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Race and the California Recall: A Top Ten List of Ironies

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Arnold Schwarzenegger's election as governor of California in the 2003 recall campaign is rife with cruel ironies. An immigrant himself, he beat the grandson of Mexican immigrants, Lieutenant Governor Cruz Bustamante, by playing the race card, and managed to dodge allegations of his praise for Hitler as a strong leader.¹ While the pundits say that the California recall was about angry voters lashing back at faithless, self-dealing politicians, more lurks beneath the surface. In California, racial and ethnic minorities now comprise a majority of the population, and the recall election brought barely concealed and seething schisms to the surface. Californians, like Americans elsewhere, are intensely divided over immigration and react in very different ways to the increasing political muscle of immigrants of color. We articulate here, in the form of a top ten list, the ongoing unraveling of race relations in California.²

10. RACE IS A 4-LETTER WORD, BUT THAT WAS THEN AND THIS IS NOW

A minority candidate whose past taps into racial or ethnic stereotypes will do much worse than a white candidate who is accused of past sexual misconduct, drug use and praising Hitler on film. Arnold Schwarzenegger's campaign team deftly deflected accusations and allegations of sexual misconduct and praise for Hitler,³ as well as admissions of group sex and illicit drug use. He simply either denied it all or brushed it off, claiming that was then and this is now. Schwarzenegger's success was so complete that he ultimately garnered the largest number of female votes of any candidate.⁴

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1. See James Bates and Mitchell Landsberg, *Producer Clarifies Quotes on Hitler*, L.A. TIMES, Oct. 4, 2003, at A22 (noting that Schwarzenegger admired Hitler "for being such a good public speaker and for what he did with it," and that Schwarzenegger allegedly used to play Nazi marching songs and "frequently clicked his heels and pretended to be an SS officer" according to the producer of the film "Pumping Iron").

2. For a related top ten list, addressing constitutional lessons from the recall election, see Vikram David Amar, *Adventures in Direct Democracy: The Top Ten Constitutional Lessons from the California Recall Experience*, 92 CAL. L. REV. 927 (2004).

3. See Peter Nicholas, *Davis Seizes on Reports About Schwarzenegger*, L.A. TIMES, Oct. 4, 2003, at A1 (reporting on Schwarzenegger's alleged sexual misconduct towards women and on his praise for Hitler's rise to power).

4. *Women Supported Schwarzenegger, Exit Polls Show*, at <http://edition.cnn.com/2003/ALLPOLITICS/10/07/recall.exit/> (last visited Apr. 19, 2005).

By contrast, Lieutenant Governor Cruz Bustamante was unable to put to rest accusations of a supposedly past flirtation with radical student politics. Five weeks into the election, Fox News and other media reported that the lieutenant governor had been involved at Fresno State in the Chicano student empowerment group MEChA.⁵ The conservative media vilified MEChA as a separatist, violent, and even terrorist organization.⁶ Even respected mainstream media outlets questioned Bustamante's fitness for public office based on his past ties to the student group.⁷ Conservative candidate Tom McClintock compared MEChA to the Ku Klux Klan.⁸ Rather than renounce MEChA, Bustamante attributed his student activism to youthful race-conscious politics that had been part of his political development, but which he had matured beyond. Using similar arguments, Schwarzenegger defused "GROPE-gate" as part of his youthful cinematic ambitions, which he had now moved beyond as a happy family man who had married an independent career woman in Maria Shriver.

While Schwarzenegger was clearly successful in putting voters' anxieties to rest on this potential drug use and sex abuse scandal, Cruz Bustamante was never able to fully shake off the insinuation that he secretly held subversive views on race relations. The radical minority insinuation tapped into Anglo anxieties that many Latinos are unwilling to assimilate and that their increasing numbers threaten California's perceived traditional way of life.⁹ These racial and immigration anxieties were applied to Cruz Bustamante's candidacy.¹⁰ The exit polls showed that of all candidates running for office, Cruz Bustamante had the highest negatives among voters who went to the polls.¹¹ The racial mud stuck.

In the last two electoral cycles, other minority candidates have similarly been tagged with disparaging stereotypes commonly used against minorities. Tony Sanchez's run for governor of Texas in 2002 was badly hurt by Anglo opponent

5. MEChA stands for Movimiento Estudiantil Chicano de Aztlán.

6. See generally Steven W. Bender, *Sight, Sound, and Stereotype: The War on Terrorism and Its Consequences for Latinas/os*, 81 OR. L. REV. 1153, 1157-1158 (2002).

7. See Tim Rutten, *An Identity Issue for Bustamante*, L.A. TIMES, Sept. 6, 2003, at E1 ("In this case, the point is that candidate Cruz Bustamante owes the voters a clear explanation of his feelings about the slogan still widely propagated by MEChA and about the other thoroughly objectionable tenets in its founding documents. The problem is that Bustamante still has not given a straight answer to any of these questions.").

8. Chelsea J. Carter, *Bustamante Under Fire for Links to Chicano Student Group 30 Years Ago*, N.Y. SUN, Sept. 5, 2003, at 5.

9. See generally VICTOR DAVIS HANSON, *MEXIFORNIA: A STATE OF BECOMING* (2003); SAMUEL P. HUNTINGTON, *WHO ARE WE?: THE CHALLENGES TO AMERICA'S NATIONAL IDENTITY* (2004); see also Roberto Lovato, *Fear of a Brown Planet: A Wave of Minority Politics is Cresting in California—White Minority Politics*, NATION, June 28, 2004, at 17 ("[Victor Davis] Hanson and other conservatives neglect to mention that the area surrounding Hanson's San Joaquin Valley home boasts a startling disparity between rich and poor, and that the stretch of farmland between Bakersfield and Stockton was the site of more reported hate crimes in 2002 than Alabama, Mississippi and Louisiana combined, according to FBI statistics. Instead of participating in serious dialogue about the roots of racial tension, the forces of white fear work relentlessly to portray now vulnerable postindustrial whites as victims of a shadowy Latino, and especially Mexican, empire.").

10. See Lovato, *supra* note 9 ("Former California Democratic gubernatorial candidate Cruz Bustamante was the most high-profile Latino politician to come under attack for association with MEChA last year, though City Councilor and former LA mayoral hopeful Antonio Villaraigosa and dozens of other Latino politicians have also been targeted. . . . Alamo-like fears of a Latino takeover are emerging in jittery white enclaves across this national-security-driven country, in which one of every four Americans will be of Latino descent by 2050[.]").

11. *Earthquake Arnold*, ASIAN WALL ST. JOURNAL, Oct. 10, 2003 (reporting that exit polls indicated that 57% of voters held an unfavorable view of Bustamante).

Rick Perry's ads hinting that Sanchez's savings and loan empire had somehow benefited from the criminal drug trade.¹² Antonio Villaraigosa's 2001 run for mayor of Los Angeles fizzled when he too stood accused of being a MEChA activist with dangerous political beliefs.¹³ The exception to the negative effects of the "Hortonizing"¹⁴ trend was in the November 2002 statewide Oregon election of Mexican American Susan Castillo, who prevailed to become Oregon's School Superintendent. In order to succeed as Oregon's first elected Latina official, she had to quell conservative radio jabs that questioned whether someone "with a name like Castillo" could be a U.S. citizen.¹⁵

Political scientists observe that the more white majorities feel that minorities are on the verge of disturbing a status quo where white voters dominate, the more susceptible they are to voting against minority candidates.¹⁶ The irony is that in a predominantly Anglo state, such as Oregon, a minority candidate has a better chance of getting elected to public office than she would in a state like California or Texas, where minorities appear to be heading towards numerical dominance. Opponents of minority candidates instinctively revert to "Horton"-style negative ads that manipulate white voter anxiety whenever they face promising minority candidacies. This has proven to be a devastating weapon.

9. IF YOU WANT TO WIN, STAY AWAY FROM VOLATILE RACIAL ISSUES

California's recall bears out the pessimistic view that minority candidates can win political office only if they manage to keep race issues non-salient during campaigns. Cruz Bustamante led early in the campaign, but after just weeks his candidacy unraveled. Bustamante's implosion can be traced to events and missteps that cast him as an extremist ethnic candidate in the minds of many California voters. From the beginning, Bustamante described himself in ethnic terms—as the grandson of Mexican immigrants who had made good by working hard. He gave frequent interviews to the Spanish media, where he spoke in stilted Spanish and identified himself with California's Mexican Americans. When he pitched his candidacy to the general electorate, Bustamante played up his working class roots and joked about his rotund ethnic profile. Bustamante was a no frills, common sense candidate, in

12. See Sylvia R. Lazos Vargas, *The Latina/o and APIA Vote Post-2000: What Does It Mean to Move Beyond "Black and White" Politics?*, 81 OR. L. REV. 783, 833-834 (2002); see generally STEVEN W. BENDER, *GREASERS AND GRINGOS: LATINOS, LAW, AND THE AMERICAN IMAGINATION* 63 (2003) (suggesting that such racial stereotypes have had negative influences on Latina/o political candidates' campaigns).

13. See Lazos Vargas, *supra* note 12, at 835.

14. See DAVID C. ANDERSON, *CRIME AND THE POLITICS OF HYSTERIA: HOW THE WILLIE HORTON STORY CHANGED AMERICAN JUSTICE* (1995) (describing how political ads playing on stereotypes of black men preying on white women helped George H. W. Bush win the 1988 presidential election).

15. See Lazos Vargas, *supra* note 12, at 832.

16. See Sylvia R. Lazos Vargas, *Judicial Review of Initiatives and Referendums in Which Majorities Vote on Minorities' Democratic Citizenship*, 60 OHIO ST. L.J. 399, 462-73 (1999) (discussing white backlash in the context of initiatives and referendums, and describing white backlash as a desire of whites—as the majority group—wanting their cultural values to dominate); Pamela S. Karlan, *Loss and Redemption: Voting Rights at the Turn of a Century*, 50 VAND. L. REV. 291, 313 (1997) (characterizing African American influence in voting districts as "curvi-linear" because as African American representation grows above 30%, whites resent black influence and exhibit backlash voting patterns).

contrast to Arnold Schwarzenegger, who dazzled with star power, but lacked the experience to solve California's daunting problems.

As the campaign developed, Bustamante could not hold on to this working class immigrant image. Instead, through errors and unforeseen events, he came to be seen as the candidate who was in the pocket of special (non-white) interests and as too ethnic and extreme for California's mainstream. First, as mentioned above, Bustamante was tagged with racial radicalism because of his youthful involvement with MEChA. Then, Bustamante accepted \$15 million in contributions from California's Indian tribes and unions, which made him appear more as a special interest politician, exceedingly cozy with powerful non-white groups.

The final straw came when Gray Davis's feckless last minute maneuver to solidify Latino support brought to the fore the issue of how the state should treat the millions of undocumented immigrants who live and work in California. After twice vetoing a driver's license bill for undocumented workers, Davis signed S.B. 60—which had become the California Hispanic Caucus's top priority—only weeks before the recall election. Davis explained his switch as realistic—the undocumented would drive anyway, with or without a license. However, the switch alienated many Latinos as well as majority voters.¹⁷ For Bustamante, this issue was a no-win situation. On the one hand, if Bustamante denounced drivers licenses for undocumented immigrants he would appear to be turning his back on those who share his same background and identity. On the other, this was an explosive issue with the mainstream electorate.

At a crucial debate, Bustamante was asked whether there were any benefits that he would deny illegal immigrants, to which he responded that he could not think of any.¹⁸ When he spoke later to the *San Francisco Chronicle* editorial board, columnist Debra Sanders asked him the same question, to which he responded only voting and passports.¹⁹ He defended driver's licenses for undocumented immigrants on fairness grounds, stating that "if it takes a driver's license for them to get to work, to take care of their families, get their kids to school and take care of the seniors . . . I'm for giving them a driver's license."²⁰ While this response might play well with recent immigrants, Californians overwhelmingly rejected this position in electing Schwarzenegger. Support for driver's licenses for undocumented immigrants morphed Bustamante into the candidate of illegal immigrants.

8. RACE MATTERS...SOMETIMES

California voters overwhelmingly defeated Proposition 54—the racial privacy initiative that would have precluded tracking of race in government recordkeeping, from schools to police work—at the same time that they rejected the leading minority candidate, Cruz Bustamante. Minority voters, in particular, overwhelmingly rejected Proposition 54, with 88% of African Americans, 75% of

17. See Aurelio Rojas, *Davis Backs License Bill*, SACRAMENTO BEE, July 29, 2003, available at <http://www.sacbee.com> (reporting that Davis's change of position was viewed among some Latinos as "pandering").

18. See Debra J. Saunders, *Gov. Schwarzenegger*, S.F. CHRON., Oct. 9, 2003, at A29.

19. *Id.*

20. William Booth, *Gov. Davis Shifts on Licenses for Immigrants*, WASH. POST, Sept. 6, 2003, at A1.

Latinos and 72% of Asian Americans voting against it.²¹ Only white Republicans as a group supported the measure. Although apparently inconsistent, voters' actions can be reconciled. Voters recognized that race matters in their private lives and in public affairs, so they rejected Proposition 54's facial colorblind imperative. However, voters were also influenced by racial messages, and the candidate that had the most to lose, Cruz Bustamante, was unable to disassociate his candidacy from negative racial messages. Undoubtedly, race *does* matter. Voters "got it" when the racial issue was relatively straightforward, like Proposition 54. But decoding negative racial stereotypes is a difficult task. Perhaps the short campaign period hampered voters, but Bustamante himself needed to be more adept at addressing legitimate concerns about racial politics.

7. WHAT DO YOU MEAN BY "WE"? PART I

Cruz Bustamante can join unsuccessful Los Angeles mayoral candidate Michael Woo and Republican Senatorial Candidate Matt Fong (along with L.A. mayoral candidate Antonio Villaraigosa and Texans Ron Kirk and Tony Sanchez) as candidates of color who were unable to forge electoral majorities. Despite the opportunities for the convergence of Asian American and Latinos on immigration and language policy (among other issues), Asian Americans remained outside any Rainbow political coalition in the California recall, voting 45% for Schwarzenegger and only 34% for Bustamante.²² The convergence of interests between Latinos and Asian Americans could theoretically work in a state like California, where Latinos and Asian Americans together make up a near majority. In California, Asian Americans were the fastest growing minority group, going from 6.9% in 1990 to 12.8% in 2000.²³ In spite of gains in the 1990s, both groups lack substantial representation in the California legislature.

Nationally, Latino candidates have not been able to win unless the congressional district in which they are competing is at least 40% Latino, and they win core Latino votes as well as crossover votes.²⁴ This is even truer for Asian

21. Emil Guillermo, *APAs Love Ah-nuld* (Oct. 17, 2003), at http://news.asianweek.com/news/view_article.html?article_id=8e9b604d5feb2ab7672b3ff047b3ca90&thi_s_category_id=172.

22. *Id.*

23. National Asian Pacific American Political Almanac, UCLA Asian American Studies Center, 11th Edition, 2003-2004, 36 (Asian American Studies Center Press) ("California is home to the largest APA population with 4,321,585, or 12.8 percent."). See also THE NEW FACE OF ASIAN PACIFIC AMERICA: NUMBERS, DIVERSITY & CHANGE IN THE 21ST CENTURY 11 (Eric Lai & Dennis Arguelles eds., 2004) ("California's total population [in 2000] is 13 percent and continues to have the largest of each of the six largest Asian groups—Asian Indian, Chinese, Filipino, Japanese, Korean, and Vietnamese. . . . By 2020, there will be more Asian Pacific Americans in California than the total for 46 other states (excluding New York, Hawaii and Illinois).").

24. The frustrating and often ironic result of racial/ethnic minorities only being able to win in voting districts into which they have been "packed" is a well observed and criticized phenomenon (and then once elected, minority representatives are marginalized in the legislature, where they have been effectively foreclosed from meaningful numerical representation). See LANI GUINIER, THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY (1994); Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663 (2001). Professor Guinier and others have proposed alternate voting schemes, utilizing cumulative voting or "instant runoff" voting, as a way to ensure minority (very broadly defined) representation in legislative bodies. See generally KATHLEEN L. BARBER, A RIGHT TO REPRESENTATION: PROPORTIONAL ELECTORAL SYSTEMS FOR THE TWENTY-FIRST CENTURY (2001). An "instant runoff" voting plan was on the November 2004 ballot for residents of San Francisco. See Lee Romney, *S.F. Takes the Lead in New Voting Method*, L.A. TIMES, HeinOnline -- 16 Berkeley La Raza L.J. 15 2005

American candidates. Because Asian Americans are not numerous enough to elect a candidate via bloc voting, crossover votes from other groups are essential to their electoral success. For example, unsuccessful Republican senatorial candidate Matt Fong swept the Asian American vote, but did not win enough cross over support to win. Successes are few, but they include Governor Gary Locke in Washington and David Wu in Oregon's First Congressional District.

6. WHAT DO YOU MEAN BY "WE"? PART II

Latino Democratic candidates can attract African American support, but they must work at it. This core Democratic constituency supported Latino candidate Cruz Bustamante at a far higher proportion, at 65%, than did Latinos, whose support ranged from 52 to 55% according to exit polls.²⁵ African American voters tend to be loyal Democrats, but they do not always favor the Latino Democratic candidate. In the 2001 Los Angeles mayoral campaign, African American voters overwhelmingly (80%) favored Anglo candidate James Hahn out of loyalty to his father, the late county supervisor Kenneth Hahn, while eighty percent of Latino voters went for the losing candidate, Antonio Villaraigosa.²⁶

The low Latino voter support for the Democratic candidate in the California recall reflects the heterogeneity of Latino voters and the fact that recent Latino immigrants have not yet developed partisan affiliations, which often takes years to develop.²⁷ Younger Latinos found Schwarzenegger's desire to change how things are done by state government to be attractive. Economic issues and economic anxiety as well may have influenced Latino voters, as they did with other constituencies.²⁸ Suburban and middle class Latinos were more likely to support the recall than low income Latino households.²⁹ Finally, Davis's last minute vote on the driver's license issue did not convince many in the Latino community that Davis was genuinely supportive of Latino interests; rather, he seemed a pandering politician, as

Aug. 9, 2004, at B1 ("Under the system, voters will rank their top three candidates in order of preference. If no one wins 50% of the votes when first choices are tallied, the candidate with the least number of votes is eliminated. The second choice of those voters is then added to the remaining candidates' tallies. The process . . . continues until a majority winner emerges.").

25. See *Times' Exit Poll Results*, L.A. TIMES, Oct. 9, 2003, at A26; see also Katharine Q. Seelye & Marjorie Connelly, *Signaling Voter Unrest, Schwarzenegger Cut Deep Into the Democrats' Base*, N.Y. TIMES, Oct. 9, 2003, at A34 (noting that Schwarzenegger won 31% of the Hispanic vote and 17% of the black vote).

26. Kevin R. Johnson, *Latinas/os and the Political Process: The Need for Critical Inquiry*, 81 OR. L. REV. 917, 933-934 (2002). As of early spring 2005, Villaraigosa seemed poised to unseat Hahn in the 2005 mayoral race. Among the factors in Villaraigosa's rise is dissatisfaction among African Americans with Hahn's role in ousting black police chief Bernard Parks. See Rep. Waters Snubs L.A. Mayor (Mar. 25, 2005), at <http://www.cnn.com/2005/ALLPOLITICS/03/25/lamayor.waters.ap/>.

27. Recent immigrants who are not yet citizens, do not consistently vote Democratic or Republican. Rodolfo O. de la Garza & Louis deSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 TEX. L. REV. 1479, 1513-14 (1993). On the other hand, Latinas/os who have been in the United States for several generations have more secure party affiliations. See Pew Hispanic Center and Kaiser Family Foundation, *National Survey of Latinos: The Latino Electorate* (Oct. 2002), available at <http://pewhispanic.org/files/reports/12.2.pdf> [hereinafter *Latino Electorate*].

28. See Seelye & Connelly, *supra* note 25.

29. Rich Connell & Daniel Hernandez, *GOP Makes Gains Among Latinos*, L.A. TIMES, Oct. 11, 2003, at B1.

Schwarzenegger charged.³⁰ In sum, the Democratic party cannot take the Latino vote for granted.

5. BUT WHAT HAVE YOU DONE FOR US LATELY?

Latino and Asian voters, although nominally allied with the Democratic party, have been repeatedly lured by attractive moderate Republicans.³¹ Despite the potential to elect the first Latino governor in California since the late 1800s, Latino voter turnout for Bustamante was anemic. Even staunchly Democratic and overwhelmingly Mexican American Imperial County had the lowest voter turnout of any county in California.³² All four Asian Americans in the California Assembly supported Bustamante, but their endorsement did not translate into significant votes from Asian American voters.³³

Democratic operatives should take heed that when minority voters *don't* vote, Democrats lose big, as shown by the razor thin margins of Roy Barnes's defeat in Georgia and Kathleen Kennedy Townsend's defeat in Maryland in 2002.³⁴ In California's 2002 elections, the Latino vote dropped down to 10%, and the white vote was up from 64% to 76%.³⁵ Considering that Schwarzenegger's star power is fading, he may have to address real issues that affect Californians in his reelection campaign.³⁶ Therefore, if Schwarzenegger wants to maintain his popularity with Asian and Latino voters, he must avoid Gray Davis's fate and take steps to avoid alienating them.

30. See Rojas, *supra* note 17.

31. See Kim Geron & James S. Lai, *Beyond Symbolic Representation: A Comparison of the Electoral Pathways and Policy Priorities of Asian American and Latino Elected Officials*, 9 ASIAN L.J. 41 (2002).

32. See de la Garza & Louis deSipio, *supra* note 27, at 1508 ("Low levels of Latino electoral participation tend to be self-perpetuating. Once the perception arises that Latinos do not vote, candidates, campaigns, and parties have no reason to reach out to these communities. Without outreach, the many 'new' voters in these communities are not socialized into the political system and become nonvoters.").

33. On the complexity of Asian American voting patterns and preferences, see PEI-TE LIEN, M. MARGARET CONWAY, AND JANELLE WONG, *THE POLITICS OF ASIAN AMERICANS: DIVERSITY AND COMMUNITY* 100 (2004) (observing that Asian American "[c]ommunity elites are typically active in local party politics, especially on the Democratic side . . . [and] it is safe to assume that most labor and civil rights elites active within the Asian American organizational network are liberals and democrats"). While Asian American elites may be reliably Democratic, non-elites (recent immigrant groups belonging to different economic classes) may diverge in their party affiliations. See also ASIAN AMERICANS AND POLITICS: PERSPECTIVE, EXPERIENCES, AND PROSPECTS (Gordon H. Chang ed. 2001) [hereinafter ASIAN AMERICANS AND POLITICS]; Keith Aoki, *A Tale of Three Cities: Thoughts on Asian American Electoral and Political Power After 2000*, 8 UCLA ASIAN PAC. AM. L.J. 1 (2002). For a view from the Northeast U.S., see Glenn D. Magpantay, *Asian American Voting Rights and Representation: A Perspective From the Northeast*, 28 FORDHAM URBAN L.J. 739 (2001).

34. See generally Lazos Vargas, *supra* note 12, at 836-37.

35. Jack Citrin and Benjamin Highton, Public Policy Institute of California, *How Race, Ethnicity, and Immigration Shape the California Electorate* (Dec. 2002) (analyzing the turnout rates of the four major racial and ethnic groups in California).

36. See Peter Nicholas, *Gov. Faces Widening Network of Opposition*, L.A. TIMES, Mar. 16 2005, at A1 ("With the governor's approval ratings dropping and opponents notching a recent victory in court, anti-Schwarzenegger forces say they've shown that a movie star governor who appeared politically invincible not long ago has been cut to human scale.").

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4. ELLIS ISLAND, HOLLYWOOD STYLE

Republicans' success with Latino and Asian American voters may well be attributed to fickle memory, an ambiguous Schwarzenegger candidacy, and Democrats' failure to correct misimpressions about this attractive challenger. Republicans managed to gain 40% of the Latino vote with Schwarzenegger garnering 31% and conservative Tom McClintock drawing an additional 9%.³⁷ According to a poll taken two weeks prior to the election, only 35% of Latino voters knew that Arnold Schwarzenegger had supported Proposition 187, the anti-"illegal alien" initiative passed by California voters in 1994.³⁸ Proposition 187, since gutted by the courts, was an assault on "illegal aliens" that attempted to exclude them from state social services—including health care—and from public education,³⁹ and spurred a wave of anti-minority sentiment.⁴⁰ The backlash awakened voter activism within Latino and Asian American communities and benefited the Democratic party, especially Gray Davis who was twice elected with solid support from Latino and Asian American voters.⁴¹

Similarly, although garnering less publicity, Arnold Schwarzenegger's long-time association with U.S. English, as a member of its Advisory Board, should have galvanized many Latino voters against him, since the organization urges English-only laws and the eradication of bilingual education programs.⁴² Although Latinos uniformly support their acquisition of English (for example, a study of Mexican immigrants confirmed that 93% agreed that residents of the United States should learn English),⁴³ they bristle at laws excluding Spanish from the classroom.

However, as part of his campaign strategy, Arnold Schwarzenegger was able to neutralize the negative effect of his past support of issues that have been controversial among ethnic voters. The short campaign period allowed Schwarzenegger to be long on Hollywood hype and short on substance, avoiding

37. See Seelye & Connelly, *supra* note 25.

38. USC Annenberg's Institute for Justice and Journalism, Pew Hispanic Center, New California Media, and The Tomás Rivera Policy Institute, 2003 Multilingual Survey of California Voters (Sept. 2003).

39. See generally Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995).

40. See Lovato, *supra* note 9, ("California's Republicans have kept generation after generation of Democrats and progressives on the defensive with initiatives that exploit growing anxieties among the aging, angry white voting majority. . . . Racial identity and education . . . came to occupy the center of [California] politics, spawning a series of ballot initiatives. Proposition 187 denied public education to the children of the undocumented, Proposition 209 denied Latinos and others access to education through affirmative action and Proposition 227 did away with bilingual education programs. The forces of white fear were even bold enough to use the local initiative process to attempt to split Los Angeles into two separate cities in 2002. And, had it won, last year's Proposition 54 would have created a society blind to the color of suffering by eviscerating race from government statistics (many believe it lost only because of a shortage of funds). Unlike the blurred vision of the Democratic Party, the Republican vision of California—and America, as several of these initiatives have been exported to other states—is clear: separate cities of poor, uneducated, brown barbarians and shining, walled white cities like those in the Academy Award-winning, all-white fantasy *Lord of the Rings*.").

41. See *Latino vote key to Davis' re-election*, Sacramento Bus. Journal, Nov. 21, 2002, <http://sacramento.bizjournals.com/sacramento/stories/2002/11/18/daily37.html>.

42. See Greg Krikorian, *Schwarzenegger Language-Advocacy Link Is Criticized*, L.A. TIMES, Aug. 30, 2003, at A27; see generally Steven W. Bender, *Direct Democracy and Distrust: The Relationship between Language Law Rhetoric and the Language Vigilantism Experience*, 2 HARV. LATINO L. REV. 145 (1997).

43. See Bender, *supra* note 12, at 87.

lengthy interviews and debates, and responding to difficult questions with funny Hollywood one-liners. In this atmosphere, Schwarzenegger, as the white immigrant, could have it both ways. White conservative republicans claimed him as one of their own because of his conservatism on fiscal issues, and Latino and Asian American voters could see him as one of theirs because of similar immigrant backgrounds. Republican assemblywoman Bonnie Garcia put it this way: "Arnold is an immigrant, and he will be pro-immigrant and pro-immigration." While a majority of voters may have bought that line, there was more than a little "bait-and-switch" involved.

3. CROUCHING JAGUAR, HIDDEN TIGER

Non-citizen immigrants are an untapped demographic electoral force set to come online in the next decade. Despite Schwarzenegger's ability to obtain the state's highest office, substantial numbers of potential Latino and Asian American voters are disenfranchised because noncitizen immigrants—documented and undocumented—cannot vote.⁴⁴ It takes up to eight years for documented immigrants to gain citizenship and subsequently gain the right to vote. Although the U.S. Constitution does not bar noncitizens from voting, most states have chosen to exclude noncitizens from voting in state or national elections while a handful of local jurisdictions permit noncitizens to vote in local campaigns.⁴⁵ Estimates are that between 29 (Census)⁴⁶ and 42% (Pew estimate)⁴⁷ of the 33 million Latinos residing in the United States are non-citizens and unable to cast votes. Meanwhile, in the wake of the recall election, momentum gathers for a constitutional amendment proposed by Senator Orrin Hatch to relax the qualifications for the U.S. Presidency. The amendment would qualify for office those immigrants who have been citizens for at least twenty years and residents for fourteen years, making Arnold an eligible "Running Man" for the White House.

2. WE ARE ALL "AMERICANS" HERE (EXCEPT FOR THE ILLEGAL IMMIGRANTS, OF COURSE)

Arnold Schwarzenegger's candidacy seems to have been perfectly pitched to attract the more conservative segments of the Latino and Asian American electorates.⁴⁸ As second and third generation Latino and Asian American

44. See Lien, *supra* note 33, at 111 ("[A]cquisition of partisanship may be related to citizenship status—noncitizens who do not expect to become citizens have the highest shares of nonidentification and independence but lower proportions of major partisanship compared to citizens or those who expect to become citizens.").

45. See Rachel L. Swarns, *Immigrants Raise Call for Right to be Voters*, N.Y. TIMES, Aug. 9, 2004, at A13 ("Several cities, including Chicago, and towns like Takoma Park, Md., already allow noncitizens to vote in municipal or school, elections."); see generally, Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meaning of Alien Suffrage*, 141 U. PA. L. REV. 1391 (1993); April Chung, *Noncitizen Voting Rights and Alternatives: A Path toward Greater Asian Pacific American and Latino Political Participation*, 4 UCLA ASIAN PAC. AM. L.J. 163 (1996).

46. Bureau of Census, *Profile of Foreign Born Population in the United States: 2000* (Dec. 2001) at 24 & Fig. 9-2.

47. Latino Electorate, *supra* note 27, at Chart 11.

48. See Wendy K. Tam and Bruce E. Cain, *Asian Americans as the Median Voters: An Exploration of Attitudes and Voting Patterns on Ballot Initiatives*, in *ASIAN AMERICANS AND POLITICS* 133, 141, *supra* note 33 ("[O]f all California's minorities, Asian Americans were the most divided by HeinOnline -- 16 Berkeley La Raza L.J. 19 2005

immigrants move up the social ladder, they increasingly vote conservative. By contrast, recent immigrants tend to vote Democratic but not as a bloc. Proposition 187 uncovered this political schism with more established and better off immigrants being more likely to oppose illegal immigration. Schwarzenegger denounced illegal immigration—which many middle class Latino and Asian Americans oppose; promised a favorable economic climate for small business owners—which appeals to Latino and Asian American entrepreneurs; and promised lower taxes for the working class—an appeal to recent immigrants who are generally not as wealthy as whites. By contrast, Bustamante appeared to support the status quo. Moreover, by making clear his support for undocumented immigrants, he may well have alienated middle class immigrants, who often compete for jobs shoulder to shoulder with younger, newly arrived immigrants.⁴⁹ The irony here is that groups situated best to vote their immigrant roots by supporting pro-immigrant-rights candidates are abandoning that prospect.

1. MELTING POT OR MELTDOWN?

In the most ironic twist in the 2003 California recall election, an immigrant defeated the grandson of immigrants in an anti-immigrant campaign climate that returned California to its anti-immigrant frenzy of the 1994 state elections. A recent poll conducted by the Public Policy Institute of California determined that among California's problems, immigration ranked ahead of crime, health care, and energy.⁵⁰ Against this backdrop, Schwarzenegger was able to walk an immigration tightrope that galvanized the anti-immigrant sentiment while touting his own immigrant success story.

Nowhere was this electoral immigration dichotomy of "good" and "bad" immigrants more evident than in Schwarzenegger's campaign ads. To the Spanish language media went ads proclaiming Arnold's background as an immigrant, but to mainstream media and Anglo voters Schwarzenegger's ads decried California's law allowing undocumented immigrants to obtain driver's licenses. Targeting undocumented immigrants became a rallying point for Schwarzenegger among voters last to welcome and first to blame undocumented immigrants, particularly Latinos, for the state's fiscal woes. Although Bustamante supported the law, his prior vote in the Assembly in the mid-1990s to require legal status as a condition to obtaining a driver's license caused some Latinos to question even Bustamante's allegiance to immigrants.

George Bush's reelection in 2004 also was replete with racial irony, some of which was foreshadowed by the California recall. Having received an estimated 31 to 35% of the Latino vote in 2000, Bush garnered an estimated 42% in 2004,

[Propositions 187 and 209], with about a third supporting them, 40-50 percent opposed, and the balance undecided.").

49. See *Id.* at 142 ("If economic times are perceived to be poor, if respondents think that diversity leads to zero-sum competition, if the neighborhoods are thought to be adversely affected by demographic change, and if others seem to be benefiting from programs and preferences that they do not need, then Asian American voters will be inclined to support restrictionist measures.").

50. Louis Freedberg, *Prop. 187 Rises Again*, S.F. CHRON., Oct. 6, 2003, at A20.
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probably the highest percentage of the Latino vote for any Republican candidate in modern polling history.⁵¹ In New Mexico, where Latino Bill Richardson was elected governor in 2002 by the largest electoral margin since 1964, Bush received 44% of the Latino vote, a substantial increase from 2000, helping to turn New Mexico from blue in 2000 to red in 2004.⁵² Although California Latinos voted only 34% for Bush in 2004, this was still an increase over the estimated 28% in 2000.⁵³

Half of all Latinos who voted for the first time in 2004 voted for Bush. Presumably, a significant percentage of these voters were immigrants. Ignoring the anti-immigrant stance of the Bush administration on the Dream Act and the AgJOBS bill, these new voters surprised many by voting Republican. The 2004 presidential election left only African Americans as a significant racial bloc vote for the Democratic Party,⁵⁴ with Asian American voters choosing Bush at the same significant level (44%) as Latinos. Bush's popularity waned somewhat among Puerto Rican voters (who voted for Bush at 28%, down 7% from 2000), but his popularity surged among Mexican American voters.⁵⁵ Bush's success among Mexican Americans in 2004 can likely be traced to values-voting—a reflection of the influence of the Catholic Church among Mexican American voters on the hot button issues of abortion and same-sex marriage. The deepest irony here is that support for the underprivileged and the imperative for peaceful alternatives to war, both substantial values instilled by the Catholic religion, were somehow trumped by values lending themselves to votes for the Republican Party.

51. See Greg Botelho, *Exit Polls: Electorate is Sharply Divided*, at <http://www.cnn.com/2004/ALLPOLITICS/11/02/prez.analysis/> ("Bush did make inroads among Latino voters, garnering 42 percent support (7 percent more than four years ago)[.]") (last visited Apr. 20, 2005). The CNN exit poll results available on the same website, however, show Bush receiving 44 percent of the Latino vote, a 9 percent gain. By most accounts, Bush made substantial gains in 2004 among Latino voters.

52. See Raoul Lowery Contreras, *Hispanics, Morality, Values and Republicans*, at <http://www.hispanicvista.com/HVC/Columnist/rcontreras/110804contreras.htm> (last visited Apr. 20, 2005).

53. *Id.*

54. According to the CNN exit poll, African Americans voted 89% for Senator John Kerry. See Botelho, *supra* note 52.

55. See Contreras, *supra* 53.

