

impact; it requires a showing "that the decision-maker selected or reaffirmed a particular course of action at least in part 'because of' not merely 'in spite of' its adverse effects upon an identifiable group." Soberal-Perez, 717 F.2d at 42. In the absence of such a showing, the strict scrutiny test is not triggered, and the statute will be upheld if it bears a rational relationship to a legitimate state purpose. Washington v. Davis, 426 U.S. 229, 242 (1976). 2/

As we have no evidence of a legislative intent to discriminate against the foreign-born, we apply the rational basis test. The apparent purpose of House Bill 573 is to ensure that health care professionals are able to communicate with the public they serve and with other professionals involved with their patients' care. That there is a legitimate state interest in protecting the health and safety of the public, and that that interest is served by requiring that health care professionals be able to communicate effectively was recognized in Southeastern Community College v. Davis, 442 U.S. 397 (1979), a case concerning the refusal of a nursing school to admit a hearing-impaired student. 3/ A requirement that an applicant for a health occupations license demonstrate the ability to effectively communicate with patients and with other health care workers appears rationally related to that goal. 4/

Another issue raised by the bill is that the requirement of oral competency in the English language may exclude people with disabilities that prevent them from communicating orally in any language, even if they can communicate effectively with English speakers. While disability has not been held to be a suspect class, Cal. Ass'n of Physically Handicapped v. FCC, 721 F.2d 677 (9th Cir. 1983) cert. den. 105 S.Ct. 121 (1984); National Ass'n of Property Owners v. U.S., 499 F.Supp. 1223 (D. Minn. 1980) aff'd sub. nom, State of Minnesota by Alexander v. Block, 660 F.2d 1240 (8th Cir. 1981; Doe v. Colautti, 454 F.Supp. 621 (D. Pa. 1978) aff'd 592 F.2d 704 (3rd Cir. 1979), the requirement that a person who has developed a workable method of non-oral communication with English speakers be able to demonstrate oral competency in English in order to be allowed to practice their profession may not even meet the lax standard set by the rational basis test. The existence of a rational basis is further called into question by the fact that two applicants with identical communication skills may be treated differently if one graduated from an English-speaking professional school and the other did not. However, since no court has decided this issue, and since courts tend to defer to the states with respect to licensing requirements, we cannot say that the law is clearly unconstitutional on this ground.

An even more troublesome feature of the bill is that the lack of standards for the licensing boards to apply in its administration, leaves them broad discretion to exclude applicants in a discriminatory fashion. The term "oral competency" is itself so amorphous as to give little or no