CRPD treaty (if it gets ratified) establish a right to language, granting the deaf child a right to access both sign language and spoken/written language.

The import of these treaties for citizens of the United States is not negligible, nor should it be. The United Nations states: "To become party to a treaty, a state must express, through a concrete act, its willingness to undertake the legal rights and obligations contained in the treaty - it must *'consent to be bound'* by the treaty."⁵⁹ Though not legally binding instruments, international treaties can and have become the norms to which institutional (governmental, business, academic, etc.) norms adhere.⁶⁰ With respect to economics, in fact, the treaties of the World Trade Organization have laid the foundation of the world economic

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system; indeed, the old “Westphalian” concept by which states have a monopoly over certain exercises of power with regard to their own territories and citizens has been largely discredited in matters of common global interest,⁶¹ as the rights of the disabled are.

International treaties are not enforced by any overarching compulsory judicial system nor by any coercive penal system, although the Security Council of the United Nations, under Chapter VII of the Charter, can enforce its decisions regarding threats to international peace and security by imposing sanctions or authorizing the use of force. In the absence of such threats, however, breaches of treaties are considered by tribunals in the international legal system, including the International Tribunal for the Law of the Sea, the Permanent Court of Arbitration, the various dispute settlement bodies of the World Trade Organization, and the International Court of Justice, the principal judicial organ of the United Nations. The International Court of Justice oversees the peaceful resolution of disputes between states, in accordance with international law. Member States of the United Nations, of which the United States is one, if they voluntarily accept the Court’s jurisdiction, must abide by the Court’s decisions in cases to which they are parties.

With respect to treaties involving human rights, many committees monitor implementation; for example, the Human Rights Committee monitors the implementation of the International Covenant on Civil and Political Rights; the Committee on the Elimination of Racial Discrimination monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; the Committee against Torture monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; and a Special Rapporteur monitors the implementation of the Standard Rules for the Equalization of Opportunities of Persons with Disabilities. In 1994 the Committee on Economic Social and Cultural Rights, which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stated:⁶²

... since the Covenant’s provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant. In addition, insofar as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the

rights specified in the Covenant, flowing from their disability.

In sum, while neither the Standard Rules nor the ICESCR declare themselves to be legally binding, they are a moral imperative. The legal philosopher John Rawls ascribed to individuals “a natural duty... to support and to comply with just institutions,”⁶³ and Brad Roth extends “to collectivities and their constituents a natural duty to support and comply with international institutions that, even if not ‘just’ in any thoroughgoing sense, facilitate coordination and militate against predation to a greater extent than any available alternative.”⁶⁴

Further, as treaties, the Standard Rules and the ICESCR have special status. Article VI, paragraph 2, of the United States Constitution makes treaties the supreme law of the land on the same footing with acts of Congress.⁶⁵ This article and paragraph have been invoked on several occasions over the centuries to uphold a treaty over a state law.⁶⁶ However, the supremacy of a treaty holds only in so long as the treaty “operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract – when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract, before it can become a rule for the Court.”⁶⁷ This condition has led to congressional debates over a range of points.⁶⁸ The import to us, however, is the determination that “[t]reaty provisions which define the rights and obligations of private individuals and lay down general principles for the guidance of military, naval or administrative officials in relation thereto are usually considered self-executing.”⁶⁹ Further, the Supreme Court has yet to find any international treaty unconstitutional. We conclude it would not only be a disgrace for the United States, as a member of the United Nations, to disregard these treaties, insofar as they are self-executing, it would also be illegal. An assumed right to access language in such treaties, therefore, would apply in the United States.

Although the United States has signed but not ratified the CRPD, the treaty is likely to carry influence in the courts and legislature. This significant influence occurs due to the normative pull and absorption of international law into the nation’s internal value set, as argued by many.⁷⁰ Indeed much of CRPD’s language was influenced by the ADA; the CRPD Ad Hoc drafting committee received significant input from the United States delegation, especially in the areas of equality and anti-discrimination. On the other hand, within the United States areas related to family and

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education tend to be the province of the states. As a result, a consensus in these areas is harder to develop and agree on nationally and internationally.

VI. Law in General and the Right to Language

The right to language is not enumerated in any of the laws or treaties discussed here. The closest we come is (1) the state laws requiring newborn hearing screening, (for what purpose could such screening have other than to protect the right to language?), and (2) Article 24 of the CRPD, which recommends that states facilitate sign language learning. But in all these laws and treaties the right to language is implied. That is,

access to the rights explicitly listed in some of the statutes and treaties discussed here, people would also need food, health care, shelter. A naked, starving, homeless person cannot reasonably be taken to have access to education. So by ensuring a right to education, do these statutes also imply a right to food, health care, and shelter? While we would answer yes, we choose not to pursue that issue here, but, rather, to make a fundamental distinction between the right to language and all other human rights.

Consider the nature of laws in general. Laws are institutional phenomena; as the philosopher John Searle says, "...institutional facts in general require language because the language is partly constitutive of

The implicit-endorsement arguments given here can be seen as a slippery slope.

Certainly, to have access to the rights explicitly listed in some of the statutes and treaties discussed here, people would also need food, health care, shelter. A naked, starving, homeless person cannot reasonably be taken to have access to education. So by ensuring a right to education, do these statutes also imply a right to food, health care, and shelter? While we would answer yes, we choose not to pursue that issue here, but, rather, to make a fundamental distinction between the right to language and all other human rights.

it is already present in the law. As the 9th amendment states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."⁷¹ That implied rights or contracts exist is among the founding arguments for a right to privacy.⁷² In *Griswold v. Connecticut*,⁷³ the U.S. Supreme Court ruled that a right to privacy was protected by the Constitution, even though the Bill of Rights does not explicitly mention privacy. The same is true for language. One simply cannot protect the right of a child to have access to education without also protecting that child's right to language given that education is conveyed via language.

Note that we are not blurring the distinction between the right to be free of discrimination (based on disability or anything else) versus the right to a specific good. Certainly, guaranteeing a child access to education, for example, is not the same as guaranteeing an education, nor does it imply it. Many other factors could inhibit one's ability to gain an education. Rather, guaranteeing a child access to education implies guaranteeing that child access to the tool via which education proceeds: language.

The implicit-endorsement arguments given here can be seen as a slippery slope. Certainly, to have

the facts."⁷⁴ In particular, all the powers, rights, obligations, duties, and so on of laws require a vehicle for being conveyed, and that vehicle is language; without language how could we possibly understand that when the Justice of the Peace says, "I now pronounce you man and wife," a whole range of rights and duties now ensue? Laws are made sense of and understood only with the resources of language. Thus any law, no matter what it deals with, implies the right to language. The very fact that the United States has a law of the land means that the United States recognizes the right to language, and the very notion of voting relies on people being able to communicate their vote via language, whether spoken, signed, or written. Thus, the need for language is, in fact, distinguished from other basic human needs with respect to the law.

VII. Benefits to Deaf Children of the Right to Language

The right to language clarifies the state's responsibility not only to protect that right but to provide full and complete information on deaf children's linguistic development rather than merely auditory development. This information would include the fact that sign languages assure linguistic development and,

therefore, allow equalization of opportunities. This information would also give an overview of cochlear implants as an auditory tool, without assurance of linguistic development.

Such information would lay the groundwork for complying with the ACA with respect to decision aids in health matters. Protecting the cognitive faculty of language, a biological mechanism, is, rightly, a health matter. Parents of deaf newborns and newly deafened young children need aids outlining current medical and psychological knowledge of the implications and prospects involved with cochlear implants and explaining risks to linguistic development in the presence of imperfect auditory information, so that they can make informed language decisions for their children.

Finally, an autonomous right to language and, hence, to linguistic development, strengthens society's protection of children's developmental rights. Although parents still have primary responsibility for their child's development, recognition of an independent right to language fosters the child's participatory role that grows along with their growing independence.⁷⁵ This right allows the deaf child's wishes to be expressed to their parents and society. It ensures both the child's right to develop his or her own cultural identity, even if differentiated from the parents. This right also ensures the deaf child's right to state or agency advocacy for the deaf child if language deprivation is occurring and the child is too young or does not have the language to advocate for oneself.⁷⁶

VIII. State Obligations Entailed by the Right to Language

a) *The Necessity of Group Discourse*

Ninety-six percent of deaf children are born to at least one hearing parent, typically in a speech-only environment.⁷⁷ Also, deafness is a low incidence disability, which makes it difficult for deaf children to find other deaf children to socialize with in a common language – a community of others like himself – without a lot of guidance and help. In addition to the dispersion problem, rapidly changing medical trends in cochlear implants, biotechnology, and genetic counseling make it harder to develop a uniform set of expectations over any period of time.

Although telecommunications is a powerful countervailing effect in that deaf people can find each other over video phones and the Internet, generally deaf individuals have the opportunity to learn and use videophones and the Internet when they have become adults, well after their window to learn language has passed. Individual interpreters, who act as surrogate teachers or even parents in the classroom tend to

have little contact with other deaf students or the deaf community. As a result, deaf students continue to be limited to dyadic groups for communication. Dyadic communication struggles to capture the richness and complexity of community and language. It appears the only way to ensure the needed exposure is to participate in group discourse.

b) *Learning a Sign Language and Funding*

The right to language legitimizes the claim that states must fund programs to ensure that deaf children have the opportunity to learn a sign language, and thus gain the linguistic competence necessary to have equal opportunity under the law. Such programs include early intervention in the form of signing adults visiting deaf infants and young children frequently, as well as programs to teach a sign language to families of deaf newborns and newly deafened young children to enable them to become as linguistically and culturally fluent as they can be.

Christine Yoshinaga-Itano outlines how to achieve optimal outcomes from the Early Hearing Detection and Intervention (EHDI) programs that administer hearing screenings and following interventions.⁷⁸ One of her strong recommendations is that families of deaf newborns "have an opportunity to interact with individuals and professionals who are deaf or hard of hearing."

Since deaf children are born in areas that may not have a local deaf community, such as in rural areas or even urban areas, one might argue that it is not practicable to teach them and their families a sign language.⁷⁹ But practical obstacles can be overcome,⁸⁰ and we have argued here that, legally, they must be overcome. There have been federal and state efforts to bring about social change that is in the public interest, for example, protecting individuals from the harmful effects of second-hand smoke. The state can devise programs to bring deaf children and their families into deaf signing environments (such as summer camps and other deaf outreach activities). These programs should continue not just throughout the critical years of first language acquisition (that is, through the age of five), but up through the age of twelve, when lateralization of the brain is complete, in order to solidify mature language skills adequate to allowing academic success and psycho-social health.⁸¹

IX. Overall Conclusion

We have argued for a right to language for every child, and specifically for every deaf child. We have also argued that the only way to ensure this right is to provide an environment where exposure to a natural sign language can be acquired through rich social interac-

tion. The right to language is implied in existing laws: codes and treaties.⁸² We have here discussed laws that are relevant to citizens of the United States; however, given the language-based nature of laws, our arguments for the implied right to language can be adapted in a general way to other countries regardless of their specific laws. In fact, however, many countries do have laws comparable to those discussed above, particularly with respect to deaf people's rights to access education and health care,⁸³ so some arguments may be adaptable point by point.

Language is a human necessity, not just for equal protection of the individual, but for the benefit of society as a whole, particularly as we recognize "the importance of wider group memberships and social contexts."⁸⁴ Thus, it is in everyone's interest to protect the right to language, and to implement not just the international treaties we outlined above, but the Brussels Declaration of the European Union of the Deaf⁸⁵ and the Human Rights Declaration of the World Federation of the Deaf.⁸⁶

Our present knowledge of the science of the brain and of language acquisition strongly supports sign language as the only truly viable and reliable access to language for deaf children. Thus, we conclude our argument with the position that the right to language for deaf children is, in practical terms, a right to sign language.

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