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Direct Democracy and Distrust: The Relationship Between Language Law Rhetoric and the Language Vigilantism Experience

Steven W. Bender*

*"We don't want Spanish gibberish here, and we mean it."*¹

Remarks of Union Gap, Washington tavern owner

*"The child will only hear English."*²

Order of Amarillo, Texas judge in child-custody hearing

*"In the U.S.A. It's English or Adios Amigo"*³

Sign in Union Gap, Washington tavern

*"No English, Shirts, Shoes, [No] Service"*⁴

* Associate Professor of Law, University of Oregon School of Law; J.D., University of Oregon School of Law, 1985, B.S., University of Oregon, 1982. Keith Aoki and Caroline Gerloch made helpful comments on earlier drafts of this article. I based the article on my panel presentation on practicing LatCrit theory at the First Annual LatCrit conference.

For perspective, I provide a brief sketch of my background. My maternal grandmother, Ramona Montes de Oca, daughter of Refugio and Vincente Montes de Oca, came to California's Coachella Valley from Guadalajara around 1921. My maternal grandfather, Fernando Troncoso, son of José and Virginia Troncoso, left Chiapas for East Los Angeles around 1918. On my father's side, I'm German and Irish. My parents were never married, and I know less of my father's family history of immigration. My mother and I lived for several years in the East Los Angeles barrio where I attended Catholic school; we later moved to Monterey Park and, when I was a teenager, to Oregon when my stepfather, Luis Acevedo, died.

1 Aviva Brandt, *Tavern Owner Sued Over English-Only Policy*, L.A. TIMES, Jan. 21, 1996, at A24.

2 Sam Verhovek, *Mother Scolded by Judge for Speaking in Spanish*, N.Y. TIMES, Aug. 30, 1995, at A9.

3 Brandt, *supra* note 1, at A24.

4 Christy Scattarella, *Latinos Complain Monroe Tavern Turns Away Non-English Speakers*, SEATTLE TIMES, Mar. 14, 1994, at A1.

Sign in Monroe, Washington tavern

*"Speak English. It's the law now."*⁵

Remarks of passerby to couple speaking Spanish on Miami sidewalk

INTRODUCTION

Revitalized after the passage of California's Proposition 187, the English language movement continues its national campaign for restrictive language laws at the local, state, and federal levels of government. Thus far, the English language laws and initiatives adopted or urged have addressed government speech - the language of government employees and of government communications, records, and publications. English language laws adopted by the states have not yet extended to public speech (such as newspapers and other media) or to private speech (such as language in the home). Yet, individuals speaking a language other than English have increasingly come under attack in their schools, their workplaces, and even in their homes and places of leisure. This article explores the parallels between incidents of language discrimination and the English language movement, concluding that the movement and the resulting government English language laws, especially those adopted by initiative, encourage attacks on non-government speech ("language vigilantism"). Recognizing this linkage, the article articulates an activist agenda to protect language autonomy in public and private settings.

I. LANGUAGE LAWS AND LANGUAGE VIGILANTISM

A. *The Resurgence of the English Language Movement*

Spearheaded by organizations such as U.S. English, the English language movement that originated in the early 1980s has led to the

5 *Designation of Official Language Already Generating Problems*, SUN SENTINEL, Dec. 11, 1988, at 4F.

adoption by many states of comprehensive⁶ English language laws and initiatives,⁷ the consideration of such laws in most other states,⁸ and the likelihood that Congress will soon pass federal language legislation.⁹ Although these state measures vary in format from "Official English" to "English-Only" laws,¹⁰ they are limited in scope to government speech. Even Arizona's language law, which is regarded as one of the most restrictive ("English-Only") laws and applies to all government branches, instrumentalities, and programs,

6 By "comprehensive" I refer to English language laws that address all or most aspects of government, in contrast to laws that require the use of English in specific situations, such as in testing for occupational licenses.

7 Since the inception of this movement, the following states have adopted some form of comprehensive government English language law: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Indiana, Kentucky, Mississippi, Montana, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Virginia, and Wyoming. Hawaii (recognizing both English and Hawaiian as official languages), Illinois, and Nebraska have English language laws that predate the modern movement. Over 40 cities also have English language laws. For an engaging historical perspective of the current English language movement see Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992).

8 As of March, 1997, states considering English language legislation in their current legislative session include Connecticut, Iowa, Kansas, Massachusetts, Michigan, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Utah, Washington, and Wisconsin.

9 Although English language law bills have been introduced in Congress since 1981, they did not progress beyond committee hearings until 1996, when such legislation passed the House. Language laws have been reintroduced in Congress in 1997 with passage considered imminent.

10 By "Official English" I refer to those laws that provide only that English is the state's "official language." By "English-Only" I refer to those laws that declare English the official language and expressly prohibit government speech in languages other than English. Some state laws fall between these two approaches in purporting to protect and to preserve English as the official language. Presumably, these intermediate laws would require government to provide services in English, yet not outlaw the concurrent delivery of services in languages other than English.

and to all government officials and employees, does not encompass non-government speech.¹¹ Leading English language law proponents have disavowed an interest in regulating non-government speech. For example, John Tanton, when chairman of U.S. English, assured that "[n]o one wants to regulate the languages used in homes, businesses, or churches, or to prevent newspapers or books from being published in any language."¹² Mauro Mujica, the current chairman of U.S. English, adds that the proposed federal English language law "would in no way restrict an individual's use of any language [because the legislation] . . . discourages multilingualism only at the government level."¹³

11 See ARIZ. CONST. art. 28, invalidated in *Yniguez v. Arizonans for Official English*, 69 F.3d 920 (9th Cir. 1995) (en banc) (invalidating the language law as overbroad in violation of the First Amendment), *vacated, sub nom. Arizonans for Official English v. Arizona*, 65 U.S.L.W. 4169 (1997) (plaintiff's resignation from state employment rendered case moot).

12 JAMES CRAWFORD, *HOLD YOUR TONGUE: BILINGUALISM AND THE POLITICS OF "ENGLISH-ONLY"* 197 (1992). See also Norman Shumway, *Preserve the Primacy of English*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 121, 123 (James Crawford, ed., 1992) (citing member of Congress' remarks that the English language movement "is not an effort to stifle private freedom, it is an effort to clarify public policy").

13 Mauro E. Mujica, *Defending the English Language*, 6 HISPANIC OUTLOOK IN HIGHER EDUCATION 12, 13 (Apr. 12, 1996) (remarking on the Language of Government Act that passed the House in 1996). See also Mireya Navarro, *Kids of Immigrants Ditching Parents' Language for English*, L.A. DAILY NEWS, Aug. 31, 1996, at N18 (citing remarks of Mujica that "[w]e are in no way forcing people to speak anything; they can speak whatever they want. But when dealing with the government, they need to speak English."); Ines Alicea, *English-Only Movement Gains Momentum*, 6 HISPANIC OUTLOOK IN HIGHER EDUCATION 4, 4 (Nov. 10, 1995) (quoting remarks of U.S. English spokeswoman that federal bill "[o]pponents think it's going to affect what language people speak in their homes, but it wouldn't have any impact on private business"); U.S. ENGLISH, U.S. ENGLISH FACTS & ISSUES ("Official English has nothing to do with the language of the home, church, community center, private enterprise or with the conversation between two neighbors over the back fence. . . . Restaurant menus are not affected; nor is entertainment such as music concerts, movies, plays and art exhibits.") (promotional material of U.S. English on file with the Harvard

B. Language Vigilantism

At the same time that English language advocates are attacking multilingualism in government, individuals using languages other than English in non-government speech are increasingly subject to economic, legal, and social sanction. In virtually all aspects of everyday life, "language vigilantes" have assumed a duty to police against multilingualism. Illustrating the gauntlet that non-English speakers (and bilingual speakers when choosing not to speak English) must face, consider the following hypothetical day in the life of Maria Sanchez, a bilingual Chicana.¹⁴ As María walks her son to a private kindergarten, she reminds him not to speak Spanish because his teachers will punish him again. Later, when conversing with a co-worker while waiting at the bus stop, María is scolded by a passerby for speaking Spanish because "you're in America now." Once aboard, the bus driver tells María and her friend that they cannot speak Spanish on his public bus. Arriving at work, María finds a directive from the supermarket owner instructing that María and the other checkers can no longer speak Spanish to Spanish-speaking customers or with other employees because some customers are irritated when they overhear the Spanish language. In the afternoon, María appears in court for a child-custody hearing. The judge tells her she is abusing her son by speaking Spanish with him, and that he will remove the child if she does not begin speaking English at home. After her day, María meets a friend for dinner at a neighborhood tavern. Hanging over the bar is a large sign stating the tavern's rule that "It's English or Adios Amigo." María goes to pick up her son at her mother's apartment complex. She greets her mother, a Chicana immigrant, in English,

Latino Law Review).

14 The idea for a "day in the life" scenario comes from Professor Bill Piatt's use of this model to illustrate the inconsistencies of statutory and other legal protections of an individual's right to his or her language. BILL PIATT, *¿ONLY ENGLISH? LAW AND LANGUAGE POLICY IN THE UNITED STATES* 145 (1990). The scenario that follows is sometimes inspired by episodes from my childhood.

remembering that the apartment complex issued a rule requiring that English be spoken at all times. Obeying the judge's orders, she speaks to her son in English as they walk home.

Are these episodes of language vigilantism imaginary or are they a real, everyday threat to a non-English or bilingual speaker? Consider the following:

1. Both public and private schools, particularly those in the Southwest, have a notorious history of punishing schoolchildren for speaking Spanish on the school grounds.¹⁵ As an example, consider that following passage of Colorado's Official English initiative, a school bus driver prohibited riders from speaking Spanish while on his bus.¹⁶
2. Although incidents involving language vigilantism "on the street" are publicized less often, most every Spanish-speaker can recall some encounter with a passerby upset with overhearing Spanish.¹⁷ One editorial writer related his confrontation with an elderly passerby on a Miami Beach sidewalk who insisted that the writer and his wife "[t]alk English" because "[y]ou are in the United States."¹⁸
3. Employers are increasingly imposing English-Only policies in the workplace, sometimes out of safety concerns, but often because

15 See Margaret E. Montoya, *Law and Language(s): Image, Integration and Innovation*, 7 LA RAZA L.J. 147, 148 (1994).

16 See DENNIS BARON, THE ENGLISH-ONLY QUESTION 20 (1990).

17 For example, in a recent "Dear Abby" column, a writer from Dallas reported that while conversing with an elderly Latino, a man approached from 100 feet away to admonish them for speaking Spanish because "we're in America now, you know." Abigail VanBuren remarked that when she had written earlier that it is rude to speak another language in front of someone who cannot speak that language, she was not referring to private conversations that did not include the monolingual English-speaker. Abigail VanBuren, *Common Language Makes Sense*, THE REGISTER GUARD, Jan. 23, 1997, at 13C.

18 Carlos A. Montane, *"Talk English-You Are in the United States,"* in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY, *supra* note 12, at 163.

their customers object to overhearing employees speaking Spanish.¹⁹ For example, a Virginia 7-Eleven store adopted an English-Only store policy aimed at ensuring good relations with customers who might otherwise suspect that store employees were speaking about them.²⁰

4. In 1995, a Texas judge instructed a bilingual mother in a child-custody hearing that she was abusing her 5-year old daughter by speaking only Spanish with her: "Now, get this straight . . . The child will only hear English."²¹

5. In 1996, Spanish-speaking customers filed a lawsuit claiming that a Washington tavern's English-Only policy violated that state's civil rights law. Until removed under pressure from the state liquor board, a sign hung over the bar reading "In the U.S.A. It's English or Adios Amigo."²² Another Washington tavern drew complaints to a state human rights commission for its sign reading "No English, Shirts, Shoes, [No] Service."²³

6. In Florida, a cooperative apartment building voted to restrict

19 The Equal Employment Opportunity Commission reports a "big jump" in complaints over English-Only employment policies. See Ann Davis, *English-Only Rules Spur Workers to Speak Legalese*, WALL ST. J., Jan. 23, 1997, at B1 (excerpting an EEOC compliance manual example classifying an English-Only rule as "possibly permissible" when imposed for safety purposes on oil rig workers who need to communicate quickly in emergencies).

20 See Charles Hall, *Arlington Sets Hearing in Language Fight*, WASH. POST, Feb. 1, 1995, at B3.

21 Verhovek, *supra* note 2, at A9.

22 Brandt, *supra* note 1, at A24. After trial, the judge ruled against the discrimination claim on grounds that the tavern owner had required the plaintiffs to speak English so that she could keep the peace. See Aimee Green, *Yakima Tavern Owner Wins Case But Judge Ruled That English-Only Sign is Insensitive*, SEATTLE TIMES, Jan. 16, 1997, at B3.

23 Scattarella, *supra* note 4, at A1. See also Kathleen Monje, *Suit Accuses Tavern of Bias Against Spanish-Speakers*, OREGONIAN, Oct. 12, 1990, at D1 (describing a lawsuit against another tavern with an English-Only policy). Cf. *Hernandez v. Erlenbusch*, 368 F. Supp. 752 (D. Or. 1973) (concluding that a tavern's English-Only policy amounted to patent racial discrimination against Mexican-Americans under federal civil rights laws).

residency to English-speakers and justified the policy as one that enhances tenant protection, stating, "We don't want undesirables living here."²⁴

Regardless of whether the language vigilante is one's employer, teacher, bartender, or a stranger, language vigilantism can wound its victim. Attesting to the effects of punishing schoolchildren for speaking Spanish, a Texas state senator remarked that "[w]hen you take a kid's language away from him, you take away his self-esteem. You take away his culture, his ties to his family, his grandparents...."²⁵ Language vigilantism has made many immigrant parents, and subsequent-generation parents, afraid to teach their children Spanish during the age at which language is most easily acquired. A Spanish-language newspaper editor conveyed the alarm among Chicano/a parents in Texas following the edict from the Texas judge on the need to speak English at home: "People are afraid. Can they take my kids because I'm speaking Spanish?"²⁶

In other settings, language vigilantism shames, stresses, and subordinates its victims. For example, a retail employee who quit because of a workplace English-Only policy claims in a pending lawsuit that her boss's chants of "English, English, English" humiliated her.²⁷ Capturing the sentiments of callers addressing the Washington tavern that required English or "Adios Amigo," the president of a Washington state Latino/a advocacy group stated, "It's opening up old wounds for a lot of our elders who faced this

24 *Condo Requires Speaking English*, ST. PETERSBURG TIMES, Mar. 4, 1988 at 2B.

25 CRAWFORD, *supra* note 12, at 80. Impediments to speaking languages other than English also affect bilingual speakers. Although my knowledge of Spanish is limited, there are some concepts that I can only express, or feel comfortable expressing, in Spanish because that is the language in which I first learned to respond to certain situations.

26 Verhovek, *supra* note 2, at A9.

27 See Ann Davis, *English-Only Rules Spur Workers to Speak Legalese*, WALL ST. J., Jan. 23, 1997, at B1.

kind of discrimination when they were younger."²⁸

II. RELATIONSHIPS BETWEEN LANGUAGE LAWS AND LANGUAGE VIGILANTISM

A. *Factual Parallels*

Following on the heels of the adoption of comprehensive English language laws by initiative in California, Colorado, and Florida were reports of language vigilantism in various non-government settings.²⁹ After the passage in 1986 of Proposition 63,³⁰ California's English language initiative, civil rights organizations received complaints about the adoption of workplace English-Only rules in hospitals, hotels, manufacturing firms, insurance companies, banks, and charitable organizations.³¹ Within days after the adoption by voters of Colorado's language initiative

28 Brandt, *supra* note 1, at A24.

29 I did not come across the same degree of publicized incidents in Arizona following approval of its language initiative. Perhaps this is because the initiative was quickly challenged in litigation and invalidated by the federal courts. See *Yniguez v. Arizonans for Official English*, 730 F. Supp. 309 (D. Ariz. 1990), *aff'd in part*, 69 F.3d 920 (9th Cir. 1995) (en banc), *vacated, sub nom. Arizonans for Official English v. Arizona*, 65 U.S.L.W. 4169 (1997) (plaintiff's resignation from state employment rendered case moot). Or perhaps it is due to the slim margin of victory (50.5 percent) in Arizona as compared to the other three states (California, 73%, Colorado, 61%, and Florida, 84%) in which the margin of passage could be described in political terms as a mandate. During the campaign preceding approval of Arizona's initiative, however, there were reports of employers adopting workplace English-Only rules linked to the English language campaign. See RAYMOND TATALOVICH, *NATIVISM REBORN?: THE OFFICIAL ENGLISH LANGUAGE MOVEMENT AND THE AMERICAN STATES* 140 (1995).

30 CAL. CONST. art. 3, § 6.

31 See Edward M. Chen, *Language Rights in the Private Sector*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY*, *supra* note 12, at 269; PIATT, *supra* note 14, at 168.

in 1988,³² there were incidents such as a Colorado school bus driver telling passengers that Spanish was illegal on the bus and the firing of a fast food worker who translated the menu into Spanish for a customer.³³ Similarly, a wave of anti-Spanish language vigilantism followed the passage of Florida's language initiative in 1988.³⁴ A bank began to reject checks with amounts written out in Spanish.³⁵ Latino/a tourists and residents reported that they were being told "Speak English. It's the law now."³⁶ A Florida supermarket manager suspended a cashier for speaking Spanish, and an assistant principal told students that they could not speak Spanish at school.³⁷ A telephone operator insisted that collect calls could no longer be accepted in Spanish, and a department store no longer would accept catalog orders in Spanish.³⁸

English language law proponents respond to such incidents by dismissing them as isolated or unimportant. For example, a state representative who backed Colorado's initiative remarked that language vigilantism there was "not very important in the overall scheme of things." She urged instead that "[i]t's much more important to remember that . . . we finally have clarified a very important point, that the business of this state is to be conducted in the English language."³⁹ Apart from the question of whether the "importance" of these laws outweighs the devastating effects of language vigilantism, the point is that there is an undeniable linkage between language laws (particularly if adopted by initiative) and

32 COLO. CONST. art. 2, § 30.

33 See James Coates, *English Only Law Becomes a Matter of Interpretation*, CHICAGO TRIBUNE, Jan. 15, 1989, at 6.

34 FLA. CONST. art. 2, § 9.

35 See *Designation of Official Language Already Generating Problems*, *supra* note 5, at 4F.

36 *Id.*

37 See Ronnie Ramos, *Hispanics Fear Florida's English Law Translates to Discrimination*, DETROIT FREE PRESS, Nov. 27, 1988, at 1B.

38 See Marshall Ingwersen, *Citizens Enforce English Only Laws*, HOUSTON POST, Nov. 29, 1988, at A15.

39 Coates, *supra* note 33, at 6.

language vigilantism. These laws, though limited to government speech, encourage the control of non-government speech, whether in the schoolyard, the workplace, the marketplace, or on the sidewalk.

Moreover, the English language movement has sometimes directly encouraged regulation of non-government speech. In contrast to recent assurances by U.S. English that it targets multilingualism at the government level only,⁴⁰ from 1984 to 1988 the U.S. English fund-raising brochure identified the mere availability of foreign language media as an attack on the English language.⁴¹ In 1985, U.S. English urged the Federal Communications Commission to limit the number of Spanish-language radio stations in Texas because these stations were systematically displacing English-language stations. It suggested that the "major" problem of cutting off American citizens from information in English justified the infringement on freedom of speech that its request would entail.⁴²

The U.S. English organization has also blamed corporate advertising in Spanish for causing harmful language segregation.⁴³ California's chapter of U.S. English once protested a Spanish-language yellow pages, and the chapter head told reporters, "[W]e object to Philip Morris or any other companies who are advertising in languages other than English."⁴⁴

40 See *supra* notes 13-14 and accompanying text.

41 See Shumway, *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY*, *supra* note 12, at 143, 144.

42 See Letter from Gerda Bikales, executive director, U.S. English, to Secretary, Federal Communications Commission, Sept. 26, 1985, excerpted in Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293, 319-20 n.179 (1989).

43 Will the same criticism be leveled at banking industry efforts to make customer account information available in Spanish?

44 *Group Wants Stop to Ads in Spanish*, SAN JOSE MERCURY NEWS, Dec. 23, 1985, at F1, excerpted in Califa, *supra* note 42, at 320, n.180 (remarks of Stanley Diamond). In the same article, a spokeswoman for U.S. English acknowledged that she had written as a private citizen to McDonald's and to Burger King

Some English language laws and policies, particularly at the municipal level, have attempted to regulate non-government speech. For example, an ordinance enacted in 1988 by the Los Angeles suburb of Pomona required that more than half of the space on any sign used by a commercial or manufacturing establishment use the English language.⁴⁵ The mayor of another Los Angeles suburb, Monterey Park, tried to prevent the local public library from accepting a donation of thousands of books in Chinese because "English is the law of the land."⁴⁶

Finally, historical and comparative experience demonstrate the potential for state or national language laws to infringe directly on non-government speech. Until invalidated by the Supreme Court in 1923 on due process grounds,⁴⁷ a Nebraska statute prohibited both public and private schoolteachers from teaching any language but English to students who had not completed the eighth grade.⁴⁸

In 1994, France enacted a comprehensive language law that regulates not only government speech, but most aspects of public

protesting their Spanish-language menus. Cf., Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace*, 45 AM. U. L. REV. 1027, 1046-1054 (1996) (speculating as to potential effects of English language laws on consumer transactions and consumer protection).

45 See Edward M. Chen, *Language Rights in the Private Sector*, in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY, *supra* note 31, at 269, 273. See also *Asian American Business Group v. City of Pomona*, 716 F. Supp. 1328 (C.D. Cal. 1989) (invalidating the ordinance on First Amendment and equal protection grounds); CRAWFORD, *supra* note 12, at 202 (observing that city councils in nearby Arcadia, San Gabriel, and San Marino refused to repeal similar ordinances).

46 BARON, *supra* note 16, at 20. See generally Robert S. Chang and Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, __ CAL. L. REV. __ (forthcoming 1997) (exploring intra- and international race and immigrant relations through the lens of politics in Monterey Park).

47 See *Meyer v. Nebraska*, 262 U.S. 390 (1923).

48 See generally BARON, *supra* note 16, at 144-50 (the law was intended to suppress the German language); Leslie S. Wexler, *Official English, Nationalism and Linguistic Terror: A French Lesson*, 71 WASH. L. REV. 285, 341-47 (1996).

speech in an attempt to prevent the "contamination" of French culture by the English language.⁴⁹ Among its provisions, the French law requires use of the French language for product advertising, announcements posted in public places, and all radio and television programs except for films and audiovisual works in their original versions.⁵⁰ Moreover, the law designates French as the language of teaching in both public and private educational institutions.⁵¹

B. Parallels in Roots and Rationales

1. Nativism and Distrust: The Shared Roots of Language Laws and Language Vigilantism

If one believes, as I do, that the rationales offered for English language laws⁵² are mostly rhetoric and pretext, then it is appropriate to discuss the roots of these laws as distinct from their "official" rationales. Simply, the English language laws and language vigilantism share the common origin of nativism, particularly distaste for Latino/a (as well as Asian American) immigrants, Latinos/as generally, and the Spanish language.

Professor Juan Perea best traces the anti-Latino/a origins of the English language movement.⁵³ As he points out, part of the original goal of U.S. English was to obtain restrictions on immigration because steady immigration was seen to reinforce the maintenance of non-English languages.⁵⁴ He concludes that the movement is

49 See generally Wexler, *supra* note 48.

50 See *id.* at 370-377 for text of French law.

51 *Id.*

52 Perea, *supra* note 7. See also *infra* Part IIB2 for discussion of these rationales.

53 Perea, *supra* note 7, at 340-373 (arguing that this motive is grounds for heightened scrutiny that should invalidate these laws under the Equal Protection Clause).

54 See *id.* at 345.

fueled by prejudice against and fear of Latinos/as.⁵⁵

But just as some voters, legislators, and others who support English language laws may in fact be motivated by non-discriminatory reasons, some language vigilantes may too act without ill will. Consider the description by a Miami journalist of his encounter with an elderly woman who admonished him and his wife for speaking Spanish on a Miami sidewalk: "The expression on her face, curiously, was not that of somebody performing a rude action, but of somebody performing a sacred patriotic duty."⁵⁶ Nevertheless, ignoble motives inspire much of the current language vigilantism. Consider the attitude toward Latinos/as expressed by the Washington tavern owner in justifying her sign requiring English (or "Adios Amigo"): "We don't want Spanish gibberish here, and we mean it."⁵⁷ Or the Florida cooperative apartment building that justified its English literacy policy as a means of screening out "undesirables."⁵⁸ Even employers moved to adopt English-Only rules in the workplace for the ostensible business purpose of not offending their customers are merely catering to prejudice.

55 See *id.*; See also Califa, *supra* note 42, at 294 (characterizing the English language movement as "an expression of the underlying insecurity about and prejudice towards Hispanics"); Leo J. Ramos, Comment, *English First Legislation: Potential National Origin Discrimination*, 11 CHICANO-LATINO L. REV. 77 (1991); Ronnie Ramos, *Hispanics Fear Florida's English Law Translates to Discrimination*, DETROIT FREE PRESS, Nov. 27, 1988, at 1B (quoting radio show callers as saying they voted for Florida's language initiative because it was "anti-Hispanic").

56 Montane, *supra* note 18, at 163.

57 Brandt, *supra* note 1, at A24. In the civil rights action brought by Spanish-speaking customers, the tavern owner claimed her remarks were misquoted and taken out of context, and ultimately she was not held to have discriminated against the customers. Green, *supra* note 22, at B3.

58 See CRAWFORD, *supra* note 12, at 5.

2. Tough Love: The Rationales of Language Laws and Language Vigilantism

Rationales offered by proponents of English language laws include the overblown financial concern that government would otherwise be forced to fund the provision of services in every language spoken in the United States.⁵⁹ English language laws are also justified on patriotic grounds to recognize the most common language in America, and on related precautionary grounds to prevent the "threat" of linguistic discord and segregation posed by the growth of the Spanish language.⁶⁰ In recent years, however, the dominant rationale has become encouraging immigrants to learn English, the language of financial success and "equal opportunity."⁶¹ Mauro Mujica, the chairman of U.S. English and himself a Latino immigrant, has argued that the organization's mission is pro-immigrant because language laws aim to help immigrants learn English as quickly as they can.⁶² A promotional advertisement for U.S. English employs this approach, suggesting that the impetus for language laws comes from immigrants themselves: "Immigrants want and need to learn English. It's time politicians got the message."⁶³ Multilingual government, the explanation goes, acts as

59 See Steven W. Bender, *Our Laws Should Encourage, Not Bar, Multilingualism*, EUGENE REGISTER GUARD, Apr. 8, 1996, at 13A (rebutting contention of Newt Gingrich that no school district could afford to provide bilingual education in all 200 languages by noting that no single school district is this diverse).

60 See Ramos, *supra* note 55, at 88-89 (rebutting what he calls the "Civil War Theory" in support of English language laws).

61 HEMISPHERES, Jan. 1995, at 23 (United Airlines magazine on file with the Harvard Latino Law Review); See also Califa, *supra* note 42, at 312.

62 Mujica, *supra* note 13, at 12.

63 HEMISPHERES, *supra* note 61.

a crutch to keep immigrants linguistically isolated, seriously limiting their earning potential.⁶⁴ English language legislation pending in Congress also embraces this theme, with the reintroduced measure that passed the House in 1996 carrying the title the "Bill Emerson Language Empowerment Act."⁶⁵

In addition to its role in justifying language laws, the "encouragement" or "empowerment" rationale can also be used to justify many forms of language vigilantism. In the hands of well-intentioned vigilantes, the empowerment rationale acts as a "tough love" measure to encourage immigrants to assimilate. In the hands of a xenophobe, the empowerment rationale can be a handy pretext if the vigilante is called upon to justify an episode of language vigilantism. Consider the Texas judge who ordered a woman to speak only English in the home, purportedly in an effort to protect the woman's child: as he observed, speaking Spanish was "relegating her to the position of a housemaid," and it was "not in her best interest to be ignorant."⁶⁶

Whether adopted as laws or voluntarily by businesses in response to public pressure, language restrictions for advertising, building signs, and related communications in the marketplace could be justified on the basis that, like multilingual ballots and multilingual government services, multilingualism in these areas helps keep immigrants linguistically isolated.⁶⁷ The same charge could be leveled against native language books, newspapers, and broadcast media.

Bilingual education is often singled out by the English language movement as detrimental because, by providing a linguistic crutch, it fails to teach children English quickly enough. Rather, they need to "sink or swim" in the deep end of the assimilation pool at an early

64 *See id.*

65 H.R. 123, 105th Cong., 1st Sess. (1997).

66 Verhovek, *supra* note 2, at A9.

67 *See* Lee May, *Battle over Bilingualism*, L.A. TIMES, Sept. 8, 1986, at 21 (quoting U.S. English director as saying that corporate advertising in Spanish "makes it much more difficult to learn English").

age. Would it not hamper this "sink or swim" approach to language acquisition to allow students to converse in their native language outside the classroom? In their homes? The Texas judge has already answered this question.

What about employers -- could they justify cutting off employees from their native language on the assembly line and in the lunchroom as simply speeding assimilation?⁶⁸

Consider also the patriotic justification for language laws -- that those in America have a patriotic duty to speak English.⁶⁹ This justification has been cited to support the most egregious episodes of language vigilantism. For example, the Washington "Adios Amigo" tavern owner explained that "I'm not discriminating. I thought this was an English-speaking country and I asked them [the Latino customers] to speak English."⁷⁰ Her sign reminds readers of their patriotic obligation -- "In the U.S.A. It's English or Adios Amigo."⁷¹

In proffering these rationales in the current national language debate, the English language movement may be as influential in encouraging language vigilantism as the actual adoption of English language laws. Powerful political figures such as Bob Dole and Newt Gingrich have embraced these rationales. Newt Gingrich warned that through bilingualism, the "very fabric of American

68 See *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993), *cert. denied*, 114 S. Ct. 2726 (1994) (enforcing assembly line English-Only rule against bilingual employees). See generally Juan F. Perea, *English-Only Rules and the Right to Speak One's Primary Language in the Workplace*, 23 U. MICH. J.L. REF. 265 (1990).

69 Of course, language vigilantism might also be explained on other grounds such as safety (e.g., workplace rules for an oil drilling platform crew). The point here is that (1) the justifications for language laws can serve as justifications for some episodes of language vigilantism, and that (2) the study of these justifications can advance the exploration of the ramifications of the link between the justifications and acts of language vigilantism.

70 Brandt, *supra* note 1, at A24.

71 Scattarella, *supra* note 4, at A1.

society will eventually break down."⁷² Bob Dole declared that "with all the divisive forces tearing at our country, we need the glue of language to help hold us together."⁷³ Even in states without comprehensive language laws, such as Texas and Washington, language vigilantism occurs daily under color of the same rhetoric.

3. The Fuzzy Line Between Government and Non-Government Speech

Under a constitutional balance that considers the degree of infringement on protected individual rights, the government could be hard-pressed to justify language laws that extend to certain non-government speech.⁷⁴ However, the public will not make such a fine constitutional distinction.⁷⁵ In the eyes and ears of private

72 NEWT GINGRICH, TO RENEW AMERICA 162 (1995).

73 David S. Broder, *Dole Backs Official Language*, WASH. POST, Sept. 5, 1995, at A1.

74 See *Yu Cong Eng v. Trinidad*, 271 U.S. 500 (1926) (invalidating a Philippine statute requiring Chinese merchants to keep business records in specified languages); *Asian American Business Group v. City of Pomona*, 716 F. Supp. 1328 (C.D. Cal. 1989) (invalidating English-language business sign ordinance on First Amendment and equal protection grounds). Cf. *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 937 (1995) (en banc) ("If this case involved a statewide ban on all use of languages other than English within . . . Arizona, the constitutional outcome would be clear. A state cannot simply prohibit all persons within its borders from speaking in the tongue of their choice. Such a restriction on private speech obviously could not stand. *Meyer v. Nebraska*, 262 U.S. 390 . . . (1923)."), *vacated, sub nom. Arizonans for Official English v. Arizona*, 65 U.S.L.W. 4169 (1997) (plaintiff's resignation from state employment rendered case moot).

75 When language vigilantes do consider the constitutional balance of justification and detriment, the undue weight they accord their goals will tip the balance in favor of restricting even non-government speech. For example, in urging the FCC to restrict the number of Spanish-language radio stations, U.S. English once reasoned that: "Freedom of speech is not unlimited. As Justice Brandeis has pointed out, no one is free to shout 'fire' in a crowded theater. Speech and information are often curtailed in matters relating to national security,

individuals enforcing language law rhetoric, speech is speech whether the speaker (or listener or reader) is in the unemployment line or the assembly line, or in the voting booth or restaurant booth. As explored next, the potential for rhetoric-fueled emotion to displace reason is particularly great after a language initiative campaign.

III. INITIATIVE VIGILANTISM

In addition to language laws enacted by state legislatures, the modern English language movement has proceeded by voter initiative, notably in the immigrant-rich states of Arizona, California, Colorado, and Florida.⁷⁶ As detailed earlier, the adoptions in California, Colorado, and Florida were followed by documented incidents of language vigilantism.⁷⁷ Given the nature of the initiative process, this repercussion is not surprising. In fact, use of the initiative to establish language policy is particularly likely to induce vigilantism.

for example. Cutting off American citizens from sources of information in the language of their country, fostering language segregation via the airwaves . . . are major problems that warrant the steps we propose." Letter from Gerda Bikales, executive director, U.S. English, to Secretary, Federal Communications Commission, Sept. 26, 1985, excerpted in Califa, *supra* note 42, at 319-20 n.179 (noting the FCC refused the request on grounds, among others, of the First Amendment).

⁷⁶ Arizona's 1988 initiative passed with only 50.5% of the vote, but California's 1986 initiative passed with 73% of the vote, and 1988 initiatives in Colorado and Florida passed with 61% and 84% of the vote respectively. Jamie B. Draper and Martha Jiménez, *A Chronology of the Official English Movement*, in LANGUAGE LOYALTIES, *supra* note 12, at 89, 92-93. In 1990, Alabama voters ratified a constitutional "Official English" amendment with 90% approval.

There is also the potential for English language initiative (and referendum) campaigns at the local level. For example, in 1983, San Francisco voters approved Proposition O which asked Congress to repeal bilingual provisions in the Voting Rights Act.

⁷⁷ See *supra* text accompanying notes 29-51.

A. *The Connection Between the Initiative Process and Language Vigilantism*

Unlike most legislation, initiatives tend to be adopted following intense media campaigns. These campaigns, and forums for commentary such as public debates and editorial pages, tend to oversimplify issues and appeal to voter prejudice and emotion.⁷⁸ After being bombarded by negative images of immigrants "refusing" to learn English, linguistic "ghettos" posing threats to national unity, and "demands" by immigrants for "expensive" multilingual government, voters in initiative language campaigns may view their "yes" vote as anti-Spanish, anti-immigrant, or anti-Latino/a.⁷⁹ Even the more "positive" messages of encouragement, empowerment, and

78 See Derrick A. Bell, Jr., *The Referendum: Democracy's Barrier to Racial Equality*, 54 WASH. L. REV. 1, 19 (1978) ("Appeals to prejudice, oversimplification of the issues, and exploitation of legitimate concerns by promising simplistic solutions to complex problems often characterize referendum and initiative campaigns."); Cynthia L. Fountaine, Note, *Lousy Lawmaking: Questioning the Desirability and Constitutionality of Legislating by Initiative*, 61 S. CAL. L. REV. 733, 741 (1988). In his article, Professor Bell was one of the first to warn that direct democracy in the form of the initiative threatens the rights of minorities. *But see*, Amicus Brief of FLA-187 Committee, *Arizonans for Official English v. Arizona*, 65 U.S.L.W. 4169 (1997) (arguing that the initiative process is the "quintessence of participatory democracy" and an appropriate mechanism for addressing tensions between cultural pluralism and efforts to maintain assimilation, and urging that courts exercise exceptional care in reviewing citizen-based initiatives).

79 See CRAWFORD, *supra* note 12, at 115 (the Florida campaign worked up resentment against Spanish and Spanish-speakers); Ronnie Ramos, *supra* note 37, at 1B (radio station callers voted for Florida's initiative because it was "anti-Hispanic"). For descriptions of California's heated initiative campaign, *see, e.g.*, TATALOVICH, *supra* note 29, at 114-122; Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 CAL. L. REV. 321, 332 (1987); John Wildermuth, *English-Only Proposition Draws Lots of Hot Words*, SAN FRANCISCO CHRONICLE, Oct. 20, 1986, at 7.

assimilation, when widely disbursed through the media, can encourage language vigilantism for reasons discussed previously.⁸⁰

Backlash following the adoption of California's Proposition 187 provides the most recent illustration of the negative consequences of initiative campaigns that implicate subordinated groups such as immigrants, Spanish and other non-English language speakers, or gays and lesbians.⁸¹ Documenting dozens of incidents of hate speech and discriminatory treatment by businesses, individuals, and law enforcement officials, one study concludes that the rhetoric that permeated the Proposition 187 debate "gave license to discrimination and intolerance."⁸² Demonstrating the similar roots of Proposition 187 and English language initiatives, many such incidents involved language vigilantism. For example, a Los Angeles public bus driver yelled to his passengers that they could "only speak English" on his bus, and some employers reacted to Proposition 187 by imposing English-Only rules in the workplace.⁸³

In addition to the potential for language vigilantism fueled by the emotional nature of initiative campaigns, the initiative's essence as a form of direct democracy encourages private enforcement. Voters

80 See *supra* text accompanying notes 59-73.

81 For a discussion of anti-gay initiative campaigns in Oregon and Colorado see Hans A. Linde, *When Initiative Lawmaking Is Not "Republican Government": The Campaign Against Homosexuality*, 72 OR. L. REV. 19 (1993); Daniel J. Garfield, Comment, *Don't Box Me In: The Unconstitutionality of Amendment 2 and English-Only Amendments*, 89 NW. U. L. REV. 690 (1995).

82 Nancy Cervantes et al., *Hate Unleashed: Los Angeles in the Aftermath of Proposition 187*, 7 CHICANO-LATINO L. REV. 1 (1995). See also Lolita K. Buckner Inniss, *California's Proposition 187-Does it Mean What it Says? Does it Say What it Means? A Textual and Constitutional Analysis*, 10 GEO. IMMIGR. L.J. 577, 580 (1996) ("The greatest impact that Proposition 187 may have is . . . [that some undocumented immigrants] have already been, and may continue to be, hindered by wrongful attempts at enforcement, or by fear of enforcement."); 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, 660-61 (1995).

83 See Cervantes, *supra* note 82, at 11-12.

with the power to legislate an issue tend to take ownership of that issue and are likely to assume that they serve as an enforcement mechanism. Commenting on language vigilantism following approval of Florida's language initiative, the president of the Spanish-American League Against Discrimination remarked that "people have taken the law into their own hands and are enforcing it as they see fit."⁸⁴ Again, the Proposition 187 experience helps illustrate this phenomenon of private enforcement of initiatives. While accosting a cook for his "green card" the day after passage of Proposition 187, restaurant customers told him they were in charge of "kicking out all illegals" under the new law.⁸⁵ Moreover, a Latina immigrant rights lawyer was sent hate mail threatening that "187 will be enforced."⁸⁶

B. The Connection Between Language Vigilantism and the Content of Language Law

Language law initiatives are particularly susceptible to misguided citizen enforcement.⁸⁷ Although some language laws are more stringent than others (notably Arizona's), they share a common provision declaring English as the state's "official language." Scholars have questioned what an "official language" truly means. Many government officials aren't sure either, leading

84 *Anti-Hispanic Incidents Reported After Florida Oks Official English*, ARIZONA REPUBLIC, Nov. 15, 1988, at A4.

85 See Cervantes, *supra* note 82, at 15.

86 *Id.* at 17.

87 Both the Arizona and California language initiatives provide for citizen enforcement in court. See ARIZ. CONST. art. 28, § 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 in this State."); CAL. CONST. art. 3, § 6(d) ("Any person who is a resident of or is doing business in the State of California shall have standing to sue the State of California to enforce this section . . ."). It is unlikely, however, that individuals are aware of these provisions, and therefore it is uncertain whether they have any potential to encourage language vigilantism without publicity of the actual exercise of such enforcement rights.

Professor Rachel Moran to observe that the limited government enforcement of these laws derives in part from their vagueness -- confronted with unclear language, administrators have tended to preserve existing multilingual services.⁸⁸ Ironically, the language vigilantism that these laws encourage could be their most tangible effect. In contrast to the reserve of would-be government enforcers, many private citizens act on misguided assumptions and interpretations of newly passed initiatives.

The following examples of language vigilantism evidence that vigilantes will misinterpret their state's language initiative. In Florida, there were reports of Latino/a tourists and residents being told "Speak English. It's the law now."⁸⁹ Also in Florida, a department store clerk, citing the language initiative, refused to take a catalog order in Spanish as had been done in the past.⁹⁰ In Colorado, a school bus driver told his passengers that the new language initiative made it illegal for them to speak Spanish on the bus.⁹¹ Illustrating how young children interpret these laws, there were reports of Colorado schoolchildren telling their Latino/a playmates they were now "unconstitutional" and had to leave the country.⁹²

As one observer in Miami noted, "[n]obody knows what the [Florida initiative] means. Because of its vagueness, people are individually perceiving it the way they want and making up laws in their own heads."⁹³ Moreover, although some misinterpretation may

88 Rachel F. Moran, *Irritation and Intrigue: The Intricacies of Language Rights and Language Policy*, 85 NW. U. L. REV. 790, 792 (1991).

89 *Designation of Official Language Already Generating Problems*, *supra* note 5, at 4F.

90 See Marshall Ingwersen, *Citizens Enforce English Only Laws*, HOUSTON POST, Nov. 29, 1988, at A15.

91 See Coates, *supra* note 33, at 6.

92 See *id.*

93 Maya Bell, *English-Only Rule Raises Concern*, ORLANDO SENTINEL, Dec. 11, 1988, at D1. See also Ramos, *supra* note 37, at 1B (quoting remarks of president of anti-discrimination organization that "[w]hat has happened is that people have taken the law into their own hands and are enforcing it as they see

be unintentional, xenophobes may be citing the vague language law as a handy pretext to justify discrimination.⁹⁴

Finally, apart from vigilantes, the speakers of languages other than English may themselves misinterpret a vague initiative to chill their native tongue. For example, Latino/a Spanish-speakers may believe they can no longer speak Spanish in public settings, such as restaurants, or while using public transportation. Again, the Proposition 187 experience illustrates this phenomenon of victim-misconstruction. Although Proposition 187 by its terms does not extend to emergency medical care, and has been enjoined from effect almost since its passage, at least two deaths have resulted because undocumented people were afraid to seek emergency medical treatment.⁹⁵

fit."); Coates, *supra* note 33, at 6 (quoting remarks of Federico Peña when mayor of Denver that "[p]eople interpret these kinds of laws by themselves"); Monica Rhor, *Hispanics Say S. Floridians Resent Influx of Immigrants*, SUN SENTINEL, Jan. 11, 1989, at 1A (citing remarks of local LULAC president that "[p]eople will take upon themselves the creative interpretation and aggressive enforcement of the Official English Amendment. The inevitable result is invidious ethnic discrimination").

94 See PIATT, *supra* note 14, at 168; CRAWFORD, *supra* note 12, at 116 (concluding the Florida incidents were a combination of misunderstanding and use of the law as a license to strike back against the Spanish language). Employers adopting English-Only policies following approval of language initiatives may be exploiting the new laws. See Bell, *supra* note 93, at D1 (language law opponent remarks that employers view the new law as a license to repress other languages); Perea, *supra* note 68, at 366, n.530 (quoting remark of regional trial attorney for EEOC that California's language law may have emboldened employers to adopt English-Only rules).

95 See Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 U.C.L.A. L. REV. 1509, 1559, n.234 (1995).

IV. AN ACTIVIST AGENDA AGAINST LANGUAGE VIGILANTISM

A. Targeting Language Laws and Initiatives

Professor Derrick Bell has written that "[e]xperience is a far safer guide than rhetoric."⁹⁶ Despite calls for federal and state language laws to empower and encourage our nation's immigrants to learn English, experience tells us that these laws unleash and legitimize incidents of language vigilantism against immigrant and Latino/a populations generally.⁹⁷ This experience is another reason why these language proposals should be contested vigorously and, if enacted, challenged immediately through litigation.⁹⁸

Because of the particular havoc that language initiatives can spark, the English language movement must be opposed with fervor in states such as Oregon and Washington⁹⁹ that authorize citizen initiatives but do not yet have comprehensive language laws. Moreover, the initiative process itself must be reexamined and curtailed in light of the disturbing trend to employ this tool of direct democracy to address crucial issues of social policy and values, particularly those implicating subordinated populations.¹⁰⁰

96 Bell, *supra* note 78, at 1.

97 See Mary Nichols, *The English-Only Movement Legitimizes Attacks on Brotherhood and Tolerance*, L.A. TIMES, Feb. 19, 1989, at 5 ("The record of English-only legislation demonstrates that it legitimizes attacks on brotherhood and tolerance, encouraging an ugly strain of bigotry that has no place in American society").

98 On balance, it may be best to forego this litigation in states with no experience of language vigilantism and no record of government enforcement, which is most probable in states with small immigrant populations.

99 In 1996, a Washington state language initiative effort failed to gather sufficient signatures for certification, but supporters plan to try again.

100 For suggestions to reform or to restrict the initiative process, see generally Linde, *supra* note 81 (arguing that certain initiatives should be invalidated under the constitutional guarantee of republican government); Catherine A. Rogers and

B. Targeting Language Vigilantism Through a Litigation Model

Language vigilantism should be targeted directly by high-profile litigation. Professor Richard Delgado remarked at the LatCrit conference that civil rights laws are being flouted.¹⁰¹ We must undertake to vigorously invoke civil rights laws (and related theories) to reeducate the American public and American business as to their requirements and application. For example, litigation can be used to challenge certain employer English-Only rules, particularly those based on customer preference, as well as language restrictions imposed on customers by businesses such as taverns and restaurants. Most business owners should know that federal and state civil rights laws protect against the denial of services on the basis of race, but many fail to appreciate the linkage between race and native language. Litigation may engender public understanding (or at least debate) that singling out someone's native language for disparate treatment is no different than singling out the color of someone's skin to send her to the back of the bus.¹⁰² Moreover, a litigation model against language discrimination can help educate the language minority community as to their protected rights.¹⁰³

David L. Faigman, *"And to the Republic for Which it Stands": Guaranteeing a Republican Form of Government*, 23 HASTINGS CONST. L.Q. 1057 (1996) (arguing all state initiatives constitute per se violations of the Guarantee clause); Daniel M. Warner, *Direct Democracy: The Right of People to Make Fools of Themselves; The Use and Abuse of Initiative and Referendum, A Local Government Perspective*, 19 SEATTLE U. L. REV. 47 (1995) (suggesting improvements to the initiative process).

101 Richard Delgado, Address at the First Annual LatCrit Conference, First Keynote Talk, on Theory (May 2, 1996).

102 Cf. *Hernandez v. Erlenbusch*, 368 F. Supp. 752 (D. Or. 1973) (holding tavern English language rule constituted racial discrimination against Mexican-Americans).

103 For example, after settling their lawsuit against an Oregon tavern that had enforced an English-Only rule against them, the Latina plaintiffs expressed through their lawyer that "[t]he reason we brought this case was to educate the community about the difficulties we face as Americans who speak Spanish and to

The existing civil rights laws, however, present some obstacles to the success of language vigilantism litigation. It remains unclear whether discriminating on the basis of language (e.g., a tavern's English-Only rule) constitutes discrimination on the basis of race under the federal civil rights laws.¹⁰⁴ Moreover, litigants invoking these laws, and most state counterparts, must prove purposeful discrimination.¹⁰⁵ The intent requirement would complicate a case where a non-discriminatory rationale is provided such as if a tavern owner claimed that an English-Only policy is intended to keep the peace by enabling the bartender to understand whether "fighting words" are being exchanged.¹⁰⁶ Applying state civil rights law, a

try to make sure that no other Spanish-speaking person ever has to face the same humiliation we felt." Kathleen Monje, *Tavern, 3 Women Settle Legal Dispute Over Use of Spanish*, OREGONIAN, Sept. 10, 1991, at B5 (adding that "[w]e hope that our willingness to stand up for our rights will help all other people of color to see that you can report discrimination and obtain justice").

104 See Bender, *supra* note 44, at 1083-1087. Cf. *Flores v. Texas*, 904 S.W.2d 129 (Tex. Crim. App. 1995) (en banc) (rejecting argument that language discrimination is equivalent to discrimination based on race or national origin and affirming denial of probation to defendant because of his inability to speak English), *cert. denied* 117 S. Ct. 520 (1996).

105 See *General Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 391 (1982) (holding that claimants under 42 U.S.C. § 1981 must demonstrate intentional discrimination). In contrast, claimants challenging employer English-Only rules under the Equal Employment Opportunity Act need only establish disparate impact. See generally BILL PIATT, *LANGUAGE ON THE JOB* 49 (1993). Aiding this proof, an EEOC guideline treats English-Only rules as having a *per se* adverse impact so that the employer must demonstrate an adequate business necessity or the rule will have disparate impact and be invalid. However, the Ninth Circuit has rejected the guideline and requires the employee to demonstrate an adverse impact in each case before the employer will be called upon to justify the rule as a business necessity. See *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993) (enforcing assembly line English-Only rule against bilingual employees who failed to demonstrate adverse impact), *cert. denied*, 114 S. Ct. 2726 (1994).

106 But see, Monje, *supra* note 23, at D1 (tavern owner justified English policy because "[i]f they're speaking Spanish, how is my bartender going to know if they're cussing?"). The decision in *Hernandez v. Erlenbusch*, 368 F. Supp. 752

trial judge found in favor of the Washington "Adios Amigo" tavern owner because, the judge decided, the owner was acting to ensure the safety of others and of her property.¹⁰⁷ Her condescending sign, "In the U.S.A. It's English or Adios Amigo" was deemed "insensitive to minorities," but was not actionable discrimination.¹⁰⁸ Although she had told reporters "[w]e don't want Spanish gibberish here, and we mean it," at trial she claimed her remarks were quoted out of context.¹⁰⁹ Despite this errant trial court decision, language vigilantism accompanied by evidence of animosity of this sort should establish purposeful discrimination. But language vigilantism accompanied by rhetoric of patriotism or immigrant "empowerment" may survive scrutiny.

Of course, there are drawbacks to any strategy for social change that relies exclusively on a litigation model. Commentators such as Luke Cole, Kevin Johnson, Gerald López, and Rachel Moran have warned that solutions to subordination that depend on lawyers and legal remedies may undermine client autonomy.¹¹⁰ Professor

(D. Or. 1973) pre-dated authority requiring intentional discrimination under the federal civil rights laws. In holding that a tavern English language rule constituted racial discrimination against Mexican-Americans, the court in *Hernandez* looked to the language rule's impact on Mexican customers, not to the tavern owner's intent in establishing and enforcing the rule.

107 See Green, *supra* note 22, at B3.

108 See *id.*

109 See *id.*

110 See Luke W. Cole, *The Struggles of Kettleman City: Lessons for the Movement*, 5 MD. J. CONTEMP. LEGAL ISSUES 67, 77 (1993-94) (lawsuits are the least favored approach to addressing environmental racism); Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA RAZA L.J. 42, 47 (1995) (observing that litigation alone historically has not been very successful in promoting change for the Latino community); GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 37-38 (1992) (suggesting that those who would "lawyer rebelliously" must "ground their work in the lives and in the communities of the subordinated"); Moran, *supra* note 88, at 809 (rights-based strategies should be related to techniques such as community organizing that preserve client independence).

Johnson suggests that to successfully promote social change, any litigation model must be "linked to a broader-based political and social movement."¹¹¹ Therefore, a grassroots movement is needed to act in partnership with the litigation model.

C. Grassroots Action Against Language Vigilantism

The U.S. English organization promotes itself as a "grassroots movement."¹¹² Spiraling language vigilantism calls for formation of a counter-grassroots organization to address this alarming trend. This private organization would operate in a manner similar to the former English Plus Information Clearinghouse, established as a coalition of organizations to oppose the English language movement.¹¹³ In addition to serving as a think-tank and monitoring the English language movement and language-related litigation, this organization would educate the community on language rights, and organize and publicize protests of language vigilantism, particularly when the offenders are corporate advertisers and national employers.¹¹⁴ In addition to a language-based national organization, existing national, regional, and local civil rights organizations must organize protests of language vigilantism in settings ranging from

¹¹¹ Johnson, *supra* note 110, at 55.

¹¹² HEMISPHERES, *supra* note 61.

¹¹³ See generally, *The English Plus Alternative in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY*, *supra* note 12 at 151. The English Plus Clearinghouse was discontinued because of a lack of funding, organizational priorities, and other reasons. See e-mail from Maurice Belanger, National Immigration Forum, to Steven Bender (Feb. 2, 1997) (copy on file with the Harvard Latino Law Review).

¹¹⁴ Corporate advertisers who refuse to warn of product dangers in languages other than English despite targeting a language minority market are engaging in conduct related to language vigilantism that protesters should address. *But cf.* Ramirez v. Plough, Inc., 863 P.2d 167 (Cal. 1993) (refusing to impose tort duty on manufacturer to disclose aspirin danger warnings in the language in which the product is advertised because court believes the legislature is the appropriate forum to require such disclosures).

taverns to local workplaces and schools, and even courtrooms.¹¹⁵

CONCLUSION

Professor Juan Perea warns that even mere symbolic "Official English" laws pose a threat to Latinos/as by symbolizing the subordination of the Latino/a heritage and culture.¹¹⁶ These laws, and the movement that urges them, may cause additional injury - they encourage language vigilantism in non-government settings that reach into the home. For this reason alone, these laws are worth fighting against.

115 As an example, consider the Texas judge who ordered the mother of a young child to speak to the child in English only. See Verhovek, *supra* note 2, at A9.

116 Perea, *supra* note 7, at 363-371.