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The Spanish Predominant Language Ordinance: Is Spanish on the Way in and English on the Way Out.

Adriana Resendez

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**THE SPANISH PREDOMINANT LANGUAGE ORDINANCE:
IS SPANISH ON THE WAY IN
AND ENGLISH ON THE WAY OUT?**

ADRIANA RESENDEZ

I. Introduction.....	318
II. Evolution of Language Policy in the United States	326
A. U.S. Language Policy: A Fine Line Between Embracing Diversity or Creating Division	327
B. English-Only Legislation: Creating a Fiery Debate....	330
III. El Cenizo and the Spanish Predominant Language Ordinance: The End of the English Language in the United States?	336
A. The History of El Cenizo and the Road Towards the Passage of the Spanish Language Ordinance	337
B. Reactions to the Passage of the Spanish Language Ordinance.....	341
IV. Equal Protection: English Speakers' Fourteenth Amendment Rights	345
A. Language, A Chosen Characteristic	348
1. Connection Between Language and a Suspect Class in the Courts and in Federal Agencies.....	349
2. Scholarly Debate: Minority Languages Deserve Heightened Protection	350
3. Judicial Recognition of Accent and National Origin.....	350
4. Minority Language Protection: National Origin Discrimination	351
B. Strict Scrutiny Application: Whether the El Cenizo Ordinance Can Survive Heightened Judicial Scrutiny ..	352
1. El Cenizo's Compelling Government Interest: Increase Citizen Involvement in Governmental Decisions.....	354
2. City Ordinance Narrowly Tailored to Promote Citizen Participation in Local Government: Providing English Speakers with Translations of City Meetings	355
C. Rational Basis Analysis: City Ordinance's Facial Neutrality	357

1. Disparate Impact Analysis	357
2. Analyzing El Cenizo's City Ordinance for a Disparate Impact	359
V. Conclusion	361

“[B]ecause you speak Spanish doesn't make you less American.”¹

I. INTRODUCTION

On August 3, 1999, the City Council of El Cenizo, a small, South Texas town along the Mexican border, fired a shot heard around the world.² On that hot summer day, El Cenizo's mayor and city commissioners passed an ordinance declaring that the city shall conduct all functions and meetings in the predominant language of the community—in this case, Spanish.³ The measure, believed to be the first in the United States rele-

1. *Spanish Language Mecca; It's the Law in Texas Town*, CINCINNATI POST, Aug. 27, 1999, at 38A (quoting City Council Commissioner Flora Barton regarding the reaction to the passage of a Spanish-only ordinance in El Cenizo, Texas), 1999 WL 21777670. When this small town along the South Texas border passed a language ordinance declaring that the city conduct all meetings and activities in Spanish, many critics accused El Cenizo of not being American, suggesting that if one walks into an El Cenizo municipal meeting, an individual might wonder what side of the Rio Grande they are on. *See id.* (noting that when passing the Spanish-only ordinance, commissioners emphasized that El Cenizo attempted to overcome the language barrier in town meetings in order to increase attendance at the official town meetings). Commissioner Barton stated that holding town hall meetings in Spanish is no “less American” than holding the meetings in English. *Id.*

2. *See generally Epithets in English for Spoken Spanish*, HOUS. CHRON., Sept. 26, 1999, at 2 (noting that El Cenizo shook the world by announcing that it would conduct city meetings in Spanish), available at 1999 WL 24255402; Robert Garcia, *El Cenizo: Reaction Surprising*, LAREDO MORNING TIMES, Aug. 14, 1999, at A1 (reporting that the passage of the predominant language ordinance made headlines from Miami to Los Angeles, and from nationally syndicated radio personality Paul Harvey to local radio talk shows), available at <http://www.lmtonline.com/news/archive/0814/pagea1.pdf>; Dane Schiller, *Ordinance Draws Fire from Afar; Spanish-Speaking Town Gets Threats*, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 1999, at 1B (stating that the town leaders were unaware that the passage of the predominant language ordinance would generate so much attention), WL 8/29/99 SAEN 01B.

3. El Cenizo, Tex., Ordinance 1999-8-3(a) § 4 (Aug. 3, 1999) (stating that all city functions and meetings be conducted in the predominant language of the community); *see, e.g.*, Hugh Aynesworth, *Law Protecting Undocumented Aliens Sparks Ire: Texas Town Offers 'Safe Haven' to Illegals*, WASH. TIMES (D.C.), Aug. 26, 1999, at A1 (announcing that the passage of the city ordinance established Spanish as the predominant language of El Cenizo), 1999 WL 3092838. The mayor and city commissioners passed the controversial ordinance mandating that all contractual dealings with various levels of government be conducted in Spanish. *See id.* (acknowledging the implementation of the Spanish language ordinance in all city affairs); Richard Estrada, Editorial, *Unforeseen Consequence*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 13A (describing the passage of the pre-

gating English to a secondary status, effectively establishes Spanish as the official language of the city.⁴ The ordinance stipulates that the city shall provide English translations of all meetings and activities, providing the city secretary receives a request for the translation within forty-eight hours of any official city meeting or activity.⁵ El Cenizo's Spanish lan-

dominant language ordinance, officially making El Cenizo a Spanish-speaking city), 1999 WL 20278937; Dane Schiller, *No Inglés: In Border Town of El Cenizo, Spanish Is in and the INS Is Out*, SAN ANTONIO EXPRESS-NEWS, Aug. 11, 1999, at 1A (recognizing that all governmental business in El Cenizo will be conducted in Spanish), available at WL 8/11/99 SAEN01A.

4. See El Cenizo, Tex., Ordinance 1999-8-3(a) § 4 (Aug. 3, 1999) (stating that the predominant language of the community was Spanish); *Best Bets*, TIMES UNION (Albany, NY), Aug. 30, 1999, at C1 (noting that in August the city commissioners voted to affirm Spanish as the official language), 1999 WL 21371361; Barbara Chavez, *Radio Hosts Apologize Again*, ALBUQUERQUE J., Oct. 8, 1999, at B2 (reporting that a Texas town voted to pass a law making Spanish the official tongue), 1999 WL 26689595; Don Feder, Editorial, *It's the United (for Now) States*, INDIANAPOLIS STAR/INDIANAPOLIS NEWS, Sept. 4, 1999, at A15 (remarking that any official business will be undertaken in Spanish), 1999 WL 3865872; Gonzales & Rodriguez, *Brownout Takes on the Media*, DENV. POST, Sept. 12, 1999, at K03 (reporting that El Cenizo opted to have their meetings in Spanish), 1999 WL 27555666; Ken Hamblin, *Bush Needs to Take Stand on the Border*, DENV. POST, Jan. 30, 2000, at H02 (discussing the passage of the ordinance that ordained Spanish the language of all government business), 2000 WL 4451227; Thaddeus Herrick, *Texas Town Officially Speaks Spanish Also Becomes 'Haven' for Illegals*, ARIZ. REPUBLIC, Aug. 14, 1999, at A10 (noting that El Cenizo established an ordinance making Spanish the official language), 1999 WL 4192574; Carl P. Leubsdorf, *Bush Defends Tax-Cut Record in Iowa Debate: GOP Candidates Break Little New Ground During Last Televised Faceoff Before Caucus*, DALLAS MORNING NEWS, Jan. 16, 2000, at 17A (reporting that El Cenizo voted to make Spanish the official language of its business), available at 2000 WL 7570616; Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (commenting "that all official government business be conducted in Spanish"), 1999 WL 3092085. But see *Roaring in Spanish: Border Town's Official Language Declaration Ill-Advised*, HOUS. CHRON., Aug. 19, 1999, at 30A (stating the wrongful actions taken by the local government in El Cenizo in declaring Spanish the predominant language), available at 1999 WL 24248959. The article states that the passage of the Spanish-predominant language ordinance is wrongful because it offers no advantages to the citizens of El Cenizo and "provides ammunition" to advocates who want to declare English the official language of the United States government. See *id.* (reporting that El Cenizo made an ill-advised move when it established Spanish as the official language of the community by giving English-only advocates reasons to justify English as the official language of this country).

5. See El Cenizo, Tex., Ordinance 1999-8-3(a) § 4 (Aug. 3, 1999) (providing an accommodation for non-Spanish speakers at city functions); see also Madeline B. Diaz, *English Is Handy, but It's Not Required Here: Border City Makes Spanish Its Official Language, Forbids Informing on Illegals*, AUSTIN AM.-STATESMAN, Aug. 20, 1999, at B10 (declaring that English translations of meetings may be obtained but should be requested within forty-eight hours), 1999 WL 7422599; Dane Schiller, *Ordinance Draws Fire from Afar; Spanish-Speaking Town Gets Threats*, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 1999, at 1B (noting that English translations of official town meetings conducted in Spanish are provided with

guage ordinance has placed the border town at the center of a legal controversy regarding language rights in the United States.⁶

Debates concerning language legislation have percolated across the country for the last two decades, during which a movement arose to establish English as the official language of the United States.⁷ In 1981,

forty-eight hours notice), WL 8/29/99 SAEN 01B; Dane Schiller, *Town Won't Back Off on Spanish-Only Law*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 6A (stipulating that city transactions, including council meetings, will be undertaken in Spanish with English translations, provided the city secretary receives notice within forty-eight hours), 1999 WL 20278963.

6. See Lynda Gorov, *Texas Town Makes Spanish Official, Stirs War of Words*, BOSTON GLOBE, Aug. 29, 1999, at E8 (citing that El Cenizo is at the forefront of language legislation in the United States), 1999 WL 6078891; Claudia Kolker, *Town Speaks the Language of Its People*, L.A. TIMES, Aug. 13, 1999, at A1 (proclaiming that the language ordinance provoked a language debate), 1999 WL 2186159; Dane Schiller, *Ordinance Draws Fire from Afar; Spanish-Speaking Town Gets Threats*, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 1999, at 1B (reporting that El Cenizo ignited a firestorm over language rights), WL 8/29/99 SAEN 01B; see also Don Feder, Editorial, *It's the United (for Now) States*, INDIANAPOLIS STAR/INDIANAPOLIS NEWS, Sept. 4, 1999, at A15 (predicting a frightening future where pockets of Cambodians, Russians, Koreans, Arabs, and many others demand and insist on language separatism), 1999 WL 3865872; Ellen Goodman, Editorial, *English Language's Taking Over the World*, FLA. TODAY, Sept. 7, 1999, at 11A (stating that a small border town in Texas created a big fuss, enough to "make newswires buzz and tongues wag"), 1999 WL 26902377. The commentary asserts that English-only advocates suggest that El Cenizo is going to bring down this English speaking country, describing the border town as "'our very own Quebec,' the 'canary in the mine' and the proof of our 'Balkanization.'" *Id.* (suggesting that the Spanish-speaking community is generating a downfall for the United States); Miguel Perez, *A Small Town in Texas Fires a Linguistic Broadside*, REC. (N. N.J.), Aug. 18, 1999, at A03 (stating that the controversy could have negative ramifications for the nation's twenty-seven million Latinos, create a wave of xenophobia, and "become the battle cry for Archie Bunkers across America"), 1999 WL 7110918; Dane Schiller, *Town Won't Back Off on Spanish-Only Law*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 6A (reporting that the mayor ignited a firestorm by requiring that city business be undertaken in the predominant language of the community), 1999 WL 20278963. According to Mayor Rafael Rodriguez, the ordinance generated controversy which ranged to the extreme, and the city received threats in which the callers said that "[t]hey say they will kill us and burn City Hall.'" *Id.* Mayor Rodriguez was not worried about the death threats because he believed that their "'security [came] from above.'" *Id.* Flora Barton, El Cenizo City Commissioner, stated that they received at least 100 calls regarding the ordinances, many of which were incendiary. *Id.* As a result of the controversy, the city installed a new phone to identify the source of calls. *Id.*

7. See H.R.J. Res. 48, 101st Cong. (1989) (proposing an English language amendment to the Constitution of the United States); Jack Citrin, *Language Politics and American Identity*, PUB. INT. (1990), reprinted in 66:2 THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE? 34 (Bee Gallegos ed., 1994) (echoing that U.S. English was established in the early eighties to ensure the preservation of the English language); Jamie B. Draper & Martha Jiménez, *A Chronology of the Official English Movement*, reprinted in LANGUAGE LOYALTIES 89 (James Crawford ed., 1992) (stating that in the 1980s, a campaign was orchestrated at a national level by a rich and powerful lobby, U.S. English, to establish

the English language as the sole and official language of the United States); BILL PIATT, ¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES 20 (1990) (commenting on the emergence of a movement that sought to pass laws and an amendment to the United States Constitution declaring English the official language); Carol Schmid, *The English Only Movement: Social Bases of Support and Opposition Among Anglos and Latinos*, in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 202 (James Crawford ed., 1992) (claiming that prior to 1981, not one individual was familiar with the English-only movement); RAYMOND TATALOVICH, NATIVISM REBORN? THE OFFICIAL ENGLISH LANGUAGE MOVEMENT AND THE AMERICAN STATES 10 (1995) (relaying that the establishment of U.S. English began in 1983 and its primary purpose was to promote English as the official language); Kiyoko Kamio Knapp, *Language Minorities: Forgotten Victims of Discrimination?*, 11 GEO. IMMIGR. L.J. 747, 757 (1997) (observing that “English-as-an-Official-Language” began in the 1980s); Leila Sadat Wexler, *Official English, Nationalism and Linguistic Terror: A French Lesson*, 71 WASH. L. REV. 285, 357-58 (1996) (declaring that the English-only movement emerged at the beginning of the 1980s); *Ninth Federal Court Ruling on Arizona’s Official English is Misguided Says U.S. English*, U.S. NEWSWIRE, Oct. 5, 1995 (observing that U.S. English, founded in 1983, has approximately 640,000 members, and 5000 new members join each month), 1999 WL 6620003; James Crawford, *Hispanophobia*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/HY1CH6.htm> (last visited Oct. 23, 2000) (noting the efficiency of U.S. English in spreading their message during the 1980s in which “all but two of the fifty states had at least considered legislation to declare English their official language”); James Crawford, *Issues in U.S. Language Policy: Language Legislation in the U.S.A.*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/langleg.htm> (last modified July 21, 2000) (relaying that English-only legislation made its debut in 1981 as a constitutional language amendment); see also Tena Jamison Lee, *How Can There be Free Speech If It’s Only in English?*, 24 HUM. RTS. 10 (1997) (stressing that in light of the fact that ninety-seven percent of the country’s population speaks English, some politicians find it necessary to introduce legislation proclaiming English the “official language,” even going to the extreme of prompting legislation that inhibits the usage of any other languages in governmental functions), WL 24-SPG HUMRT 10; Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 340-41 (1992) (commenting that the official English language movement, which gained momentum in the 1980s, is part of a dishonorable tradition because it stems from nativist traditions to disenfranchise certain Americans). Nativism tends to thrive during times of national stress, in response to wartime or unwelcome immigration. See *id.* at 340 (reflecting that nativist theories come into play during chaos or unwarranted waves of immigration). Nativism triggers prohibitive laws directed at individuals whose ethnicity diverges from that of the dominant culture to further the goals of national security and unity. *Id.* (announcing that nativism generates restrictive measures at individuals whose ethnic background deviates from the majority as an attempt to create cohesiveness, stability, security and homogeneity). During these times of national stress, nativist movements seek to intensify their constrictive view of American cultural identity by promulgating laws aimed at restricting cultural traits believed “foreign.” *Id.* at 340-41 (declaring that in the midst of turbulent times, nativist movements amplify their narrow view of the American identity by establishing statutes, ordinances, and other laws that discourage the manifestation of cultural behavior deemed nonmainstream). One other feature synonymous with the nativist movements is the yearning to disenfranchise certain Americans or thwart the naturalization of future Americans because of their distinctions from the core culture. *Id.* (reporting that a resounding factor entrenched within the nativist movement is the longing to

former Senator S.I. Hayakawa, co-founder of U.S. English,⁸ introduced an amendment to the United States Constitution declaring English the nation's official language.⁹ Although the proposed amendment died in Congress, English as the official language of the United States became a crusade for conservative critics.¹⁰ The movement's supporters embrace the notion that a common language operates as a unifying force in the American landscape, settling disharmony in a nation of diverse ethnic, racial, and religious groups.¹¹ The movement's popularity spread quickly

marginalize certain Americans, or inhibit the citizenship process of future Americans because of their differences from the majority population).

8. See BILL PIATT, *¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES* 21 (1990) (reporting on U.S. English, a group founded by Senator Hayakawa and Dr. John Tanton, who supported English-only amendments). U.S. English was concerned with the increasing use of the Spanish language. See *id.*; Jack Citrin, *Language Politics and American Identity*, PUB. INT. (1990), reprinted in 66:2 THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE? 34 (Bee Gallegos ed., 1994) (noting that in 1983, preoccupied with the notion that the failure to institute a common language in this country would generate the civil unrest and strife experienced by Belgium, Canada, and other linguistically separated countries, Senator S.I. Hayakawa and John Tanton, a Michigan ophthalmologist, established U. S. English to maintain a common language); Karen Adams, *White Supremacy or Apple Pie?: The Politics of Making English the Official Language of Arizona*, in ENGLISH: OUR OFFICIAL LANGUAGE? 62 (Bee Gallegos ed., 1994) (noting that from 1981-1986 John Tanton served as chairman of U.S. English). S.I. Hayakawa, *The Case for Official English*, in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 94 (James Crawford ed., 1992) (outlining his involvement with the Official English-only movement); James Crawford, *Anatomy of the English-Only Movement*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/anatomy.htm> (last visited Oct. 30, 2000) (stating the inception of the English-only movement dating from 1983 when founded by Senator Hayakawa of California and Dr. John Tanton, a Michigan ophthalmologist).

9. See S.J. Res. 72, 97th Cong. (1981), <http://ourworld.compuserve.com/homepages/JWCRAWFORD/ela97.htm> (last visited Oct. 30, 2000) (quoting the proposed English Language Constitutional Amendment which holds that "English shall be the official language of the United States").

10. See James Crawford, LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 1-2 (James Crawford ed., 1992) (discussing the demise of the English Language Amendment and the impetus of the Official English language movement among the conservative right); see also Jack Citrin, *Language Politics and American Identity*, PUB. INT. (1990), reprinted in 66:2 THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE? 34 (Bee Gallegos ed., 1994) (describing the failure of the English Language Amendment at the Congressional level); Bee Gallegos, ENGLISH: OUR OFFICIAL LANGUAGE? 7 (Bee Gallegos ed., 1994) (noting that legislation calling for an amendment to the U.S. Constitution declaring English the official language did not pass).

11. See James Crawford, LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 2 (James Crawford ed., 1992) (stating the themes of the Official English movement); see also Dennis Baron, *Federal English*, in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 40 (James Crawford ed., 1992) (declaring that the English-only movement often rationalizes its agenda on the basis of

across the nation, and many politicians supported the issue by sponsoring legislation declaring English the official language at the municipal and state levels.¹²

The passage of the language ordinance in El Cenizo, the first municipality in contemporary U.S. history to establish Spanish as the official language of the city government, alarms opponents because of possible negative repercussions.¹³ Critics contend that instituting Spanish as the predominant language in a community is just as insulting, divisive, xenophobic, and ill-advised as proclaiming English the official language in this country.¹⁴ Other critics, namely English advocacy groups such as English

language unity); Ingrid Betancourt, *"The Babel Myth": The English-Only Movement and Its Implications for Libraries*, in ENGLISH: OUR OFFICIAL LANGUAGE? 127 (Bee Gallegos ed., 1994) (contending that supporters of English-only measures believe that speaking languages other than English mirrors a fragmented national loyalty). *But see* BILL PIATT, ¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES 173 (1990) (commenting that opponents of Spanish language rights believe the movement for Official English is a socially sanctioned way of arousing nativist fears of increasing immigration).

12. *See* Jack Citrin, *Language Politics and American Identity*, PUB. INT. (1990), reprinted in 66:2 THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE? 34 (Bee Gallegos ed., 1994) (noting that U.S. English directed its efforts at local and state levels).

13. *See* Alberto Diaz, *Texas Town's Spanish Decision "Outrageous,"* USA TODAY, Dec. 21, 1999, at 15A (noting that different languages separate people whereas a common language unifies people), 1999 WL 6861812; Richard Estrada, Editorial, *Town's Ordinance a Step Backward*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 17, 1999, at 12A (remarking that El Cenizo was the first community in modern history to declare Spanish the predominant language), 1999 WL 20276350; *see also* Dick Feagler, Editorial, *A Little Perfidy, Deep in the Heart of 'Tejas,'* PLAIN DEALER (Cleveland, Ohio), Aug. 27, 1999, at 11B (criticizing El Cenizo's decision to pass the ordinance calling it "one of the wackiest ever passed"), 1999 WL 2378712.

14. *See* Myriam Marquez, Editorial, *Texas Town's Leaders' Spanish-First Agenda Should Insult Us All*, ORLANDO SENTINEL, Aug. 23, 1999, at A12 (arguing that making Congress pass a law forcing English first insults our intelligence and passing a law forcing Spanish first in a free society is even more insulting), 1999 WL 2829538; Miguel Perez, *A Small Town in Texas Fires a Linguistic Broadside*, REC. (N. N.J.), Aug. 18, 1999, at A03 (stating that mandating Official Spanish is an extreme, one-sided, measure), 1999 WL 7110918; Editorial, *Roaring in Spanish: Border Town's Official Language Declaration Ill-Advised*, HOUS. CHRON., Aug. 19, 1999, at 30A (declaring that official language statutes are unwise because "[t]his country must never become so tyrannical that Americans need a special law in order to speak Spanish, English or any other language"), available at 1999 WL 24248959; *see also* Dane Schiller, *Critics Hit All-Spanish Decree in Texas Town*, PORTLAND OREGONIAN, Aug. 15, 1999, at A09 (quoting Webb County Judge Mercurio Martinez, as saying that El Cenizo's mayor "blew it"), 1999 WL 5366474. *But see* Richard Estrada, Editorial, *This U.S. Town Requires Spanish Only*, SAN DIEGO UNION-TRIB., Aug. 23, 1999, at B6 (proclaiming that even though El Cenizo's action was offensive and unacceptable in establishing Spanish as the predominant language, the move was logical), 1999 WL 4084539. One member of the city council claims they decided to institute the ordinance because the community advocated for the measure. *See id.* (addressing the city council's justifications for implementing the Spanish language ordinance).

First, argue that the move encourages dissimulation among non-native English speakers, calling El Cenizo "America's 'very own Quebec.'"¹⁵ Indeed, English First made a plea to the federal government, stating that "[t]his is a wake up call . . . because if we're not going to insist on a common language, we can expect more like this one."¹⁶

The leaders of El Cenizo contend they passed the ordinance in an attempt to make local government more responsive to the citizenry.¹⁷ The

15. See Lynda Gorov, *Texas Town Makes Spanish Official, Stirs War of Words*, BOSTON GLOBE, Aug. 29, 1999, at E8 (expressing the concerns of Jim Boulet Jr., executive director of English First, an English advocacy group, who believes that such a step does not maintain conformity with the rest of the nation), 1999 WL 6078891. Boulet further retorted:

In a nation of immigrants, we have to be able to communicate with each other This is a wake-up call, first to George W. Bush, who seems to think that being against English-only will get him Hispanic votes but who doesn't mind this, and then to our own federal government, because if we're not going to insist on a common language, we can expect more like this one.

Id. But see Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (remarking that Mr. Bush's press secretary, Linda Edwards, stated, "Gov. Bush has a long and consistent record of respecting the Hispanic culture and heritage"), 1999 WL 3092085; Dane Schiller, *Critics Hit All-Spanish Decree in Texas Town*, PORTLAND OREGONIAN, Aug. 15, 1999, at A09 (quoting Betty Flores, mayor of Laredo, as saying about the mayor of El Cenizo, "[h]is heart is in the right place" "We cannot second guess him; he is the one who is in the field taking fire"), 1999 WL 5366474; *Texas Town Approves Spanish As Its Language*, CHI. TRIB., Aug. 15, 1999, at 18 (relaying statement of Linda Evans, a spokesperson for Gov. George W. Bush's office, "[A]s a general rule, Gov. Bush believes that government business in America should be conducted in English"), 1999 WL 2902506.

16. See Lynda Gorov, *Texas Town Makes Spanish Official, Stirs War of Words*, BOSTON GLOBE, Aug. 29, 1999, at E8 (quoting a member of the English First advocacy group who criticizes the "hands off" policies of the federal government), 1999 WL 6078891.

17. See Flora Barton, *And Why Defend Spanish? Look at the Town's History*, SAN DIEGO UNION-TRIB., Sept. 3, 1999, at B7 (expressing claims by a city council commissioner that the reason El Cenizo passed the ordinance was at the behest of its residents), 1999 WL 4086997; Editorial, *¡Bienvenidos a El Cenizo!*, CHI. TRIB., Aug. 19, 1999, at 22 (reporting the mayor's comments that the language ordinance was an attempt that conforms to the needs of the citizenry), 1999 WL 2903745; Claudia Kolker, *Town Speaks the Language of Its People*, L.A. TIMES, Aug. 13, 1999, at A1 (noting that the Spanish language law originated because of a petition circulated by the community), 1999 WL 2186159; see also *Texas Town Approves Spanish As Its Language*, CHI. TRIB., Aug. 15, 1999, at 18 (noting the city council's approval to make Spanish, not English, the town's predominant language), 1999 WL 2902506. See generally Georgie A. Geyer, Editorial, *Tolerating 'Spanish-Only' Texas Town is Borderline Loco*, CINCINNATI ENQUIRER, Aug. 29, 1999, at B07 (concluding that El Cenizo passed the Spanish language ordinance because El Cenizo is largely a Spanish-speaking town and citizens will take a more active part in local government if they can understand the language), 1999 WL 9452273; *Spanish Language Mecca; It's the Law in Texas Town*, CINCINNATI POST, Aug. 27, 1999, at 38A (noting that many citizens did not attend the city council proceedings because of the language barrier), 1999 WL 21777670;

majority of El Cenizo's citizens speak Spanish as their predominant language, and many citizens did not attend past city council meetings because of the difficulties in understanding the English language.¹⁸ Some observers, however, have speculated that the ordinance exceeds the boundary of constitutional rights and will be judicially struck down in the future.¹⁹

This Comment examines the constitutional issues regarding the passage of the Spanish language ordinance, as analyzed under the Equal Protection Clause of the Fourteenth Amendment. Part II reviews the history of language policy in the United States, including controversial English-only legislation. Part III discusses the history of El Cenizo, including the events leading up to the passage of the ordinance and reactions to its enactment. Part IV relays the history of the Fourteenth Amendment, particularly the Equal Protection Clause, and describes the different doctrines that apply in scrutinizing language legislation. Finally, Part V concludes that El Cenizo's Spanish language ordinance passes constitutional muster under the framework of Fourteenth Amendment jurisprudence.

Texas Town Approves Spanish As Its Language, CHI. TRIB., Aug. 15, 1999, at 18 (voicing concerns by Mayor Rafael Rodriguez that in the past, the town meetings were conducted in English and no explanations were offered in Spanish, thus resulting in widespread apathy), 1999 WL 2902506.

18. See Hugh Aynesworth, *Law Protecting Undocumented Aliens Sparks Ire: Texas Town Offers 'Safe Haven' to Illegals*, WASH. TIMES (D.C.), Aug. 26, 1999, at A1 (claiming that the notion behind the ordinance came about because of constant complaints that the local residents did not comprehend what actions were being undertaken by the city government), 1999 WL 3092838; Madeline B. Diaz, *English Is Handy, but It's Not Required Here: Border City Makes Spanish Its Official Language, Forbids Informing on Illegals*, AUSTIN AM.-STATESMAN, Aug. 20, 1999, at B10 (reporting about the passage of the ordinance so that El Cenizo's citizens could understand what was occurring in the community), 1999 WL 7422599; Dane Schiller, *Ordinance Draws Fire from Afar; Spanish-Speaking Town Gets Threats*, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 1999, at 1B (announcing claims by Mayor Rafael Rodriguez that conducting business in Spanish is of vital importance because it fosters cooperation and gives people the opportunity to engage in local government), WL 8/29/99 SAEN 01B.

19. See Hugh Aynesworth, *Law Protecting Undocumented Aliens Sparks Ire: Texas Town Offers 'Safe Haven' to Illegals*, WASH. TIMES (D.C.), Aug. 26, 1999, at A1 (quoting U.S. Rep. Henry Bonilla, the congressman who represents El Cenizo's district in Washington, as saying that "it looks like this matter will have to be resolved in the courts"), 1999 WL 3092838; Dane Schiller, *Critics Hit All-Spanish Decree in Texas Town*, PORTLAND OREGONIAN, Aug. 15, 1999, at A09 (stating the predictions of Tony Zavaleta, a dean at the University of Texas at Brownsville, regarding the future of the Spanish-predominant language ordinance), 1999 WL 5366474.

II. EVOLUTION OF LANGUAGE POLICY IN THE UNITED STATES

Although English has always been the traditional and de facto language of the United States in the public arena,²⁰ the Constitution does not establish an official language.²¹ The lack of an official language evidences the fact that the United States always has been a country of multilingual cultures.²² Germans in Pennsylvania; French in Louisiana; Spanish in Florida, Texas, and California; Dutch in New York; Swedish in Delaware; and Native Americans in all points in between.²³ These cultures did not migrate to this country with the blatant goal of imposing

20. See Dennis Baron, *English in a Multicultural America*, in ENGLISH: OUR OFFICIAL LANGUAGE? 79 (Bee Gallegos ed., 1994) (stipulating that English has always been perceived as the unofficial language of this nation).

21. See *Harris v. Rivera Cruz*, 710 F. Supp. 29, 31 (D.P.R. 1989) (stating that no official language exists in the United States); Ingrid Betancourt, "The Babel Myth": *The English-Only Movement and Its Implications for Libraries*, in ENGLISH: OUR OFFICIAL LANGUAGE? 132 (Bee Gallegos ed., 1994) (recognizing that our founding fathers neglected to establish English as the official language of this country); Shirley Brice Heath, *English in Our Language Heritage*, in LANGUAGE IN THE USA 6 (Charles A. Ferguson & Shirley Brice Heath eds., 2d ed. 1982) (declaring that the Constitution makes no reference to an official language); Gary Imhoff & Gerda Bikales, *The Battle Over Preserving the English Language*, in ENGLISH: OUR OFFICIAL LANGUAGE? 73 (Bee Gallegos ed., 1994) (proclaiming that the American Constitution does not make any provision for an official language); Mark L. Adams, *Fear of Foreigners: Nativism and Workplace Language Restrictions*, 74 OR. L. REV. 849, 855 (1995) (explaining that the failure of the Constitution to mention an official language stems from America's historical tradition of linguistic diversity); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 271-81 (1992) (supporting the assertion that no official language exists in the United States); Hiram Puig-Lugo, *Freedom to Speak One Language: Free Speech and the English Language Amendment*, 11 CHICANO L. REV. 35, 37 (1991) (perceiving that the founding fathers did not establish a national language, and rejected a proposal initiated by John Adams for an American academy to promote the uniformity of the English language), WL 11 CHLLR 35; Note, *Official English: Federal Limits on Efforts to Curtail Bilingual Services in the States*, 100 HARV. L. REV. 1345, 1348 (1987) (observing that the framers of the Constitution deliberated the establishment of an official language, but chose to avoid the issue); *Q & A on the News*, STAR-TRIB. (Minneapolis-St. Paul), Dec. 31, 1999, at 02A (stating that English is not the official language), 1999 WL 7523889. *But see* *Soberal v. Heckler*, 717 F.2d 36, 42 (2d Cir. 1983) (stipulating that English is the official language of the United States); *Alfonso v. Board of Review, Dep't of Labor and Indus.*, 444 A.2d 1075, 1077 (N.J. Sup. Ct. 1982) (stating that in this country the official language is English).

22. See *Languages Other Than English in the U.S.: 1990 U.S. Census Data on Languages Spoken in the United States*, at <http://www.us-english.org/foundation/lang.htm> (last modified Apr. 26, 1991) (listing the 329 known languages spoken in this country).

23. See NANCY CONKLIN & MARIE LOURIE, A HOST OF TONGUES: LANGUAGE COMMUNITIES IN THE UNITED STATES 73 (1983) (noting the various groups who first arrived to settle in the United States); BILL PIATT, ¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES 5-7 (1990) (reporting the arrival of the first Europeans on this continent); Diego Castellanos, *A Polyglot Nation*, in LANGUAGE LOYALTIES: A SOURCE BOOK

language, religious, or political systems upon the native inhabitants.²⁴ To the contrary, these newcomers simply wanted to maintain their native languages upon arrival in the United States²⁵ and pursue their own religious and economic self-determination.²⁶ While many of these separate linguistic societies provided a social and cultural sanctuary to new immigrants, they also became avenues for learning English.²⁷ Thus, while the United States has never imposed an official language, English developed as the common language of the country and the language many cultures taught to recent migrants.²⁸

A. *U.S. Language Policy: A Fine Line Between Embracing Diversity or Creating Division*

Throughout the colonial struggle, American revolutionary leaders understood the importance of multilingual communication in gaining independence from Great Britain.²⁹ For example, the Continental Congress published excerpts of declarations, articles, and other documents in both German and English.³⁰ More notably, early colonial leaders distributed

ON THE OFFICIAL ENGLISH CONTROVERSY 13-15 (James Crawford ed., 1992) (distinguishing the different cultural groups that arrived on America's shores).

24. See BILL PIATT, *¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES* 8 (1990) (noting that the first European arrivals did not want to impose any sort of socio-economic program on the natives).

25. See James C. Stalker, *Official English or English Only*, 77 *ENG. J.* 18 (1988), reprinted in 66:2 *THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE?* 47 (Bee Gallegos ed., 1994) (emphasizing that the newly arrived Europeans desired to conduct their activities and business in their native language).

26. See BILL PIATT, *¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES* 8 (1990) (stating that no attempts were made to maintain a common or official language among natives or immigrants because of the idea of self determination).

27. See Shirley Brice Heath, *Why No Official Tongue?*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 22 (James Crawford ed., 1992) (relating that many non-English speakers created linguistic safe havens which provided them with a measure of security and offered them opportunities to learn English).

28. See BILL PIATT, *¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES* 8 (1990) (remarking that no inroads were made during the pre-revolutionary days to establish a national language).

29. See *id.* (recognizing the importance of communication in different languages during the Revolutionary War); see also Diego Castellanos, *A Polyglot Nation*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 17 (James Crawford ed., 1992) (stating that Germans accounted for a quarter of a million people, the largest non-speaking English group during the Revolutionary War).

30. See BILL PIATT, *¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES* 8 (1990) (denoting the various publications of the Continental Congress). The Continental Congress published excerpts of "Votes and Proceedings of the Congress" (1774), the "Declaration of Articles Setting Forth Causes of Taking up of Arms" (1775), and "Resolves of Congress" (1776) in German and English. *Id.* (explaining that the docu-

the Articles of Confederation and other political materials in French and English.³¹ The ability to spread information and ideas among different languages succeeded in drawing loyalty from different ethnic groups towards the fight for independence.³²

After the colonies gained independence, the new country continued to maintain a linguistically diverse population.³³ Further, as the United States expanded, this diversity spread throughout other parts of the nation.³⁴ For example, the Louisiana Constitution permitted the production of laws in French as recently as seventy years ago.³⁵ Similarly, California allowed the publication of statutes in Spanish until the late nineteenth century.³⁶ Likewise, New Mexico maintained English and Spanish as the official languages of that state until the middle of the twentieth century.³⁷

ments were printed in different languages). Benjamin Rush encouraged the teaching of French and German in American schools and urged the establishment of a German college in Pennsylvania. *Id.* at 9 (explaining that a famous national hero encouraged the learning of foreign languages).

31. *See id.* (recognizing that the precursor to the Declaration of Independence was printed in a language other than English).

32. *See id.* (proclaiming that the disbursement of information in languages other than English generated a sense of loyalty during the fight for freedom from Great Britain).

33. *See* Diego Castellanos, *A Polyglot Nation*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 18 (James Crawford ed., 1992) (indicating the diverse groups that existed after the colonies gained freedom). Months after the Revolution, Dutch, Polish, German, and French were the main languages taught besides English. *See id.* (recognizing the different languages of instruction after the War for Independence); Shirley Brice Heath, *Why No Official Tongue?*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 20 (James Crawford ed., 1992) (stressing the acceptance of a myriad number of languages during the latter part of the eighteenth century).

34. *See* Shirley Brice Heath, *Why No Official Tongue?*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 20 (James Crawford ed., 1992) (commenting that the United States was created from speakers of different dialects and languages).

35. *See* James C. Stalker, *Official English or English Only*, 77 *ENG. J.* 18 (1988), reprinted in 66:2 *THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE?* 47 (Bee Gallegos ed., 1994) (noting that Louisiana laws were published in French for many years).

36. *See id.* (remarking that the state of California permitted the production of its laws in Spanish); *see also* *Spanish Language Rights in California: Constitutional Debates*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 51-52 (James Crawford ed., 1992) (reiterating that laws had been published in Spanish in California until 1878).

37. *See* James C. Stalker, *Official English or English Only*, 77 *ENG. J.* 18 (1988), reprinted in 66:2 *THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE?* 47 (Bee Gallegos ed., 1994) (noting that the requirement of English as a sole language has never been certain); *see also* U.S. Comm'n on Civil Rights, *Language Rights and New Mexico Statehood*, in *LANGUAGE LOYALTIES* 61-62 (James Crawford ed., 1992) (stating that New Mexico inserted provisions in its constitution that made Spanish an official language, on par with English). The New Mexico Constitution further provided that all laws enacted by

During the latter part of the nineteenth century and early twentieth century, the nation's linguistic diversity grew remarkably as successive waves of Europeans arrived and the United States increased its territories to include Hawaii, the Philippines, and Puerto Rico.³⁸

Laws attempting to establish a homogenous language began to manifest in the early 1920s during the aftermath of World War I.³⁹ Stimulated by the war, strong anti-German sentiment reached new heights across the country, and an American movement burgeoned, emphasizing the need for a common language to assimilate newly arrived immigrants.⁴⁰ In response to the hysteria sweeping the nation during World War I, many states closed foreign language schools, mostly German, through laws requiring an English-only curriculum or allocating public funds for English-only institutions.⁴¹

Hence, official language laws emerged as a significant product of these war-torn times.⁴² In 1920, Nebraska became the first state to recognize English as an official language through a constitutional amendment.⁴³

the legislature would be produced in English and Spanish. *See id.* (noting that provisions were added to the state's constitution to mandate the issuance of all laws in English and Spanish). Before 1967, notices of county and statewide elections were required to be produced in both languages. *Id.* (proclaiming that prior to 1967, statewide election notices had to be translated into Spanish and English). Even today, many legal notices are required to be printed in both Spanish and English. *Id.* (stating that in contemporary times, almost all legal notices should be published in both languages).

38. *See* ACLU BRIEFING PAPER 6 *English Only: From its Inception, The United States has been a Multilingual Nation*, at <http://aclu.org/library/pbp6.html> (last visited Nov. 17, 2000) (explaining the linguistic diversity that existed in the United States at the turn of the century as immigrants flocked to this country).

39. *See* RAYMOND TATALOVICH, NATIVISM REBORN? THE OFFICIAL ENGLISH LANGUAGE MOVEMENT AND THE AMERICAN STATES 50 (1995) (arguing that wartime hysteria ignited nativist attitudes in the wake of World War I); *see also* Kenneth L. Karst, Essay, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. L. REV. 303, 316 (1986) (remarking that suspicions of German-American disloyalty existed during the First World War).

40. *See* Jack Citrin, *Language Politics and American Identity*, PUB. INT. (1990), reprinted in 66:2 THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE? 31 (Bee Gallegos ed., 1994) (reflecting on the hysteric reactions to the war and the threatened need to introduce a national language).

41. *See* CQ Researcher, *Bilingual Education*, in ENGLISH: OUR OFFICIAL LANGUAGE? 98 (Bee Gallegos ed., 1994) (reporting on the closing of foreign language schools during America's entry into World War I because of statutes insisting on English language instruction and the diversion of funds to schools offering English classes only).

42. *See* RAYMOND TATALOVICH, NATIVISM REBORN? THE OFFICIAL ENGLISH LANGUAGE MOVEMENT AND THE AMERICAN STATES 33 (1995) (describing the attempts by other states to make English the official language of the United States).

43. NEB. CONST. art. I, § 27 (stating "[t]he English language is hereby declared to be the official language of this state, and all official proceedings, records and publications

Likewise, Illinois designated "American" as its official language in 1923.⁴⁴ These initial laws regarding language restrictions set the stage for contemporary English-only legislation.⁴⁵

B. *English-Only Legislation: Creating a Fiery Debate*

The modern English-only movement began in 1983 when former Senator S.I. Hayakawa of California collaborated with Dr. John Tanton, a Michigan environmentalist, ophthalmologist, and population control activist, in founding the group U.S. English.⁴⁶ Initially, U.S. English sought to pass a constitutional amendment establishing English as the official language of the United States.⁴⁷ When the amendment failed in Con-

shall be in such language, and the common school branches shall be taught in said language in public, private, denominational and parochial schools").

44. See RAYMOND TATALOVICH, *NATIVISM REBORN? THE OFFICIAL ENGLISH LANGUAGE MOVEMENT AND THE AMERICAN STATES* 21 (1995) (listing the first laws aimed at regulating language legislation).

45. See *id.* (enumerating early English-only laws which preceded the movement to English-only legislation).

46. See James Crawford, *Anatomy of the English-Only Movement*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/anatomy.htm> (last visited Oct. 16, 2000) (noting the history of the English-only movement); see also Guy Wright, *U.S. English*, in *LANGUAGE LOYALTIES* 128 (James Crawford ed., 1992) (detailing Senator Hayakawa's involvement with the English advocacy group). See generally James Crawford, *Hispanophobia*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/HY1CH6.htm> (last visited Oct. 23, 2000) (relaying the background of the movement's founder). Dr. Tanton's reputation as a citizen-activist began in two movements known for their liberalism: ecology and population control. See *id.* (describing Dr. Tanton's association with liberal groups). Tanton stated that being raised on a farm made him a "congenial conservationist." See *id.* In the 1960s, he became involved with the National Audubon Society, Sierra Club, and other similar groups. See *id.* Environmentalism magnified the problem of an overwhelming number of humans. See *id.* After establishing a Planned Parenthood clinic in Michigan, Tanton aligned with Zero Population Growth, becoming its national president in the 1970s. See *id.* (describing Dr. Tanton's rise in the hierarchy of a population control group).

47. See Jack Citrin, *Language Politics and American Identity*, *PUB. INT.* (1990), reprinted in 66:2 *THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE?* 34 (Bee Gallegos ed., 1994) (announcing an initial and primary goal of U.S. English, an English language advocacy group, in passing an amendment declaring English the official language); Mark R. Halton, *Legislating Assimilation: The English Only Movement*, *THE CHRISTIAN CENTURY* (1989), reprinted in 66:2 *THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE?* 88 (Bee Gallegos, ed., 1994) (describing the efforts of U.S. English to declare English the official language); S.I. Hayakawa, *The Case for Official English*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 99 (James Crawford ed., 1992) (stating the introduction of the English Language Amendment in 1981).

gress, however, U.S. English targeted local and state governments.⁴⁸ Spurred by the efforts of U.S. English, many municipalities, counties, and states have considered adopting English as their official language.⁴⁹ The most widely publicized example of English-only legislation occurred in 1986 when California voters supported Proposition 63, an amendment to the state's constitution.⁵⁰ The amendment proposed to declare English the official language of the state.⁵¹ The measure passed with seventy-three percent of the vote, the first official English amendment passed by ballot initiative.⁵²

The California official English amendment passed, in large part, because supporters succeeded in characterizing the measure as a sign of patriotism.⁵³ Many voters polled prior to the enactment of Proposition 63 believed that "if you live in the United States you should be able to

48. See Jack Citrin, *Language Politics and American Identity*, PUB. INT. (1990), reprinted in 66:2 THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE? 34 (Bee Gallegos ed., 1994) (stating that upon the failure of the English Language Amendment at the national level, U.S. English subsequently concentrated on state and local levels to introduce English-only language legislation); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 341 (1992) (relating that many English-only supporters still seek to obtain constitutional amendments or English laws in the states).

49. Jack Citrin, *Language Politics and American Identity*, PUB. INT. (1990), reprinted in 66:2 THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE? 34 (Bee Gallegos ed., 1994) (suggesting that the strong efforts led by U.S. English have introduced numerous attempts at language legislation).

50. See *id.* at 36 (noting that the purpose of the initiative was to protect and preserve the English language); Jamie B. Draper & Martha Jiménez, *A Chronology of the Official English Movement*, reprinted in LANGUAGE LOYALTIES 92 (James Crawford ed., 1992) (announcing the passage of Proposition 63 in California).

51. See Geoffrey Nunberg, *The Official English Movement: Reimagining America*, in *Afterword to LANGUAGE LOYALTIES* 479, 484 (James Crawford ed., 1992) (describing the adoption of the English language amendment); see also Editorial, *Prop. 63 Deserves Approval*, SAN FRANCISCO EXAMINER, Oct. 24, 1986, reprinted in LANGUAGE LOYALTIES 135 (James Crawford ed., 1992) (describing the conflict over Proposition 63, a measure designed to implement English as the official language of California).

52. See Jamie B. Draper & Martha Jiménez, *A Chronology of the Official English Movement*, reprinted in LANGUAGE LOYALTIES 89, 90 (James Crawford ed., 1992) (announcing the divided vote the English language amendment garnered in California); see also Editorial, *Prop. 63 Deserves Approval*, SAN FRANCISCO EXAMINER, Oct. 24, 1986, reprinted in LANGUAGE LOYALTIES 136 (James Crawford ed., 1992) (showing support for Proposition 63).

53. See Jack Citrin, *Language Politics and American Identity*, PUB. INT. (1990), reprinted in 66:2 THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE? 40 (Bee Gallegos ed., 1994) (stating that advocates for English-only have proclaimed that voting for such a measure is an indicator of allegiance, loyalty, and national spirit).

“speak English.”⁵⁴ The poll suggests that many people identify speaking English with being American.⁵⁵ Indeed, many Americans see English as the national language, and, therefore, support proficiency in English as a desirable goal.⁵⁶

Proponents of English-only laws believe that the influx of foreign languages threatens the primacy of English in the United States.⁵⁷ Some English-only supporters contend that the use of one primary language prevents the divisiveness that erupts when multiple languages must coexist.⁵⁸ As a result, English-only advocates have continued to promote English through legislative efforts and, as recently as 1997, tried to pass

54. *See id.* (reflecting the opinions of Americans polled after the passage of Proposition 63 who believe that English should be spoken in the United States); RAYMOND TATALOVICH, *NATIVISM REBORN? THE OFFICIAL ENGLISH LANGUAGE MOVEMENT AND THE AMERICAN STATES* 175-76 (1995) (relaying that the passage of Proposition 63 was symbolic, in that it represented the American norm of speaking English).

55. *See* Shirley Brice Heath, *English in Our Language Heritage*, in *LANGUAGE IN THE USA* 18 (Charles A. Ferguson & Shirley Brice Heath eds., 1981) (recounting that most Americans characterize English as a choice that contributes to the national well-being); *see also* Jack Citrin, *Language Politics and American Identity*, *PUB. INT.* (1990), *reprinted in* 66:2 *THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE?* 38 (Bee Gallegos ed., 1994) (suggesting the idea that speaking English is closely synonymous with political party affiliation and ideology); Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 *MINN. L. REV.* 269, 362 (1992) (noting the widespread popularity of English-only initiatives that are passed by overwhelming margins).

56. *See* Shirley Brice Heath, *English in our Language Heritage*, in *LANGUAGE IN THE USA* 6 (Charles A. Ferguson & Shirley Brice Heath eds., 1981) (promoting fluency in the English language as a goal desired by all Americans); *see also* Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 *MINN. L. REV.* 269, 346 (1992) (renewing the claim that the official English movement believes national unity is dependent on conformity with Anglo culture in the form of language).

57. Mauro Mujica, *Statement From the Chairman: "Why An Immigrant Runs An Organization Called U.S. English,"* at <http://www.us-english.org/mem.htm> (last visited Oct. 11, 1999) (referring to the web page of U.S. English, an English advocacy group, containing a statement from its chairman, Mauro Mujica). Mr. Mujica, an immigrant from Chile, believes English is a requirement for success. *See id.* (stating Mr. Mujica's comments that English is an ingredient for the road to success).

58. *See* Norman Shumway, *Preserve the Primacy of English*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 122 (James Crawford ed., 1992) (stating concerns regarding the continuity of the nation under more than one national language). *But see* Stephen J. Solarz, *Official English: A Concession to Nativism*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 124 (James Crawford ed., 1992) (commenting that America is not "becoming another Quebec, or the national equivalent of the Tower of Babel").

federal legislation making English the official language of the United States.⁵⁹

59. See Bill Emerson English Language Empowerment Act of 1997, H.R. 123, 105th Cong. (1997). The proposal stated in pertinent part:

SEC. 3. ENGLISH AS THE OFFICIAL LANGUAGE OF FEDERAL GOVERNMENT.

(a) IN GENERAL-Title 4, United States Code, is amended by adding at the end the following new chapter:

CHAPTER 6-LANGUAGE OF THE FEDERAL GOVERNMENT

Sec. 161. Declaration of official language of Federal Government

The official language of the Federal Government is English.

Sec. 162. Preserving and enhancing the role of the official language

Representatives of the Federal Government shall have an affirmative obligation to preserve and enhance the role of English as the official language of the Federal Government. Such obligation shall include encouraging greater opportunities for individuals to learn the English language.

Sec. 163. Official Federal Government activities in English

(a) CONDUCT OF BUSINESS- Representatives of the Federal Government shall conduct its official business in English.

(b) DENIAL OF SERVICES- No person shall be denied services, assistance, or facilities, directly or indirectly provided by the Federal Government solely because the person communicates in English.

(c) ENTITLEMENT – Every person in the United States is entitled –

(1) to communicate with representatives of the Federal Government in English;

(2) to receive information from or contribute information to the Federal Government in English; and

(3) to be informed of or be subject to official orders in English.

Sec. 164. Standing

A person injured by a violation of this chapter may in a civil action (including an action under Chapter 151 of title 28) obtain appropriate relief.

Sec. 165. Reform of naturalization requirements

(a) FLUENCY- It has been the longstanding national belief that full citizenship in the United States requires fluency in English. English is the language of opportunity for all immigrants to take their rightful place in society in the United States.

(b) CEREMONIES- All authorized officials shall conduct all naturalization ceremonies entirely in English.

Sec. 166. Application

Except as otherwise provided in this chapter, the provisions of this chapter shall supersede any existing Federal law that contravenes such provisions (such as by requiring the use of a language other than English for official business of the Federal Government).

Sec. 167. Rule of construction

Nothing in this chapter shall be construed-

(1) to prohibit a Member of Congress or an employee of official of the Federal Government, while performing official business, from communicating orally with another person in a language other than English;

(2) to limit the preservation or use of Native Alaskan or Native American languages (as defined in the Native American Languages Act);

Critics often question the motives behind English-only legislation and note the suspect nature of such legislation.⁶⁰ For example, a confidential memo circulated by the chairman of U.S. English entitled "Witan IV"

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- (3) to discriminate against or restrict the rights of any individual in the country; and
 - (4) to discourage or prevent the use of languages other than English in any non-official capacity.

Sec. 168. Affirmation of constitutional protections

Nothing in this chapter shall be construed to be inconsistent with the Constitution of the United States.

Sec. 169. Definitions

For purposes of this chapter:

- (1) FEDERAL GOVERNMENT – The term Federal Government means all branches of the national Government and all employees and officials of the national Government while performing official business.
- (2) OFFICIAL BUSINESS- The term 'official business' means governmental actions, documents, or policies which are enforceable with the full weight and authority of the Federal Government, and includes publications, income tax forms, and informational materials, but does not include –
 - (A) teaching of languages
 - (B) requirements under the Individuals with Disabilities Education Act;
 - (C) actions, documents, or policies necessary for-
 - (i) national security issues; or
 - (ii) international relations, trade, or commerce;
 - (D) actions or documents that protect the public health and safety;
 - (E) actions or documents that facilitate the activities of the Bureau of the Census in compiling any census of population;
 - (F) actions, documents, or policies that are not enforceable in the United States;
 - (G) actions that protect the rights of victims of crimes or criminal defendants;
 - (H) actions in which the United States has initiated a civil lawsuit; or
 - (I) using terms of art or phrases from languages other than English.
- (3) UNITED STATES – The term "United States" means the several States and the District of Columbia.

Id.

60. See BILL PIATT, *¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES* 22 (1990) (questioning the reasons behind the implementation of English-only legislation). See generally James Crawford, *Hispanophobia*, at <http://ourworld.com-putserve.com/homepages/JWCRAWFORD/HY1CH6.htm> (last visited Oct. 23, 2000) (reporting how Dr. Tanton, one of the founders of U.S. English, created the Federation for American Immigration Reform (FAIR)). FAIR, a group resembling U.S. English, advocated for immigration reform and restrictions. See *id.* at 5 (stating that FAIR was interested in limiting the number of immigrants in this country). In its fundraising memos FAIR targeted Hispanic newcomers, especially undocumented Mexicans, as a threat to the general welfare. See *id.* at 6 (noting the tone FAIR directed at Mexican immigrants by implying they were a threat to society).

reeked of alarmist propaganda.⁶¹ Many of the groups targeted by the English-only campaign—bilingual educators, minority groups, and others—regard the movement as an embodiment of racism, xenophobia, and ethnocentrism.⁶² Furthermore, some link the wave of popularity for the English-only movement to the recent increase of Latin American and Asian immigrants entering the United States, both legally and illegally, each year.⁶³

61. See James Crawford, *Hispanophobia*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/HY1CH6.htm> (last visited Oct. 23, 2000) (documenting the contents of a memo that warned of a Hispanic takeover because of immigration and high birthrates). The memo stated:

GOBERNAR ES POBLAR translates “to govern is to populate.” In this society where the majority rules, does this hold? Will the present majority peaceably hand over its political power to a group that is simply more fertile? . . . Can *HOMO CONTRACEPTIVUS* compete with *HOMO PROGENITIVA* [sic] if borders aren’t controlled? Or is advice to limit one’s family simply advice to move over and let someone else with greater reproductive powers occupy the space? . . . Perhaps this is the first instance in which those with their pants up are going to get caught by those with their pants down! . . . How will we make the transition from a dominant non-Hispanic society with a Spanish influence to a dominant Spanish society with a non-Hispanic influence? . . . As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion? . . . We’re building in a deadly disunity. All great empires disintegrate, we want stability.

Id.

The memo further stated:

Will Latin American immigrants bring with them the tradition of the *MORDIDA* (bribe), the lack of involvement in public affairs, etc.? . . . Is assimilation a function of the educational and economic level of immigrants? If so, what are the consequences of having so many ill-educated people coming in to [sic] low paying jobs? . . . What are the differences in educability between Hispanics (with their 50 percent dropout rate) and Asiatics (with their excellent school records and long tradition of scholarship)? . . . Will Catholicism brought in from Mexico be in the [Latin] American or the European model? What are the implications . . . for the separation of church and state? The Catholic church has never been reticent on this point. If they get a majority of voters, will they pitch out this concept? . . . Is apartheid in Southern California’s future? The demographic picture in South Africa now is startlingly similar to what we’ll see in California in 2030. . . . A White majority owns the property, has the best jobs and education, has the political power, and speaks one language. A non-White majority has poor education, jobs, and income, owns little property, is on its way to political power, and speaks a different language. . . . Will there be strength in this diversity? Or will this prove a social and political San Andreas fault?

Id.

62. James Crawford, *Anatomy of the English-Only Movement*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/anatomy.htm> (last visited Oct. 16, 2000).

63. Cf. Valarie A. Lexion, *Language Minority Voting Rights and the English Language Amendment*, 14 HASTINGS CONST. L.Q. 657, 661 (1987) (contending that the English-only movement is in direct response to the increasing number of immigrants).

In addition, critics charge that English-only advocates use the campaign as a means of achieving social control over minorities, thus maintaining the status quo among the ruling class.⁶⁴ The movement towards official English legislation has been driven by political elites, rather than the result of a grass-roots coalition or a majority of the electorate.⁶⁵ However, a new and different movement has formed in a small, South Texas town populated by a majority of non-English speakers—the movement towards Spanish language legislation.

III. EL CENIZO AND THE SPANISH PREDOMINANT LANGUAGE ORDINANCE: THE END OF THE ENGLISH LANGUAGE IN THE UNITED STATES?

As the first measure passed in modern American history to challenge the primacy of English in official government business, the Spanish language ordinance in El Cenizo garnered tremendous attention.⁶⁶ To some, the measure presented a threat to the future of the nation's democracy because of potential language balkanization.⁶⁷ The ordinance's supporters, however, argue that the ordinance exemplifies democracy at work because it opens the government's doors to the people.⁶⁸

64. See James Crawford, *Anatomy of the English-Only Movement*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/anatomy.htm> (last visited Oct. 16, 2000) (claiming that the English-only movement tries to uphold the status quo among the ruling elite); see also Jack Citrin, *Language Politics and American Identity*, PUB. INT. (1990), reprinted in 66:2 THE REFERENCE SHELF, ENGLISH: OUR OFFICIAL LANGUAGE? 34 (Bee Gallegos ed., 1994) (stating that the English-only movement uses the restrictive language measures to dissimulate rather than assimilate non-English speakers).

65. See James Crawford, *Anatomy of the English-Only Movement*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/anatomy.htm> (last visited Oct. 16, 2000) (commenting that the driving forces behind the English-only movement have been the politically powerful, rather than the general population).

66. See Richard Estrada, Editorial, *Unforeseen Consequence*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 13A (charging that El Cenizo presents the "first town in modern U.S. history to declare that all municipal business will be conducted in Spanish"), 1999 WL 20278937.

67. See Don Feder, Editorial, *It's the United (for Now) States*, INDIANAPOLIS STAR/INDIANAPOLIS NEWS, Sept. 4, 1999, at A15 (arguing that the nation's future is at stake because it may potentially become a multilingual nation) (on file with the *St. Mary's Law Journal*); see also Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (relaying that many immigrants from Mexico refuse to assume an American identity by refusing to speak a common language), 1999 WL 3092085.

68. See Alberto Diaz, *Texas Town's Spanish Decision "Outrageous,"* USA TODAY, Dec. 21, 1999, at 15A (commenting that EL Cenizo represents an example of a democracy that is based on tenets that citizens will govern themselves), 1999 WL 68681812; see also Don Feder, Editorial, *It's the United (for Now) States*, INDIANAPOLIS STAR/INDIANAPOLIS

A. *The History of El Cenizo and the Road Towards the Passage of the Spanish Language Ordinance*

Founded in 1989, El Cenizo began as a *colonia*, an unincorporated substandard housing subdivision along the Texas-Mexico border.⁶⁹ During the late 1980s and early 1990s, hundreds of these *colonias* sprouted along the Rio Grande.⁷⁰ Lacking the most basic services and necessities of other communities,⁷¹ local farmers and developers created these unincorporated subdivisions and sold them to destitute individuals, primarily newly arrived Mexican immigrants.⁷² For example, reflecting the impoverished nature of many *colonias*, sixty-four percent of El Cenizo's households receive food-stamps.⁷³ In addition, virtually every resident of El Cenizo is an immigrant or the child of an immigrant.⁷⁴

NEWS, Sept. 4, 1999, at A15 (relating statements by supporters of the measure who note that the primary goal is to engage people in government participation), 1999 WL 3865872.

69. See Richard Estrada, Editorial, *Unforeseen Consequence*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 13A (examining the background of El Cenizo), 1999 WL 20278937.

70. See Richard Estrada, *Colonias Shouldn't Morph into Colonies*, DALLAS MORNING NEWS, Aug. 27, 1999, at 29A (reporting on the explosion of substandard housing along the border between Mexico and the United States), 1999 WL 24154425; Richard Estrada, Editorial, *Unforeseen Consequence*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 13A (estimating the total colonia population at 250,000 during the late 1980s and early 1990s), 1999 WL 20278937.

71. See Richard Estrada, Editorial, *Unforeseen Consequence*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 13A (illustrating the lack of the most rudimentary services in *colonias*), 1999 WL 20278937. The *colonias* lacked electricity, sewage, paved roads, and running water. *Id.* (noting that these subdivisions do not have enough infrastructure). As publicity spread around the state regarding the impoverished condition of these individuals, Texas approved the allocation of million of dollars in revenues to grant basic services to the *colonias*. *Id.* Dane Schiller, *Critics Hit All-Spanish Decree in Texas Town*, PORTLAND OREGONIAN, Aug. 15, 1999, at A09 (stating that El Cenizo was deprived of running water and electricity), 1999 WL 5366474.

72. See Richard Estrada, *Colonias Shouldn't Morph into Colonies*, DALLAS MORNING NEWS, Aug. 27, 1999, at 29A (explaining the creation of substandard housing divisions along the Rio Grande border), 1999 WL 24154425; Georgie A. Geyer, Editorial, *Tolerating 'Spanish-Only' Texas Town is Borderline Loco*, CINCINNATI ENQUIRER, Aug. 29, 1999, at B07 (reporting that during the last quarter-century, immigrants have been purchasing cheap land along the border), 1999 WL 9452273.

73. See Richard Estrada, *Colonias Shouldn't Morph into Colonies*, DALLAS MORNING NEWS, Aug. 27, 1999, at 29A (noting that impoverished individuals often reside in unincorporated subdivisions, such as El Cenizo), 1999 WL 24154425; *Spanish Language Mecca; It's the Law in Texas Town*, CINCINNATI POST, Aug. 27, 1999, at 38A (reporting that El Cenizo is largely a blue collar town with dirt roads running through the city), 1999 WL 21777670.

74. See Claudia Kolker, *Town Speaks the Language of Its People*, L.A. TIMES, Aug. 13, 1999, at A1 (depicting the ethnic composition of El Cenizo), 1999 WL 2186159; *La Estrella, Pueblo de Texas Oficializa el Idioma Espanol*, FORT WORTH STAR-TELEGRAM, Aug. 17,

El Cenizo's population stands at roughly 7,500 predominantly Spanish-speaking citizens.⁷⁵ While ninety percent of the population speaks Spanish, approximately seventy-five percent, to some degree, speak English as well.⁷⁶ However, because most of the population speaks Spanish fluently, anger arose among citizens as the city government held meetings in English, with many residents incapable of understanding the proceedings.⁷⁷ Arguments erupted, fights ensued, and residents who attended the meetings continued to request that the city either provide an interpreter or hold the proceedings in Spanish.⁷⁸ In some instances, Spanish-speaking citizens simply refused to attend the meetings due to the formidable language barrier.⁷⁹ As a result, the City Council of El Cenizo grew concerned with the lack of civic involvement among residents and proposed a local ordinance to address the problem.⁸⁰

1999, at 5 (relating that El Cenizo is a town composed of documented and undocumented immigrants), 1999 WL 23944649.

75. See Claudia Kolker, *Town Speaks the Language of Its People*, L.A. TIMES, Aug. 13, 1999, at A1 (denoting El Cenizo's population), 1999 WL 2186159.

76. See Flora Barton, *And Why Defend Spanish? Look at the Town's History*, SAN DIEGO UNION-TRIB., Sept. 3, 1999, at B7 (relating El Cenizo's demographics), 1999 WL 4086997; *Spanish Language Mecca; It's the Law in Texas Town*, CINCINNATI POST, Aug. 27, 1999, at 38A (estimating that the majority of El Cenizo's population speaks Spanish with limited English skills), 1999 WL 21777670.

77. See Claudia Kolker, *Town Speaks the Language of Its People*, L.A. TIMES, Aug. 13, 1999, at A1 (quoting Mayor Rafael Rodriguez regarding the climate of El Cenizo's early town meetings), 1999 WL 2186159; see also *Spanish Language Mecca; It's the Law in Texas Town*, CINCINNATI POST, Aug. 27, 1999, at 38A (reporting that on many occasions residents had to ask the city commissioners to translate local civic matters into Spanish), 1999 WL 21777670.

78. See Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (quoting City Commissioner Gloria Romo regarding El Cenizo's first town meetings and the resistance generated by the citizens in attending such proceedings), 1999 WL 3092085.

79. See Dane Schiller, *No Inglés: In Border Town of El Cenizo, Spanish Is in and the INS Is out*, SAN ANTONIO EXPRESS-NEWS, Aug. 11, 1999, at 1A (stating that the reason behind the passage of the Spanish language ordinance was apathy among the citizens of El Cenizo), available at WL 8/11/99 SAEN 01A; see also *Spanish Language Mecca; It's the Law in Texas Town*, CINCINNATI POST, Aug. 27, 1999, at 38A (noting that some citizens refused to attend meetings because of the language barriers), 1999 WL 21777670.

80. See Flora Barton, *And Why Defend Spanish? Look at the Town's History*, SAN DIEGO UNION-TRIB., Sept. 3, 1999, at B7 (insisting that the reasons behind the implementation of the ordinance were to invite every citizen to participate in the political process), 1999 WL 4086997; see also Editorial, *Roaring in Spanish: Border Town's Official Language Declaration Ill-Advised*, HOUS. CHRON., Aug. 19, 1999, at 30A (stating that the mayor and the town commissioners of the municipality wanted to draw more residents to local meetings by conducting them in Spanish), available at 1999 WL 24248959.

August 3, 1999, marked the beginning of what some see as a battle for language supremacy along the Rio Grande border.⁸¹ On that day, El Cenizo's City Council passed a language ordinance that drowned any suppositions that language conflicts would never seriously impact the United States.⁸² The El Cenizo language ordinance specifically states that "[a]ll City functions and meetings and notices thereof shall be conducted and posted in the predominant language of the community."⁸³ Because Spanish is the predominant language spoken in El Cenizo, the ordinance effectively mandates that the city conduct all official business and monthly council meetings in Spanish.⁸⁴ Consequently, the ordinance has spawned a flurry of national debate and criticism.⁸⁵

The El Cenizo City Council passed the Spanish language ordinance in an attempt to make local government more responsive to its citizenry.⁸⁶

81. See *Spanish Becomes Official Language of Texas Town*, ORLANDO SENTINEL, Aug. 14, 1999, at A18 (noting the strife created by the passage of the predominant language ordinance), 1999 WL 2828058. See generally Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (noting that on Aug. 3, 1999, the passage of the resolution drew criticism from English advocacy groups), 1999 WL 3092085.

82. See George A. Geyer, Editorial, *Tolerating 'Spanish-Only' Texas Town is Borderline Loco*, CINCINNATI ENQUIRER, Aug. 29, 1999, at B07 (proclaiming that El Cenizo's passage of the language ordinance dismisses allegations that language controversies would never endanger the country), 1999 WL 9452273; see also Editorial, *Texas, Habla Espanol?*, HERALD (Rock Hill, S.C.), Aug. 30, 1999, at 7A (validating the fears of those who believe that by letting individual towns pronounce their own languages, the country will soon be balkanized), 1999 WL 9650396.

83. El Cenizo, Tex., Ordinance 1999-8-3(a) § 4 (Aug. 3, 1999) (ordaining that Spanish be the predominant language of the municipality); see also Ronald Brownstein & T. Christian Miller, *Bush, McCain Tax Fight Intensifies*, L.A. TIMES, Jan. 16, 2000, at A6 (announcing that El Cenizo passed a measure requiring town business be undertaken in Spanish), available at 2000 WL 2201437; *Epithets in English for Spoken Spanish*, HOUS. CHRON., Sept. 26, 1999, at 2 (declaring that El Cenizo would be holding its city council meetings in Spanish), available at 1999 WL 24255402.

84. See Editorial, *Roaring in Spanish: Border Town's Official Language Declaration Ill-Advised*, HOUS. CHRON., Aug. 19, 1999, at 30A (reporting that Spanish is the official language of El Cenizo), available at 1999 WL 24248959; Ken Hamblin, *Bush Needs to Take Stand on the Border*, DENV. POST, Jan. 30, 2000, at H02 (stating that El Cenizo is the only town in the United States conducting its government business in Spanish), 2000 WL 4451227.

85. See Scott Baldauf, *In This City Hall, Official Business Is in Spanish*, CHRISTIAN SCIENCE MONITOR, Aug. 25, 1999, at 1 (asserting that the language measure represents a focal point in a debate over assimilation), available at 1999 WL 5381856; see also Ellen Goodman, Editorial, *English Language's Taking Over the World*, FLA. TODAY, Sept. 7, 1999, at 11A (reporting that El Cenizo created a controversy by declaring Spanish the official language of city business), 1999 WL 26902377.

86. See Hugh Aynesworth, *Law Protecting Undocumented Aliens Sparks Ire: Texas Town Offers 'Safe Haven' to Illegals*, WASH. TIMES (D.C.), Aug. 26, 1999, at A1 (reporting

Reflecting the truest nature of a representative democracy, the council approved the language ordinance after it originated from a petition circulated by community members.⁸⁷ With citizen involvement in government as its ultimate goal, El Cenizo's City Council hoped to dissuade citizen apathy by passing the language ordinance.⁸⁸ In past years, the council estimated that only a dozen individuals regularly attended monthly city council meetings; however, city officials expect this figure to double at future proceedings due to the passage of the language ordinance.⁸⁹

The El Cenizo City Council believed that in order for citizens to become more actively involved in local government and to participate in municipal proceedings, they must understand the council's proceedings.⁹⁰ Moreover, the city council believed the measure would benefit the community because it worked to facilitate a sense of confidence among citi-

on the success El Cenizo has encountered when the local citizens became more involved with their city government), 1999 WL 3092838; Ellen Goodman, Editorial, *English Language's Taking Over the World*, FLA. TODAY, Sept. 7, 1999, at 11A (commenting that city business in El Cenizo will be conducted in Spanish as a result of the passage of the ordinance), 1999 WL 26902377; see also *Texas Town Approves Spanish As Its Language*, CHI. TRIB., Aug. 15, 1999, at 18 (noting the city council's approval to make Spanish, not English, the town's official language), 1999 WL 2902506. See generally Flora Barton, *And Why Defend Spanish? Look at the Town's History*, SAN DIEGO UNION-TRIB., Sept. 3, 1999, at B7, 1999 WL 4086997. Three city officials visited every house in the subdivision, inviting every resident to participate in their local government. *Id.*

87. See Richard Estrada, Editorial, *This U.S. Town Requires Spanish Only*, SAN DIEGO UNION-TRIB., Aug. 23, 1999, at B6 (reporting that officials in this border town yielded to popular requests that the proceedings be conducted in Spanish), 1999 WL 4084539; see also Claudia Kolker, *Town Speaks the Language of Its People*, L.A. TIMES, Aug. 13, 1999, at A1 (stating that the community proposed the Spanish language ordinance), 1999 WL 2186159.

88. See Editorial, *Roaring in Spanish: Border Town's Official Language Declaration Ill-Advised*, HOUS. CHRON., Aug. 19, 1999, at 30A (pointing out that the sole reason in passing the ordinance was to increase the number of locals attending the town meetings), available at 1999 WL 24248959; see also Lynda Gorov, *Texas Town Makes Spanish Official, Stirs War of Words*, BOSTON GLOBE, Aug. 29, 1999, at E8 (discussing the city council's attempt to overcome citizen apathy), 1999 WL 6078891.

89. See Lynda Gorov, *Texas Town Makes Spanish Official, Stirs War of Words*, BOSTON GLOBE, Aug. 29, 1999, at E8 (stating predictions by Rafael Rodriguez and Gloria Romo that attendance at city council meetings is expected to double in the future), 1999 WL 6078891.

90. See Editorial, *¡Bienvenidos a El Cenizo!*, CHI. TRIB., Aug. 19, 1999, at 22 (stating the mayor's remarks that by converting to Spanish, the city government takes an essential step towards encouraging civic involvement), 1999 WL 2903745; Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (stating that the dominant language of the citizenry must be used in order to foster local governmental involvement), 1999 WL 3092085.

zens by enhancing their communication abilities.⁹¹ Thus, in passing the ordinance, the city council attempted to encourage community participation and improve the city's social, political, educational, and economic spheres.⁹²

B. *Reactions to the Passage of the Spanish Language Ordinance*

Because El Cenizo's citizenry predominantly speaks Spanish, the community understandably responded favorably to the ordinance.⁹³ Others, however, did not react so warmly. Reactions ranged from mild criticism to outright disgust.⁹⁴ El Cenizo's municipal government initially received over 100 calls about the ordinance, many containing hateful, racially insensitive remarks.⁹⁵ For example, one caller told city commissioner Flora Barton, "Go back to Mexico; if you do not, you will not be here long."⁹⁶ Similarly, a nationally syndicated radio program, the "Don and Mike Show," went so far as to call the city council and launch a twelve minute

91. See Lynda Gorov, *Texas Town Makes Spanish Official, Stirs War of Words*, BOSTON GLOBE, Aug. 29, 1999, at E8 (indicating that confidence among citizenry is enhanced by communication in their dominant language), 1999 WL 6078891.

92. See Flora Barton, *And Why Defend Spanish? Look at the Town's History*, SAN DIEGO UNION-TRIB., Sept. 3, 1999, at B7 (elaborating that by passing the language ordinance, the town has flourished by making improvements throughout the city), 1999 WL 4086997.

93. See Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (voicing remarks by a city council member, Gloria Romo, stating that all of the residents of El Cenizo understand Spanish), 1999 WL 3092085; Dane Schiller, *Town Won't Back Off on Spanish-Only Law*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 6A (referring to statements made by Soledad Vasquez, owner of a convenience store in El Cenizo, that many people in El Cenizo prefer speaking Spanish), 1999 WL 20278963.

94. Dane Schiller, *Town Won't Back Off on Spanish-Only Law*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 6A (reporting reactions to the ordinance), 1999 WL 20278963.

95. See *id.* (stating comments by Flora Barton that El Cenizo has received numerous threatening telephone calls filled with insults and disparaging remarks), 1999 WL 20278963; Dane Schiller, *Ordinance Draws Fire from Afar; Spanish-Speaking Town Gets Threats*, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 1999, at 1B (referring to hate filled telephone calls El Cenizo residents have received since passage of the ordinance), WL 8/29/99 SAEN 01B.

96. Dane Schiller, *Ordinance Draws Fire from Afar; Spanish-Speaking Town Gets Threats*, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 1999, at 1B (quoting one insulting telephone call El Cenizo received after the passage of the ordinance), WL 8/29/99 SAEN 01B.

tirade against a woman who answered the phone.⁹⁷ The show broadcast this outburst to over sixty radio stations throughout the country.⁹⁸

While such reactions encompass the extreme and outrageous, others have directed milder criticism at El Cenizo's actions.⁹⁹ One commentator saw the ordinance as a bad idea because it separated El Cenizo from the country's majoritarian establishment, predicting that one day a court would strike down the ordinance.¹⁰⁰ Likewise, a politician in Laredo, Texas, a city ten miles north of El Cenizo, stated that the mayor of El Cenizo "blew it" by failing to realize that English is the language of the United States.¹⁰¹

Some believe that the ordinance discourages newcomers from learning English and, thus, assimilating into the United States.¹⁰² Furthermore, as thirty-eight percent of the town's children live below the poverty line, some critics believe that relegating immigrants to a Spanish-only environment keeps them impoverished.¹⁰³ Other commentary compares El

97. See Jim Belshaw, *Getting Back in the Groove*, ALBUQUERQUE J., Sept. 8, 1999, at B1 (chastising the talk show hosts that called to harass and mock the woman who had the ill fortune of answering the phone), 1999 WL 26687199; F. De Jesus Mendoza, *Growing Hispanic Influence Fuels Racist Backlash*, U-WIRE, Sept. 9, 1999, at 1 (depicting a radio broadcast aired over the "Don and Mike Show" that insulted the El Cenizo City Council regarding the passage of the Spanish ordinance), 1999 WL 18812007. The barrage included statements such as "[y]ou're in America. You've got to speak American . . . If those people do not understand it, they should get on their burros and go back to Mexico . . . This is America . . . You Mexicans have your own country.'" *Id.* (describing the insulting call delivered by two talk radio hosts to El Cenizo's city office). See generally Barbara Chavez, *Radio Hosts Apologize Again*, ALBUQUERQUE J., Oct. 8, 1999, at B2 (printing an apology by talk show hosts Don Geronimo and Mike O'Meara after they called the city office in El Cenizo and ridiculed the woman who answered the call), 1999 WL 26689595. Nieves Torres, a spokesperson for MALDEF, wants to remove the show from the airwaves. See *id.* (reporting on the efforts of a Mexican-American advocacy group to eliminate the program).

98. See F. De Jesus Mendoza, *Growing Hispanic Influence Fuels Racist Backlash*, U-WIRE, Sept. 9, 1999, at 1 (stating that this exchange was aired over sixty radio stations nationwide), 1999 WL 18812007. After the broadcast, the radio station, KHTL-AM 920, removed the show in response to protests from advertisers and listeners. See *id.*

99. See Dane Schiller, *Critics Hit All-Spanish Decree in Texas Town*, PORTLAND OREGONIAN, Aug. 15, 1999, at A09 (stating remarks by Laredo mayor Betty Flores that everyone who lives in an English-speaking country should make a conscious decision to speak English), 1999 WL 5366474.

100. See *id.* (commenting on a statement by Dean Tony Zavaleta regarding the legal ramifications of the ordinance).

101. *Id.* (printing remarks made by Webb County Judge Mercurio Martinez that El Cenizo made a major mistake by implementing the ordinance).

102. See *id.* (quoting a dean of the University of Texas at Brownsville as saying that "[t]hey are splintering themselves off from everything institutional in our country").

103. See Editorial, *Asides: Tex-Mex Tensions*, WALL ST. J., Aug. 16, 1999, at A14 (suggesting that keeping poor children immersed in a language other than English prevents

Cenizo's situation to that of Quebec, a Canadian province in which many citizens speak French, thus straying from the rest of the English speaking nation.¹⁰⁴ Critics comparing El Cenizo to Quebec believe that the ordinance replicates the atmosphere in Canada where the dual languages and customs foster strife between English and non-English speakers.¹⁰⁵ Still others opposing the Spanish-only measure conclude that the ordinance could have negative consequences for the nation's twenty-seven million Latinos by creating xenophobic fears.¹⁰⁶

English advocacy groups, such as English First and U.S. English, do not consider El Cenizo an isolated incident, believing that many immigrants from Mexico refuse to embrace an American identity or learn a common language.¹⁰⁷ Indeed, U.S. English claims that the ordinance represents a natural consequence of a federal government that fails to police the border and politicians who attempt to solicit the Hispanic vote.¹⁰⁸ Other commentators believe that El Cenizo may begin a trend of groups de-

them from escaping poverty), 1999 WL 5464635; *see also* Georgie A. Geyer, Editorial, *Tolerating 'Spanish-Only' Texas Town is Borderline Loco*, CINCINNATI ENQUIRER, Aug. 29, 1999, at B07 (believing that by not learning English, immigrants are not confronted with any demands to become part of a larger society), 1999 WL 9452273.

104. *See* Editorial, *Keep Official English*, AUGUSTA CHRON., Aug. 23, 1999, at A04 (comparing El Cenizo to the French-speaking province of Quebec where dual languages can foster strife), 1999 WL 26110404; Lynda Gorov, *Texas Town Makes Spanish Official, Stirs War of Words*, BOSTON GLOBE, Aug. 29, 1999, at E8 (stating remarks by Jim Boulet, director of English First, comparing El Cenizo to Quebec and its experience of linguistic strife), 1999 WL 6078891.

105. *See* Editorial, *Keep Official English*, AUGUSTA CHRON., Aug. 23, 1999, at A04 (proclaiming that the strife festering in Quebec can be duplicated in this nation), 1999 WL 26110404.

106. *See* Myriam Marquez, Editorial, *Texas Town's Leaders' Spanish-First Agenda Should Insult Us All*, ORLANDO SENTINEL, Aug. 23, 1999, at A12 (proclaiming that the ordinance is a nativist's worst nightmare come true and that it feeds the hysteria generated by English advocacy groups, such as English First), 1999 WL 2829538; *see also* Miguel Perez, *A Small Town in Texas Fires a Linguistic Broadside*, REC. (N. N.J.), Aug. 18, 1999, at A03 (discussing the negative ramifications the Spanish-only ordinance could have on the millions of Hispanics in the United States), 1999 WL 7110918.

107. *See* Georgie A. Geyer, Editorial, *Tolerating 'Spanish-Only' Texas Town is Borderline Loco*, CINCINNATI ENQUIRER, Aug. 29, 1999, at B07 (criticizing American policy that allows separatism among the *colonias*, thus discouraging assimilation into the greater society), 1999 WL 9452273; *see also* Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (relating comments of Mauro Mujica, chairman and chief executive officer of U.S. English), 1999 WL 3092085.

108. *See* Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (discussing the measure as a product of the government's failure to monitor the border, and political panhandling for the Hispanic vote), 1999 WL 3092085.

manding language separatism.¹⁰⁹ At least twenty-four states throughout the country have addressed this potential movement by passing legislation recognizing English as the official language of their respective constituency.¹¹⁰

Furthermore, media criticism suggests that El Cenizo's Spanish language ordinance breeds divisiveness.¹¹¹ By not encouraging language assimilation among the townspeople, the ordinance sanctions a cohesiveness that sets the residents of El Cenizo apart from the rest of

109. See Don Feder, Editorial, *It's the United (for Now) States*, INDIANAPOLIS STAR/INDIANAPOLIS NEWS, Sept. 4, 1999, at A15 (suggesting that the leaders of El Cenizo want the United States to become a bilingual nation) (on file with the *St. Mary's Law Journal*); see also *Spanish Language Mecca; It's the Law in Texas Town*, CINCINNATI POST, Aug. 27, 1999, at 38A (relaying criticism that El Cenizo depicts a situation where many languages may be spoken in one nation), 1999 WL 21777670.

110. See, e.g., ALA. CONST. amend. 509 (bestowing the right to impose English as the official language on any person or resident doing business within the state); CAL. CONST. art. III, § 6 (requiring the legislature to enforce official English by suitable legislation and granting the right to any person or resident doing business in the state to bring forth suit for enforcement); COLO. CONST. art. II, § 30(a) (giving right to the General Assembly to pass laws implementing official English); FLA. CONST. art. II, § 9 (reserving the right to enact appropriate enforcement legislation); HAW. CONST. art. XV, § 4 (declaring both Hawaiian and English as the official state languages); 5 ILL. COMP. STAT. ANN. § 460/20 (West 1993) (adopting the English language as official within the state of Illinois); IND. CODE ANN. § 1-2-10-1 (Michie 1998) (declaring English the official state language); KY. REV. STAT. ANN. § 2.013 (Michie 1996) (adopting English as Kentucky's official language); MISS. CODE ANN. § 3-3-31 (1999) (proclaiming English the state's official language); MO. ANN. STAT. § 1.028 (West 2000) (stating that English is the official language of the state); MONT. CODE ANN. § 1-1-510 (1999) (declaring English the primary and official language of local governments and Montana); N.H. REV. STAT. ANN. § 3-C:1 (Supp. 2000) (designating English the official state language); N.C. GEN. STAT. § 145-12 (1999) (designating English as the official language of the state of North Carolina); N.D. CENT. CODE § 54-02-13 (1989) (proclaiming English as the official state language); S.C. CODE ANN. § 1-1-696 (Law. Co-op. 1999) (designating the official state language as English); S.D. CODIFIED LAWS § 1-27-20 (Michie Supp. 2000) (adopting English as the official state language); TENN. CODE ANN. § 4-1-404 (1998) (establishing English as the official language); VA. CODE ANN. § 7.1-42 (Michie 1999) (designating English as the state's official language); WYO. STAT. ANN. § 8-6-101 (Michie 1999) (declaring the state's official language to be English); see also Joyce H. Price, *Officially, They Speak No Inglés: It's Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (stating that English-only measures have been instituted in twenty-five states across the nation), 1999 WL 3092085.

111. See Editorial, *Focus: No Inglés*, SAN ANTONIO EXPRESS-NEWS, Aug. 23, 1999, at 12A (referring to Ted W. Mathis's statement that the predominant language ordinance causes conflict between English and Spanish-speaking people), available at WL 8/23/99 SAEN 12A; Miguel Perez, *A Small Town in Texas Fires a Linguistic Broadside*, REC. (N.J.), Aug. 18, 1999, at A03 (criticizing the Spanish language measure because it instigates divisions among people), 1999 WL 7110918.

the United States.¹¹² Other pundits see the ordinance as an extreme measure that does not attempt to reconcile the existence of two separate languages, English and Spanish.¹¹³

El Cenizo's ordinance triggered a bitter debate concerning the rights that language minorities may assert through local government action and the limit to which a government entity can control the use of non-English languages.¹¹⁴ One of the issues that remains unresolved centers on whether the ordinance can withstand constitutional challenge. Consider the following hypothetical: an English-speaking individual moves to El Cenizo, but because she neither speaks nor understands Spanish, this individual feels alienated at a city council meeting. Despite an accommodation provision providing a translator when requested at least forty-eight hours in advance, the language barrier prevents the English-speaker from adequately raising concerns at city council meetings. Feeling that the government's language ordinance imposes an unnecessary burden on her right to actively participate in local government, the English-speaker files a challenge to the ordinance under the Equal Protection Clause of the Fourteenth Amendment. Specifically, the constitutional challenge questions whether a municipality can discriminate against a non-Spanish-speaking individual and whether that municipality has a duty to accommodate the individual.

IV. EQUAL PROTECTION: ENGLISH SPEAKERS' FOURTEENTH AMENDMENT RIGHTS

Because a classification grounded on language is associated, at least arguably, with a classification based on ethnicity or race, the Equal Pro-

112. See Editorial, *¡Bienvenidos a El Cenizo!*, CHI. TRIB., Aug. 19, 1999, at 22 (claiming that by promoting the use of a sole language not spoken by the majority, El Cenizo encourages its residents to believe they have nothing in common with the rest of the nation), 1999 WL 2903745; Editorial, *Town's Ordinance a Step Backward*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 17, 1999, at 12A (stating that by establishing Spanish as the dominant language, El Cenizo further isolates its citizens from the mainstream), 1999 WL 20276350.

113. See Editorial, *¡Bienvenidos a El Cenizo!*, CHI. TRIB., Aug. 19, 1999, at 22 (reporting that English is not a dispensable luxury and suggesting that El Cenizo attempt to make its citizens conversant in English), 1999 WL 2903745; Myriam Marquez, Editorial, *Texas Town's Leaders' Spanish-First Agenda Should Insult Us All*, ORLANDO SENTINEL, Aug. 23, 1999, at A12 (criticizing the ordinance for failing to recognize that English is a dominant language necessary for people to compete in a global economy), 1999 WL 2829538.

114. See Claudia Kolker, *Town Speaks the Language of Its People*, L.A. TIMES, Aug. 13, 1999, at A1 (proclaiming that the language ordinance provoked a language debate), 1999 WL 2186159; Dane Schiller, *Ordinance Draws Fire from Afar, Spanish-Speaking Town Gets Threats*, SAN ANTONIO EXPRESS-NEWS, Aug. 29, 1999, at 1B (reporting that El Cenizo ignited a firestorm over language rights), WL 8/29/99 SAEN 01B.

tection Clause of the Fourteenth Amendment stands as a logical starting point in resolving the controversy.¹¹⁵ The Equal Protection Clause states that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”¹¹⁶ As emphasized by the Supreme Court, one of the fundamental goals of the Equal Protection Clause is to eliminate discrimination.¹¹⁷ Courts achieve this goal by declaring unconstitutional any discrimination based on race,¹¹⁸ national origin,¹¹⁹ or gender.¹²⁰ Moreover, this constitutional guarantee requires the government to treat similarly situated persons in a similar manner¹²¹ and further warrants that government classifications “‘must be reasonable, not arbitrary.’”¹²² Depending on the circumstances and the challenged government action, the Supreme Court demands that courts, when faced with an Equal Protection claim, employ one of the following three standards of review:¹²³ strict scrutiny,¹²⁴ heightened scrutiny,¹²⁵ or rational basis review.¹²⁶

115. See Donna F. Coltharp, Comment, *Speaking the Language of Exclusion: How Equal Protection and Fundamental Rights Analyses Permit Language Discrimination*, 28 ST. MARY'S L.J. 149, 165 (1996) (suggesting that the Equal Protection Clause of the Fourteenth Amendment is a springboard from which to examine the relationship between language and race).

116. U.S. CONST. amend. XIV, § 1.

117. See *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984) (deciding that a fundamental premise of the Fourteenth Amendment was to abolish all government-sponsored discrimination).

118. See, e.g., *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (holding that a law forbidding marriage between whites and nonwhites violated the tenets of the Equal Protection Clause); *Bolling v. Sharpe*, 347 U.S. 497, 498-99 (1954) (discerning that racial segregation was unconstitutional).

119. See *Hernandez v. Texas*, 347 U.S. 475, 482 (1954) (holding that an accused, regardless of descent or national origin, has the right to be heard by a jury selected from qualified citizens).

120. See *Craig v. Boren*, 429 U.S. 190, 190 (1976) (holding that gender classifications must serve important governmental goals and must be significantly related to achieving such goals).

121. See *Eisenstadt v. Baird*, 405 U.S. 438, 446-47 (1971) (quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920) in declaring that those similarly situated must be treated in a similar manner).

122. *Id.* at 447.

123. See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985) (outlining the distinguished characteristics between heightened judicial scrutiny and rational basis); Karla C. Robertson, Note, *Out of Many, One: Fundamental Rights, Diversity, and Arizona's English-Only Law*, 74 DENV. U. L. REV. 311, 319 (1996) (discussing the hierarchy of the review standards employed by the Supreme Court).

124. See *City of Cleburne*, 473 U.S. at 440-41.

125. See *id.* at 440. See generally *Miss. Univ. of Women v. Hogan*, 458 U.S. 718, 723-26 (1982).

126. See *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955).

Strict scrutiny examination stands as the most demanding equal protection standard employed by the courts.¹²⁷ Such review applies only in instances when the law creates suspect classifications based on race,¹²⁸ national origin,¹²⁹ alienage,¹³⁰ or when a government action abridges a fundamental right, such as the right to vote.¹³¹ Under strict scrutiny analysis, courts use a two-pronged test, determining first whether the government action creating the suspect classification served a compelling government interest, and second, whether the government narrowly tailored the means to serve that interest.¹³² The first prong exists primarily as an ends test in which courts discern whether the aim of the classification is discriminatory.¹³³ Under the second prong, courts determine whether the legislative means reflects reasoned judgment.¹³⁴ Because courts presume the challenged action unconstitutional under strict scrutiny analysis,¹³⁵ the government must overcome a substantial burden in justifying its action.¹³⁶

Courts employ the heightened or intermediate scrutiny test for review of gender classifications.¹³⁷ To withstand intermediate scrutiny, the

127. See Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293, 331 (1989) (stressing that the strict scrutiny test is the most searching review method used by the courts).

128. See *Loving v. Virginia*, 388 U.S. 1, 11 (1967) (discerning that marriage between whites and nonwhites brought up issues of race, thus warranting a strict scrutiny review).

129. See generally *Korematsu v. United States*, 323 U.S. 214, 216 (1944) (stating that Japanese-American exclusion from the West Coast during World War II warranted the application of the strict scrutiny review standard).

130. See *Bernal v. Fainter*, 467 U.S. 216, 220-21 (1984) (asserting generally that a law discriminating on the basis of alienage is subjected to strict scrutiny). The *Bernal* Court identified that a statute which serves a "political function" is the only permissible alienage classification. See *id.* The political function exception excludes aliens from serving in positions "intimately related to the process of democratic self-government." *Id.* at 220.

131. See *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966) (deciding that the right to vote is a basic right conferred by the Constitution).

132. See *Plyler v. Doe*, 457 U.S. 202, 217-18 (1982) (outlining the two-pronged analysis necessary in determining whether a statute is constitutional).

133. See Wendy Olson, *The Shame of Spanish: Cultural Bias in English First Legislation*, 11 CHICANO-LATINO L. REV. 1, 29 (1990) (pronouncing the objectives of the first prong of the two-pronged analysis).

134. See *Plyler*, 457 U.S. at 217 (requiring that the legislative means reflect the ideals of equal protection).

135. See LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 16-6, at 1451-52 (2d ed. 1988) (alluding to the fact that a classification subject to strict scrutiny analysis will usually not survive judicial scrutiny).

136. See *id.* § 16-6, at 1452 (stating that suspect classifications undergo a more rigorous review than legislation subject to lower levels of review).

137. See *Orr v. Orr*, 440 U.S. 268, 269-70 (1979) (repealing a statute that burdened men only, therefore subjecting it to heightened scrutiny).

courts require that the law at issue “serve important governmental objectives and . . . be substantially related to achievement of those objectives.”¹³⁸ Not surprisingly, intermediate scrutiny puts less of a burden on the government in justifying its action.

The third standard of review, the rational basis test, requires only that the law is “rationally related to a legitimate state interest.”¹³⁹ Courts usually use this standard when the government action applies to a group of people who do not warrant special protection and the action does not affect a fundamental right.¹⁴⁰ From the government’s perspective, the rational basis test represents the most lenient standard of review.¹⁴¹

A. *Language, A Chosen Characteristic*

If a classification based on race or national origin creates a suspect class triggering strict scrutiny analysis, a language classification should spur the same level of scrutiny if the court deems language an immutable characteristic of an identifiable suspect class.¹⁴² However, foreign language use by minorities has not been positioned within legal frameworks that control the application of Equal Protection analysis under the Fourteenth Amendment.¹⁴³ Furthermore, courts have not identified language use as a fundamental right which triggers strict scrutiny analysis.¹⁴⁴ Fun-

138. *Califano v. Webster*, 430 U.S. 313, 316-17 (1977) (per curiam).

139. *See New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (promulgating the objectives of the rational basis review standard).

140. *See* JOHN E. NOWAK & RONALD D. ROTUNDA, *CONSTITUTIONAL LAW* § 14-3, at 601 n.5 (5th ed. 1995); *see also* Russell W. Galloway, Jr., *Basic Equal Protection Analysis*, 29 SANTA CLARA L. REV. 121, 159 (1989) (discussing the applicability of the rational basis test).

141. Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293, 343 (1989) (noting the leniency of the rational basis standard).

142. *See* Lee J. Ramos, *English First Legislation: Potential National Origin Discrimination*, 11 CHICANO-LATINO L. REV. 77, 97-98 (1991) (suggesting that language minority status should be afforded scrutiny at the level of a suspect classification).

143. *See Smothers v. Benitez*, 806 F. Supp. 299, 305 (D.P.R. 1992) (noting the difficulty in addressing an equal protection claim when dealing with language use by minorities).

144. *See id.* at 309 (implying that language is not a fundamental right). The court denoted language as “an important aspect of one’s ethnicity,” yet while discussing whether the right to seek employment is fundamentally protected, the court did not characterize language use as a fundamental right. *See id.* *But see* Bill Piatt, *Toward Domestic Recognition of a Human Right to Language*, 23 HOUS. L. REV. 885, 892-95 (1986) (suggesting that courts should perceive language as a fundamental right).

damental rights currently afforded protection include the right to vote,¹⁴⁵ the right to reproduce,¹⁴⁶ and the right to equal litigation opportunity.¹⁴⁷

1. Connection Between Language and a Suspect Class in the Courts and in Federal Agencies

In *Hernandez v. New York*,¹⁴⁸ the Supreme Court held that English-only legislation produces suspect classifications because the repression of languages other than English amounts to discrimination based on national origin.¹⁴⁹ The Court acknowledged in *Hernandez* that “[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond.”¹⁵⁰ As evidenced by this holding, the Court does not consider language with regard to English speakers an immutable characteristic associated with national origin.¹⁵¹ In an earlier decision, however, the Court conceded that language with respect to minority groups may establish an immutable characteristic intertwined with national origin, thus allowing for a more stringent examination of the classification.¹⁵² In *Lau v. Nichols*,¹⁵³ the Supreme Court ruled that the failure of San Francisco’s school district to furnish equal educational opportunities to non-English speaking Chinese students led to discrimination based on national origin, thus violating the Civil Rights Act of 1964.¹⁵⁴ The Court required that school systems who obtain federal funding remain “‘responsible for assuring that students of a particu-

145. See *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966) (treating the right to vote as a fundamental right).

146. See *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (recognizing the right to procreate as a fundamental right).

147. See *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (holding that a state must provide indigent criminal defendants with a trial transcript).

148. 500 U.S. 352 (1991).

149. See *Hernandez v. New York*, 500 U.S. 352, 371 (1991) (denoting that language differences elicit division and initiate racial hostility).

150. *Id.* at 370 (noting that language is a manifestation of one’s identity and allows for easier mobility between communities).

151. See *id.* at 372 (emphasizing that the prosecutor’s race neutral reasons for striking bilingual Spanish-speakers through use of peremptory challenges survived a *Batson* challenge). Yet, the Court asserted that in certain circumstances the prosecutor’s actions, by striking all jurors who speak a particular language, potentially is viewed as a pretext for racial discrimination. See *id.* at 371.

152. See *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (acknowledging a tie between language and national origin).

153. 414 U.S. 563 (1974).

154. See *Lau*, 414 U.S. at 569 (stating that “[s]imple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination”).

lar race, color, or national origin are not denied the opportunity to obtain the education generally obtained by other students in the system.’”¹⁵⁵ In *Lau*, San Francisco’s system effectively denied students, who did not comprehend English, access to any meaningful education.¹⁵⁶

In addition to Supreme Court precedent, at least one federal regulatory commission recognizes the nexus between national origin discrimination and language. The Equal Employment Opportunity Commission prohibits discrimination against persons simply because the person possesses the “physical, cultural or linguistic characteristics of a national origin group.”¹⁵⁷ Because the EEOC, an agency designed to eradicate the effects of discrimination in employment, acknowledges that language can identify one with a suspect class, any argument to the contrary must overcome an imposing obstacle.

2. Scholarly Debate: Minority Languages Deserve Heightened Protection

In addition, a number of legal scholars acknowledge the link between language and national origin.¹⁵⁸ Constitutional scholar Kenneth Karst sees language as a major characteristic that defines social groups and argues that these social groups often suffer discrimination because of this characteristic.¹⁵⁹ Another leading scholar, Stephen Cutler, notes that national origin has discernible meaning because of the manifestation of ethnicity through one’s cultural traits and cultural continuity.¹⁶⁰

3. Judicial Recognition of Accent and National Origin

Some courts have even gone so far as to link a language accent with national origin.¹⁶¹ In *Carino v. University of Oklahoma Board of Re-*

155. *Id.* at 566-67 (quoting the regulations promulgated by the Department of Health, Education, and Welfare).

156. *See id.* at 568 (determining that the Chinese-speaking minority received fewer educational benefits than the English-speaking majority).

157. *See* 29 C.F.R. § 1606.1(a) (1999).

158. *See* Kenneth L. Karst, Essay, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. L. REV. 303, 351-57 (1986) (stipulating that a primary tongue is interwoven with a person’s national identity).

159. *Id.* at 352 (commenting that “[a] distinctive language sets a cultural group off from others, with one consistent unhappy consequence throughout American history: discrimination against members of the cultural minority”).

160. *See* Stephen M. Cutler, Note, *A Trait Based Approach to National Origin Claims Under Title VII*, 94 YALE L.J. 1164, 1169 n.25 (1985).

161. *See* *Carino v. Univ. of Okla. Bd. of Regents*, 750 F.2d 815, 819 (10th Cir. 1984) (stating that an employee’s demotion due to his “national origin and related accent” was unconstitutional); *Berke v. Ohio Dep’t of Pub. Welfare*, 628 F.2d 980, 981 (6th Cir. 1980)

gents,¹⁶² the plaintiff, originally from the Philippines, alleged that the defendant university demoted him from his position as a dental laboratory supervisor because of his foreign accent.¹⁶³ The Tenth Circuit affirmed the trial court's ruling, which found that "the decision to demote the Plaintiff from the supervisory position in the old laboratory was made on the basis of his national origin and related accent, and that this decision violated the rights of the Plaintiff."¹⁶⁴ Similarly, in *Berke v. Ohio Department of Public Welfare*,¹⁶⁵ the plaintiff, a Polish immigrant, argued that because of her accent, "which flowed from her national origin," the Ohio Department of Public Welfare denied her two departmental positions.¹⁶⁶ The Sixth Circuit agreed and held that the defendant indeed denied the plaintiff's employment due to her national origin related accent.¹⁶⁷

4. Minority Language Protection: National Origin Discrimination

On a parallel note, courts have historically extended protection to an individual's use of non-English languages in the United States.¹⁶⁸ For example, in *Meyer v. Nebraska*,¹⁶⁹ a Nebraska statute banned the teaching of a foreign language to students below the eighth grade.¹⁷⁰ The Supreme Court determined that the statute interfered with the procurement of knowledge by students, noting that "the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue."¹⁷¹ Similarly, in *Farrington v. Tokushige*,¹⁷² a case concerning a Hawaiian statute that singled out foreign language schools, particularly those taught in Japanese, the Court held the statute arbitrary, unlawful, and repressive.¹⁷³ Notably, the Court

(alleging that the district court did not err in finding that the plaintiff was denied a job "because of her accent which flowed from her national origin").

162. 750 F.2d 815 (10th Cir. 1984).

163. *Carino*, 750 F.2d at 816.

164. *Id.* at 819.

165. 628 F.2d 980 (6th Cir. 1980).

166. *See Berke*, 628 F.2d at 981 (discussing an employment discrimination case involving an employee's foreign accent and national origin).

167. *Id.*

168. *See Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (holding that the Constitution protects those who speak languages besides English).

169. 262 U.S. 390 (1923).

170. *See Meyer*, 262 U.S. at 397 (deeming the statute a valid exercise of the state's police power).

171. *Id.* at 401.

172. 273 U.S. 284 (1927).

173. *See Farrington v. Tokushige*, 273 U.S. 284, 293 (1927) (declaring a Hawaiian regulation unconstitutional because it was biased against some students).

based its decision on the statute's infringement of a parent's constitutional right to educate their children in languages besides English.¹⁷⁴ Also, in *Yu Cong Eng v. Trinidad*,¹⁷⁵ a law prohibited persons from keeping financial books in "any language other than English, Spanish or any local dialect."¹⁷⁶ The businessman plaintiff kept his records in Chinese.¹⁷⁷ The Supreme Court found that the statute negatively impacted Chinese merchants, and established a constitutional right to employ a language besides the official language of a state.¹⁷⁸

B. *Strict Scrutiny Application: Whether the El Cenizo Ordinance Can Survive Heightened Judicial Scrutiny*

While El Cenizo's predominant language ordinance may one day trigger a constitutional challenge based on an Equal Protection claim, such a challenge would not rise to the level of strict scrutiny because courts do not recognize the use of English as generating a suspect classification.¹⁷⁹ However, assume, *arguendo*, that the use of the English language does indeed create an immutable characteristic entangled with national origin. Such a circumstance requires an analysis of the El Cenizo ordinance under the heavy burden of strict scrutiny.

Under strict scrutiny analysis, the reviewing court subjects the ordinance to a two-prong test, asking: (1) whether the state mechanism creating the classification serves a compelling state interest, and (2) whether the means of instituting the action are "narrowly tailored to serve [the] significant government interest."¹⁸⁰ Not surprisingly, few state actions creating a suspect class survive strict scrutiny analysis.

In *United States v. Paradise*,¹⁸¹ the Supreme Court of the United States, in a plurality opinion employing strict scrutiny review, upheld a state ac-

174. *See id.* at 298 (explaining that parents have a "right to direct the education of [their children] without unreasonable restrictions").

175. 271 U.S. 500 (1926).

176. *Yu Cong Eng v. Trinidad*, 271 U.S. 500, 508 (1926).

177. *See id.* (tracing the claimant's Chinese record keeping to "his ignorance of the English and Spanish languages").

178. *See id.* at 524-25 (proclaiming that a merchant's right to conduct business affairs in his native language prevents oppression, damage to property, and preserves liberty); *see also* BILL PIATT, *¿ONLY ENGLISH? LAW & LANGUAGE POLICY IN THE UNITED STATES* 127-28 (1990) (allowing for someone to conduct business in a language besides the official recognized tongue).

179. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 42 (2d Cir. 1983) (stating that English-only social security notices did not violate the Equal Protection Clause); *Frontera v. Sindell*, 522 F.2d 1215, 1219 (6th Cir. 1975) (stating that an English-only service test was not subject to strict scrutiny because a suspect nationality did not exist).

180. *Perry Educ. Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37, 45 (1983).

181. 480 U.S. 149 (1987).

tion involving remedial measures that were facially discriminatory.¹⁸² The *Paradise* Court addressed the Fourteenth Amendment implications of a district court order which required the Alabama Department of Public Safety to implement an African-American promotions quota.¹⁸³ The district court's order required the department to promote one black state trooper for every white applicant.¹⁸⁴ Although the Court did not expressly adopt strict scrutiny analysis for cases involving facially discriminatory remedial measures for past racial or ethnic discrimination, it held that the judicial order in that particular case was capable of surviving such an analysis.¹⁸⁵

The Court began with the premise that firmly embedded within our Fourteenth Amendment jurisprudence is the notion that governmental bodies, including courts, have the constitutional discretion to employ racial classifications designed to remedy discriminatory practices aimed at suppressing a particular minority group.¹⁸⁶ In reviewing the dual-faceted strict scrutiny standard, the Court declared that the district court's promotion quota served a compelling interest "in remedying the discrimination that permeated entry-level hiring practices."¹⁸⁷ The Court further opined that the quota, mandating that half of promotions be awarded to African-Americans, was narrowly tailored in remedying the effects of past discrimination.¹⁸⁸ Notably, the applicability of the judicial order in *Paradise* was confined to the promotion of qualified black applicants only.¹⁸⁹ Further, the district court provided the Department of Public Safety with the option of enacting a neutral promotion scheme before the effective date of the district court's order.¹⁹⁰ The Court deemed that the district court's order was "an effective, temporary, and flexible measure."¹⁹¹ Thus, the promotion quota, mandating the Department of Public Safety to promote one entry-level African-American state trooper for every white applicant, was constitutionally permissible under the strict scrutiny review standard.

182. See *United States v. Paradise*, 480 U.S. 149, 185 (1987) (plurality) (noting that the judicial order was "amply justified and narrowly tailored to serve the legitimate and laudable purposes" of the district court).

183. See *id.* at 165 (rendering moot the question as to the level of scrutiny to be applied because the judicial order at hand survived the strict scrutiny of the Court). The Court included the relevant excerpts of the district court's order in the opinion. *Id.* at 163.

184. *Id.* at 163-64.

185. *Id.* at 166-67.

186. *Id.* at 166.

187. *Paradise*, 480 U.S. at 170.

188. *Id.* at 185.

189. *Id.*

190. *Id.* at 163.

191. *Id.*

Comparable to the Supreme Court's rationale, the El Cenizo predominant language ordinance survives a strict scrutiny review by effectuating temporary and flexible measures to affirmatively aid a disadvantaged group. El Cenizo's temporary and flexible measures are evidenced by the allowance of English translation coupled with the mandate that the predominant language be spoken at city meetings.¹⁹² The ordinance is flexible from the standpoint that an English speaker is not prevented from participating in the city's affairs. Further, the El Cenizo ordinance is temporary in that city meetings are conducted in the "predominant language used in the [c]ity," rather than in any specific language.¹⁹³ Although the current predominant language of El Cenizo is Spanish,¹⁹⁴ the structure of the ordinance is such that a significant demographic shift towards an English-speaking citizenry could result in a corresponding change in the predominant language of El Cenizo.¹⁹⁵

1. El Cenizo's Compelling Government Interest: Increase Citizen Involvement in Governmental Decisions

Under the first prong of a strict scrutiny analysis, the challenged government action must fulfill a compelling governmental interest.¹⁹⁶ El Cenizo's City Council had the compelling interest of furthering citizen participation in local politics because the population had become overly apathetic to the political climate.¹⁹⁷ As such, the community's governing body had an imperative need to arouse local political interest and participation, the very core of democracy. Indeed, getting citizens involved in governmental action so as to precipitate change and having that same constituency play a pivotal role in formulating social policy exemplifies democracy's primary characteristic.¹⁹⁸ Furthermore, many issues dis-

192. El Cenizo, Tex., Ordinance 1999-8-3(a), §§ 2, 5 (Aug. 3, 1999).

193. *See id.* § 5 (providing that when a non-Spanish-speaking person intends to speak at a city function or meeting, translation into the predominant language shall be provided upon forty-eight hours notice).

194. *Id.* § 2.

195. *See id.* § 3 (declaring that, pursuant to an official survey, the predominant language of El Cenizo is Spanish).

196. *Perry Educ. Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37, 45 (1983).

197. *See* Hugh Aynesworth, *Law Protecting Undocumented Aliens Sparks Ire: Texas Town Offers 'Safe Haven' to Illegals*, WASH. TIMES (D.C.), Aug. 26, 1999, at A1 (denoting City Commissioner Flora Barton's comment that citizens had to become more involved in their local government), 1999 WL 3092838; Lynda Gorov, *Texas Town Makes Spanish Official, Stirs War of Words*, BOSTON GLOBE, Aug. 29, 1999, at E8 (relaying the city commissioner's concerns that apathy plagued El Cenizo), 1999 WL 6078891.

198. *See* Richard Estrada, *Colonias Shouldn't Morph into Colonies*, DALLAS MORNING NEWS, Aug. 27, 1999, at 29A (noting that El Cenizo City Commissioners saw the ordinance as an example of the democratic process in action), 1999 WL 24154425.

cussed at city council meetings, such as employment, voting, access to emergency service, and environmental topics, affect the local community, and residents must understand the magnitude of these subjects.¹⁹⁹ Consequently, El Cenizo had a pressing obligation to stymie discontent among its citizens and engage citizens in a more active fashion in order to improve the community's condition.²⁰⁰

The city council had to encourage participation and support in its efforts to improve the impoverished community. As City Commissioner Flora Barton stated, "[g]rowth relies on getting the people involved."²⁰¹ In further justifying the ordinance, the city council stated that the ordinance simply sought to "make local government more accessible to the residents."²⁰² El Cenizo's City Council has vital concerns in "developing democracy . . . [by] opening government's doors to [the] people."²⁰³

2. City Ordinance Narrowly Tailored to Promote Citizen Participation in Local Government: Providing English Speakers with Translations of City Meetings

The relevant language of El Cenizo's ordinance reads "[a]ll City functions and meetings and notices thereof shall be conducted and posted in the predominant language of the community."²⁰⁴ The second prong of the strict scrutiny test mandates that the means utilized be narrowly tailored to serve the compelling governmental interest.²⁰⁵ The El Cenizo ordinance satisfies this prong.

To begin, the ordinance never expressly declares Spanish as the town's official language. In contrast, the ordinance's language is tightly drawn to prevent firm establishment of an official language for a definite amount

199. See, e.g., Dane Schiller, *Town Won't Back Off on Spanish-Only Law*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Aug. 31, 1999, at 6A (noting that it was necessary to conduct the meetings in Spanish so citizens could understand what was happening in their local government), 1999 WL 20278963.

200. See Flora Barton, *And Why Defend Spanish? Look at the Town's History*, SAN DIEGO UNION-TRIB., Sept. 3, 1999, at B7 (relaying some of the dismal conditions the community encountered), 1999 WL 4086997. For example, El Cenizo did not have an adequate infrastructure, only recently contracted for ambulatory services, and purchased a garbage truck. See *id.* (discussing the plight El Cenizo faced before the passage of the ordinance).

201. *Id.*

202. *Texas Town Approves Spanish As Its Language*, CHI. TRIB., Aug. 15, 1999, at 18 (noting the city council's intentions in erasing citizen apathy), 1999 WL 2902506.

203. Don Feder, Editorial, *It's the United (for Now) States*, INDIANAPOLIS STAR/INDIANAPOLIS NEWS, Sept. 4, 1999, at A15 (announcing El Cenizo's aims in attracting citizens to local politics) (on file with the *St. Mary's Law Journal*).

204. El Cenizo, Tex., Ordinance 1999-8-3(a) § 4 (Aug. 3, 1999).

205. See *Plyler v. Doe*, 457 U.S. 202, 217 (1982).

of time.²⁰⁶ The ordinance emphasizes its open nature by stating that “[t]he necessity for stating that the City has no official language is officially declared,” and that all official city business will be “conducted and posted in the predominant language of the community.”²⁰⁷ This broad construction does not expressly disallow for the establishment of another language besides Spanish as the predominant language in the future.²⁰⁸ Although currently the majority of El Cenizo’s population speaks Spanish, ethnic demographics may change and another tongue may become the predominant language of the community in the future. Spanish may be replaced by another language and relegated to a secondary status in the community. The ordinance does not forbid nor prohibit the usage of other languages besides Spanish, it merely stipulates that the city use Spanish in official government communications.²⁰⁹

The ordinance further accommodates non-Spanish-speaking individuals by providing services that effectuate an understanding of the discourse at city meetings.²¹⁰ Specifically, the measure reads,

[t]ranslation into English, as practicable, shall be provided at all City functions and meetings for those peoples who do not speak the predominant language of the community. Notice of this need for translation should be communicated to the City secretary at least forty-eight (48) hours prior to any official City function or meeting.²¹¹

This narrowly tailored alternative provides outlets to individuals who may otherwise fail to comprehend the predominant language of the community.²¹² As a result, the ordinance satisfies the second prong of strict scrutiny analysis, thus passing constitutional muster under the Equal Protection Clause.

206. *See* El Cenizo, Tex., Ordinance 1999-8-3(a) § 4 (Aug. 3, 1999) (dictating that the Spanish-predominant language ordinance does not reflect the amount of time Spanish will reign supreme).

207. *Id.* (relaying that the ordinance does not specifically refer to the establishment of an official language).

208. *See id.* (advocating that the ordinance never states that other languages may not be used during official city business).

209. *Id.* (reflecting that the ordinance merely states Spanish will be used in official city business discourse, but does not disallow the usage of other languages).

210. *Id.* (noting that English translation service is available with forty-eight hours notice).

211. El Cenizo, Tex., Ordinance 1999-8-3(a) § 5 (Aug. 3, 1999).

212. *Id.* (providing alternatives to those individuals who may feel disadvantaged because they do not speak or understand Spanish).

C. *Rational Basis Analysis: City Ordinance's Facial Neutrality*

Courts refer to the lowest level of judicial review under the Equal Protection Clause as the rational basis analysis. Under a rational basis review, a court will uphold a government act if it achieves a legitimate governmental purpose.²¹³ To satisfy this analysis, the ordinance must serve a valid civic purpose and not appear facially discriminatory.²¹⁴ Because El Cenizo's ordinance simply requires that government actors utilize the predominant language of the community, the ordinance does not require or exclude any specific language.²¹⁵ Consequently, the ordinance does not explicitly favor one language over another.²¹⁶ For all practical purposes, the ordinance simply directs the imposition of a language that provides a common link for the community.²¹⁷ As a result, the purpose of instituting the ordinance is rationally related to a legitimate governmental purpose—to promote societal development in an impoverished community resonating with political apathy.²¹⁸ Moreover, the means of instituting the ordinance correlates with the governmental aims of fostering civic participation, thus satisfying a rational basis review.²¹⁹

1. Disparate Impact Analysis

Under rational basis analysis, however, a court may still subject a classification to heightened scrutiny if the law or statute at issue favors one group at the expense of another.²²⁰ Under this disparate impact analysis, despite affecting one group more than another, a court will not consider a classification suspect and, thus, subjected to a heightened scrutiny, unless the court determines that the government actor intended to discriminate

213. See Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293, 343 (1989) (indicating how a law can pass constitutional muster when analyzed under the rational basis model).

214. See El Cenizo, Tex., Ordinance 1999-8-3(a) (Aug. 3, 1999) (explaining that the law is possibly valid because it serves a legitimate governmental purpose).

215. See *id.*

216. See *id.*

217. See *id.* (utilizing Spanish as a means to bring the community together).

218. See *Spanish Language Mecca; It's the Law in Texas Town*, CINCINNATI POST, Aug. 27, 1999, at 38A (remarking that attendance was low at city council meetings because citizens could not understand the language), 1999 WL 21777670.

219. See Editorial, *¡Bienvenidos a El Cenizo!*, CHI. TRIB., Aug. 19, 1999, at 22 (commenting on the fact that citizens were apathetic about attending city meetings because they did not understand English), 1999 WL 2903745.

220. See *Hunter v. Underwood*, 471 U.S. 222, 232 (1985) (discussing how a facially neutral law can be subjected to heightened scrutiny where one group is impacted more than another). In this scenario, African Americans were more likely to lose their voting privileges under a law punishing individuals for crimes involving moral turpitude. See *id.*

against the suspect group.²²¹ In *Washington v. Davis*,²²² African-American applicants brought suit by alleging that the District of Columbia's police recruiting procedures discriminated against blacks.²²³ The applicants supported their allegations with a series of written personnel tests that excluded a disproportionately high percentage of African-American applicants.²²⁴ The Court "adhered to the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose."²²⁵ A racially disproportionate impact, alone, will not justify declaring the governmental action unconstitutional.²²⁶ In *Yick Wo v. Hopkins*,²²⁷ a San Francisco ordinance forbade the operation of laundries in wooden buildings. Despite the ordinance, a party could obtain an exemption from the Board of Supervisors.²²⁸ The Board gave permits to nearly all of the non-Chinese applicants but rejected all of the nearly two hundred Chinese applicants.²²⁹ The Court held that although neutral on its face, the city enacted the ordinance with discriminatory intent, thus violating the Equal Protection Clause.²³⁰

Although a reviewing court must find a discriminatory purpose to justify invoking heightened scrutiny, such a purpose need not be the statute's sole purpose.²³¹ In *Arlington Heights v. Metropolitan Housing*

221. See LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 16-20, at 1503 (2d ed. 1988) (tracing intent as a motive behind a classification that targets suspect groups).

222. 426 U.S. 229 (1976).

223. *Washington v. Davis*, 426 U.S. 229, 229 (1976).

224. See *id.* (involving African-American applicants' contention that Test 21, which is a verbal skill assessment test administered to potential government employees, was constitutionally impermissible).

225. *Id.* at 240.

226. See *id.* at 242 (stating that disparate impact "is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution").

227. 118 U.S. 356 (1886).

228. *Yick Wo v. Hopkins*, 118 U.S. 356, 358 (1886) (involving a native of China who operated a laundry in a wooden building, yet had obtained a license from the board of fire-wardens which validated that all machines were in working order and did not implicate a fire hazard).

229. *Id.* at 357 (denoting that the two hundred Chinese petitioners had operated the laundries for over twenty years yet were still discriminated against).

230. See generally *id.* at 374 (declaring that the Chinese claimants had complied with all building regulations, thus the only assessable reason for the denial of the claimant's permits was the building supervisor's purposeful discrimination).

231. See *Arlington Heights v. Metro. Hous. Corp.*, 429 U.S. 252, 265 (1977) (asserting that rarely can a claimant prove that the legislature's sole purpose embodied a discriminatory intention). The Court further reasoned that since legislatures are faced with many competing interests, courts only review legislative mandates based on arbitrariness or irrationality. See *id.*

Corp.,²³² the Court determined that a reviewing court may find a discriminatory intent when discrimination acts as a “motivating factor” in bringing about a constitutionally suspect statute.²³³ In *Arlington Heights*, a plaintiff challenged a village’s refusal to redesignate land from single-family to multi-family use. This redesignation would have allowed construction of lower income integrated housing.²³⁴ Ultimately, the Court sustained the statute because it could not find any manifestation of discriminatory intent during the statute’s formulation.²³⁵

2. Analyzing El Cenizo’s City Ordinance for a Disparate Impact

The El Cenizo City Council passed the predominant language ordinance without any discriminatory intent.²³⁶ The ordinance simply attempted to foster civic involvement among El Cenizo’s constituency in hopes of boosting attendance at the city council meetings.²³⁷ Furthermore, the local populace attributed their apathy to the fact that they did not comprehend English, the language formerly used at city gatherings.²³⁸ In attempting to address those grievances, the city council adopted a measure aimed at accommodating El Cenizo’s citizens, thus recognizing the right to disseminate information among its constituency.²³⁹ Because the opportunity to be heard and understood by local government is of paramount importance in the framework of political

232. 429 U.S. 252 (1977).

233. See *Arlington*, 429 U.S. at 265 (opining that pursuant to the *Davis* Doctrine the claimant is not required to prove that the enacting body’s sole purpose embodied a discriminatory intent).

234. See *id.* at 255.

235. See *id.* at 269 (asserting that the zoning commission’s consistent application of neutral criteria, concerning the maintenance of single-family units, although reaping a disparate impact was not deemed unconstitutional due to the evidentiary absence of discriminatory intent).

236. El Cenizo, Tex., Ordinance 1999-8-3(a) (Aug. 3, 1999).

237. See Georgie A. Geyer, Editorial, *Tolerating ‘Spanish-Only’ Texas Town is Borderline Loco*, CINCINNATI ENQUIRER, Aug. 29, 1999, at B07 (indicating that the majority of El Cenizo residents are Spanish speakers and speaking Spanish during government activities would increase participation), 1999 WL 9452273; *Spanish Language Mecca; It’s the Law in Texas Town*, CINCINNATI POST, Aug. 27, 1999, at 38A (noting that Spanish speakers would not attend city functions because of the formidable language barrier), 1999 WL 21777670.

238. See Lynda Gorov, *Texas Town Makes Spanish Official, Stirs War of Words*, BOSTON GLOBE, Aug. 29, 1999, at E8 (stating that if one wishes to make people feel comfortable and seek their cooperation and participation, one needs to speak in their language), 1999 WL 6078891; Joyce H. Price, *Officially, They Speak No Inglés: It’s Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (noting that eighty percent of El Cenizo’s population only speak Spanish), 1999 WL 3092085.

239. See Joyce H. Price, *Officially, They Speak No Inglés: It’s Spanish Only for Town in Texas*, WASH. TIMES (D.C.), Aug. 14, 1999, at A1 (reiterating an El Cenizo council mem-

expression, a reviewing court would be highly unlikely to find any discriminatory intent.²⁴⁰ The ordinance represents a legitimate, nondiscriminatory interest in promoting unity and cohesiveness among a marginalized population that felt excluded from the political process.²⁴¹ Moreover, the city council did not act because of prejudices against non-Spanish speakers when it passed the measure, nor does the act represent an effort to orchestrate anti-English legislation.²⁴² The measure was not intended to infringe upon the personal liberties of English speakers; rather, the ordinance sought to preserve the individual rights of citizens to partake in their civic calling.²⁴³

The fact that the ordinance disproportionately impacts non-Spanish speakers does not render it unconstitutional.²⁴⁴ In *Personnel Administrator of Massachusetts v. Feeney*,²⁴⁵ the Supreme Court determined that to declare an act unconstitutional, the government must have enacted the statute "because of" a desire to bring about a discriminatory impact, not merely "in spite of" the possibility of such an impact.²⁴⁶ In *Feeney*, a woman challenged a Massachusetts statute that gave a hiring preference to veterans who passed a competitive exam.²⁴⁷ At the time the suit arose, males constituted ninety-eight percent of the veterans in Massachusetts; therefore, the preference operated to benefit males.²⁴⁸ The Court accepted as undisputed that the Massachusetts legislature knew the law

ber's belief that if a city wants civic participation, it has to conduct meetings in a language easily understood by the populace), 1999 WL 3092085.

240. See *Nixon v. Shrink Mo. Gov't Pac*, 120 S. Ct. 897, 917 (2000) (Thomas, J., dissenting) (declaring that the Constitution's founders intended to protect an individual's right to participate in political speech). The status of "a self-governing people depends upon the free exchange of political information." *Id.*

241. See Claudia Kolker, *Town Speaks the Language of Its People*, L.A. TIMES, Aug. 13, 1999, at A1 (declaring that in order to placate upset citizens, Spanish would be used at city council meetings), 1999 WL 2186159.

242. See Editorial, *¡Bienvenidos a El Cenizo!*, CHI. TRIB., Aug. 19, 1999, at 22 (stating that the ordinance was "merely an attempt to accommodate the [pressing] needs of the local" populace), 1999 WL 2903745.

243. See Richard Estrada, Editorial, *This U.S. Town Requires Spanish Only*, SAN DIEGO-UNION TRIB., Aug. 23, 1999, at B6 (stipulating that the ordinance was implemented to honor a common civic culture), 1999 WL 4084539.

244. See *Washington v. Davis*, 426 U.S. 229, 242 (1976) (declaring that a classification can still be declared constitutional even if it affects one group more than another).

245. 442 U.S. 256 (1979).

246. See *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (explaining that state action may not pass constitutional muster if it was motivated, in whole or in part, by a discriminatory animus).

247. See *id.* at 259 (involving a plaintiff who challenged the constitutionality of a statute that overwhelmingly favored males).

248. See *id.* at 270 (noting the high percentage of veterans that were male in Massachusetts at the time the regulation was passed).

would disfavor women, yet the Court declared that “[d]iscriminatory purpose’ . . . implies more than intent as volition or intent as awareness of consequences.”²⁴⁹ Consequently, the legislature’s awareness of the statute’s consequences proved insufficient to show “discriminatory purpose.”²⁵⁰

One could analogize El Cenizo’s situation to *Feeney* in that the city council undoubtedly knew the ordinance would overwhelmingly favor Spanish speakers. However, the city council passed the ordinance in spite of such a consequence, not because the city wanted to deliberately benefit Spanish speakers and intentionally discriminate against English speakers. The city council did not intend to impinge an English speakers’ rights even though that is a potentially foreseeable consequence of such a measure.

V. CONCLUSION

In light of the circumstances, El Cenizo had the authority to implement the predominant language ordinance. The passage of such a measure survives constitutional scrutiny because the ordinance does not transgress an English speaker’s Fourteenth Amendment Equal Protection rights. Under the ordinance, an individual who neither speaks nor understands Spanish enjoys the same opportunities to participate in local government as a Spanish-speaking individual.

The El Cenizo language ordinance is facially neutral in that it does not discriminate against anyone on the basis of language. The ordinance does not prohibit the use of other languages besides Spanish at a city venue. In contrast, the measure merely provides for the allowance of one language in the official course of business for the sake of conformity and unity.

The ordinance acts as a vehicle by which the city government can best inform the local population of issues that bear significant impact in El Cenizo. The fact that the ordinance disproportionately affects non-Spanish speakers does not mean that the city created the ordinance with any discriminatory motive or intention. If anything, in an attempt to accommodate non-Spanish speakers, the ordinance explicitly provides for English translations at the meetings if requested within a reasonable amount of time.²⁵¹

249. *See id.* at 279 (stating that it cannot be seriously entertained that Massachusetts did not perceive the measure would favor males).

250. *See id.* (declaring that a preference for veterans was not devised for the purpose of confining women to a “stereotypic and predefined place in the Massachusetts Civil Service”).

251. El Cenizo, Tex., Ordinance 1999-8-3(a) § 5 (Aug. 3, 1999).

The city council's pronouncements that they instituted the ordinance to involve the citizens in the local governing process justifies the act as serving a compelling government interest. Assuming civic involvement represents a desirable goal for any democracy, the local government carries the responsibility of providing the local citizenry with accessibility to city functions. The means instituted in this case, the passage of the ordinance, serve as a mechanism by which to accomplish this goal. The city did not so broadly word the ordinance so as to completely disfavor the usage of other languages. As a result, even if a court chose to review the ordinance through strict scrutiny, the court would conclude that El Cenizo's actions serve a compelling interest through the least restrictive means available.

El Cenizo's language ordinance does not transgress on a non-Spanish-speaking individual's equal protection rights nor does it exclude the usage of other languages. Rather, the ordinance exerts effort to accommodate the needs of those who do not speak the predominant language. Ultimately, all language, like the United States itself, should be inclusive rather than exclusive.