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ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": Literal Silencing/Silenciando la Lengua *

* "Silencing the tongue."

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SUMMARY: ... The effect of "official language" provisions such as Article XXVIII results in "silencing" much more than the non-English native language of many immigrants in the United States. ... The anxiety over the threat posed by immigrants was more specifically verbalized by the leader of Florida's "English Only" group as he revealed his feelings about the Latino presence in Miami: "I didn't move to Miami to live in a Spanish speaking province ... The Latins are coming up fast. ... Attempts at silencing foreign languages are vividly demonstrated in the role that language politics have played in Miami, the birthplace of the contemporary "English Only" movement in the United States. The irony is that Miami is the city with the largest number of persons born outside of the United States, which is now about 59 percent. ... As a result, fire safety information pamphlets in Spanish were prohibited; Spanish marriage ceremonies were halted; and public transportation signs in Spanish were removed from Miami's streets. ... Assimilation, however, did not reduce the powerful influence that Spanish, my native language, continues to have on defining who I am. ...

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Escritores bilingües en Español e Inglés, advierten las limitaciones de un solo idioma y la imposibilidad de traducir algunas expresiones. Aunque el Inglés es la lengua que yo utilizo para comunicarme en público, durante mi niñez todos los miembros de mi familia hablabamos solo Español en nuestra casa. Hoy en día, el Español continua siendo una magnífica fuente de expresiones que en mi opinión no tienen traducción al Inglés. El Español sigue siendo el idioma preferido entre mi padre y yo.

Writers, bilingual in English and Spanish, have noted the limitations of a single language and the "untranslatability" of certain meanings. Although English is the tool of my public discourse, during my childhood, Spanish was spoken exclusively by all of my family members in our home. Today, the Spanish language continues to provide me with a rich source of expressions that I believe have no equivalents in English. Spanish is still the language of choice between my father and me.

I'd like to talk about how law shapes culture by restricting, or "silencing," language. For some years, the metaphor of "silencing" has been invoked to refer to oppressive effects of law and culture experienced by various groups. Generally, this metaphor has been applied to suggest that prevailing discourse works to exclude narratives and linguistic styles that non-dominant individuals and groups might prefer. Recently,

forcible- and not merely metaphysical- silencing has been sought at both the state and federal government levels of the United States, where governmental entities have attempted to impose real silence upon non-English speaking people. n1

[*996] I was born in Havana, Cuba. My family, along with many others, left Cuba in the 1960's to flee Fidel Castro's regime. In 1963, we arrived in the United States. As a result, until age eight, I only spoke Spanish. In spite of our delayed introduction to the English language, my parents, my two brothers, and I all learned to read and write the English language. And, like many others who spoke Spanish as their first language, we all seemingly assimilated into our new American culture.

In my apparent assimilation, I resemble Maria-Kelley Yniguez. In 1988, Maria-Kelly Yniguez worked as a medical malpractice claims evaluator for the Arizona Department of Administration. n2 She was fully bilingual in both Spanish and English. n3 At work, her bilingual abilities allowed her to aid non-English speaking clients who came in seeking help in filing medical malpractice claims against the State of Arizona. n4 She also sometimes chose to speak Spanish to other Spanish-speaking people. n5 She did this in order to communicate concepts that were inexpressible in English, including aspects of her cultural heritage, the sense of community and experience shared by Latinos in this country, and a sense of "solidarity." n6

Also in 1988, Arizona voters, by a narrow margin of 50.5 percent, approved an amendment to the state constitution by adopting Article XXVIII, an "English Only" provision. n7 The amendment provides that "the English language is the language of the ballot, the public schools, and all government functions and actions" and is to be used by all government officials and employees during the "performance of government business." n8 It further mandates that all government officials and employees shall "act" in English and no other language. n9 This is to date the most restrictive "language initiative" in the country. Immediately after the Arizona Constitution was amended, Yniguez stopped speaking Spanish at work, fearing that she would be subject to sanctions for violating a mandate of the Arizona Constitution. n10

Yniguez filed a lawsuit in federal district court against the State of [*997] Arizona, and alleged that the provision violated her rights of freedom of speech and equal protection under the First and Fourteenth Amendments. n11 On February 6, 1990, the district court granted declaratory relief, finding Article XXVIII overbroad and violative of Yniguez's First Amendment protected speech. n12 The case was appealed to the Ninth Circuit Court of Appeals. n13 On appeal, the court, in a six-to-five decision, struck Article XXVIII as an invalid regulation of speech of Arizona public employees and of the non-English speaking members of the Arizona population's right to hear the speech at issue. n14

On appeal, the group "Arizonans for Official English," supporters of "English Only" legislation and intervenors in the lawsuit, advanced three arguments in support of the legislation: (1) "protecting democracy by encouraging unity and political stability;" (2) "encouraging a common language;" and (3) "protecting public confidence." n15 The Ninth Circuit rejected the arguments for promoting a common language as a means of protecting unity and political stability. n16 It found that some of the Arizona population desired to hear the speech at issue, and the Amendment restricted not only Yniguez's right to speak, but also the right of the public to receive information. n17 The court also found that government offices were more efficient and effective when the employees could speak a language that the claimants could understand. n18

Lastly, as for the argument that the "English Only" provision protected public confidence, the Arizonans for Official English claimed that allowing government employees to speak languages other than English would lead to "disillusionment and concern" of those who did not understand them. n19 The Ninth Circuit correctly noted that the disillusionment and concern felt by non-English-speaking people when, for example, they were prevented from obtaining information about a landlord's wrongful retention of a rental deposit or from getting instructions on filing a complaint in small claims court would clearly outweigh any

"concern" felt by the English-speaking population over the provision of [*998] government services in the Spanish language. n20

On March 3, 1997, the U.S. Supreme Court vacated the Ninth Circuit's decision as moot and remanded the case to the district court for dismissal. n21 Although the action was dismissed without the Court reaching the merits, the development of *Yniguez v. Arizonans for Official English* n22 warrants careful consideration in that the examination of Article XXVIII, the Arizona Language Initiative, discloses the political context within which this "language legislation" was enacted.

The effect of "official language" provisions such as Article XXVIII results in "silencing" much more than the non-English native language of many immigrants in the United States. "Official language" politics, in restricting the auditory aspects of "foreign" languages, also attempt to silence immigrants through exclusion, forced conformity, and domination.

In *Yniguez*, the Arizonans For Official English expressed a "concern" about the prevalence of immigrants who speak their native language in public arenas, n23 and debate has arisen in which others have touted the "glue of language" as being the most effective means of achieving cultural unity in this country. n24 "Official language" advocates also charge that immigrants do not learn English quickly enough upon arriving in the United States and that "English Only" measures will encourage greater efforts by non-English speaking immigrants to learn English. n25 This logic, though, directly contravenes empirical evidence establishing that immigrants very much want to learn English.

Examples of the demand for English language instruction abound. In Washington D.C., during the 1994-95 school year, approximately five [*999] thousand immigrants were turned away from ESL (English as a Second Language) classes. n26 In Los Angeles, some ESL programs are taught twenty-four hours a day. n27

Not only do most immigrants actively attempt to learn English, but they are also losing their native languages at a faster pace than did immigrants early in this century. Previously, it took three generations for an immigrant family to completely lose its native tongue. n28 In recent decades, there appears to be a trend towards monolingual English-speaking by the children of immigrants. n29 Thus, this concern by "Official Language" advocates is clearly unfounded.

The anxiety over the threat posed by immigrants was more specifically verbalized by the leader of Florida's "English Only" group as he revealed his feelings about the Latino presence in Miami: "I didn't move to Miami to live in a Spanish speaking province ... The Latins are coming up fast. There's a headiness, a certain righteous sense of superiority." n30 Attempts at silencing foreign languages are vividly demonstrated in the role that language politics have played in Miami, the birthplace of the contemporary "English Only" movement in the United States. n31 The irony is that Miami is the city with the largest number of persons born outside of the United States, which is now about 59 percent. n32

Not long after more than 125,000 Cubans arrived in South Florida through the Mariel boatlift, voters in Dade County, Florida, approved an "English Only" ordinance. n33 The ordinance prohibited county officials [*1000] from spending money for promotion or use of any language other than English. n34 As a result, fire safety information pamphlets in Spanish were prohibited; Spanish marriage ceremonies were halted; and public transportation signs in Spanish were removed from Miami's streets. n35 The majority of Florida's voters further reinforced their anti-immigrant stance by approving an amendment to the state constitution making English the "official language" of the state of Florida. n36

Orders of linguistic silence to immigrants are not only issued by legislative bodies, but they are also readily dispatched by the judiciary. Consider the recent *Amarillo, Texas* case in which, during a custody hearing, Judge Samuel Kiser accused Marta Laureano of having relegated her five-year-old daughter to the position of housemaid and having caused her to be "ignorant" because Ms. Laureano had conversed only in Spanish with her daughter. n37 Judge Kiser later apologized to "house maids" for his comment; however, he

maintained his position that Ms. Laureano's language preference created an "abusive" home environment for her daughter. n38 Judge Kiser, in effect, equated the use of Spanish between mother and child with child abuse, which is one of the most deadly forms of domestic violence and aggression. Like "English Only" legislation, decisions such as those handed down by Judge Kiser in Texas boldly endorse the sentiment that immigrants should not be heard.

[*1001] Hearing Spanish or any other "foreign" language represents to some monolingual speakers a threat to Anglo-American culture. It fuels distrust of the speakers and fear that "outsiders" will upset the comprehensible order of an English-speaking America. Speech, in a language other than English, may be most highly suspect when the communication appears to fortify human bonds, enhance intimacies, or serve as an exchange of useful information between speaker and listener.

We live in a time in which greater global mobility demands not only that many different languages and cultures co-exist, but that different experiences and practices reinforce one another toward an America that thrives on ethnic, cultural, and linguistic diversity. To this end, I would urge a more fully contextualized approach by courts addressing language issues similar to those raised by Maria-Kelley Yniguez's experience in the Arizona Department of Administration.

"Official language" proponents emphasize the need for immigrants to "assimilate" into American culture by muting their native speech and thus renouncing their past. Long ago, I assimilated into the fiber of this country. Assimilation, however, did not reduce the powerful influence that Spanish, my native language, continues to have on defining who I am. As a result of carrying two languages with and within me, different aspects of my self are fueled by internal correspondences rooted in my Cuban and American cultures. Although the transplantation from my native land forced me to create a new identity, the two languages within me cannot exist one without the other. Every day, they actively influence and shape my communication with the exterior world in English y en Espa<tild n>ol.

FOOTNOTE-1:

n1. In 1997 and 1998, the following states undertook "Official English" initiatives: Alaska, Arizona, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, Pennsylvania, Utah, Washington, and West Virginia. See Bal.Meas. 2, 20th Leg., 2d Sess. (Ala.1998); S.Con.Res. 1010, 43rd Leg., 2d Sess. (Ariz.1998); S.219, 77th Leg., Reg.Sess. (Kan.1997); H.R.J. Res. 9, Reg. Sess. (Md.1998); H.3132, 181st Gen.Ct.Reg.Sess. (Mass.1997); H.4100, 89th Sess. (Mich.1997); H.2198, 80th Sess. (Minn.1997); S.645, 89th ed Sess. (Mo.1998); S.441, 69th Reg.Sess. (Nev.1997); S.530, 208th Sess., (Penn.1997-98); H.189, 52nd Sess., (Utah 1998); S.5865, 55th Sess., (Wash.1997); H.2732, 73rd Sess., (W.Va.1998). See also National Language Act of 1997, H.R. 1005, 105th Cong. (1997) (proposed federal legislation to declare English the official language of the United States Government).

n2. See [Yniguez v. Arizonans for Official English, 69 F.3d 920, 924 \(9th Cir. 1995\)](#).

n3. See id.

n4. See id.; [Yniguez v. Mofford, 730 F. Supp. 309, 310 \(D. Ariz. 1990\)](#).

n5. See [Yniguez, 69 F.3d at 924](#).

n6. See [Brief for Intervenor-Defendants-Appellants at 3, Yniguez, 69 F.3d 920 \(9th Cir. 1995\)](#) (No. 92-17087) (citing to Plaintiff's Statement of Facts (CR Doc. 17, par. 9)).

- n7. See [Yniguez, 69 F.3d at 924.](#)
- n8. See [Yniguez, 730 F. Supp. at 317.](#)
- n9. See [id. at 315.](#)
- n10. See [Yniguez, 69 F.3d at 924; 730 F. Supp. at 310.](#)
- n11. See [Yniguez, 730 F. Supp. at 310.](#)
- n12. See [id. at 316.](#)
- n13. See [Yniguez, 69 F.3d 920.](#)
- n14. See *id.*
- n15. See [Yniguez, 69 F.3d at 944.](#)
- n16. See [id. at 944-46.](#)
- n17. See [id. at 932.](#)
- n18. See [id. at 942.](#) The Arizonans for Official English did not contest, and in fact acknowledged, that Yniguez's use of Spanish contributed to the efficient operation of her employer. See [id. at 924, 942 & n.4.](#)
- n19. [Id. at 947.](#) Maria Kelley Yniguez did not speak Spanish to monolingual English speakers. Rather, she sought a right to speak another language only when doing so facilitated the performance of her duties, and she only spoke Spanish with Spanish-speaking claimants and attorneys. [Id. at 943.](#)
- n20. See [id. at 947.](#)
- n21. See [id. at 920; Arizonans for Official English v. Arizona, 117 S.Ct. 1055 \(1997\),](#) vacated as moot and remanded to district court for dismissal. The Court based its decision on the following findings: (1) grave doubts existed as to the standing of petitioners, Arizonans for Official English and its Chairman, Robert D. Park, to pursue appellate review under the case or controversy requirement of Article III of the United States Constitution; (2) the resignation of Maria Yniguez from public sector employment in April 1990 to pursue work in the private sector, where speech was not governed by Article XXVIII, mooted her claim; and (3) prior to adjudicating the case on the merits, the District Court and the Court of Appeals should have sought, through abstention or certification to the Arizona Supreme Court, an authoritative construction of [Article XXVIII, 117 S.Ct. at 1058.](#)
- n22. See [Yniguez, 69 F.3d 920.](#) The case of [Ruiz v. Hull, 957 P.2d 984 \(Ariz. 1998\),](#) is factually similar to Yniguez. On April 28, 1998, the Supreme Court of Arizona found Article XXVIII of the Arizona Constitution violative of the First Amendment and of the Equal Protection Clause of the Fourteenth Amendment.
- n23. See [Yniguez, 69 F.3d at 947.](#)
- n24. See Clay Robison, Official English Only is Preying on Fear, *Hous. Chron.*, Sept. 10, 1995, at 2; see also Aaron Epstein, Can English Be "Official?" Justices to Rule Florida Among 21 States With Linguistic Mandates, *Miami Herald*, Mar. 26, 1996, at A1.
- n25. See Robison, *supra* note 24, at 2.

n26. See English as Official Language (1996): Hearings on S. 356 Before the Senate Comm. on Governmental Affairs, 104th Cong. (1996) (statement of Karen K. Narasaki, Executive Director of the National Asian Pacific American Legal Consortium).

n27. Jon Anderson, English Spoken Here - But Not Exclusively, Chi. Trib., Mar. 28, 1996, at 1.

n28. See English as Official Language (1996), supra note 26; see also Patrick J. McDonnell, Study Disputes Immigrant Stereotypes, Cites Gains, L.A. Times, Nov. 3, 1995, at A1.

n29. McDonnell, supra note 28.

n30. See Jeffrey Schmalz, Hispanic Influx Spurs 3 Ballots on Language, N.Y. Times, Oct. 26, 1988, at A1. (Statement of Dr. Mark A. LaPorta).

n31. Max J. Castro, On the Curious Question of Language in Miami, in Language Loyalties: A Source Book on the Official English Language Controversy 178 (James Crawford ed., 1992).

n32. See id. The following cities are listed in order of population born outside the United States: Miami 59.7%, Los Angeles 38.4%, San Francisco 34%, New York City 28.4%, and San Diego 20.9%. 1990 Census of Population and Housing, Summary Social, Economic, and Housing Characteristics, United States. Table 1: Selected Social Characteristics 1990. U.S. Department of Commerce, Economics and Statistics Administration.

n33. Dade County Ordinance No. 80-128 stated, in pertinent part:

1. The expenditure of county funds for the purpose of utilizing any language other than English, or promoting any culture other than that of the United States, is prohibited.
2. All county governmental meetings, hearings, and publications shall be in the English language only.
3. The provisions of this ordinance shall not apply where a translation is mandated by state or federal law...

Dade County "Antibilingual" Ordinance, in Language Loyalties: A Source Book on the Official English Language Controversy 131 (James Crawford ed., 1992).

n34. See Dade County "Antibilingual" Ordinance, supra note 33 (Dade Cty. Ord. No. 80-128(1)).

n35. Jamie B. Draper and Martha Jimenez, A Chronology of the Official English Movement, in Language Loyalties: A Source Book on the Official English Language Controversy 89, 90 (James Crawford ed., 1992). In 1984, however, in response to protest against the restrictive provisions of the ordinance, the measure was amended so that public employees could communicate with medical patients and conduct other types of official business in languages other than English. See Robert Lindsley, Debates Growing on Use of English, N.Y. Times, July 21, 1986, at A1.

In 1993, the Dade County Commissioners sat on a then newly-configured Commission expanded to contain a majority of Hispanics and African Americans. Not until then was the county ordinance finally repealed by a majority of the Dade County Commissioners, having been deemed "a cancer" serving no useful purpose. John Fernandez, United Commission Votes to Dump Dade's English-Only Measure, Palm Beach Post, May 19, 1993, at A1.

n36. The Florida Constitution states in pertinent part: "English is the official language of the State of Florida... The legislature shall have the power to enforce this section by appropriate legislation." Fla. Const. art. II, 9 (1988).

n37. James Harrington, *Racism Taints Texas Justice*, *Daily Texan*, Sept. 7, 1995; see also Luis Wilmot, *Report Judicial Abuses to State Commission*, *San Antonio Express-News*, Sept. 11, 1995.

n38. Wilmot, *supra* note 37.