Defending against a Death by English - English-Only, Spanish-Only, and a Gringa's Suggestions for a Community Support of Language Rights

Kenya Hart

Follow this and additional works at: http://scholarship.law.berkeley.edu/blrlj

Recommended Citation
Available at: http://scholarship.law.berkeley.edu/blrlj/vol14/iss2/2

Link to publisher version (DOI)
http://dx.doi.org/https://doi.org/10.15779/Z38KM2J

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley La Raza Law Journal by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
Defending Against A "Death By English"¹

English-Only, Spanish-Only, and a Gringa’s Suggestions for Community Support of Language Rights

Kenya Hart†

Introduction ............................................................................................................. 178
I. Language Minorities and Language Legislation in the United States ............. 182
   A. Immigrants and Immigration ................................................................. 182
   B. Minority Languages ............................................................................ 184
   C. The English-Only Movement ............................................................. 185
II. English-Only, Spanish-Only, and First Amendment Interests ..................... 189
   A. Article 28 and Yniguez v. Arizonans for Official English ................. 191
      1. Article 28 of the Arizona Constitution ............................................. 191
      2. Yniguez v. Arizonans for Official English ....................................... 192
         a. Construction ................................................................................ 192
         b. Overbreadth and the First Amendment ....................................... 193
         c. Public Employee Speech ............................................................. 194
         d. Additional Issues: Speech v. Expressive Conduct and Affirmative
            v. Negative Rights ....................................................................... 197
         e. The Concurrence of Judge Brunetti ............................................. 198
      3. Ruiz v. Hull ...................................................................................... 199
   B. El Cenizo’s Predominant Language Ordinance and First Amendment
      Interests ................................................................................................... 200
      1. The Predominant Language Ordinance .......................................... 200
      2. Analysis of the Predominant Language Ordinance under Yniguez
         and Ruiz .......................................................................................... 201
         a. Construction and Overbreadth ................................................. 202
         b. The Speech of Elected Representatives and the Public’s Right to
            Petition for Redress of Grievances ............................................. 205
III. American Languages ..................................................................................... 208
   A. A New Direction .................................................................................... 208
   B. Policy Positions ..................................................................................... 210
      1. Language and National Unity ......................................................... 210
      2. Language and National Development ............................................. 210

---
† Kenya Hart studied law at the University of Montana. She now lives and works in Seattle, Washington. For their insights and support she thanks Professors of Law, Maria Pabón López, Indiana University School of Law, Indianapolis, and Mary Helen McNeal, University of Montana School of Law.
INTRODUCTION

Over the past two decades, millions of labor migrants entered the United States from Mexico. Many of these immigrants arrived speaking only or primarily Spanish. At the same time a complex prejudice against Mexicans in the U.S. — combined with native fears of job displacement, overpopulation, and environmental harms — fueled opposition and hostility toward immigrants and immigrant communities. In turn, this opposition provided fertile ground for the activities of English-only organizations supporting legal prohibitions against the use of minority languages.

English-only organizations, such as Washington, D.C.-based “U.S. English,” formed in the early 1980s to advance laws at the federal and state levels that make English either the symbolic or obligatory language of government. These

2. U.S. Commission on Immigration Reform (the Jordan Commission), Binational Study: Migration Between Mexico and the United States (1997) at http://www.utexas.edu/lbj/uscir/ (last updated April 20, 1998) [hereinafter Binational Study]. The authors cite Immigration and Naturalization Services reports that approximately 1.6 million Mexicans were admitted as legal U.S. residents between 1981 and 1990, and an additional 1.5 million between fiscal years 1991 and 1995. In 1995 alone, the INS apprehended 1.3 million unauthorized migrants in the U.S. Id. at 3. The authors report further that “[w]ork is the single most important attraction in the U.S.” for Mexican migrants. Id. at 22.


4. See e.g., Lazos Vargas, supra note 3, at 440 (discussing the early origins of the English-only movement in Dade County, Florida, and explaining that voters’ support of English-only laws “does not necessarily equate with racism or nativism, although . . . these elements also exist within the English-only movement”).

5. James Crawford, Anatomy of the English-Only Movement, at http://ourworld.compuserve. com/homepages/JW/CRAWFORD/anatomy.htm (last visited Nov. 25, 2003) [hereinafter Crawford, Anatomy]. In this essay, I use the term ‘Official English’ to mean laws that establish English as merely the symbolic language of a jurisdiction. I contrast that term with ‘English-only,’ which I use to mean laws that prohibit the use of non-English languages and require the exclusive use of English in some manner.
DEFENDING AGAINST A "DEATH BY ENGLISH"

organizations initiate and fund state campaigns in support of English-only laws, and then help to defend those laws upon judicial review. Their English-only movement has advanced steadily since 1981: twenty-three states presently have some form of active English language legislation; since 2000 the courts and legislatures of Alaska, Utah, Oklahoma, and Iowa have been forced to address the issues they present.

Although voters continue to support English-only laws, and advocates’ attempts to expand their reach will likely continue, a growing number of courts are addressing the constitutionality of the speech restrictions those laws impose. In addition to abridging First and Fourteenth Amendment rights of public employees and the individuals they serve, English-only laws incite deeper anti-immigrant fears among natives, and encourage them, as “language vigilantes,” to enforce the laws in areas where they were never intended to reach. Further, misinterpretation among immigrants of the scope of English-only laws creates a disabling and disheartening confusion, causing some to fear speaking illegally in their own homes and in other public and private areas where their speech remains protected.

Efforts to restrict minority languages appear to accompany efforts to restrict both the entry of migrants into the U.S. and the scope of their presence and purpose.
Upon arrival, despite public sentiment opposing liberal immigration policies, however, labor migration into the U.S. continues, particularly from Mexico and Central America. Some analysts project decreasing numbers of Latin American immigrants to the U.S., citing a number of economic developments in Mexico that will enable Mexican citizens to support themselves and their families without emigration. On the other hand, forces within the United States may continue to demand liberal immigration policies and attract Mexican labor migrants. Nevertheless, whether the rate of Mexico-U.S. migration slows or remains steady, the actual number of Spanish speakers in the U.S. will increase. To the extent that English-only laws receive support from those who both oppose immigration and equate the phenomenon with the voices of native Spanish-speakers in the U.S., the advance of the organizations that sponsor these laws will likely gain momentum.

Although the Washington-based U.S. English organization and other advocates of English-only laws claim that their activities are motivated primarily by a desire to forge national unity from the disparate cultures introduced by immigration, their tactics appear instead to be building only wider rifts between immigrants and natives. One immigrant community, for example, has recently accepted the challenge inherent in English-only provocations. In August 1999, the small Texas border town of El Cenizo passed its Predominant Language Ordinance, becoming the first U.S. municipality to make Spanish the language in which official meetings and functions are conducted. In many ways the El Cenizo ordinance is a welcome, even inevitable response to the efforts of English-only advocates to force unconstitutional and unworkable laws upon an ascendant portion of the population—those whose predominant language is Spanish. Yet even if this ordinance were to pass judicial scrutiny under First and Fourteenth Amendment constitutional
analysis,\textsuperscript{20} similar efforts in the future may exaggerate nativist fears and prejudices, fertilizing the growth of English-only activism. Under this likely scenario, states become battlegrounds in an escalating war of competing language laws in which well-funded English-only organizations\textsuperscript{21} recruit the anxious elite\textsuperscript{22} to fight working-class immigrants and their native-born children.\textsuperscript{23}

With this essay I join those authors who have criticized English-only challenges to language diversity in the United States. I depart from them, however, in my suggestions for support of immigrants and other language minorities.\textsuperscript{24} I begin in Part I by describing the current climate in which English-only advocates work to advance their “Official English”\textsuperscript{25} laws. In Part II, I discuss Arizona’s English-only constitutional amendment and the Ninth Circuit’s ruling that the amendment violates employees’, officials’, and the public’s First Amendment rights.\textsuperscript{26} I then describe El Cenizo’s Predominant Language Ordinance and analyze that ordinance according to the Ninth Circuit’s decision. I conclude that while the El Cenizo ordinance addresses serious community concerns about participatory democracy and immigrant empowerment, it would not survive judicial scrutiny under the U.S. Constitution based on the appellate court’s First Amendment analysis.

Finally, I close with ideas for a national network of local, community-based ‘American Languages’ centers that would both support language minorities and

\begin{itemize}
\item \textsuperscript{20} Id. at 1032-39. Pabón Lopez concludes that the Predominant Language Ordinance is constitutional under both the First and Fourteenth Amendments to the U.S. Constitution. The only other commentator to discuss the constitutionality of the ordinance concludes that it does not violate an English speaker’s Fourteenth Amendment Equal Protection rights. See Adriana Resendez, \textit{Comment, The Spanish Predominant Language Ordinance: Is Spanish on the Way In and English on the Way Out?}, 32 ST. MARY’S L.J. 317, 361 (2001).
\item \textsuperscript{21} By the late 1980s U.S. English “claimed 400,000 dues-paying members and an annual budget of $5 million.” Crawford, \textit{Anatomy}, supra note 5. \textit{See also} Lazos-Vargas, \textit{ supra} note 3, at 408 (discussing how well-financed national organizations supplant or out-spend local, grassroots organizations in state ballot initiative campaigns and may thereby decisively influence the direction of those state campaigns).
\item \textsuperscript{22} Resendez, \textit{supra} note 20, at 336 (arguing that the English-only movement has been driven by political elites, not a grass-roots coalition, and that these elites use their campaign to “achieve social control over minorities, thus maintaining the status quo among the ruling class”). \textit{Cf} Lazos-Vargas, \textit{ supra} note 3, at 439-40 (claiming that the English-only movement “was, and continues to be, unequivocally a grass roots movement,” and that its appeal is to the concerns “of Euro-whites as to their declining dominance”). James Crawford cites a U.S. English internal membership survey showing that its members were “disproportionately affluent, male, conservative, college-educated, northern European in origin, and elderly,” and that only 10 percent came from blue-collar backgrounds. Further, 42 percent agreed that they had joined U.S. English because they agreed with the statement: ‘I wanted America to stand strong and not cave in to Hispanics who shouldn’t be here.’ James Crawford, \textit{Hispanophobia}, at http://ourworld.compuserve.com/homepages/JWCRAWFORD/HYTCH6.htm (last visited Nov. 25, 2003) [hereinafter Crawford, \textit{Hispanophobia}].
\item \textsuperscript{23} Burns & Gimpel, \textit{ supra} note 3 (noting that “racial attitudes are generally not sufficiently refined to draw distinctions between natives and immigrants of a particular ethnic group”).
\item \textsuperscript{24} Throughout this essay I use the term ‘language minorities’ to refer to United States residents who speak only or primarily a language other than English. Many government agencies refer to language minorities as ‘persons with limited English proficiency’ (LEPs), a term that defines speakers by reference to their English deficiencies rather than by their skills in another language in addition to their level of English proficiency.
\item \textsuperscript{25} James Crawford explains that U.S. English and similar groups “have repeatedly disavowed the English-only label,” preferring the more neutral-sounding ‘Official English,’ even though U.S. English was itself responsible for initially popularizing the term ‘English-only’ during a campaign in California to outlaw bilingual voting ballots. Crawford, \textit{Anatomy}, \textit{ supra} note 5.
\item \textsuperscript{26} See Yniguez, \textit{supra} note 10.
\end{itemize}
address natives’ concerns about immigrants and immigration currently masked by the focus on restrictive language legislation. In these centers public interest lawyers, language minorities, and others who support them would organize a holistic approach to legal and cultural advocacy of language rights while working to incorporate the entire community into efforts to develop informed, inclusive approaches to the protection and promotion of language diversity in the United States.

I. LANGUAGE MINORITIES AND LANGUAGE LEGISLATION IN THE UNITED STATES

A. Immigrants and Immigration

The United States and Mexico share 2,000 miles of international border as well as a unique history of migration. At the end of the twentieth century the United States was the world’s major ‘labor importer,’ Mexico its major exporter, and the current U.S.-Mexico border had witnessed more than one hundred years of itinerant dreams. To the curious observer of this migrant history, official U.S. immigration policy toward Mexico reveals Protean powers of transformation, a result of the nexus of complicated interests from which it develops. These include the business sector interest in a large labor supply and resulting deflationary wages; the interests of state and national politicians advancing plans for national and international economic development; those of think-tanks, professional lobbyists, and others organized to influence national laws and policy on related issues; and of constituents, expressing their fears of instability through polls, ballots, and local political activities.

However the competing influences interact, U.S. immigration policy and practice has permitted a dramatic increase in the number of immigrants to the United States since passage of the Immigration Act of 1965 and subsequent immigration legislation, particularly the amnesty provisions of the 1986 Immigration Reform


29. For a discussion of these interests and the way they often defy ideological categorization, see Burns & Gimpel, supra note 3. The authors describe how business interests benefit from the deflationary effect that immigration has on wages. For this reason, prominent conservatives in Congress have “aligned themselves with the interests of big business and the high-tech lobby by arguing for more open borders in order to lower labor costs and maintain competitiveness in a global economy.” The authors also observe the growing opposition of some environmentalists to immigration who perceive immigrants as threatening scarce natural resources. They conclude that “ideology is not a statistically significant predictor of immigration attitudes” Id.

30. Briggs, supra note 15 (noting that more than one million immigrants entered the United
and Control Act.\textsuperscript{31} Less than transparent U.S. immigration policies underlying this legislation, combined with what analysts term “demand-pull” factors originating in the U.S.,\textsuperscript{32} remain the primary motivations for Mexico-U.S. migration.\textsuperscript{33} These demand-pull factors within the United States include the recent era of rapid economic expansion and low unemployment rates, and the ongoing recruitment of migrant laborers by U.S. employers in the agriculture, manufacturing, and service sectors.\textsuperscript{34}

In addition to these U.S. demand-pull factors that attract Mexican migrants, “supply-push” factors in Mexico also impel them.\textsuperscript{35} These factors include an era of rapid population growth in the 1970s, a recent series of economic crises and peso devaluations, and the results of privatization programs arising from the economic restructuring mandates of the North American Free Trade Agreement.\textsuperscript{36}

All of these factors have brought many new immigrants and immigrant families to live and work in the U.S. As of 1996, the total Mexican-born population in the United States was estimated at 7.0 to 7.3 million.\textsuperscript{37} According to U.S. Census Bureau estimates from July 1, 2001, Latinos/as are now the largest minority group in the United States,\textsuperscript{38} comprising 13 percent of the total population.\textsuperscript{39} Sixty percent are of Mexican origin.\textsuperscript{40} Further, between April 1, 2000, and July 1, 2001, the

\begin{footnotesize}
\begin{enumerate}
\item Binational Study, supra note 2, at 9.
\item Id. at 25.
\item Latapi et al., supra note 28, at 164.
\item Binational Study, supra note 2, at 25-26. Employers often hire private labor brokers to recruit immigrant workers. Sometimes these brokers obtain workers for employers willing only to pay literally slave-wages. See e.g., Duncan Campbell, Taco’s Tomato Pickers on Slave Wages, THE GUARDIAN (London) Mar. 17, 2003, available at http://www.guardian.co.uk/Print/0,3858,4626474,00.html, (reporting that in the past five years there have been six federal prosecutions for slavery involving the forced labor of Latin American immigrants in the Florida agricultural industry under anti-slavery laws dating back to the end of the civil war).
\item Binational Study, supra note 2, at 26.
\item Id. Regarding discrimination against Spanish implicit even in multi-lateral trade agreements, one commentator has noted that the “most striking” element of the NAFTA is its failure to include provisions for the use of Spanish in its U.S.-model dispute resolution mechanism. See Christopher David Ruiz Cameron, Mexican-Americans in the United States on the Sesquicentennial of the Treaty of Guadalupe Hidalgo, 5 SW. J.L. & TRADE AM. 5, 21 (1998). The author contrasts this omission of Spanish with the treaty’s inclusion of French in addition to English so as to accommodate the single Canadian province of French-speaking Quebec. Id. at 22. In a different essay, also noting the invisibility of Spanish and Spanish-speakers within U.S. legal institutions, the same author documents the absence of the Spanish words allegedly spoken in every reported case challenging English-only workplace rules under Title VII of the Civil Rights Act. See 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, 10 LA RAZA L.J. 261, 293 (1998) (observing how English-only decision-writing on workplace rules mirrors the English-only rules themselves).
\item Id. at 7.
\item Lynette Clemenson, Hispanics Now Largest Minority, Census Shows, N.Y. TIMES, Jan. 22, 2003, at A1 (reporting that the U.S. population includes 37 million Latinos/as compared with 36.2 million African Americans).
\end{enumerate}
\end{footnotesize}
Latino/a population—including native-born Latinos/as as well as both authorized and unauthorized resident immigrants—grew by 4.7 percent.\textsuperscript{41}

Analysts are divided over whether high immigration rates are likely to continue through the present decade. Factors such as rising unemployment and welfare reforms in the U.S. may combine with demographic and economic factors emerging within Mexico to slow the rate of Mexico-U.S. migration.\textsuperscript{42} On the other hand, recent developments may favor increasing rates of immigration once again.\textsuperscript{43} Demographic data suggest, however, that the absolute number of Latinos/as in the United States will continue to grow,\textsuperscript{44} and that the proportion of Latinos/as to the non-Latino/a white population will also increase.\textsuperscript{45}

B. Minority Languages

Along with the presence of immigrants in our communities come the sounds of their non-English languages. The U.S. Census Bureau reports that as of the year 2000, 17.9 percent of the U.S. population five years of age and over speak a language other than English at home, and 8.1 percent of the population report speaking English less than “very well.” Additionally, more than one fifth of the population in ten states speak a language other than English at home.\textsuperscript{46} In California 40 percent of the residents report speaking a language other than English at home.

\textsuperscript{41} Clemetson, supra note 38. In comparison, the white, non-Hispanic population grew by 0.3 percent. Approximately three quarters of Latinos/as in the United States are citizens or authorized residents. Id.\textsuperscript{42} Binational Study, supra note 2, at 28-32. On a related note, the authors’ discussion supports a strategic connection between the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the Welfare Reform Act) and the Illegal Immigration Reform and Immigrant Responsibility Act passed that same year. Id. at 3. In the mid-1990s, popular hostility toward immigrants was increasing. At the same time, the national economy was rapidly expanding, placing upward pressure on wages in the U.S. Together, these two laws may both reduce the number of unauthorized immigrants—thereby satisfying anti-immigration constituents—and offset the threatened labor shortage with an influx of unskilled domestic workers, addressing industries’ needs for a large pool of new entrants.\textsuperscript{43} The U.S. Federal Reserve Board Chairman Alan Greenspan recently announced that a “major increase in immigration rates” would help offset the aging population in the U.S. See Sen. Special Committee on Aging, The Aging Global Population, testimony of Federal Reserve Chairman Alan Greenspan (Feb. 27, 2003) at http://federalreserve.gov/boarddocs/testimony/2003/20030227/default.htm. Greenspan’s analysis also provides support for the business sector’s argument in favor of continued liberal immigration policies to maintain a large, unskilled labor pool in the face of anticipated declining growth rates among the working-class population. See also Naomi Klein, The Rise of the Fortress Continent, THE NATION, Feb. 3, 2003, at 10. Klein documents the present development by the U.S. government of a “U.S.-run security perimeter” enclosing the three NAFTA countries of Canada, the U.S., and Mexico. The de facto boundaries of this “fortress continent” will extend from the southern Mexican border at Guatemala, up to the northern border of Canada. Klein asks, and answers, the most salient questions that have arisen for policy-makers in the post-9/11 economic and political environment: “How do you have air-tight borders and still maintain access to cheap labor? How do you expand for trade, and still pander to the anti-immigrant vote? How do you stay open to business, and stay closed to people? Easy. First you expand the perimeter. Then you lock down.” Id.\textsuperscript{44} Day, supra note 16.

\textsuperscript{45} A widely reported announcement by the U.S. Census Bureau early in 2003 declared that Hispanics are now the nation’s largest minority group, surpassing blacks. See e.g., Lynette Clemetson, supra note 38 (quoting Martha Farnsworth Riche, the Census Bureau director during the Clinton administration, acknowledging that the demographic shift “came sooner than we thought”).\textsuperscript{46} U.S. Census Bureau, Geographic Comparison Table GCT-P11, at http://factfinder.census.gov/bb/\_lang=en\_vt_name=DEC_2000\_SF3\_U_GCTP11\_US9_geo (last visited Nov. 25, 2003) (the ten states are Arizona, California, Florida, Hawaii, Nevada, New Jersey, New Mexico, New York, Rhode Island, and Texas).
and 20 percent speak English less than "very well."\(^{47}\)

Despite these seemingly high numbers, the language minority population remains proportionally smaller today than it was one hundred years ago.\(^{48}\) Further, the actual rate at which immigrants are learning English is increasing due to the strength of the forces in today's culture that facilitate linguistic assimilation, such as mass media, urbanization, and rapid transportation.\(^{49}\) English-only advocates emphasize the "soaring" rates of Americans who do not speak English or who are "English-deficient," and stress the perceived language crisis in those states with the highest levels of immigration.\(^{50}\) Yet while the number of non-English speakers in the U.S. has in fact increased substantially over the past two decades, immigrants' inclination to learn English has suffered no setbacks,\(^{51}\) and the English language itself is in no danger of extinction.\(^{52}\)

C. The English-Only Movement

Despite the safe status of English, however, a new movement to mandate government use of the language developed in the early 1980s and has become increasingly active.\(^{53}\) The founder of this movement, Dr. John Tanton, had been a Michigan physician and an active supporter of both Planned Parenthood and several national environmental protection organizations.\(^{54}\) In 1983, after failing in his efforts to pass an English Language Amendment to the U.S. Constitution,\(^{55}\) Dr. Tanton's Washington, D.C.-based organization, U.S. English, took its campaign to "unify" America through English-only laws\(^{56}\) to the states' legislatures and then

\(^{47}\) Id.

\(^{48}\) James W. Crawford, The Official English Question, at http://ourworld.compuserve.com/homepages/JWCRAWFORD/question.htm (last visited Nov. 25, 2003) [hereinafter Crawford, Question] (observing that the 1890 census reported 4.5 times as many non-English speakers in the U.S. than the arguably more accurate 1990 census).

\(^{49}\) Id. Crawford describes the contemporary United States as a "Babel in reverse," explaining that while the absolute number of non-English speakers has been increasing, the rate of their linguistic assimilation of English has increased, too. Id.


\(^{51}\) Drucilla Cornell & William W. Bratton, Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom, and Legal Suppression of Spanish, 84 CORNELL L. REV. 595, 610 (1999) (explaining that statistically, much like past immigrants, Latino/a immigrants today will read fluently within ten years of settlement and speak fluently within fifteen years, the second generation will speak English fluently, and the third generation will be monolingual in English).

\(^{52}\) Id. at 694. See also Crawford, Anatomy, supra note 5 (arguing that the threatened languages in the United States today do not include English but rather the Native American languages and the heritage languages of immigrants).

\(^{53}\) Crawford, Hispanophobia, supra note 22 (stating that U.S. English "[s]ingle-handedly . . . placed a new idea on the national agenda").

\(^{54}\) James Crawford describes how Dr. Tanton began his activist career in the 1960s by joining the Sierra Club, the National Audubon Society, and other environmental groups. Upon becoming aware of the problems associated with overpopulation, Dr. Tanton opened a Planned Parenthood chapter in his home state of Michigan and soon became national president of Zero Population Growth. Id.

\(^{55}\) Crawford, Legislation, supra note 8 (explaining how the English Language Amendment would have prohibited the use of any language but English by federal, state, and local governments, but so far has never arrived at a committee vote).

\(^{56}\) U.S. English, Welcome, supra note 6. The organization describes itself as a "citizens' action group" comprised of a lobbying, legislation drafting, and political campaign-running branch, as well as a separate foundation that promotes English education and public awareness. The organization's
directly to the voters.\textsuperscript{57}

For the past twenty years, U.S. English has provided the primary support and strategy to individuals seeking to pass English-only statutes or constitutional amendments in their states.\textsuperscript{58} Additionally, the organization continues to support English-only legislation at the federal level—including several bills recently introduced in the 108th Congress—and regularly supports state organizations in their defense of English-only laws upon their judicial review.\textsuperscript{59}

English-only laws may be divided conceptually into two distinct categories, those that merely make English the symbolic language of a government, much like a state’s official bird or flower, and those that actually oblige government officials and employees to speak only English in the course of government business.\textsuperscript{60} U.S. English appears to favor the latter. According to its own literature, “[d]eclaring English the official language means that official government business at all levels must be conducted solely in English. This includes all public documents, records, legislation and regulations, as well as hearings, official ceremonies and public meetings.”\textsuperscript{61}

As mentioned above, twenty-three states presently have active “Official English” laws, including Iowa’s restrictive English-only statute signed into law in March 2002.\textsuperscript{62} Some of these laws are being challenged, however. In the same month that Iowa adopted its law, a trial court in Alaska ruled that that state’s English-only law—a ballot initiative supported by 70% of Alaska voters—is unconstitutional; the Alaska Supreme Court heard oral arguments on supporters’ appeal in June 2003.\textsuperscript{63} Arizona’s Supreme Court has also overruled that state’s

literature states that it is “dedicated to preserving the unifying role of the English language in the United States,” and cites its current director’s “commitment to keeping this nation unified through a common language.” Id. In contrast, however, James Crawford has documented the organization’s “determination to resist racial and cultural diversity in the United States,” citing specifically (though not exclusively) a highly publicized, internal memorandum of Dr. Tanton leaked during the organization’s campaign in Arizona in support of that state’s English-only constitutional amendment. In the memo, Dr. Tanton asks rhetorically, “Will the present majority peaceably hand over its political power to a group that is simply more fertile? . . . As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion? . . . We’re building in a deadly disunity. All great empires disintegrate, we want stability.” Crawford, Hispanicophobia, supra note 22.

58. Crawford, Anatomy, supra note 5. While U.S. English remains the largest nationally-based English-only organization, similar though smaller groups exist, including ProEnglish. ProEnglish states that it is currently working at the federal level to support proposed English-only statutes and to rescind Executive Order 13166. See ProEnglish, Making English Our Official Language, at http://www.proenglish.org/issues/offlang/index.html (last visited Nov. 25, 2003).
60. The Supreme Court of Oklahoma, for example, describes the majority of states’ English laws as being “non-prohibitive, brief, and symbolic,” in contrast to the highly restrictive Initiative Petition No. 366 before it on review. In re Initiative Petition No. 366, State Question No. 689, 46 P.3d 123, 126 (Okla. 2002) (holding that a state English-only law proposed by initiative petition violates Oklahoma’s state constitution).
English-only constitutional amendment. In 2002, the Supreme Court of Oklahoma ruled that a proposed English-only statutory amendment would violate Oklahoma's state constitution and therefore could not be submitted to the electorate for a vote. The federal courts, however, have yet to provide any definitive guidance. The only federal court decision to review an English-only law affecting the speech of government employees and elected officials was vacated by the U.S. Supreme Court on standing in a decision that failed to reach the merits of the issue.

Despite evidence that Latino/a immigrants are learning English as rapidly as past generations of immigrants to the U.S., and despite reports that these new settlers show an enthusiasm to learn English that outpaces available educational assistance, U.S. English continues to express concern that Latinos/as are not assimilating the language fast enough. The organization cites as evidence a U.S. Department of Labor report stating that "immigrants learn English more rapidly when there is less native-language support around them." Without addressing the truth of this assertion, or data to the contrary, one can argue that immigrants are also likely to learn frustration, alienation, shame, embarrassment, anger and depression when deprived of the ability to communicate in the language in which


66. Cornell & Bratton, supra note 51, at 616 (noting that "[p]ending a definitive federal court ruling ... the constitutionality of restrictive Official English statutes remains an open question").


68. Cornell & Bratton, supra note 51.

69. Yvonne A. Tamayo, "Official Language" Legislation: Literal Silencing/ Silenciando La Lengua, 13 HARV. BLACKLETTER L.J. 107, 117-18 (1997) (observing that in Washington D.C., thousands of immigrants were turned away from English as a Second Language (ESL) classes between 1994 and 1995, and that in Los Angeles ESL classes are taught around the clock to accommodate immigrants' work schedules while "an estimated forty to fifty-thousand persons are enrolled on waiting lists for English classes"). In the introduction to a collection of essays published by the national organization TESOL (Teachers of English to Students of Other Languages), the editor encouraged teachers to resist the English-only movement and to "show those outside our profession that the ills of society will not be solved by making the already challenging lives of immigrants and language minorities even more difficult and devoid of human rights and dignity." TESOL Sociopolitical Concerns Committee 1996, TESOL's Recommendations for Countering the Official English Movement in the U.S., at http://www.ncela.gwu.edu/mispubs/tesol/official/ (last visited Nov. 25, 2003). The links to the essays in this manual, however, have been removed from the official websites of the federal government's National Clearinghouse for English Language Acquisition and National Clearinghouse for Bilingual Education where this introduction was found. Both organizations exist under the auspices of the U.S. Department of Education.


71. Crawford, Question, supra note 48 (asserting that "[t]here is no evidence that bilingual accommodations slow down English acquisition. Absolutely none has been marshaled by English Only advocates -- only unsupported claims about ethnic separatism and immigrants' disinclination to learn English unless forced to do so").
they are most comfortable and expressive. Further, when confronted with public officials willing and able to speak the language of those who seek their assistance but whose speech is muted by law, or by natives newly emboldened by anti-immigrant rhetoric surrounding English-only campaigns, immigrants may also learn to suppress their courage, their enthusiasm, and their entrepreneurial initiative. They may choose to bury their resolve to overcome linguistic shyness rather than venture into their new communities to interact with others. Perhaps most importantly, however, speakers of minority languages may believe that the laws of their new country do not extend their equal protection to immigrants.  

Opposition to non-European immigrants flourishes in the United States. The ugly rhetoric that accompanies this opposition may be found both nestled in elite academic discourse and bursting from popular media. Our neighbors repeat it, our shopkeepers advertise it. As several commentators have noted, even judges recycle the myths. As a result of English-only campaigns, natives are emboldened to assault minority language speakers verbally, and those speakers themselves fear crossing the linguistic line—not fully understanding just where that line has been drawn. Until the U.S. Supreme Court speaks definitively on the issue, state
courts will continue to address English-only laws as funds and energy exist to challenge them. In the next section, I describe the Ninth Circuit’s analysis of Arizona’s restrictive English-only amendment to its constitution, and apply this analysis to the country’s first Spanish-only law to help illustrate the inefficacy of this approach. Then propose, as an alternative, a new American Languages movement to counter the efforts of English-only advocates and support language minorities in their communities.

II. ENGLISH-ONLY, SPANISH-ONLY, AND FIRST AMENDMENT INTERESTS

In November 1988, Arizona voters approved a restrictive English-only amendment to their state constitution by the slimmest of margins. This amendment, Article 28 of the Arizona state constitution, declared English to be the state’s official language and therefore the language of all government “functions and actions.” In addition to its symbolic declaration, the amendment required state and local governments to “act in English and in no other language.” In August 1999, the mayor and commissioners of El Cenizo, Texas, adopted that town’s Predominant Language Ordinance at the request of frustrated residents. The Predominant Language Ordinance refrained from declaring an official language, but required “all City functions and meetings and notices thereof” to be conducted in the majority language of the community, Spanish.

Both laws require elected representatives to speak only in one language, although their stated purposes differ. Whereas supporters of Article 28 defined the state’s interest in the amendment as “protecting democracy by encouraging ‘unity and political stability,’” as well as “encouraging a common language; and protecting public confidence,” El Cenizo officials claimed that holding public meetings in Spanish helps residents feel confident in their communication skills and enhances their ability to participate in their own government.

As I discuss below, Arizona’s Article 28 was analyzed in Yniguez v.

---

80. Ruiz, 957 P.2d at 987 (following a petition drive conceived and conducted by Arizonans for Official English, 50.5% of the voters approved the amendment).
81. ARIZ. REV. STAT. CONST. art. 28 § 1(2) (2001). For the full text of Article 28, see infra Appendix A.
82. Id. § 3(1)(a).
83. El Cenizo, Tex., Predominant Language Ordinance, 1999-8-3(a) (Aug. 3, 1999) [hereinafter Ordinance]. For the full text of the ordinance, see infra Appendix B.
85. Ordinance, supra note 83, at § 1.
86. Id. §§ 3-4.
87. Yniguez, 69 F.3d at 944.
88. Aynesworth, supra note 84.
Arizonans for Official English by the Ninth Circuit Court of Appeals in 1995. That court held the amendment to be unconstitutional under the First Amendment. The U.S. Supreme Court unanimously dismissed the action on standing and vacated the Ninth Circuit’s opinion. Nevertheless, the Ninth Circuit decision provides the most in-depth analysis by a federal court of the specific issues presented by English-only laws that broadly restrict the speech of public officials and employees. Although the Supreme Court of Arizona subsequently overruled Article 28 on both First Amendment and Fourteenth Amendment equal protection grounds, at least one commentator believes that courts will continue to analyze English-only laws primarily under the First Amendment.

When analyzing Spanish-only laws passed by ordinance in a small municipality, analogy to First Amendment analysis of state-wide English-only laws will be imprecise. Moreover, given that the Yniguez case may have presented the court with a matter of first impression, the circumstances of El Cenizo’s Predominant Language Ordinance become even more novel. Further, whereas the Yniguez court emphasized the speech rights of public employees, the El Cenizo ordinance arguably impacts elected officials more than employees. Nevertheless, in this section I discuss the Ninth Circuit’s analysis of First Amendment interests as applied to Arizona’s Article 28, and then adapt that analysis to El Cenizo’s Predominant Language Ordinance.

While many commentators have addressed the analysis of the Yniguez court, only one has analyzed the El Cenizo ordinance under the First Amendment, providing guidance to its supporters in the event of a future challenge. Contrary to

90. M. Robertson, supra note 9, at 1668.
91. Id. at 1643-44 (recognizing that a majority of commentators analyze English-only laws primarily under the Equal Protection Clause, but arguing that First Amendment analysis is preferable because (1) under the Fourteenth Amendment, English-only laws are not likely to receive strict or intermediate scrutiny; (2) being a minority language speaker is not equated with race and so is not a suspect class; therefore, (3) the Fourteenth Amendment test will be whether intent to discriminate existed, which is hard enough to prove when a legislature acts, but when the intent of voters must be determined it can be nearly impossible; and (4) courts are wary of creating affirmative fundamental rights to government services in a non-English language).
93. M. Robertson, supra note 9, at 1646 (explaining that although the dissent of Judge Brunetti addresses specifically the constitutionality of restricting the speech of elected legislators, “the free speech rights of hired government employees in the English-only context have been examined seriously only in the Ninth Circuit’s [majority] decision”).
94. One of the two commentators to analyze the El Cenizo ordinance has observed that “[a]lthough there are differences, a court faced with a challenge to the Predominant Language Ordinance would probably generalize from the closest legislative analogue (i.e., Official-English declarations). Thus, it is most useful to analogize to cases in which Official-English legislation was challenged.” Pabón López, supra note 19, at 1034.
96. Pabón López, supra note 19. For a Fourteenth Amendment analysis of the ordinance, see Resende, supra note 20.
97. Fran Ansley, Borders, 965 DENVER UNIV. L. R. 965, 973 (2001) (explaining that “[Pabón López’s] article also provided a very concrete kind of support to El Cenizo by laying out the results of her
that commentator's optimistic conclusions, however, I argue that the Predominant Language Ordinance unconstitutionally violates elected officials' First Amendment right of free speech, as well as the right of non-Spanish speaking residents of El Cenizo to petition their government for redress of grievances. Under a federal Constitution that may prove unresponsive to the unique circumstances of a language minority, the El Cenizo ordinance will appear as merely the obverse of the Arizona amendment, with no greater claims to constitutional legitimacy.

When viewed apart from the constraints of the Constitution, however, the efforts of the El Cenizo commissioners to develop civic and community identity cause many civil and human rights advocates to cheer. Like those advocates, I wholeheartedly support the efforts of El Cenizo to build broader democratic participation and develop its unique political, economic and cultural strengths as an immigrant community in the U.S. Ultimately, however, I believe that the means chosen not only are unnecessary and in violation of the U.S. Constitution, but also, and perhaps more important over time, poorly serve immigrants and language minorities to the extent that they set a combative precedent while engaging those populations in a losing battle.

A. Article 28 and Yniguez v. Arizonans for Official English

1. Article 28 of the Arizona Constitution

In 1995, the Ninth Circuit Court of Appeals, sitting en banc, concluded that Article 28 of the Arizona Constitution ("Article 28" or "the amendment") violated speech interests protected by the First Amendment.\(^\text{98}\) Article 28 had been adopted by the Arizona voters in 1988 following a petition drive commenced by Arizonans for Official English. Section 1 of the amendment declared that English was the official language of the state of Arizona, the language of "all government functions and actions." Section 3 required every official and employee of the government, at both state and local subdivision levels, to "act in English and no other language" during the performance of all government business.\(^\text{99}\)

Maria-Kelly Yniguez was an employee of the state of Arizona when Article 28 was adopted. She worked in the state's Department of Administration where she managed medical malpractice claims against the state. Ms. Yniguez was both bilingual and biliterate in English and Spanish. Willing to use her language skills to increase the number of people her agency could serve, Ms. Yniguez was able to provide state services to monolingual speakers of either language.\(^\text{100}\)

Within a week of the state's passage of Article 28, Ms. Yniguez, fearful of employment sanctions for failing to obey the state constitution, stopped speaking Spanish in the performance of her duties and brought suit against the State of Arizona. She sought both an injunction against enforcement of the amendment as

doctrinal research in a way that would have been invaluable to a litigation team had it been necessary to mount a legal defense of the El Cenizo ordinance\(^\text{97}\). El Cenizo's Predominant Language Ordinance has not been challenged, which may further embolden additional immigrant towns along the border should they feel further threatened by anti-Spanish and anti-immigrant hostilities.

\(^{98}\) Yniguez, 69 F.3d at 924.

\(^{99}\) Id.

\(^{100}\) Id.
well as a ruling that the amendment was unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution.\textsuperscript{101}

In February 1990, the Federal District Court for the District of Arizona issued its judgment and opinion. The court found that Article 28 barred state officers and employees from using any language other than English while performing their official duties, and concluded that when construed in this manner, the constitutional amendment was both facially overbroad and in violation of the First Amendment.\textsuperscript{102} Following the governor's decision not to appeal, Arizonans for Official English moved to intervene. The court denied the intervention motion, which the appellate court subsequently reversed. Ms. Yniguez then cross-appealed the district court's denial of her request at trial for nominal damages.\textsuperscript{103} The parties' appeals on the merits and for an award of damages then proceeded to the Ninth Circuit Court of Appeals.\textsuperscript{104}

2. \textbf{Yniguez v. Arizonans for Official English}

\textit{a. Construction}

In the majority decision written by Judge Reinhardt, the Ninth Circuit first addressed the proper construction of Article 28. The Arizona Attorney General had proposed a narrow construction of the amendment, one that would limit its language prohibitions to only the "official acts" of government entities. This construction would permit the use of non-English languages whenever "reasonable to facilitate the day-to-day operation of government."\textsuperscript{105} In contrast, the District Court had previously construed the "sweeping language" of Article 28 as a broad prohibition against all uses of any language other than English by Arizona officers and employees during the performance of their official duties, limited only by the narrow exceptions provided in the amendment.\textsuperscript{106}

In its own analysis of the amendment's construction, the Ninth Circuit first cited the amendment's explicit choice of the verb "act" over the modified noun construction—"official acts"—proposed by the state's Attorney General. Then, noting that the Court was required to give each word of the amendment its operative effect where possible, the Court emphasized that both the verbal thrust and broad scope of the amendment's prohibitions supported a construction that extended its reach to all government officials and employees in the course of all government business. The Court also noted that the Attorney General's proposed construction would render the amendment's exceptions superfluous.\textsuperscript{107}

\begin{itemize}
\item \textsuperscript{101} \textit{Id.} at 925.
\item \textsuperscript{102} \textit{Id.}
\item \textsuperscript{103} \textit{Id.} at 926.
\item \textsuperscript{104} Maria-Kelly Yniguez died May 28, 2002. Connie Cone Sexton, \textit{Maria Yniguez Became a Reluctant Hero in Court Battle, ARIZONA REPUBLIC}, June 23, 2002, available at http://www.asu.edu/educ/eps/ILPRU/newsarchive/Art402.txt (last visited Nov. 25, 2003). Her husband stated of his wife that "she believed everyone needed to grasp English to reach their pinnacle but she argued that people don't learn a language overnight." \textit{Id.}
\item \textsuperscript{105} Yniguez, 69 F.3d at 928.
\item \textsuperscript{106} \textit{Id.} at 928.
\item \textsuperscript{107} \textit{Id.} at 929-30.
\end{itemize}
Finally, the Court observed that the text itself provided no support for the proposed allowance for the use of languages other than English if reasonably necessary to facilitate day-to-day operations of the government. Rather, the clear terms of Article 28 provide that "[t]he use of languages other than English is banned except where expressly permitted." Concluding that the plain language of the amendment did not allow the Attorney General’s proposed constraints upon it, the Court adopted the District Court’s construction, then turned to its analysis of Article 28 based on the interests protected by the First Amendment.

b. **Overbreadth and the First Amendment**

In *Yniguez*, the Ninth Circuit initially explained that the overbreadth doctrine protects the First Amendment rights of those whose speech may be unconstitutionally prohibited but who may themselves be unable to challenge the prohibition. Where a provision creates a “realistic danger” of “significantly compromised” speech rights “in a substantial number of instances,” a party may challenge that provision to protect against the chilling of the speech of third parties, even if the speech restriction may be constitutional as applied to that party’s own speech. The overbreadth of the restriction, however, must be “real and substantial” when judged against its “plainly legitimate sweep,” and must not be “susceptible to a narrowing construction that would cure its constitutional infirmity.”

Ms. Yniguez had argued that Article 28 was overbroad because it prohibited her own Spanish speech when addressing the needs of Spanish-speaking claimants, as well as the non-English speech of “innumerable employees, officials, and officers” throughout Arizona. The result, she claimed, was that the amendment prevented “thousands of non-English-speaking Arizonans” from receiving critical public information that would otherwise be available to them. The Ninth Circuit agreed with Ms. Yniguez. The majority found that the amendment’s broad language applied to the governmental speech of all civil servants and teachers, and of the legislative, executive, and judicial branches of state and local government, noting specifically the speech restrictions upon elected representatives. Moreover, the majority found that the amendment also prevented numerous non-English-speaking Arizonans from obtaining essential government information. The Court then concluded that overbreadth analysis was appropriate given the burden imposed by Article 28 in the required “substantial number of instances.” Recognizing that the singular purpose of Article 28 was to ban the use of any language but English by all government employees and officials, and that the Article contained no severability clause, the Court held that the amendment would be invalidated in its entirety if subsequent analysis proved that its provisions unconstitutionally impact the First Amendment speech rights of the state’s public employees.

---

108. *Id.* at 930.
109. *Id.* at 931.
110. *Id.* at 931-32.
111. *Id.* at 932.
112. *Id.*
113. *Id.* at 933.
114. *Id.* at 934.
c. Public Employee Speech

The majority analyzed the First Amendment interests of public employees implicated by Article 28 in six steps. This subsection follows those steps.

General Principles. The majority began by observing that no state could prohibit private individuals from speaking in the language of their choice. Article 28, however, addresses not private individuals but “persons performing services for the government.” Nevertheless, the majority wrote, the Supreme Court has held that the state may not deny an individual the benefit of ongoing employment on a basis that infringes upon his freedom of speech merely because the state is acting in its capacity as that individual’s employer.115

Regulation of Traditional Types of Public Employee Speech. A state employee’s First Amendment protections of speech notwithstanding, the state’s authority to restrict that speech is broader than its authority to restrict the same speech spoken by private citizens. As a result, upon review the courts will apply a less stringent scrutiny.116 In its discussion of the balancing test that a reviewing court must apply to government restrictions of employee speech, the majority relied primarily upon two Supreme Court cases, Pickering v. Board of Education of Township High School District117 and Connick v. Myers.118 In Connick, the U.S. Supreme Court grounded its decision upon an analysis that examined whether the employee’s speech addressed matters of public concern or merely private interests, explaining that if the employee expression does not address “any matter of political, social, or other concern to the community” then the state has “wide latitude” to restrict that speech.119 Pickering further illustrates the significance of the ‘public concern’ content of the employee speech within a First Amendment analysis: the government employer’s interest in “promoting the efficiency of the public services it performs through its employees” must be balanced against the employee’s free speech rights when, as a citizen, she comments upon matters of public concern.120

The Yniguez majority elaborated upon the government’s interest in employee efficiency by quoting the Supreme Court’s articulation of that interest in Waters v. Churchill.121 Specifically, the majority explained that Waters provided the definition of a state’s interest in restricting the speech of its employees for purposes of analyzing the restriction against the free speech interests of the employee:

The government’s interest in achieving its goals as effectively and efficiently as possible is elevated from a relatively subordinate interest when it acts as sovereign to a significant one when it acts as employer. The government cannot restrict the speech of the

---

115. Id. at 938 (citing Perry v. Sinderman, 408 U.S. 593, 597 (1972)).
116. Id. (citing authority).
117. 391 U.S. 563 (1968) (holding that school’s firing of a teacher who criticized the school officials’ fund-raising activities in a letter to the editor of a local newspaper violated the teacher’s right as a citizen to comment upon matters of public concern).
118. 461 U.S. 138 (1983) (holding that an assistant district attorney’s right to freedom of speech was not violated when she was fired after circulating an internal memorandum critical of the office’s transfer policy because her speech involved only matters of private concern and she was not seeking to inform the public).
119. Id. at 143.
120. Pickering, 391 U.S. at 568.
121. 511 U.S. 661 (1994) (plurality opinion).
public at large just in the name of efficiency. But where the
government is employing someone for the very purpose of
effectively achieving its goals, such restrictions may well be
appropriate.122

The majority then emphasized that this governmental interest is not
determinative but must be balanced against the employee's interest in “speaking out
on public matters.”123

The Interests Favoring Protection of the Prohibited Speech. Having
explained the competing interests, the majority began its balancing analysis with a
discussion of the interests of Arizona’s employees, officials, and the public
generally. The Court acknowledged that the speech at issue did not “fit easily into
any of the categories in the case law,” whether it categorized the speech as being of
either private or public concern, and noted specifically that unlike the categories
delineated in the case law, Ms. Yniguez's speech occurred within the context of her
performance of official duties.124 The majority explained that this context, however,
is a legitimate factor to consider among the conflicting interests, and that the official
duties context of the speech at issue added weight to the arguments in support of
protecting that speech.125

Similarly, precedent required the Court to consider the public’s interest in
the speech as judged by the desire of the public to hear it.126 The majority observed
that the public not only expressed an interest in hearing state employees’ non-
English speech, but also initiated that non-English communication in most
circumstances. Further, the Court explained, the information conveyed by the
speech concerns public and private benefits of which a significant portion of the
public would be deprived if the speech were not available in a form they could
understand.127 These benefits include the public’s ability to file grievances and
obtain information about legal rights and social services, as well as the ability of
state legislators to communicate information and ideas to their constituents.128

The majority concluded, therefore, that by obstructing the free flow of
information and ideas between government employees and the interested public,
Article 28 effectively required the state to mute valuable, desired speech.129

The Absence of Any State Interest in Efficiency and Effectiveness. The
majority next repeated that in this matter it was applying to Article 28 a balancing
test derived from the Waters/Pickering cases involving government employees’
speech of public, not private, concern.130 In this test the interests in favor of the
speech as discussed immediately above are balanced against the state’s interest in
operational efficiency and efficacy. In its consideration of the state’s interest, the

122. Yniguez, 69 F.3d at 938-39 (quoting Waters, 511 U.S. at 675) (emphases added in
Yniguez).
123. Id. at 939 (quoting Waters, 511 U.S. at 674).
124. Id.
125. Id. at 940.
126. Id.
127. Id.
128. Id. at 941-42 (discussing the emphasis on the public’s right to receive information and
ideas as affirmed in U.S. v. Natl. Treasury Employees Union, 513 U.S. 454 (1995)).
129. Id. at 942.
130. Id.
majority observed that Article 28’s restrictions on the willing, non-English speech of its employees actually render the state’s operations less efficient and effective. In fact, the Court noted, Ms. Yniguez’s use of Spanish with Spanish-speaking Arizonans actually “contributed to the efficient and effective administration of the State.” Importantly, the majority recognized that Article 28 might have procured greater efficiency had it banned non-English speech only when that speech hindered the provision of government services, but not when it helped. The Court emphasized that based on the parties’ stipulated facts, its ruling on this matter did not address a restriction on non-English speech that had been shown to hinder job performance.\(^3\)

The Propriety of Considering State Justifications Other Than Efficiency and Effectiveness. The majority next addressed the possibility of considering the weight of any state interests other than those in its employees’ efficient and effective job performance.\(^3\) These interests had been summarized in Rutan v. Republican Party of Illinois as consisting of the broader concerns that “the government might have in the structure and functioning of society as a whole,” even where those alleged interests have no connection to job performance.\(^1\)\(^3\) There, however, the majority had applied strict scrutiny to the speech restrictions at issue rather than a balancing test and therefore did not consider the broader scope of the alleged governmental interests.

The majority noted that in a case decided five years after Rutan, the Supreme Court applied a more thorough balancing test in which it evaluated broadly both the benefits and the burdens of the legislation before it on review. In choosing to discuss the state’s non-employment-related interests in Article 28 as alleged by Arizonans for Official English, the majority explained, it was following the Supreme Court’s approach in its more recent decision.\(^3\)\(^4\)

Evaluating the Alleged State Justifications. To conclude its discussion of public employee speech, the majority proceeded to evaluate three non-employment-related state interests advanced by Arizonans for Official English: “protecting democracy by encouraging ‘unity and political stability’; encouraging a common language; and protecting public confidence.”\(^1\)\(^3\)\(^5\)

The majority began by emphasizing that its scrutiny must be closer here because rather than addressing an isolated disciplinary action, Article 28’s restrictions on speech affected a large number of potential speakers.\(^1\)\(^3\)\(^6\) The majority then noted that neither Article 28 itself nor the record before the court on review provided evidence that Article 28 would actually further the interests alleged.\(^1\)\(^3\)\(^7\) Rather, Arizonans for Official English relied merely on “assertion and conjecture,” neither of which rendered the allegations credible. Further, earlier Supreme Court cases had considered proposed state justifications for restrictive language laws

131. Id. at 943.
132. One commentator, however, has noted that no precedent supported this extension of legitimate state interests. See M. Robertson, supra note 9, at 1684-88 (arguing that the Ninth Circuit erred in examining a state’s interests outside the employment context because, since Rutan v. Republican Party of Ill., the Supreme Court has specifically not followed the dissent’s suggestion in that decision that a state may have legitimate interests beyond those in efficient and effective employment).
133. Yniguez, 69 F.3d at 943 (citing Rutan, 497 U.S. 62, 70 n.4 (1990)).
134. Id. at 944 (citing U.S. v. Natl. Treasury Employees Union).
135. Id.
136. Id.
137. Id. at 944-45.
similar to the justifications provided by Arizonans for Official English and had found them to be arbitrary and insufficient.\textsuperscript{138} The majority observed that those cases had established that a state's interest in ensuring the uniform use by its citizens of a single language to promote unity, though important, was insufficient to justify state restrictions on the academic instruction of foreign languages.\textsuperscript{139} 

The majority concluded that the means employed in Article 28 to advance the goals of 'protecting democracy and establishing unity' were coercive, repressive, and only indirectly related to the means employed.\textsuperscript{140} As for the assertion that the non-English language speech of state employees undermines public confidence and causes disillusionment and concern, the majority explained that Article 28 would itself cause disillusionment and concern among the part of the public that speaks languages other than English, and that concerns about possible hostility from the public have not been found by the Supreme Court to justify infringements upon constitutional rights.\textsuperscript{141} 

The majority cited again the vast "range of potential injuries to the public" resulting from the language minorities' inability to access essential government information and services under Article 28, then announced its holding that the amendment unconstitutionally impaired free speech interests protected by the First Amendment.\textsuperscript{142}


Before disposing of the First Amendment question as described in subsection (c) above, the majority addressed two additional issues. Arizonans for Official English had argued that the Court should relax its scrutiny of the speech restriction here because Ms. Yniguez's willful choice to speak a non-English language implicates not pure speech but rather conduct (that is, her Spanish-speaking services involved nonverbal expressive activity).\textsuperscript{143} Where expressive conduct and not pure speech is at issue, the U.S. Supreme Court has held that government entities have broader regulatory powers provided that a regulation remains directed at the conduct itself and not at the communicative content of that conduct.\textsuperscript{144} 

The majority was unpersuaded, however, observing that speech in any language—and regardless of the speaker's choice between one and another—may be the muscular conduct necessary to articulate speech but is also, and fundamentally, the "sophisticated and complex system of understood meanings" comprising speech

\textsuperscript{138} Id. at 945 (discussing Meyer v. Nebraska, 262 U.S. 390, 403 (1923) and Farrington v. Tokushige, 273 U.S. 284, 299 (1927), cases that had overruled state laws restricting the teaching of a non-English language in public schools).

\textsuperscript{139} Id. at 946.

\textsuperscript{140} Id.

\textsuperscript{141} Id. at 947.

\textsuperscript{142} Id.

\textsuperscript{143} Id. at 934.

\textsuperscript{144} Id. (citing Texas v. Johnson, 491 U.S. 397 (1989) (concerning a protestor's right to burn a U.S. flag to express opposition with U.S. policy); Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969) (concerning a high school student's right to wear an arm band to express anti-war sentiment); and U.S. v. O'Brien, 391 U.S. 367 (1968) (concerning a war protester's burning of a draft card to express anti-war sentiment)).
The majority equated a speaker's choice among two or more languages with her choice of which words to use within a single language. It then defined different languages as different "communicative elements of speech," and the speaker's choice among those languages as one "based on a pragmatic desire to convey information" with the whole set of speech elements available to her. Closing its discussion of this issue with a less than persuasive argument, however, the majority relied upon Cohen v. California to support its assertion that the most important element of Ms. Yniguez's Spanish speech was its emotive rather than cognitive force. It then concluded that Article 28's prohibition against non-English speech does not implicate conduct nor a mere mode of expression, but rather pure speech itself.

Lastly, the majority addressed the argument advanced by Arizonans for Official English that Ms. Yniguez sought a ruling that recognized an affirmative duty of governments to provide its services in non-English languages. The majority quickly dismissed this argument, providing the example of a legislator who seeks and is elected to office in part due to his ability to speak the non-English language of his constituents. The Court observed that this hypothetical legislator could not be ordered to speak that language as an affirmative right of his constituents, but neither could the state restrict the legislator's own negative right to be free to communicate information relating to his office in whatever language he considered to be "in the best interest of those he was elected to serve." The majority concluded that Ms. Yniguez did not seek an affirmative state duty. The state need not provide its services in more than one language, the Court explained, but "it is an entirely different matter when it deliberately sets out to prohibit the languages customarily employed by public employees."

The Concurrence of Judge Brunetti

Judge Brunetti wrote a separate concurrence to emphasize that Article 28's restrictions on the speech of elected officials was sufficient cause on its own to strike down the amendment, even though the number of officials affected may be considerably smaller than the number of government employees and public individuals whose speech interests are unconstitutionally abridged. By regulating the speech of elected officials, he wrote, Article 28 "attempts to manipulate the political process" and "stifle informative inquiry and advocacy," therefore "threaten[ing] the very survival of our democratic society." This manipulation, Judge Brunetti explained, occurs through the amendment's interference with candidates' communication with voters and with their obligations to express their views to the public.

145. Id. at 934-35.
146. Id. at 935.
147. Id., (citing Cohen v. California, 403 U.S. 15, 26 (1971) (concerning the emotive effect of the protected words "fuck the draft" over the more cognitive "I strongly oppose the draft").) It seems more likely to this author that Ms. Yniguez's Spanish speech to monolingual Spanish-speaking claimants was important not as much for its emotive effect as for its ability to communicate the state's message with speech that the recipient could understand cognitively.
148. Id. at 936.
149. Id. at 937.
150. Id. (emphasis in the original).
151. Id. at 950.
opinions on the issues upon which they may legislate. This communication between candidates and voters prevents disenfranchisement, he wrote, and is therefore a core interest protected by the First Amendment.\footnote{Id. at 950-51.}

In addition to interfering with crucial communication between candidates and voters, Article 28 also interferes with the officials' representation of their constituents once elected. Again, Judge Brunetti stressed, the First Amendment demands that elected representatives receive "the widest latitude" of expression when discussing their views on issues of concern to the public.\footnote{Id. at 951 (quoting Bond v. Floyd, 385 U.S. 116, 135-36 (1966))).} Finally, Article 28 "attempts to reconfigure the political landscape" by imposing political conformity, through language, upon "the foundation of the cultural and ethnic diversity in our democratic and political processes."\footnote{Id.} As a result of Article 28's unconstitutional interference with the democratic process, Judge Brunetti repeated, the amendment's restriction on the speech of elected officials was alone sufficient to strike it down.\footnote{Id.}

3. \textit{Ruiz v. Hull}

The Ninth Circuit opinion focused primarily on the First Amendment speech interests of government employees. As noted earlier, while the Ninth Circuit remains the only federal court to address English-only requirements of all government employees and officials, the \textit{Yniguez} opinion was vacated in 1997 by a unanimous Supreme Court decision.\footnote{Id. at 997 (asserting that where the First Amendment protects speech, that protection extends to the communication, its source, and its recipient).} The next year the Arizona Supreme Court struck down Article 28, holding that the amendment violated First Amendment interests in both freedom of speech and freedom to petition the government for redress of grievances, as well as Fourteenth Amendment Equal Protection rights.\footnote{Ruiz, 957 P.2d at 1002.}

In \textit{Ruiz v. Hull}, the Arizona Supreme Court stated that in addition to depriving language minorities of access to important government information that would otherwise be available to them, Article 28 also contravenes the public's right to seek redress from their government by denying language minorities their ability to participate equally in the political process, a core principle of representative government.\footnote{Id. at 997 (asserting that where the First Amendment protects speech, that protection extends to the communication, its source, and its recipient).}

In its discussion of the First Amendment interests violated by Article 28's broad prohibitions, the \textit{Ruiz} court specifically addressed the implications of those prohibitions on the communication of elected representatives. The court noted that legislators in Arizona speak with their constituents in the languages in which those constituents are most competent, but that Article 28 would ban that communication

\begin{footnotes}
\footnotetext{152. Id. at 950-51.}
\footnotetext{153. Id. at 951 (quoting Bond v. Floyd, 385 U.S. 116, 135-36 (1966))).}
\footnotetext{154. Id.}
\footnotetext{155. Id. Two authors have addressed the significance of Judge Brunetti's emphasis on the unconstitutionality of restrictions on elected officials' speech. See Michael Albert Pagni, Note, \textit{The Constitutionality of English-Only Provisions in the Public Employee Speech Arena: An Examination of Yniguez v. Arizonans for Official English}, 24 HASTINGS CONST. L.Q. 247, 256 (1996) (asserting that Judge Brunetti's emphasis on elected officials is "the most judicially sound analysis of Yniguez's claim"), and K. Robertson, supra note 92, at 323 (emphasizing Judge Brunetti's focus on Article 28's manipulation of the political process).}
\footnotetext{156. See Arizonans for Official English v. Arizona, 520 U.S. 43 (1997) (dismissing on standing and vacating as moot).}
\footnotetext{157. Ruiz, 957 P.2d at 1002.}
\footnotetext{158. Id. at 997 (asserting that where the First Amendment protects speech, that protection extends to the communication, its source, and its recipient).}
\end{footnotes}
and therefore prevent constituents from accessing their own government and from petitioning for redress of their grievances. Article 28, the court wrote, would prohibit the large number of Arizonans who do not speak the dominant language from "expressing[ing] their political beliefs, opinions, or needs to their elected officials."  

B. El Cenizo’s Predominant Language Ordinance and First Amendment Interests

In contrast to Arizona’s English-only Article 28, the Predominant Language Ordinance of El Cenizo, Texas, presents an example of legislation that focuses on the actual needs of individuals in their communities rather than imposing mandates from a normative perspective that fail to understand the lived experiences of language minorities. In this respect, the El Cenizo ordinance exists as one model of a local government’s resolve to use language to create new democratic power at the community level.

Nevertheless, while the El Cenizo ordinance locates democratic authority in participatory action and seeks thereby to enable that participation at the most basic levels, similar ordinances adopted by communities in the future will likely increase opposition toward language minorities and immigrants from those who perceive in the legislation a personal attack and a call to more powerful arms. Additionally, as I discuss below, despite the laudable intentions of El Cenizo’s citizens, the method they chose to support political participation, and cultural and economic development, is likely unconstitutional. The restrictions of the Predominant Language Ordinance are not only unnecessary, but also expose them to expensive lawsuits, and engage the town in a language war from which only further divisiveness and hostility toward language minorities can develop.

1. The Predominant Language Ordinance

In August 1999, the city council of El Cenizo, Texas, “fired a shot heard around the world.” El Cenizo is one of many small, recently incorporated immigrant towns built upon the U.S. side of the U.S.-Mexico border. At the time of the ordinance’s adoption the town was home to approximately 7,000 residents, mostly immigrants from Mexico who commuted north along the Rio Grande to Laredo each day for employment in the retail or domestic service industries. Four in five El Cenizistas speak only Spanish. In August 1999, the town had three elected officials – a mayor and two commissioners. The mayor spoke very little English, but one commissioner called English her first language; all three were U.S. citizens.

Prior to adoption of the Predominant Language Ordinance, official meetings in El Cenizo had been held in English. Town officials reported that citizen participation at these meetings was low because the residents were unable to

159. Id. at 998.
160. Resendez, supra note 20, at 336 (describing the belief of supporters of the Ordinance that it “exemplifies democracy at work because it opens the government’s doors to the people”).
161. Id. at 318.
162. Pabón López, supra note 19, at 1022-23.
163. Id. at 1023.
understand the proceedings. As a result, residents failed to recognize the importance of contributing to the development of the town’s physical and financial infrastructure through participation and payment of local taxes. When the mayor and two commissioners first took office, for example, “the telephone company had canceled service for nonpayment, the nearby landfill had refused to accept any more city trash and contracts with ambulance and fire companies had been severed.”164 Without residents’ responsibility and involvement in the development of their own town, El Cenizo was failing as a self-sufficient community. Lacking the ability to communicate with their elected representatives, however, the residents kept resisting invitations to join.

At the request of the community, therefore, El Cenizo’s elected officials conducted a survey to determine the predominant language of the citizens165 and determined that this language was Spanish. Officials then passed the city’s Predominant Language Ordinance, “effectively establish[ing] Spanish as the official language of the city.”166

El Cenizo’s Predominant Language Ordinance first recites the council’s recognition of the need to conduct all official city meetings and functions in the predominant language of the community, “understanding,” however, that English remains the predominant language of the United States.167 The ordinance further declares that all city ordinances shall be written in English. After stating that the city has no “official language” but that a survey determined the city’s predominant language to be Spanish, Section 4 of the ordinance then requires that “[a]ll City functions and meetings and notices thereof” be conducted in Spanish. Translation into Spanish “as a matter of course” will be provided if the official conducting the meeting or function cannot speak Spanish. Finally, Section 5 of the ordinance provides for translation into English “as practicable” at all City functions and meetings for any resident who does not speak Spanish provided that the resident gives forty-eight hours’ notice. Of less significance to this discussion, Sections 6 and 7 provide for translation of written ordinances, resolutions, official documents and notices.

2. Analysis of the Predominant Language Ordinance under Yniguez and Ruiz

At first glance, the El Cenizo Predominant Language Ordinance appears quite different from Arizona’s Article 28. In fact, the only commentator to apply a First Amendment analysis to the ordinance relies on both Yniguez and Ruiz to support her assertion that the Predominant Language Ordinance “does the converse” of Article 28 and “allows the residents of El Cenizo to freely discuss government affairs in their predominant language, Spanish.”168 Importantly, however, her assertion that free discussion was enabled by the ordinance is correct only because prior to its adoption, government affairs in the town had been discussed and conducted in a minority language, English. Once the Predominant Language

164. Aynesworth, supra note 84.
165. Resendez, supra note 20, at 340.
166. Id. at 319.
167. Ordinance, supra note 83, recital.
168. Pabón López, supra note 19, at 1025.
Ordinance accomplishes a majority language government in El Cenizo—similar to the default situation in Arizona—both the El Cenizo ordinance and the Arizona amendment take on very similar aspects.

In this section I argue that the El Cenizo Predominant Language Ordinance does not reverse the logic of the Arizona amendment, but rather parallels it. The Ordinance does this by first recognizing the dominant language in its local jurisdiction, and then requiring the use of that language in government affairs, just as supporters of Article 28 recognized the dominant language in the state of Arizona, and then required its exclusive use by state employees and officials. In this way, the Predominant Language Ordinance restricts the speech of language minorities in El Cenizo, including the speech of future elected officials who are monolingual in English—possibly even the children or grandchildren of those residents who are now monolingual in Spanish. For reasons similar to those provided by the Ninth Circuit in Yniguez and by the Arizona Supreme Court in Ruiz, El Cenizo’s Predominant Language Ordinance infringes upon the First Amendment rights of El Cenizo’s elected representatives to speak freely and spontaneously about crucial matters of public concern, as well as the rights of the public who would be recipients of that speech.

a. Construction and Overbreadth.

The relevant substantive language of the Predominant Language Ordinance is found in Section 4. The fact that Section 1 of the ordinance expressly denies its establishment of an official language is insignificant given that courts have focused not on symbolic declarations but on words that confine government employees and officials to the use of only one language, thereby prohibiting protected speech. Arguably, that wording is found in Section 4. Avoiding use of the word “only,” Section 4 nevertheless mandates the use of a single language by government officials: “All city functions and meetings and notices thereof shall be conducted and posted in the predominant language of the community.” Condensed to its legal impact, this line states that every city function, and all its meetings, must be conducted in Spanish. The following and final line of Section 4 provides that translation into Spanish for any city official unable to speak the language shall be provided “as a matter of course.” If the first line did not require Spanish-only, then the second line would be superfluous as no need for translation would exist. Without the second line, one could infer that if an official did not speak Spanish, then she was permitted to speak English, even though as much of the function or meeting as possible would be conducted by others in Spanish. With the inclusion of this second line, however, the Spanish-only requirement of the ordinance becomes unavoidable.169

In Yniguez, the majority observed that the text of Article 28 provided no support for an interpretation that allows for the use of languages other than English if reasonably necessary to facilitate day-to-day operations of the government. Rather,

---

169. *See also* Resendez, *supra* note 20. Although a supporter of the Predominant Language Ordinance, the author writes that “because Spanish is the predominant language spoken in El Cenizo, the ordinance effectively mandates that the city conduct all official business and monthly council meetings in Spanish.” *Id.* at 339. Presumably, were the predominant language of El Cenizo to become English at some future point, the ordinance would require that all city functions and meetings be conducted in English, thereby converting the ordinance into an English-only law.
the terms of Article 28 provide that "[t]he use of languages other than English is banned except where expressly permitted." El Cenizo's ordinance likewise provides no support for the use of any language except Spanish, even if the official does not speak Spanish. In fact, the ordinance appears even stricter than Article 28 in that it allows no exceptions. The ordinance does provide for translation, but as I discuss below, this provision fails to enable a substantial amount of official communication.

Further, in Yniguez, the Ninth Circuit rejected the state attorney general's attempt to narrow the construction of Article 28 by interpreting the amendment's order "to act" in English as implicating only "official acts." Instead, the majority there cited its requirement to give each word its clear meaning and operative effect. Similarly here, the Predominant Language Ordinance requires that "all city functions... be conducted" in Spanish. The fact that the ordinance places its verb in the passive and thereby avoids both stating the subject of the verb and consequently drafting a construction parallel to English-only legislation does not save its meaning and impact. This ordinance requires elected officials in El Cenizo to conduct themselves only in Spanish in the course of all city functions.

Additionally, the ordinance fails to specify or narrow the meaning of the noun "functions," and the context in which the word appears lends no guidance. The Ninth Circuit, while discussing the possible breadth of the verb "act," noted that the proposed limited meaning of "official act" does not appear among the common meanings of the verb. Similarly, the Ruiz court observed that Section 1(2) of the amendment did not limit the terms "functions" and "actions" to official acts, and that "the ordinary meanings of those terms do not impose such a limitation." Here, the dictionary definition that most closely describes the "function" of a government official is the following: "The natural or proper action for which a person, office, mechanism, or organ is fitted or employed... [a]n assigned duty or activity." A proper reading of Section 4, therefore—after giving the noun "functions" its operative effect, making the passive verb active, expressing its implied subject, and accounting for the translation provision—requires all city officials to conduct themselves only in Spanish in the course of all official duties and activities.

As for the translation provisions of the Predominant Language Ordinance, both Sections 4 and 5 of the ordinance address this need. Section 4 provides that if a city official cannot speak Spanish, then the city will provide translation into Spanish "as a matter of course." Section 5 focuses not on officials but on the public. It provides that if a resident cannot speak Spanish, then the city will provide translation into English with forty-eight hours' notice. One commentator has relied on these two provisions to argue that not only does the ordinance not require Spanish-only, but in fact permits, for example, a bilingual English-Spanish official to communicate with a monolingual English constituent in English without a translation into Spanish.

The plain language of these sections, however, when viewed both separately and combined, does not support a construction of the ordinance that

170. Yniguez, 69 F.3d at 929.
171. Id.
172. Ruiz, 957 P.2d at 993.
would allow an elected official to address a person attending a meeting or function directly in English, with or without subsequent translation into Spanish. Further, and most importantly, Section 4, requiring that all meetings and functions be conducted in Spanish as demonstrated above, provides for translation of an official's English into Spanish "as a matter of course," but a member of the public who is unable to speak Spanish must provide 48 hours' notice before being provided translation of an official's speech into English "as practicable." If the term "City functions" includes all activities that pertain to the functioning of the City, then the plain language of the ordinance prohibits an elected official from communicating with her constituents in any non-Spanish language whenever she is engaged in a function that she was elected to perform, including functions in which she attempts to determine from her constituents what needs they have of their government.

One can easily imagine a scenario where an official and one of her constituents meet in the course of the official's functions without having planned the encounter in advance. Without anyone to translate their conversation into Spanish, that conversation would be prohibited. This is not a frivolous hypothetical. Rather, the very language of the ordinance requires this result, and no exceptions are provided that would allow an English-speaking official to address a constituent in English if translation into Spanish is not actually needed. Although this scenario may seem unlikely in El Cenizo or other similar towns today, again one can imagine a second-generation daughter of an immigrant, bilingual in Spanish and English, elected as mayor, for example, approached by a third-generation constituent who only modestly comprehends Spanish but is fluent in English. As the Predominant Language Ordinance stands, no exceptions exist to allow the mayor to speak English to the individual. The ordinance only permits her to speak Spanish and then have that Spanish translated into English for the constituent if the constituent had provided forty-eight hours' notice. As another author has noted in the context of English-only laws, "[t]he bilingual employee is able to speak, but only in a form incomprehensible to a listener who has limited or no [Spanish] proficiency. This infringes on both the right of the employee to use a foreign language and thus communicate, and the right of the listener to receive the message from a willing and able speaker."175

Additionally, in Yniguez, as discussed above, after finding that Article 28 burdened protected speech in a substantial number of instances, the majority concluded that overbreadth analysis was appropriate. The Court also noted that since the amendment contained no severability clause it must be invalidated in its entirety if proven unconstitutional.176 Here, although the absolute size of El Cenizo is much smaller than the state of Arizona, the proportional amount of individuals whose speech is restricted by the ordinance is similar. The Predominant Language Ordinance addresses principally officials and does not expressly include employees, but the concurring decision of Judge Brunetti in Yniguez, discussed above, emphasizes that Article 28's restrictions on the speech of elected representatives was alone sufficient to hold the amendment overbroad and unconstitutional. Moreover, as with Article 28, the ordinance here prevents potentially many non-Spanish speaking residents of El Cenizo—certainly within the next generation—from

175. M. Robertson, supra note 9, at 1678.
176. Yniguez, 69 F.3d at 933.
receiving information from their elected representatives.

Finally, unlike Article 28, the El Cenizo ordinance does contain a severability clause. Nevertheless, although it may fairly be said that the primary purpose of the ordinance is not so much to ban English as to require Spanish, if the Spanish-only restrictions were held unconstitutional under the First Amendment and ordered stricken from the ordinance, little of the language law would remain.

Contrary to a more optimistic analysis, therefore, El Cenizo’s Predominant Language Ordinance does not “escape[ ] the first prong of Amendment XXVIII’s invalidity by not regulating the speech of any resident, official, or employee of the City.” Rather, the ordinance broadly prohibits the non-Spanish speech of elected officials in a substantial number of circumstances directly related to their official capacity, thereby restricting the free flow of information and ideas between constituents and their elected representatives. Further, that broad prohibition is not rescued by either the translation provisions or the severability clause accompanying it.

b. The Speech of Elected Representatives and the Public’s Right to Petition for Redress of Grievances

In striking down Arizona’s Article 28 on grounds that it impermissibly infringes upon the public’s right to petition the government for a redress of grievances, the Ruiz court emphasized that the Arizona amendment deprived language minorities of access to government information in their own languages that would otherwise be available where a willing and able speaker existed. This denial to language minorities of their right to access their government and to participate equally in the political process violated a fundamental constitutional right “at the core of America’s democracy.”

The same First Amendment interest is violated in the same manner by the Predominant Language Ordinance. The El Cenizo ordinance bans willing and able speakers in non-Spanish languages from providing government information and services to English speakers – the language minorities in El Cenizo – and thereby prohibits English-speaking residents from accessing their government and petitioning for a redress of grievances. Ironically, El Cenizo officials adopted their ordinance because they were concerned about the low participation of the Spanish-speaking public in the political process of their community. Yet by adopting an ordinance that bans non-Spanish language rather than merely switching to Spanish de facto and allowing English to be spoken wherever necessary, the council replicated the circumstances that caused the Arizona Supreme Court to find that language minorities in that state were effectively shut out of the political process. In El Cenizo, language minorities under the Predominant Language Ordinance are similarly shut out.

In Yniguez, the majority addressed the Free Speech Clause of the First Amendment and applied a Pickering/Waters-type balancing test to weigh the opposing interests and examine the burdens presented by Article 28. There, the Court concluded that the restricted speech could be placed in the category of “public

177. Pabón López, supra note 19, at 1035.
concern," thereby narrowing the authority of the state to restrict it. Further, the context of the official duties in which the speech occurred added additional weight to the interests opposing the amendment. Finally, the majority found that the desire of the public to hear the restricted speech was strong, and denial of that speech would result in a denial of important information and benefits as well. The combined effect of Article 28, therefore, was to mute valuable, desired speech of public employees and officials.

Here, the El Cenizo Predominant Language Ordinance presents similar interests and burdens on the side of public officials and the non-Spanish-speaking public. The speech restricted by the ordinance is of public concern and occurs in the context of official duties. Although the desire of the public to communicate with elected representatives in a language other than Spanish in the present community of El Cenizo may be weak, to the extent that this ordinance provides a model for future Spanish-only ordinances in more linguistically diverse cities, and given the probability of growth and demographic change in El Cenizo itself, the likelihood exists of a stronger desire developing. Additionally, as mentioned above concerning the relative size of El Cenizo, the number of residents expressing a desire to communicate with an elected official in a non-Spanish language need not be large to be proportional to the number considered in Yniguez, especially given the broader protections afforded the speech of elected representatives.

Were a court to review the El Cenizo ordinance, or a future ordinance modeled upon that law, it would likely apply an Yniguez-type analysis. After discussing the interests in opposition to the ordinance, it would then examine the interests of the state in the effective and efficient performance of its employees. In Yniguez, the majority concluded that Article 28 actually rendered the employees' services less efficient and effective, and that in the absence of English-only requirements, Ms. Yniguez was able to provide services that increased the state's operational efficiency. Importantly, as noted above, the majority distinguished between Article 28's blanket prohibition of non-English language and a hypothetical restriction that would only prohibit non-English speech where it actually hindered the provision of government services.

Once again, the Yniguez analysis requires a similar result when applied to the El Cenizo ordinance. Even in a town where 80 percent of the residents are monolingual in Spanish, situations will remain wherein non-Spanish languages will be requested and desired. A law that prohibits the use of non-Spanish languages in an official's conduct of her government functions therefore renders that official's services less efficient, not more. Moreover, as the Yniguez dictum makes clear with respect to Article 28, the El Cenizo ordinance had only to prohibit English where it hindered the provision of government services, thereby allowing its use where it would enable the provision. Rather than adopting an arguably Spanish-only ordinance, the El Cenizo council could have enacted a symbolic Official Spanish ordinance which would probably not be unconstitutional, then proceed de facto to conduct meetings and other official functions in Spanish without actually prohibiting the use of other languages. The result of this type of Official Spanish law followed by unofficial reliance upon Spanish in public council meetings and among those proficient in the language would be merely to replicate the default proceedings in state and local governments throughout the United States. The only difference would be the language employed, though in both situations that language would be the predominant public language.
A reviewing court might also accept the Ninth Circuit’s decision to consider non-employment-related state interests. Were a court to evaluate state interests beyond those of the operational efficiency of its employees, the supporters of El Cenizo’s ordinance might fare somewhat better than the proponents of Article 28. Like the advocates of Article 28, El Cenizo’s mayor and commissioners cited desires for unity and stability, and for encouraging public confidence in their government. Unlike Article 28 advocates, however, El Cenizo supporters can show that adoption of their ordinance helped accomplished many of their goals. 179 Nevertheless, as discussed above, case law does not adequately support an extension of state interests in restricting employee speech. Moreover, important reasons exist to refrain from encouraging either broader government authority to regulate employee speech or a more relaxed scrutiny upon judicial review. 180 Additionally, as noted in the Yniguez decision, even where a positive connection between non-employment interests and the goals of the speech restriction can be established, a court may still find that the interests or the means employed are arbitrary and insufficient to justify the restrictions. 181

Finally, a close examination of the non-employment-related goals cited in support of both Article 28 and the Predominant Language Ordinance reveals a disturbing similarity. As one commentator writes, “[f]or the residents of El Cenizo, their culture is very important... language itself is a significant vehicle of culture.” 182 This assertion eerily echoes the rhetoric of U.S. English and unintentionally supports that organization’s argument for passing English-only legislation. Further, in a discussion of the El Cenizo ordinance under local government law, the same author cites Professor Gregory Alexander’s “paradox of exclusion” to lend support to the ordinance. Professor Alexander had argued that communities, “[p]recisely because they are constituted by shared commitments to some specific good... must, in symbolic effect if not in conscious intention, exclude some members of the society, precluding those individuals from participating in the group’s internal life.” 183 The author thus justifies the ordinance’s exclusion of English speakers from government “functions and meetings” with questionable theories of participatory democracy which, again, place powerful arguments in the mouths of English-only advocates.

To conclude Part II, an analysis of El Cenizo’s Predominant Language Ordinance based on the First Amendment interests expressed in both Yniguez and Ruiz supports the conclusion that the ordinance would be held unconstitutional. This does not mean, however, that a different analysis—one that is not restrained by a line of cases arguably unsuited to the public speech of language minorities—would arrive at the same conclusion. First Amendment analysis, however, as elaborated in Yniguez and Ruiz, rejects the constitutionality of the El Cenizo ordinance as it

179. Aynesworth, supra note 84 (reporting that since adoption of the ordinance, El Cenizo had been able to purchase a used garbage truck, had signed contracts to get ambulance and fire service re-established, and paid a long overdue power bill).
180. Yniguez, 69 F.3d at 953 (Reinhardt, J., specially concurring) (comparing the majority’s assertion that the state remains constitutionally limited in its ability to restrict government employees’ speech with Judge Kozinski’s dissenting belief in the “unlimited government power” a state may exercise over the speech of employees and officials).
181. Id. at 945-46.
182. Pabón López, supra note 19, at 1023.
183. Id. at 1029.
rejected the constitutionality of Article 28. Support for immigrants' "cultural production,"184 and for the participatory democracy of a pueblo olvidado,185 must be created in forms that survive the vagaries and vicissitudes of judicial review. Importantly, that support must also refrain from reliance upon rhetorical and theoretical inconsistencies, and avoid divisive strategies requiring unnecessary laws and litigation.

Finally, to the extent that future legislation similar to the El Cenizo ordinance ignores the potential for increased fear and misunderstanding among those presently non-aligned (to maintain the metaphor of bilateral hostilities), it may perform a disservice to immigrants and language minorities in the long-run. Fears among natives of job displacement, isolation, and loss of identity are real. Those fears must be understood and properly engaged through efforts that address all the underlying issues of prejudice and perceived economic threat. At the same time, the right to free speech in one's primary language, and the equal empowerment of all to participate in their governments and communities, must be supported and encouraged. In the final section, therefore, I propose a national organization of community-based, member-run American Languages centers. These centers would support language diversity nationally and regionally through model legislation, positive campaigns in support of that legislation, and targeted education and outreach in a manner that builds connections and community where segregation and suspicion will otherwise dominate.

III. AMERICAN LANGUAGES

A. A New Direction

A review of the literature discussed above suggests the need for a new approach to supporting the rights of language minorities in the United States. Before sketching my proposal for a new 'American Languages' movement, I review below the argument presented in Parts I and II:

- significant migration to the United States from Mexico and Central America will likely continue;
- Latino/a cultures and the Spanish-speaking population in the U.S. will evolve and expand;
- in response to increased immigration from Latin America through the 1980s and '90s, English-only advocates have developed effective methods of passing English-only laws at the municipal, state, and federal levels;
- despite the stated motivations of these organizations, their English-only laws are more divisive than unifying;
- English-only rhetoric that accompanies English-only campaigns—and

---

184. Id. at 1024 (quoting Donaldo Macedo defining cultural production as "specific groups of people producing, mediating, and confirming the mutual ideological elements that emerge from and reaffirm their daily lived experiences").

the public awareness efforts of the laws’ supporters—exploits and exaggerates both latent and overt prejudices toward Latinos/as and immigrants;

- the rhetoric also causes fear and misunderstanding of the laws’ scope among immigrants and other non-English-speaking people;
- Spanish-only laws, though in some ways a predictable and defensible response, are probably also unconstitutional;
- the socio-political realities of North America in the 21st century will require creative efforts toward building constructive and cooperative dialogue between those most affected by immigration in the U.S.—working class people of all backgrounds (though especially racial minorities), and immigrants of all nationalities living and raising their families here.

Considering the need identified above, in this final section I propose a national network of community-based “American Languages” centers that would support and promote linguistic diversity as a symbolic proxy for the instrumental benefits of cultural diversity. With the following discussion I hope to acknowledge and contribute to the conversation on community organizing around issues of language diversity in the United States already in progress on the ground and around the country.186 I make my suggestions, however, mindful of the need for each community language center to maintain its own distinct identity, and to control its own development and structure. From my personal experience with community organizing I have found that the most successful and compelling movements, whether national or local, arise from the work of individuals empowered to define and develop their own contribution to the goals that draw them together, and then to find appropriate ways to link them with the contribution of others. Further, I believe that in most circumstances the process of imposing details unilaterally and from without, while tempting for some and often faster, stifles the ingenuity and joy that is critical to the process of community organizing for the long-term.

In this spirit, then, my discussion necessarily leaves most logistical details to those in their communities who would try to implement the idea of an American Languages movement in some manner, trusting in their enthusiasm and personal experiences. I focus instead on suggesting underlying policies along with a few activities in which the language centers might engage. The full list of possible activities, and the exact form that each center would take to support them, is better left to those whose experiences can identify the work that needs to be done in their own neighborhoods and cities.

Finally, by “American Languages” I mean to suggest all the languages spoken in the Americas, with each center’s emphasis on the languages spoken in its own U.S. community. Broadly speaking, these local centers would counter the harmful effects of English-only laws and rhetorical assaults, while creating a new, positive presence among the frontline populations – both immigrant and native – who experience the upheaval resulting from the international economic policies that cause labor migration. By focusing on language and cross-cultural communication, these networked community centers would be well placed to inaugurate a new national dialogue on immigrant and American identity. Through support and

186. See also Bender, supra note 11, at 173 (discussing the urgent need for a “broader-based political and social movement” to oppose English-only organizations and counter the “alarming trend” of language vigilantism, and calling for a coalition of organizations that would strategize and organize against English-only laws and their broader harmful effects).
celebration of all American languages, the centers could expand the right of all to participate equally in both the development of this country, and this country's global interaction with others.

B. Policy Positions

Three important policy positions must underlie and enforce the work of the proposed American Languages centers: (1) language diversity does not itself threaten national unity; (2) in fact, language diversity can enhance both national and local development; and (3) where it exists, native prejudice against immigrants and minority languages must be creatively confronted and engaged. I briefly address these issues below.

1. Language and National Unity

Professor Adeno Addis has observed that "the issue of linguistic identity is perhaps the most difficult to untangle, but it is also the most serious the international community and nation-states will face this century." Further, as Prof. Addis notes, linguistic differences do not themselves cause national disunity and conflict. "Rather, it is the reluctance on the side of those in power to acknowledge, or the desire to suppress, those differences that has led to skirmishes and civil wars that threatened the integrity of the nation-state." The pressing concern for an American Languages movement, therefore, must be articulated not by placing in opposition national unity and linguistic diversity, but by proposing "institutional structures" that create both at once. Prof. Addis concludes that the question of "how we can develop the capacity to live with difference, such as linguistic differences, is going to be the major issue of the twenty-first century." The work of an organized network of community-based American Languages centers is one way to develop that capacity. The American Languages centers would strive to promote national unity through support of language diversity, not destroy that unity as English-only advocates fear.

2. Language and National Development

Not only does language diversity not threaten national unity, language diversity itself offers nations valuable skills with which to develop politically and economically. One alternative to English-only laws, named "English Plus" by

188. Id. at 725-26. See also Lauri Malksoo, Language Rights in International Law: Why the Phoenix Is Still in the Ashes, 12 FLA. J. INTL. L. 431, 435 (explaining that "[t]he underlying idea [of language rights as a tool for preserving international peace and security] is that prohibiting individuals or groups from speaking their native language can contribute to ethnic conflicts, de-stabilize multiethnic countries and threaten the peace and security in the world").
189. Id. at 727.
190. See e.g. Juan F. Perea, Killing Me Softly, with His Song: Anglocentrism and Celebrating Nouveaux Latinas/os, 55 FLA. L. REV. 441, 456 (arguing that a language policy that not only encourages English but also discourages retention of a native language "deprives society of a valuable resource in an increasingly globalized economy").
early advocates, was developed in recognition of this relationship.191 English Plus crafts policies and language legislation that support the valuable skills that bilingual and multi-lingual individuals possess, and recognizes the ways in which those skills improve a country's ability to develop internally and interact globally. The benefits to a country of residents with broad language skills impact the success of that country's economic, political, and cultural activity, and enhance both its national security and international diplomacy.192 As James Crawford has noted, national policies in the U.S. have focused on teaching "foreign" languages to native residents, while simultaneously preventing ethnic minorities' retention of their heritage language knowledge. "Instead of focusing on immigrants' disabilities in English," Crawford asks, "why not encourage them to maintain their abilities in other tongues while they learn English? Why not exploit the valuable resources they are contributing? In short, why not promote English, plus other languages?"193

National and state policies arising from English Plus would increase public investment in language education for all Americans. They would fund and support English as a Second Language instruction for non-English speakers, along with heritage language classes for language minorities and non-English-language classes for native English speakers.194 Additionally, English Plus policies and legislation would guarantee the rights of language minorities to be free from language-based discrimination and to speak, learn, and maintain the language of their choice. Finally, English Plus would support the provision of essential services, due process, and access to government for language minorities. Presently, four states have adopted some form of English Plus legislation,195 and a non-binding English Plus resolution has been sponsored in Congress since the mid-1990s by Rep. José Serrano of New York.196

The ability of English Plus policies and legislation to address native concerns about immigrant assimilation in the U.S., while simultaneously supporting language skills and the legal rights of language minorities, creates a helpful tool for communities organizing around immigrant issues and needs. The theories of language diversity underlying English Plus policies offer the proposed American Languages centers an important base upon which to structure much of their legislative and campaign support activities. Combined with additional organizing techniques that develop from the needs of each community,197 English Plus would provide a powerful component of a successful language rights movement in the

193. Id.
194. Id. (noting that only 3% of U.S. high school graduates, and only 5% of U.S. college graduates, attain any meaningful proficiency in a second language, and of these many come from bilingual homes).
195. Id. (listing those four states as New Mexico (1989), Oregon (1989), Rhode Island (1992), and Washington (1989), and describing an ordinance adopted by the city of Oakland, California, in 2002 that guarantees bilingual services where needed by language minorities for access to local government).
196. Id. For the full text of Rep. Serrano's English Plus Resolution, see infra Appendix C.
197. Combs, supra note 191 (stating that in addition to modeling legislation on English Plus and using its approach as an effective educational tool, "local coalitions must define alternative strategies based on the needs of their communities").
3. Language and Prejudice

Finally, the American Languages centers must recognize the extent to which native prejudice influences support of English-only laws and policies. Importantly, those involved in the activities of these centers must consciously engage the prejudice of natives underlying much of their hostility toward immigrants and immigrant communities in the U.S. Although native fears of job displacement genuinely motivate some of that hostility, these fears frequently arise from pre-existing prejudices against ethnic minorities. \[^199\] "Economic calculations are not the sole foundation of prejudice toward immigrants, or even the main one," conclude the authors of a multi-year survey of voter-respondents. Rather, "[t]he effect of economic hardship is to activate prejudices that are latent, adding fuel to the fire of pre-existing views.\[^200\]

Of particular importance to the educational campaigns of a new American Languages movement, these authors report a positive correlation between increasing anti-immigrant prejudice and "exposure to rhetoric about immigration and immigration policy" such as that accompanying English-only campaigns and publicity literature. The ambivalence toward immigrants that natives experience will "quickly turn into negativity if the ambivalent respondent is primed with negative information."\[^201\] Further, the authors hypothesize from the results of their research that negative stereotyping of immigrants by natives will increase when natives live in or near immigrant communities if there is no close social interaction between the two groups.\[^202\] This finding highlights the need for community responses to native prejudice that provide positive social interaction between native and immigrant communities. More importantly, it also suggests a real potential for an organization like the American Languages centers to make a difference in the lives of working class natives and immigrants.

Similarly, Prof. Sylvia Lazos Vargas discusses the "racial spillover effects" of anti-foreign resentment from campaigns accompanying ballot initiatives for English-only and other anti-immigrant laws.\[^203\] With relevance to the work of the proposed American Languages centers, she demonstrates the ways that framing English-only laws determines whether voters will support them. For example, poll data have shown that "overwhelming support" for English-only laws dissolves into a tie "when respondents were made to realize the impact of English-only on non-

198. One commentator, for example, has called for a "counter-grassroots organization" that would "operate in a manner similar to the former English Plus Information Clearinghouse," explaining that the Clearinghouse was a coalition of organizations formed to oppose the English language movement. See Bender, supra note 11, at 173.

199. Lazos Vargas, supra note 3, at 148 (reporting results from a 28-year study of voters' attitudes toward 58 identifiable groups that placed illegal immigrants among the top eight groups with the highest negative scores).

200. Burns & Gimpel, supra note 3.

201. Id.

202. Id.

203. Lazos Vargas, supra note 3, at 454 (discussing specifically the "climate of hostility" and heightened conflict among neighbors and businesses that developed during the campaign for Proposition 187 in California and after its enactment).
Prof. Lazos Vargas reports, however, that the “new” politics’ emphasis on money and media creates an arena in which complex issues may be fundamentally simplified and packaged in a ballot initiative in ways that obscure those impacts and enable majorities to decide issues designed only to impact minorities. “New politics put a premium on drafting propositions in a way that will maximize ‘gut’ reactions and minimize a voter’s consideration of the impacts of her vote on minorities,” Prof. Lazos Vargas explains. She repeats, however, that when voters become more aware of the way their votes impact minorities, they may be persuaded to change their positions.

The results discussed above demonstrate the need for broad information campaigns and targeted outreach directed at informing the electorate and general population about the impacts on language minorities of English-only laws. The need to support language minorities in the U.S. and to counter the efforts of English-only advocates, combined with research suggesting the possibility of influencing preexisting negative stereotypes and prejudices held by natives against immigrants and other non-English speakers, suggest the positive potential of a project like the proposed network of community “American Languages” centers. In the next section, I outline this organization more closely, focusing on the specific work in which each center might engage to develop new conversations among natives and language minorities, and to support language diversity through positive campaigns and language legislation modeled on English Plus.

C. The American Languages Centers

Given the global leadership position of the United States today, we are uniquely well positioned to model a positive approach to national language diversity. A new American Languages movement that promotes the benefits to a nation of broad language skills could join present efforts to advance that model. Moreover, a loose, national coalition of grassroots, community-based American Languages centers could provide the organizational framework in which that movement develops. Simultaneously, these centers would provide social and political structures in which native and immigrant participants could practice participatory democracy as they build democratic institutions in their own communities.

As I discuss more specifically below, these centers would support language minorities in a number of ways, including drafting legislation for local and state campaigns based on English Plus, helping to organize and run those campaigns, clarifying confusion among language minorities arising from their misunderstanding of English-only legislation, and organizing regional and national public awareness campaigns to advance inclusive perspectives of language and cultural diversity. Equally important, however, would be the efforts of the centers and national organization to reach out to those individuals who feel threatened by immigrants and immigration in their communities, especially other working class people and ethnic minorities. Through these connections the center would attempt to prevent future

204. Id. at 443.
205. Id. at 471.
206. Id. at 472.
207. In his discussion of the history of the English-only movement in the United States, James Crawford notes that one effect of English-only measures has been “to divert working-class resentments in
support of English-only legislation (or ensure that any support is fully informed), and discourage development of prejudicial attitudes and perceived competition toward immigrants. In the sections below, I briefly outline one possible way that the movement and community centers might develop, noting the importance to both, however, of enabling activists and participants to direct their development together.

1. Formation of the American Languages Centers

The American Languages centers should be member organizations comprised of immigrants and other language minorities, along with anyone who supports language diversity. Each center should be community-based or neighborhood-identified, and then loosely networked regionally and nationally. The centers should be run democratically and remain open to all who support their activities. The membership could form working groups focused on specific goals, and elect either a steering committee or a board. Regional and national meetings could be held where members gather to share experiences and develop broader strategies.

Additionally, each center could form as a 501(c)(3) non-profit organization to assist fund-raising efforts, but might avoid formal organization at the regional or national level. Ideally, the American Languages network of centers would remain a bottom-up, grassroots organization, engaging in national coordination but refraining from a national leadership model that would develop and impose uniform strategies and policies. I envision a broad group of community centers that reflect the character of each local community or neighborhood, and that arise from the initiative and needs of the individuals who create and develop them.

Finally, the movement and local centers could seek broad funding, including individual community donations, community development grants, support from private donors and foundations, and assistance from related national organizations. Again, however, the movement’s emphasis should be on the volunteer skills, knowledge, and desire that the membership brings to the activities of each center, always attempting to minimize structural reliance upon the need for high levels of financial support.

2. Activities of the American Languages Centers

In this section I offer suggestions for the activities of a grassroots American Languages movement and network of community centers. These activities include those that could benefit from the participation of public interest lawyers, as well as those that should develop primarily from the skills and knowledge of individuals

a safe, xenophobic direction, the main targets being Spanish- and Chinese-speakers who competed with whites for low-level jobs." Crawford explains that this method of divide and conquer "exemplifies one of the earliest uses of English-only measures for purposes of social control: depriving a minority of its rights, thus reinforcing a sense of privilege among white workers and pre-empting the solidarity of labor." Crawford, Anatomy, supra note 5. Similarly, Joseph Carens has observed that "[o]ne of the ways in which those in power maintain their privileges is by getting people to focus on potential tradeoffs between those who are badly off and those who are worse off, thereby treating their own privileges as a background given that cannot be challenged." Joseph H. Carens, Open Borders and Liberal Limits: A Response to Isbister, 34 INTL. MIGRATION REV. 636-643 (2000) (as quoted in Joseph Nevins, Searching for Security: Boundary and Immigration Enforcement in an Age of Intensifying Globalization, 28 SOC. JUSTICE 132-48 (2001) available at WilsonSelectPlus.
without formal legal training.

a. Legislation

With the help of public interest lawyers in the community, working groups within the centers could draft municipal and county ordinances and resolutions, as well as state constitutional amendments and statutes modeled on English Plus. The centers would also develop and help direct campaigns in support of their legislation. Where jurisdictions have adopted symbolic Official English laws, the centers can focus on legislation that promotes English Plus principles; where more restrictive English-only laws exist, however, local ordinances could be non-binding declarations and resolutions that do not conflict with the state law, and centers could work simultaneously to repeal English-only laws and adopt constitutional amendments that protect language diversity by expanding speech protections. Alternatively, where jurisdictions have existing laws that restrict only government speech, the centers could begin by drafting and campaigning for local resolutions pronouncing support for language diversity in all remaining areas of public and private speech. Even where these resolutions are merely symbolic declarations of support for minority languages, the campaigns behind them may offer valuable educational benefits.

Finally, the City of Santa Ana, California, provides an example of a more substantive local language policy. In response to the needs of its majority foreign-born and language minority population, the city manager implemented a policy in 1988 requiring that all new hires for city employment be bilingual. The policy covered every entry-level, public contact position including police, fire, library, parks, and first contact office employees. Commenting on the new policy, the city manager explained that it “lends itself to diversity,” and a long-time Santa Ana police lieutenant called the policy “a breath of fresh air.”

Following Santa Ana’s lead, the centers could educate city managers, council members, and the general public on the successes of other cities that have implemented language diversity employment policies, and advocate for similar policies and practices. Importantly, the practice of language diversity that arises from these public policies demonstrates their ability to strengthen and unite communities rather than divide them along linguistic lines.

208. For example, local independent business alliances could announce support of ordinances that encourage commercial use of multiple languages in business promotion and advertising. In the context of English-only ballot initiative campaigns, Steven Bender has described the “ownership” of an ordinance that some individuals feel who were either strong supporters of the initiative or helped in its campaign. This sense of ownership of the law contributes to their desire to ensure its enforcement, hence the “language vigilantes” who assume responsibility for scouting out offenders. See Bender, supra note 11, at 165-66 (explaining how “the initiative’s essence as a form of direct democracy encourages private enforcement”). This same sense of ownership, however, might also be harnessed in support of language legislation that protects and promotes language diversity, encouraging language minorities and other advocates to experience pride in their involvement and support for the principles embodied in the legislation.

b. Education

Other working groups can create educational materials that instruct language minorities on the scope of existing English-only or Official English laws to prevent "victim misconstruction" and counter "language vigilantism."210 Centers could also sponsor community workshops and dialogues, outreaching to natives from racial minorities and ethnic groups, as well as working class people generally, to address their fears and concerns about immigrants and encourage mutual understanding of each other's experiences.

Additionally, centers could develop positive public campaigns in support of language diversity and general language skills and education. These campaigns, however, should de-emphasize techniques like rallies and marches that mark opposition and polarization, and should focus instead on public events that welcome everybody to peaceful discussions and spirited grappling of difficult issues.

The centers could also provide language classes where people in the community who feel that immigrants should be learning English more quickly can volunteer to work one-on-one with a language minority to improve his or her English. The center could then encourage those people to learn a bit of the non-English language.

Finally, the centers should also encourage broad language instruction in the community's schools, again with the message that we should build language skills as a gratifying experience toward community participation and tolerance—if not outright celebration—of diverse global cultures. Additionally, the centers could encourage teachers and parents to recognize the growing educational and economic advantage to their children of learning additional languages at a young age.

c. Social Interaction

On the fun side, centers should sponsor public picnics and other social events. For example, centers might sponsor alternating "American Languages" evenings in neighborhoods where several language minorities exist. Each evening's event would highlight a specific language, and those attending would "be allowed" to speak only that evening's language throughout the event. These events would center on the food and music associated with the language minority's culture, and would specifically invite community residents who do not speak the language of the evening just to hear it around them and enjoy the cultural experience.

In large cities positive public campaigns will play a greater role, along with grassroots outreach to other organizations and to civic leaders and council members. Again, regardless of the size of the community or the number of language minorities residing there, the message should highlight the benefit to the community and to the nation as a whole—culturally, politically, and economically—of language skills and diversity. Centers would emphasize the pride their community should have in its connection to the people of the world and its ability to interact with those people.

d. Dispute Mediation

Finally, centers could train in community dispute mediation and specialize

210. For a definition of these terms, see supra notes 11 and 12.
in issues relating to language diversity and immigration. The centers could hold
town hall-type gatherings in small communities where neighbors gather to discuss
these issues in a moderated but open manner, the goal being a positive recognition of
the complexities and varied perspectives inherent in cultural and linguistic diversity.
Additionally, the centers could work with the Equal Employment Opportunity
Commission to educate small businesses about English-only workplace policies and
help those businesses mediate disputes that arise either between employees, or
between employees and managers or owners.\textsuperscript{211}

\section*{Conclusion}

Native-born residents of the United States often perceive liberal
immigration policies as a threat to their ability to find and maintain decent-wage
jobs. They may also believe that the presence of non-white, non-English speaking
migrants destroys the dominant, European-based culture of this country, a culture in
which they feel most comfortable and confident. To the extent that natives identify
with this dominant culture, they may perceive the presence of non-white immigrants
as a challenge to their security and self-identity. Additionally, if they believe that
these immigrants are competing with them for limited economic opportunities, then
they may also fault immigrants for their unemployment and even their unhappiness.

To avoid this development, immigrants and their advocates must continue
defining and defending the language rights of linguistic minorities, but they should
add to their efforts an informed outreach to threatened natives, especially other
working-class racial and ethnic minorities. What has been missing from immigrants’
rights advocacy is a vigorous response to communities’ needs for more inclusive
dialogue and education, more creative efforts to bridge immigrant and native
populations in ways that recognize the fears and try to serve the needs of all poor and
working class people.

Language minorities in the U.S., along with others who support their
presence and participation here, must organize to form new, holistic community
organizations to counter the efforts of groups like U.S. English. In addition to
launching campaigns in support of English Plus state and municipal resolutions,
these organizations could create public education campaigns to address the myths
that circulate in popular discourse concerning immigration and immigrants in the
U.S., and the divisive effects of minority languages.

Just as important, however, these community organizations should reach
out to working-class natives to address their hostility toward immigrants wherever it
exists, and to encourage participation in structured, on-going conversations between
immigrants and natives over all the issues that affect their daily lives. Traditional
unity may not be possible in so large a country and in an era of disintegrating global

\textsuperscript{211} For example, in a letter to The Washington Times on Dec. 9, 2002, H. Joan Ehrlich,
Acting Director of the EEOC’s Office of Communications and Legislative Affairs, described the EEOC’s
policy with respect to small business owners’ adoption of English-only workplace rules: “The EEOC has
a strong national program to educate small businesses about their rights and responsibilities. . . . We have
small-business liaisons in each of our district offices nationwide who work cooperatively with employers
to assist with compliance issues. If a charge is filed, the EEOC encourages voluntary mediation, as
boundaries. According to some diversity advocates, it may not even be desired. Almost certainly, however, we can work toward greater understanding and mutual appreciation based on recognition of shared experiences among all workers and their families.

Last, though in many ways foremost, these community and regional organizations must support the language rights of immigrants and their families. Comprised of immigrants and others who support language and cultural diversity, the organizations could create and provide information about language rights to language minority communities. At the very least, these materials should be developed to empower private and public, family and community, cultural and civic participation as experienced and defined by those whose voices we need most to amplify and welcome.

\[212. \text{KEITH FAULKS, CITIZENSHIP (2000). Faulks writes: "Traditional international relations theory is unable to conceptualise the nature of contemporary social changes that are creating a more interdependent world. We must therefore move beyond traditional conceptions of security if we are to remodel citizenship in a way that is relevant to the requirements of a global age." Id. at 133.}

213. \text{Id. at 85 (discussing, and in part refuting, the work of Iris Young, who argues against liberal citizenship theories that embrace, in effect, "the domination of the ideal of equality over difference" such that "the diversity that characterizes society is sacrificed in the name of an abstract and unattainable conception of citizenship") (emphasis in original). See also Christina M. Rodriguez, Accommodating Linguistic Difference: Toward a Comprehensive Theory of Language Rights in the United States, 36 HARV. C.R.-C.L. L. REV. 133 (2001). Rodriguez observes that "[t]he arguments in favor of a lingua franca, which emphasize national unity and efficiency of communication, misconceive the nature of political participation and elide important demographic transformations underway in this country." Id. at 135. She concludes that "[t]he assimilationist and perhaps even integrationist thrust of the belief in a common citizenship no longer maps onto the reality of a nation in which communities of linguistic minorities are constantly replenished." Id. at 136.} \]
DEFENDING AGAINST A "DEATH BY ENGLISH"

APPENDIX A

ARIZONA STATE CONSTITUTION ARTICLE XXVIII
ENGLISH AS THE OFFICIAL LANGUAGE

1. English as the Official Language; Applicability.

Section 1.
1. The English language is the official language of the State of Arizona.

2. As the official language of this State, the English language is the language of the ballot, the public schools and all government functions and actions.

3. This Article applies to:
   a. the legislative, executive and judicial branches of government,
   b. all political subdivisions, departments, agencies, organizations, and instrumentalities of this State, including local governments and municipalities,
   c. all statutes, ordinances, rules, orders, programs and policies,
   d. all government officials and employees during the performance of government business.

b. As used in this Article, the phrase "This state and all political subdivisions of this State" shall include every entity, person, action or item described in this Section, as appropriate to the circumstances.

2. Requiring This State to Preserve, Protect and Enhance English.

Section 2. This State and all political subdivisions of this State shall take all reasonable steps to preserve, protect and enhance the role of the English language as the official language of the state of Arizona.

3. Prohibiting This State from Using or Requiring the Use of Languages Other Than English; Exceptions.

Section 3.
1. Except as provided in Subsection (2):
   a. This State and all political subdivisions of this State shall act in English and no other language.
   b. No entity to which this Article applies shall make or enforce a law,
order, decree or policy which requires the use of a language other than English.

c. No governmental document shall be valid, effective or enforceable unless it is in the English language.

2. This State and all political subdivisions of this State may act in a language other than English under any of the following circumstances:

a. to assist students who are not proficient in the English language, to the extent necessary to comply with federal law, by giving educational instruction in a language other than English to provide as rapid as possible a transition to English.

b. to comply with other federal laws.

c. to teach a student a foreign language as a part of a required or voluntary educational curriculum.

d. to protect public health or safety.

e. to protect the rights of criminal defendants or victims of crime.

4. Enforcement; Standing.
Section 4. A person who resides in or does business in this State shall have standing to bring suit to enforce this Article in a court of record of the State. The Legislature may enact reasonable limitations on the time and manner of bringing suit under this subsection.
APPENDIX B

City of El Cenizo
507 Cadena Avenue
El Cenizo, TX 78047

PREDOMINANT LANGUAGE ORDINANCE
ORDINANCE NUMBER: 1999-8-3(a)

UNDERSTANDING THAT ENGLISH IS THE PREDOMINANT LANGUAGE OF THE UNITED STATES OF AMERICA; THE CITY COUNCIL NEVERTHELESS HAS DETERMINED A NEED TO CONDUCT ALL OFFICIAL CITY MEETINGS AND FUNCTIONS IN THE PREDOMINANT LANGUAGE OF THE MEMBERS OF THE COMMUNITY. ANY TRANSLATION NEEDED SHALL BE PROVIDED BY THE CITY. ALL ORDINANCES SHALL BE WRITTEN IN ENGLISH.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL CENIZO, TEXAS:

Section 1. The necessity for stating that the City has no official language is officially declared.

Section 2. To declare the need to determine the predominant language used in the City and allowing for that determination to be found by an official survey.

Section 3. To officially declare that the results of the aforementioned survey found the predominant language used in the City to be Spanish.

Section 4. All City functions and meetings and notices thereof shall be conducted and posted in the predominant language of the community. If any City official conducting the meeting or function is unable to communicate in the predominant language of the community, then translation into the predominant language shall be provided as a matter of course.

Section 5. Translation into English, as practicable, shall be provided at all City functions and meetings for those people who do not speak the predominant language of the community. Notice of this need for translation should be communicated to the City secretary at least forty-eight (48) hours, prior to any official City function or meeting.

Section 6. In order to better conform with County, State and Federal regulations, all ordinances and resolutions written by and for the City shall be created in English. However, translations for these ordinances into the predominant language of the community shall be provided by the City upon request. Due to the ease of mistranslation, these translations are not legally binding upon the City and
only the ordinance in its original format and language shall be binding upon the City.

Section 7. Translation, from English into the predominant language or from the predominant language into English, of all official documents and notices shall be provided to any person so requesting that information. The City will provide this information in a timely fashion so as to better serve the requesting party. The City reserves the right to charge a reasonable fee for these translation services.

Section 8. If any section or provision of this ordinance is found to be void; such finding shall not affect the remaining provisions or sections.

Section 9. This ordinance shall take effect immediately on its passage, approval and publication as provided by law.

DATE: August 3, 1999

AFFIRMED BY:
Mayor, Rafael Rodriguez
Commissioner, Gloria Romo

ATTESTED TO BY:
Commissioner, Flora Barton
City Secretary, Elsa Degollado
APPENDIX C

107th CONGRESS

1st Session

H. CON. RES. 9

Entitled the ‘English Plus Resolution.’

IN THE HOUSE OF REPRESENTATIVES

January 3, 2001

Mr. SERRANO submitted the following concurrent resolution; which was referred to the Committee on Education and the Workforce

CONCURRENT RESOLUTION

Entitled the ‘English Plus Resolution.’

Whereas English is the language of the United States, and all members of the society recognize the importance of English to national life and individual accomplishment;

Whereas many residents of the United States speak native languages other than English, including many languages indigenous to this country, and these linguistic resources should be conserved and developed;

Whereas this Nation was founded on a commitment to democratic principles, and not on racial, ethnic, or religious homogeneity, and has drawn strength from a diversity of languages and cultures and from a respect for individual liberties;

Whereas multilingualism, or the ability to speak languages in addition to English, is a tremendous resource to the United States because such ability enhances American competitiveness in global markets by permitting improved communication and cross-cultural understanding between producers and suppliers, vendors and clients, and retailers and consumers;

Whereas multilingualism improves United States diplomatic efforts by fostering enhanced communication and greater understanding between nations;

Whereas multilingualism has historically been an essential element of national security, including the use of Native American languages in the development of coded communications during World War II, the Korean War, and the Vietnam War;
Whereas multilingualism promotes greater cross-cultural understanding between different racial and ethnic groups in the United States;

Whereas there is no threat to the status of English in the United States, a language that is spoken by 94 percent of United States residents, according to the 1990 United States Census, and there is no need to designate any official United States language or to adopt similar restrictionist legislation;

Whereas ‘English-only’ measures, or proposals to designate English as the sole official language of the United States, would violate traditions of cultural pluralism, divide communities along ethnic lines, jeopardize the provision of law enforcement, public health, education, and other vital services to those whose English is limited, impair government efficiency, and undercut the national interest by hindering the development of language skills needed to enhance international competitiveness and conduct diplomacy; and

Whereas such ‘English-only’ measures would represent an unwarranted Federal regulation of self-expression, abrogate constitutional rights to freedom of expression and equal protection of the laws, violate international human rights treaties to which the United States is a signatory, and contradict the spirit of the 1923 Supreme Court case Meyer v. Nebraska, wherein the Court declared that ‘The protection of the Constitution extends to all; to those who speak other languages as well as to those born with English on the tongue’: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the United States Government should pursue policies that—

(1) encourage all residents of this country to become fully proficient in English by expanding educational opportunities and access to information technologies;

(2) conserve and develop the Nation’s linguistic resources by encouraging all residents of this country to learn or maintain skills in languages other than English;

(3) assist Native Americans, Native Alaskans, Native Hawaiians, and other peoples indigenous to the United States, in their efforts to prevent the extinction of their languages and cultures;

(4) continue to provide services in languages other than English as needed to facilitate access to essential functions of government, promote public health and safety, ensure due process, promote equal educational opportunity, and protect fundamental rights; and

(5) recognize the importance of multilingualism to vital American interests and individual rights, and oppose ‘English-only’ measures and other restrictionist language measures.