Nevada Law Journal

Summer, 2007

7 Nev. L.J. 883

LENGTH: 6084 words

SYMPOSIUM: LatCrit XI Working and Living in the Global Playground: Frontstage and Backstage: ARTICLE: LANGUAGE: Introduction: **Old Hate in New Bottles:** Privatizing, Localizing, and Bundling Anti-Spanish and Anti-Immigrant Sentiment
in the 21st Century

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BIO: * James and Ilene Hershner Professor of Law and Director of Portland Programs, University of Oregon School of Law. This Article is dedicated to Associate Dean Kevin Johnson, University of California, Davis, School of Law, who inspired this work with his dedication to principles of anti-discrimination and his refusal to tolerate mistreatment of marginalized groups.

SUMMARY:
... Anti-Spanish and anti-immigrant sentiment is nothing new in the U.S. As Lupe Salinas documents in his symposium contribution, these sentiments date back to the 1900s and earlier, and they include language regulation that targeted German and other eastern and southern European immigrants. ... The Hazelton ordinance also intends to protect monolingual English language speakers from discrimination in employment and otherwise, by requiring that: ... Although the Hazelton ordinance does not explicitly mention the Spanish language, anti-Latina/o immigrant tensions sparked its adoption, as well as the other recent English language and anti-immigrant local government regulations. ... Hazelton, Pennsylvania adopted a three-ordinance package that encompassed the English language regulation excerpted above, as well as anti-immigrant measures to penalize employers who hire the undocumented and to penalize landlords who rent a dwelling unit to an undocumented immigrant. ... Localized anti-Spanish and anti-immigrant regulation calls for a similar attack. ... Professor Kleven's submission to this symposium is by far the most radical of the three contributors in his rousing arguments for the most controversial type of bilingual education - cultural maintenance. ...

TEXT:
[*883]

Anti-Spanish and anti-immigrant sentiment is nothing new in the U.S. As Lupe Salinas documents in his symposium contribution, these sentiments date back to the 1900s and earlier, and they include language regulation that targeted German and other eastern and southern European immigrants. [n1] During the 1980s, resurgent xenophobia against Latina/o and Asian immigrants revived interest in English language laws, prompting fourteen states to enact comprehensive language laws by legislation or initiative in the 1980s. [n2] Although the anti-Spanish movement lost momentum in the late 1980s, the same anti-immigrant sentiment behind California's Proposition 187 in 1994 ushered in another brief golden age for anti-Spanish laws, leading to their adoption in several more states.

The 1990s also witnessed the mainstreaming of a new dimension of the anti-Spanish movement - the privatization of language hate. I captured this troubling trend of language vigilantism in an article for the first LatCrit symposium, [n3] and in this symposium Lupe Salinas builds on this work. [n4] Today, Latinas/os and the Spanish language are under attack in private settings that range from the workplace [n5] to places of entertainment, such as taverns, [n6] to even the family home where judges increasingly mandate either English language **[*884]** acquisition or prohibit bilingual Latinas/os from speaking Spanish to their children. [n7] Recent attacks on bilingual education [n8] stem from the same ill-will against Latina/o families that spawned these judicial orders barring Spanish in the Latina/o home and that welcomed Proposition 187's prohibition of educating the children of undocumented immigrants. [n9]

Thus far in the new century, anti-immigrant sentiment has reached a fever pitch at the U.S./Mexico border and all points north. The Minuteman Project anchors vigilantism at the border, and localized efforts to regulate undocumented

immigrants extend north to the New Hampshire police chiefs who arrested and charged the undocumented as criminal trespassers, charges later thrown out by local courts. This cluster introduction stems from my curiosity and concern about how the current anti-immigrant fervor has carried over into the realm of language law. Mindful that the same anti-immigrant climate that sparked Proposition 187 and swept Pete Wilson to reelection in 1994 as the Governor of California also prompted anti-Spanish backlash such as California employers adopting English-Only rules in the workplace, [n10] I was certain Spanish would come under fire as Latina/o immigration was vilified. Regrettably, I was right.

This cluster introduction focuses on two trends that emerged or accelerated in the past few years - (1) the localization of anti-Spanish and anti-immigrant sentiment and (2) the bundling of anti-Spanish regulation with other anti-immigrant regulation. Although both these practices have roots in the last century, [n11] no doubt of late they have become more widespread and pronounced.

I. Localizing Anti-Spanish Regulation and Sentiment

Anti-Spanish and anti-Asian sentiment led a few local governments in the 1980s and 1990s to regulate against non-English languages. This regulation took several forms. A few jurisdictions embraced symbolic "Official English" regulation that deemed English as the locality's official language of government. [n12] **[*885]** Others, such as Dade County, adopted more restrictive English language laws requiring local government to act only in English, known as "English-Only laws." [n13] Still others, such as Monterey Park and Pomona, California, and six towns in Bergen County, New Jersey, chose to target business signs of immigrant merchants, requiring that their signs be written in whole or in some specified part in English. [n14] And some local governments, such as Elizabeth, New Jersey, [n15] and a Los Angeles county municipal court, [n16] required municipal employees to speak only English on the job. Finally, in 1989 voters in Lowell, Massachusetts looked beyond their municipal borders and adopted a resolution requesting the state legislature and Congress to declare English the state and U.S. official language. [n17]

Prompted by the anti-Latina/o immigrant sentiment in the early 2000s, particularly the xenophobia surrounding the 2006 election and failed Congressional efforts at comprehensive immigration reform, numerous localities took immigration enforcement into their municipal hands and recently considered and adopted English language regulation. These efforts attracted considerable media attention. For example, the adoption of anti-immigrant ordinances in Hazelton, Pennsylvania, including English language regulations, was national news, and the 2006 vote of the town board of Pahrump, Nevada (population 33,241) to declare English the town's official language, along with other anti-immigrant restrictions, was a major story in the Las Vegas news market. Other towns adopting English language regulations in 2006 included Farmers Branch, Texas, and Taneytown, Maryland. [n18]

[*886] The Hazelton ordinance, labeled the Official English Ordinance, declares English as "the official language of the City of Hazelton." [n19] Borrowing language from state English language laws, such as California's initiative that purports to protect English from legislative attack, [n20] the ordinance requires that city government take all steps to preserve English as the common language and not make any policy that "diminishes or ignores the role of English as the common language of the City of Hazelton." [n21] Further, the ordinance contains English-Only provisions requiring official actions to be taken in English and no other language, except for certain enumerated areas such as when necessary to protect public health or safety. [n22] The Hazelton ordinance also intends to protect monolingual English language speakers from discrimination in employment and otherwise, by requiring that:

> A person who speaks only the English language shall be eligible to participate in all programs, benefits and opportunities, including employment, provided by the City of Hazelton and its subdivisions ... [and]
>
> No law, ordinance, decree, program, or policy of the City of Hazelton or any of its subdivisions shall penalize or impair the rights, obligations or opportunities available to any person solely because a person speaks only the English language.

Although the Hazelton ordinance does not explicitly mention the Spanish language, anti-Latina/o immigrant tensions sparked its adoption, as well as the other recent English language and anti-immigrant local government regulations. This is apparent given the changing demographics of these communities while they absorb and scapegoat an influx of low-wage worker Latina/o immigrants. Hazelton, for example, attracted Latina/o immigrants leaving behind larger cities in New York and New Jersey. [n23] Attributing these new language laws to anti-Latina/o sentiment also reflects the dominant

discourse of the undocumented immigrant debate surrounding the 2006 elections. More than **[*887]** ever, the debate today over undocumented immigration is a proxy for discussion of the "Mexico problem." [n24]

Of course, proponents of these anti-Latina/o measures try to sugarcoat their motives. Inspired by the U.S. English approach to couch anti-Spanish laws in rhetoric of empowering immigrants to learn English, [n25] and perhaps also by the Texas judge who ordered a Latina to speak only English at home to avoid "relegating her [5-year-old daughter] to the position of a housemaid," [n26] Hazelton's mayor explained the ordinance as aiding immigrants: "we make it easy [by embracing non-English languages] for people to come [to the U.S.] and never speak English. We think we're helping them, but we're not." [n27]

Before the effective date of the Hazelton ordinance, which was September 11, 2006, [n28] the Puerto Rican Legal Defense and Education Fund and other groups filed suit to enjoin the ordinance (and related Hazelton anti-immigrant ordinances) as unconstitutional. The language ordinance, for example, is of dubious constitutionality given its conflict with the free speech rights of government employees and officials, and local citizens. [n29] In late October 2006, a federal judge temporarily enjoined enforcement of the Hazelton anti-immigrant ordinances, noting they could cause "irreparable injury" to immigrants. [n30]

II. Bundling Anti-Immigrant Regulation and Sentiment

Until recently, English language regulation has been adopted as a freestanding law containing only language restrictions. [n31] But the current anti-immigrant frenzy has birthed the phenomenon of bundling anti-Spanish regulation with other anti-immigrant restrictions. This anti-immigrant bundling has occurred at the federal and the local level. Hazelton, Pennsylvania adopted a three-ordinance package that encompassed the English language regulation excerpted above, as well as anti-immigrant measures to penalize employers **[*888]** who hire the undocumented and to penalize landlords who rent a dwelling unit to an undocumented immigrant. [n32] Pahrump, Nevada combined its English-Only ordinance with a measure prohibiting residents from flying a foreign (Mexican) flag unless displayed below an American flag, but a newly elected city counsel repealed these laws a few months later in 2007. [n33] Farmers Branch, Texas, a suburb of Dallas, combined an English language ordinance with a decision to enroll local police in a federal training program to enable them to fight undocumented immigration. [n34]

In 2006, the U.S. Senate amended its version of the ultimately unenacted comprehensive federal immigration reform proposal to recognize English as the U.S. national language and as the "common and unifying language." Congress has considered freestanding Official English and English-Only legislation regularly since 1981, with the House passing an English language bill in 1996.

In a rare example of counter-bundling, in 1999 the Texas border city of El Cenizo adopted an ordinance that embraced Spanish as its "predominant language," mandating Spanish for all city functions and meetings, with English translations available. El Cenizo the same day enacted a safe haven or "asylum" ordinance protecting undocumented immigrants by prohibiting city employees or officials from disclosing or investigating a resident's immigration status. Maria Pabon Lopez addressed these short-lived El Cenizo ordinances as part of the LatCrit V symposium. [n35]

III. Observations on the Current Trends of Anti-Immigrant Regulation

Localization of anti-immigrant sentiment owes some of its vitality to the civil rights struggles of the 1960s and their aftermath. The federal government ultimately took a leadership role by enacting and enforcing desegregation prerogatives over the objection of rogue states and localities. [n36] But Presidents Nixon and Reagan ushered in the era of states' rights as a proxy for diminished enforcement of these civil rights imperatives and ideals. [n37] Today, anti-immigrant **[*889]** ordinances thrive in this climate of protection for the expression, autonomy, and survival of local interests.

Participants and observers of the mass pro-immigrant rallies held in cities throughout the U.S. in 2006 often likened today's struggle for immigrant justice to civil rights efforts in the 1960s. [n38] As the federal government once did for civil rights of African Americans and others, Congress needs to address the immigrant situation as a human rights and civil rights crisis and adopt comprehensive immigration reform that legalizes the status of the working undocumented and creates a pathway to their eventual citizenship. [n39] Enacting this legislation will set the tone for more civil treatment of immigrants nationwide by ending the open season on immigrants and by taking away the justification for local action that the federal government has failed to act. Moreover, legalizing the status of these undocumented residents, some with deep roots in the U.S., will remove the imperative for local enforcement that these residents are illegally in the country breaking our laws by their mere presence.

As I observed in my 1997 LatCrit piece on language vigilantism, the current English language movement found success using the citizen initiative process rather than by the state legislature in the immigrant-rich states of Arizona, California, Colorado, and Florida. [n40] I noted there that disturbingly, the initiative process, a tool of direct democracy, is often used to target subordinated populations. [n41] The experience of localized anti-immigrant ordinances in 2006 suggests a similar potential of local government to attack subordinated groups. This is particularly the case in smaller cities and towns where these ordinances have thrived, such as Pahrump, Hazelton, and Farmers Branch. In these smaller cities, the ill will of a few stands a better chance of implementation. [n42] This speaks to the need for LatCrit scholars to examine carefully whether the power of local government vis-a-vis the state and federal government must be limited, particularly with regard to policies negatively affecting subordinated groups.

[*890] In my LatCrit symposium piece in the Harvard Latino Law Review, I argued the merits of a litigation model backed by a larger social movement as a means of dampening language vigilantism in private settings such as the workplace. [n43] Localized anti-Spanish and anti-immigrant regulation calls for a similar attack. The litigation model is already underway - for example, a consortium of civil rights organizations including the Puerto Rican Legal Defense and Education Fund filed suit to enjoin enforcement of the Hazelton ordinances. As mentioned above, English-Only ordinances may run afoul of constitutional free speech guarantees, and the bundled anti-immigrant restrictions may either be preempted by the federal immigration laws or contravene other constitutional guarantees. [n44]

The social movement needed to combat these localized language ordinances must be part of a larger effort to confront all the active facets of the anti-Spanish campaign - from the efforts to fend off English language legislation at the state level and in Congress; to preventing language vigilantism in the courts, the streets, and workplaces; to defending the value of bilingual education in fostering the culture of Latina/o children as well as teaching them English. This social movement needs to educate U.S. legislators, government leaders, judges, school boards, employers, and the public about the toll these anti-Spanish measures exact on Latinas/os proud to be "American" but also proud of their Latina/o culture. As well, the message must continue to be delivered that Latinas/os want to learn English, and indeed do learn English as fast as or faster than past immigrant groups from Europe. [n45] The perception still exists among many that Latinas/os disdain the English language. For example, the mayor of Hazelton, Lou Barletta, blogged in defense of his city's anti-Spanish ordinance that "Some people have taken advantage of America's openness and tolerance. Some come to this country and refuse to learn English, creating a language barrier for city employees." [n46] Proponents of English must also be educated on the inseparability in many ways of the English and Spanish languages as the two have merged in U.S. culture. Rather than fighting for some frozen-in-time imported notion of the English language, this country **[*891]** should embrace the emerging confluence of languages as uniquely an English "Made in the U.S.A." [n47]

IV. LatCrit Language Discourse Past, Present, and Future

LatCrit scholars have contributed much to the debate on anti-Spanish regulation and vigilantism. For example, in addition to Maria Pabon Lopez's analysis of the former El Cenizo Spanish language ordinance, Chris Ruiz Cameron authored an early influential LatCrit symposium piece on the discriminatory impact of English-Only rules in the workplace, [n48] and a cluster of language articles was published as part of the LatCrit III symposium in the University of Miami Law Review. [n49] In their contribution to the LatCrit IV symposium, Kevin Johnson and George Martinez isolated the racial prejudice against Latinas/os by voters who approved California's anti-bilingual education initiative in 1998. [n50]

The participants in this year's language panel contribute to this building dialogue. The panel was held just a few days before USA Today reported the proud remarks of a representative of the U.S. English organization that leads the way to promote English and suppress Spanish in government: "this is the most action [on the English language front] we've seen in about 10 years." [n51] That is cause for alarm for those who value diversity and abhor racism, and it signals the importance of this dialogue within LatCrit.

In his contribution to this symposium, Professor Salinas ably demonstrates the deep historical roots of racist and discriminatory attitudes encircling the current anti-Spanish movement. Today, attacking the Spanish language is being used as a potentially legitimate proxy for otherwise impermissible racial **[*892]** and ethnic discrimination toward the same end of humbling and snuffing Latinas/os and Latina/o culture. [n52] Language discrimination, it turns out, may even offer the attacker the means to reach further into the lives of Latinas/os than other types of discrimination. For example, in the hands of a discriminatory judge, prohibiting a bilingual parent from speaking Spanish to his or her child is a convenient means for putting Latinas/os in their supposed "proper place" - even in their own homes. The backlash against the Spanish language has spread to all sectors of Latina/o life - schools, workplaces, homes, even the Little League baseball field. [n53] Professor Salinas conveys the value of bilingualism and the inevitable permanency of Spanish in the U.S., while reminding us that Latinas/os still aspire to learn English. [n54]

Associate Dean Weeden's article addresses the new workplace discrimination that has replaced across the board racial exclusion. [n55] Today, employers and others are targeting those who decline to assimilate to the dominant cultural norms. [n56] Protection for targeted employees under federal employment discrimination law is scant because Title VII fails to address language discrimination explicitly, and the courts are reluctant to recognize employer language rules as creating the requisite disparate impact that employers must counter with a sufficient business justification. Weeden criticizes these courts as failing to apply the proper construction of the disparate impact standard that the Supreme Court has articulated, albeit in a case not relating to English-Only rules. [n57] Weeden also dismisses pro-employer court decisions predating modern "code switching" research that now reveals speaking in one's mother tongue is at least in substantial part an unconscious, reflexive act. [n58] Weeden suggests in conclusion that although language may not be an immutable characteristic, it is too important a cultural factor to allow an employer to restrict it without proving a business necessity. [n59]

But Weeden concedes too much in suggesting language may not be an immutable characteristic like skin color. [n60] In the case of a Latina/o speaker, language is being used by the employer as a proxy for an attack on the immutable characteristic of skin color or of national origin that may draw greater legal protection. Moreover, one's mother tongue was chosen by a child's parents, and that early experience in acquiring a language cannot be regarded as mutable. Code-switching research bolsters the conclusion that using the mother **[*893]** tongue is involuntary in certain circumstances; for example, bilingual Spanish-speakers may have learned to switch automatically to Spanish with persons they assume to be Latina/o. But until Congress acts to include ethnic characteristics explicitly as entitled to anti-discrimination protection, some courts will continue to hide behind the indeterminate wording of anti-discrimination prerogatives and allow all but the most direct and blatant forms of racial discrimination to thrive.

Professor Kleven's submission to this symposium is by far the most radical of the three contributors in his rousing arguments for the most controversial type of bilingual education - cultural maintenance. [n61] Kleven offers more than just a cultural justification for fostering Spanish and other non-English mother tongues in U.S. schools - he contends that constitutional guarantees of equal protection mandate bilingual education that assists non-native English speakers to master and retain their native language. The boldness in Kleven's proposition is that bilingual education in its less imperative form - merely as a means to enable students to learn other subjects while learning English - is under heavy attack by proponents of sink-or-swim assimilation that favor immersion in English for learning all subjects. [n62] To them, mastery of English is primary, and all other subjects are mere means to the quicker acquisition of English. [n63] Key immigrant jurisdictions such as California and Arizona have already adopted initiatives that effectively abolish bilingual education. [n64] Kleven's approach, as well as being academically sound, is also savvy in his refusal to concede cultural retention to xenophobes with assimilative imperatives. Rather, his compelling arguments for cultural retention open for compromise the middle ground of bilingual education as a means of English acquisition. But Kleven is realistic in sensing that bilingual education as cultural maintenance is likely not forthcoming from the courts as they drift conservative. [n65] Nor are courts likely to recognize any compromise by ordering mandatory bilingual education. Indeed, the Ninth Circuit has upheld California's initiative to abandon bilingual education as a failed experiment in favor of English immersion. [n66] Instead, Kleven suggests that what he calls full bilingual education "will likely come about only as one aspect of a mass movement for racial **[*894]** and social justice of all who are disadvantaged by the society's inegalitarian social structure." [n67]

What is missing from LatCrit language discourse, and much of LatCrit discourse, is the blueprint for such a mass movement that targets the many interrelated facets of subordination today. Perhaps that blueprint is best conceived organically, on the streets, and then mapped by academics. But I think that the necessary social and racial movement must gather strength from the combined effort and thinking of all sources - with a blurring of the roles of academic and activist. That is asking a great deal from today's scholars, who are rewarded by their home institutions for their scholarly achievements as measured by the caliber of the placement of their writings, and ignored for their achievements in the community and for their influence on the streets, especially the unpaved ones far from the ivory tower. But those streets often hold the key to our progress as a nation, in the battle over whether we will continue to scapegoat the least powerful - the immigrants, documented or not - or whether we will recognize the strength to be gained as a nation by embracing their contributions and their place in the "American" dream.

Legal Topics:

For related research and practice materials, see the following legal topics:
Education LawStudentsBilingual StudentsGovernmentsLocal GovernmentsEmployees & OfficialsGovernmentsLocal GovernmentsFinance

FOOTNOTES:

n1. Lupe S. Salinas, Immigration and Language Rights: The Evolution of Private Racist Attitudes into American Public Law and Policy, 7 Nev. L.J. 895 (2007). For example, Nebraska's 1920 constitutional amendment that declared English the official state language sprang from anti-German sentiment. Neb. Const. art. 1, ß 27.

n2. Steven W. Bender, Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace, 45 Am. U. L. Rev. 1027, 1047 (1996) (listing those states).

n3. Steven W. Bender, Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience, 2 Harv. Latino L. Rev. 145 (1997).

n4. See Salinas, supra note 1.

n5. L. Darnell Weeden, The Less Than Fair Employment Practice of an English Only Rule in the Workplace, 7 Nev. L.J. 947 (2007).

n6. See Bender, supra note 3, at 151.

n7. Salinas, supra note 1.

n8. Thomas Kleven, The Democratic Right to Full Bilingual Education, 7 Nev. L.J. 933 (2007).

n9. A federal judge in California struck down most of Proposition 187's provisions, and the decisions stood when the state decided to forego appeal. See League of United Latin Am. Citizens v. Wilson, 908 F. Supp. 755 (C.D. Cal. 1995) and 997 F. Supp. 1244 (C.D. Cal. 1997). All that survived were ancillary provisions addressing manufacture and use of false documents.

n10. Bender, supra note 3, at 165.

n11. For example, the modern English language movement can be traced to the adoption in 1980 of regulation by Dade County, Florida voters targeting Spanish-speaking Cuban Americans. See generally Max J. Castro, On the Curious Question of Language in Miami, in Language Loyalties: A Source Book on the Official English Controversy 178 (James Crawford ed., 1992) (calling the Dade County ordinance and the antibilingual efforts there the "harbinger and model of future language struggles" in the U.S.); Raymond Tatalovich, Nativism Reborn?: The Official English Language Movement and the American States 85-91 (1995). Local attacks on non-English languages include localized anti-German measures in the early 1900s. See Dennis Baron, The English-Only Question: An Official Language for Americans? 110 (1990) (commenting that local ordinances were passed between 1918 and 1920, during World War I, forbidding use of German).

n12. See Deborah J. Schildkraut, Press One for English: Language Policy, Public Opinion, and American Identity 2 (2005) (four Chicago suburbs enacted official English in 1996).

n13. See Castro, supra note 11, at 131 (contains text of Dade County ordinance).

n14. Pomona's sign ordinance, enacted in 1988 and targeting Asian language characters, required foreign language business signs to "devote at least one-half of the sign area to advertising copy in English alphabetical characters." See Castro, supra note 11, at 284-87. A federal district court judge soon struck down the Pomona sign ordinance as violating free speech and equal protection constitutional guarantees. Asian Am. Bus. Group v. City of Pomona, 716 F. Supp. 1328 (C.D. Cal. 1989). See also Schildkraut, supra note 12, at 1 (detailing the experience of Latina/o merchants under an Atlanta suburb sign ordinance); Tatalovich, supra note 11, at 123-24 (detailing language regulation in Monterey Park).

n15. James Crawford, Hold Your Tongue: Bilingualism and the Politics of "English Only" 4 (1992).

n16. See Gutierrez v. Mun. Court of the Se. Judicial Dist., County of L.A., 838 F.2d 1031 (9th Cir. 1988) (upholding the preliminary injunction against enforcement of a court rule requiring municipal court employees to speak English at work), vacated as moot, 490 U.S. 1016 (1989). See also Maldonado v. City of Altus, 433 F.3d 1294 (10th Cir. 2006) (finding sufficient evidence to present jury question whether municipal English-only policy for all employees created a hostile work environment that adversely affected Spanish-speakers; among proof of adverse impact was testimony of ethnic taunting because of the language policy, as well as contentions the policy made the workers feel like second-class citizens).

n17. Jamie B. Draper & Martha Jimenez, A Chronology of the Official English Movement, in Language Loyalties: A Source Book on the Official English Controversy, supra note 11, at 89, 93.

n18. See Laura McCandlish, More States, Cities Pass "Official English" Policy, Balt. Sun, Nov. 23, 2006, at 5B.

n19. Hazelton, Pa., Official English Ordinance 2006-19 (Sept. 8, 2006) [hereinafter Hazelton Ordinance].

n20. Cal. Const. art. 3, ß 6 (declaring that the legislature shall "make no law which diminishes or ignores the role of English as the common language of the State of California").

n21. Hazelton Ordinance, supra note 19.

n22. The ordinance does undercut this English-Only component some by providing that unofficial or nonbinding translations or explanations of such official actions "may be provided separately in languages other than English." Hazelton Ordinance, supra note 19. Query how this ordinance would operate if the official action was, for example, a ruling by a municipal judge in open court. Presumably, a bilingual judge capable of speaking Spanish would need to issue her ruling in English to a Spanish-speaking party, but could then follow that ruling with a Spanish language translation.

The Hazelton ordinance also purports to avoid intruding on private use of language in nongovernmental settings:

> The declaration and use of English as the official language of the City of Hazelton should not be construed as infringing upon the rights of any person to use a language other than English in private communications or actions, including the right of government officials (including elected officials) to communicate with others while not performing official actions of the City of Hazelton.

Hazelton Ordinance, supra note 19, at ß 5.

I have written elsewhere why the supposed separation of public and private speech is unrealistic in practice for language regulation. See Bender, supra note 3, at 166-68.

n23. Congress' Fiddling Leaves Cities Fighting Illegal Immigration, USA Today, Sept. 5, 2006, at 10A.

n24. This demonizing of Mexican immigrants is so self-evident that I refuse to cite authority for this proposition.

n25. Bender, supra note 3, at 159-60.

n26. Id. at 160.

n27. Wendy Koch, Efforts to Make English "Official" Language Heat Up, USA Today, Oct. 9, 2006, at 8A.

n28. For discussion on the supposed connection between Latina/o immigration and terrorism, see Steven W. Bender, Sight, Sound, and Stereotype: The War on Terrorism and Its Consequences for Latinas/os, 81 Or. L. Rev. 1153 (2002).

n29. See, e.g., Ruiz v. Hull, 957 P.2d 984 (Ariz. 1998) (striking down Arizona's English-Only initiative as violating free speech interests of the public, public employees, and elected officials).

n30. Federal Judge Blocks Hazleton Anti-Immigrant Ordinance, Says Law Causes Harm to Legal Immigrants, Oct. 1, 2006, available at http://www.prldef.org/Press/Press%20 Releases/Hazleton 2 press release.pdf. In late December 2006 the Mexican American Legal Defense and Educational Fund joined other civil rights and liberties groups to challenge the legality of the Farmers Branch, Texas anti-immigrant ordinance.

n31. An exception is Monterey Park, California, which enacted an Official English ordinance in 1986 and repealed it shortly thereafter. That ordinance also denounced immigrant sanctuary and encouraged city police to cooperate with the federal INS to apprehend undocumented immigrants. See John Horton & Jose Calderon, Language Struggles in a Changing California Community, in Language Loyalties: A Source Book on the Official English Controversy, supra note 11, at 186, 188-89.

n32. See Hazelton, Pa., Illegal Immigration Relief Act Ordinance 2006-18 (Sept. 8, 2006).

n33. Christina Eichelkraut, "English-only" Ordinance is Tossed, Pahrump Valley Times, Feb. 16, 2007 available at http://www.pahrumpvalleytimes.com/2007/Feb-16-Fri-2007/news/12602797.html.

n34. Thomas Korosec, Dallas Suburb Targets Illegal Immigrants, Hous. Chron., Nov. 14, 2006, at A1.

n35. See Maria Pabon Lopez, The Phoenix Rises From El Cenizo: A Community Creates and Affirms a Latino/a Border Cultural Citizenship Through Its Language and Safe Haven Ordinances, 78 Denv. U. L. Rev. 1017 (2001). See also Robert MacNeil & William Cran, Do You Speak American? 100 (2005) (noting the successor mayor of El Cenizo reversed both policies).

n36. See generally Arthur M. Schlesinger, Jr., Robert Kennedy and His Times 286-342 (2002) (discussing the conflict between the federal government and recalcitrant Southern states from the vantage point of Robert Kennedy, then U.S. Attorney General).

n37. States' rights ruled the day during their administrations in the area of welfare reform, a proxy for targeting minorities. Richard Nixon initiated the states' rights strategy, in a 1969 speech on welfare reform calling for a "new federalism in which power, funds and responsibility will flow from Washington to the states and to the people." Welfare: A Documentary History of U.S. Policy and Politics 313-14 (Gwendolyn Mink et al. eds., 2003). Reagan's State of the Union address in 1988 suggested that "some years ago, the federal government declared war on poverty, and poverty won." He announced a welfare strategy that looked to the states for inspiration: "States have begun to show us the way ... . Let's give the states even more flexibility and encourage more reforms." Id. at 509.

n38. Rachel L. Swarns, Growing Unease for Some Blacks on Immigration, N.Y. Times, May 4, 2006, at A1.

n39. See Steven W. Bender, One Night in America: Robert Kennedy, Cesar Chavez, and The Dream of Dignity (forthcoming).

n40. See Bender, supra note 3, at 163. Although Arizona's previous English-Only initiative was struck down by the courts in 1998, Ruiz v. Hull, 957 P.2d 984 (Ariz. 1998), Arizona voters in 2006 passed a new English language initiative, Proposition 103, with 74.2 percent of votes in favor of the proposition.

n41. Bender, supra note 3, at 169.

n42. Nashville's mayor vetoed an English-Only ordinance in early 2007 that would have made Nashville the largest U.S. city with English language regulation. Tennessee: Measure Making English Official Language Is Vetoed, Seattle Post-Intelligencer, Feb. 13, 2007, at A2. Large cities have a recent history of embracing multilingualism, as represented by cities such as Denver, Atlanta, Cleveland, Dallas, San Antonio, and Tucson that adopted resolutions celebrating multilingualism rather than succumbing to anti-Spanish sentiment. See Harvey A. Daniels, What One Teacher Can Do, in Not Only English: Affirming America's Multilingual Heritage 121, 127 (Harvey A. Daniels ed., 1990).

n43. See Bender, supra note 3, at 170-74.

n44. A comprehensive Society of American Law Teachers ("SALT") statement on the constitutionality of local anti-immigrant ordinances that I helped author is available on SALT's website. Raquel Aldana & Steven Bender, SALT Statement on Post 9/11 Anti-Immigrant Measures (2007), available at http://www.saltlaw.org/ (follow "Writings: Position Statements" hyperlink; then follow "SALT Statement on Anti-Immigrant Ordinances" hyperlink). The Mexican American Legal Defense and Educational Fund has prepared a "State and Local Anti-Immigrant Ordinance Toolkit" of legal and public policy arguments against these ordinances, available at http://www.maldef.org/publications/index.cfm. See also Michael A. Olivas, Immigration - Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement, U. Chi. Legal F. (forthcoming 2007) (making the case for federal preemption of state and local anti-immigrant measures). Among the most constitutionally suspect was Pahrump, Nevada's short-lived ban on solo displays of foreign flags.

n45. See Bender, supra note 2, at 1032.

n46. Lou Barletta, Small Town Defenders, available at http://www.smalltowndefenders.com/public/ (last visited Apr. 22, 2007).

n47. I develop this argument in a forthcoming book, ?Comprende?: Celebrating the Spanish that All Americans Know.

n48. Christopher David Ruiz Cameron, How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy, 85 Cal. L. Rev. 1347 (1997), reprinted in 10 La Raza L.J. 261 (1998).

n49. Keith Aoki, Introduction: Language is a Virus, 53 U. Miami L. Rev. 961 (1999); William Bratton, Law and Economics of English Only, 53 U. Miami L. Rev. 973 (1999); Drucilla Cornell, The Imaginary of English Only, 53 U. Miami L. Rev. 977 (1999); Sharon K. Hom, Lexicon Dreams and Chinese Rock and Roll: Thoughts on Culture, Language, and Translation as Strategies of Resistance and Reconstruction, 53 U. Miami L. Rev. 1003 (1999); Madeleine Plasencia, "Suppressing the Mother Tongue" - Anti-Subordination and the Legal Struggle Over Control of the Means of Communication, 53 U. Miami L. Rev. 989 (1999); Yvonne A. Tamayo, Literal Silencing/Silenciando la Lengua, 53 U. Miami L. Rev. 995 (1999); John Hayakawa Torok, Finding the Me in LatCrit Theory: Thoughts on Language Acquisition and Loss, 53 U. Miami L. Rev. 1019 (1999); Catherine Peirce Wells, Speaking in Tongues: Some Comments on Multilingualism, 53 U. Miami L. Rev. 983 (1999). William Bratton and Drucilla Cornell expanded their contribution in a concurrent law review piece. Drucilla Cornell & William W. Bratton, Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom, and Legal Suppression of Spanish, 84 Cornell L. Rev. 595 (1999).

n50. Kevin R. Johnson & George A. Martinez, Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education, 33 U.C. Davis L. Rev. 1227 (2000).

n51. Wendy Koch, Efforts to Make English 'Official' Language Heat Up, USA Today, Oct. 9, 2006, at 8A (remarks of Rob Toonkel).

n52. See also Johnson & Martinez, supra note 50, at 1230 (contending that California's anti-bilingual education initiative amounts to racial discrimination by proxy).

n53. Salinas, supra note 1.

n54. Id.

n55. See also Angela Onwuachi-Willig & Mario L. Barnes, By Any Other Name?: On Being "Regarded As" Black, and Why Title VII Should Apply Even If Lakisha and Jamal Are White, 2005 Wis. L. Rev. 1283 (2005) (addressing workplace racial discrimination by proxy).

n56. See generally Camille Gear Rich, Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII, 79 N.Y.U. L. Rev. 1134 (2004) (criticizing the judicial distinction in employment discrimination litigation between morphological and voluntary racial and ethnic traits).

n57. See Griggs v. Duke Power Co., 401 U.S. 424 (1971).

n58. Weeden, supra note 5.

n59. Id.

n60. Id.

n61. Kleven, supra note 8.

n62. Steven W. Bender, Greasers and Gringos: Latinos, Law, and the American Imagination 88-90 (2003).

n63. Id.

n64. Id. at 89.

n65. Kleven, supra note 8.

n66. See Cal. Teachers Ass'n v. State Bd. of Educ., 271 F.3d 1141 (9th Cir. 2001). Here, teachers urged that the initiative restricted their constitutionally protected free speech by giving parents a private right of action to sue teachers who refuse to provide an English language education. But in-classroom curriculum can be regulated freely by the state when it relates to legitimate educational goals. Thus, the court concluded the state could require teachers to teach in English. Although teachers have greater speech rights outside of classroom instruction, the court construed the California law to involve only "instruction" and "curriculum" and not to outlaw Spanish or other non-English languages in other circumstances, such as on the playground, in social settings, or in disciplining students. The California initiative also withstood an equal protection challenge because the court found naively that racial animus did not motivate its passage. Valeria v. Davis, 307 F.3d 1036 (9th Cir. 2002).

n67. Kleven, supra note 8.