

IMPLEMENTING HUMAN RIGHTS IN KANSAS TO ENSURE EQUAL
EDUCATIONAL OPPORTUNITIES FOR SPANISH SPEAKERS

BY

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Abstract

This thesis is about Spanish speakers in Kansas and whether their right to equal educational opportunities is being guaranteed. It is understood that the state of Kansas has not enacted legislation to make education a fundamental human right. However, this thesis explains that regardless of the constitutional frameworks in which a person lives, human rights exist for all. Due to the inviolability of human rights, everyone has the right to equal educational opportunities. Chapters one and two describe the human rights that we all hold, including the right to education. Chapters three through five then explain how poverty, poorly funded schools and discrimination on the basis of language all impede Spanish speakers from accessing their right to an education. This thesis concludes that to ensure the right to an education for all people in Kansas, we must implement non-discriminatory practices in all levels of government and in our communities.

Introduction

This thesis is an examination of the United States and the state of Kansas through the lens of international human rights. Specifically, it scrutinizes the daily realities of Spanish speakers, and asks: How do Hispanics fare in education in the United States and in Kansas? Do current policies and practices provide Hispanics with equal opportunities to benefit from an education? Is systemic discrimination, which violates international law, impeding Hispanic students from succeeding academically and making learning English a challenge for Hispanic adults?

To respond to these questions, it is divided into five chapters. First, chapter one provides a foundation for each chapter that follows. It defines human rights, describes the role of the United States in the development of human rights law and enumerates the core international human rights treaties. Chapter one is important because it describes human rights as being inviolable rights that do not require legal backing; they exist whether or not a country acknowledges them. Moreover, it demonstrates that human rights constitute a spectrum of rights that should be guaranteed as a whole so that each individual right will be ensured. Thus, it sets the stage for a discussion of the need to ensure equal opportunities for all by eliminating barriers, such as poverty, that impede some Hispanics from succeeding academically.

Chapter two outlines in detail the right to education as described in international law. It clarifies that guaranteeing that right implies more than just the passage of legislation. Equal opportunities to an education must also be guaranteed. Systemic problems, such as poverty or racial prejudice, can harm a person's capacity

to fully reap the rewards of his or her education.

Chapter three addresses poverty and demonstrates a link between poverty and low educational attainment. Specifically, it discusses poverty in the U.S. and Kansas and shows that larger percentages of minorities, especially Hispanics, are living in poverty than whites. It also provides an overview of dropout rates among different ethnic groups and shows that high dropout rates prevail among Hispanics. Chapter three indicates that the prevalence of poverty among Hispanics shows that there is a system of social inequity that is harming the educational attainment of Hispanics. That system must be rectified.

Chapter four discusses the school finance debate in Kansas. Before the school finance litigation began, school districts with large percentages of minority students, including students with limited English proficiency, were receiving less money than districts with fewer students with special needs. Chapter four proffers that while remedies have been made, school funding in Kansas may still be insufficient to meet the actual needs of English language learners. However, school finance litigation in Kansas did result in one positive outcome that could impact the future of human rights in Kansas; a discussion of education as a fundamental human right came to the forefront.

Chapter five examines laws that promote equal educational opportunities for speakers of languages other than English. It recognizes that those laws do comply with international human rights standards. But it argues that the current wave of official English legislation that is moving across the United State may be hurting the

application of those laws. This means that although there are laws that on a certain level protect Spanish speakers, the Official English movement has revealed an atmosphere of distrust and resentment towards immigrants that could lessen their impact. The general mood of legislation to designate English as the official language has been one that stresses immigration, rather than language. Official English laws have served, therefore, as a proxy for anti-immigrant sentiments. Chapter five concludes with an examination of Kansas House Bill (HB) 2140, which designated English as the official language in Kansas.

The conclusions of this thesis are that while significant legislation upheld by the U.S. and Kansas supreme courts have provided protections for limited English proficient students in schools, problems of poverty and prejudice continue to plague Hispanic students and impede them from succeeding. Recommendations of this thesis include the pursuit of a top-down approach. Kansas should demonstrate, at the state level, a respect for other languages in order for schools to truly work towards achieving education for all children.

Chapter One: Understanding Human Rights

Using human rights as the basis for analysis necessitates answers to three questions: What are they? Where do they come from? and Can they be used as authentic standards of measure? Chapter one will answer these three questions. First, human rights will be defined. Next, the core international human rights treaties, which are the source of human rights, will be described. In addition, the United States' obligation to comply with those treaties will be explained. This chapter will demonstrate the validity of using human rights standards to analyze the state of education for Spanish speakers in Kansas.

Defining human rights: The conceptual layers

The Universal Declaration of Human Rights conveys that at birth, all members of the human race are endowed with the same and most importantly, equal, rights (Article 1). Thus we all hold human rights by virtue of being human beings. There are complexities to this definition that will be addressed by this section of the thesis.

The first layer of the definition is humanity itself; that is, human rights are predicated on birth into the human race. Within this layer is the notion that those rights do not necessitate legal support; human rights exist regardless of a given nation's legal, political, or constitutional frameworks. The second layer broadens the definition of human rights and captures their multi-faceted nature; there are many basic human needs that must be satisfied for a person to live a life of dignity.

The first layer of the definition of human rights is widely accepted and

indicates that they exist for all members of the human species. Being human, therefore, is a pre-condition for making claims to those rights. Donnelly builds upon that pre-condition by re-naming rights as entitlements. He notes that “to have a right to x is to be specially entitled to have and enjoy x”(9). If a person has a right to education, therefore, one is entitled to receive an education.

Donnelly states that the notion that human rights are entitlements, to which all human beings are privy, also implies that human rights are “demands” (15). Any individual, having been born human, can demand that his or her rights, all to which he or she is entitled, be guaranteed. And, they can make that claim based on a “special class of rights”, as Donnelly calls them, “simply because one is a human being” (12). A person can demand, for example, special language accommodations, simply because he or she is a member of the human race. Again, any claim to “human rights” is based solely on one’s status as a human being, or as stated by Machan, “by virtue of their nature” (50).

Machan and Donnelly make another clarification regarding human rights that often, is either misunderstood or overlooked. While the language of their research speaks of "having" rights, they each add certain disclaimers to the use of the verb "to have". A subset of this first conceptual layer of human rights is the notion that regardless of the political framework of the nation in which one lives, he or she can still lay claim to the rights that one has as a human being. As Machan writes, "many people talk about having a human right. It sounds like the right is something that could be given away, but this is misleading" (51). And Donnelly states

Legal rights arise from the law; contractual rights arise from special agreement; moral rights from principles of righteousness. But one has the right in question whether the law is violated or not, whether the bargain is kept or not, whether others comply with the demands of morality or not (12).

The clarification Donnelly and Machan make is that while a legal framework may provide a basis for human rights, those rights exist, with or without a supporting law. Their argument is that human rights are entitlements, which all human beings can claim regardless of where they live or the entity that governs them. Donnelly adds, "the special function of human rights virtually requires that they be claimed precisely when they are unenforceable by ordinary legal or political means" (13). This means that if a country does not protect a person's rights by legal means, he or she may turn to human rights and the protections they offer.

Thus the first layer of the definition of human rights indicates that they are entitlements all members of the human race can claim. The second layer of the definition broadens its scope by adding weight to those entitlements. Donnelly and others stretch the definition of human rights by pulling language from the Universal Declaration of Human Rights, which voices support for the "inherent dignity...of all members of the human family" (Preamble). The Declaration proclaims, and researchers such as Donnelly clarify, the notion that human rights are not merely rights accorded to all members of the human species but also rights that secure the "dignity" (Universal Declaration of Human Rights, Preamble) of man. Human rights

arise from essential human needs that must be fulfilled for one to lead “a life of dignity”(Donnelly 17).

Human life is a life of dignity, but according to "doctrines of human rights", as Donnelly calls them (19), without the realization of one's rights as a human being, he or she has lost his or her dignity, perhaps even his or her humanity; the premise of human rights reaches, therefore, beyond the simple notion that as human beings, we are born with certain rights. Rather, Donnelly refers to a “human rights paradigm” that “equate(s) having human rights and being human” (19). Ensure one's access to his or her human rights and that person will live a dignified, human life. Or as Donnelly says, "human rights say in effect, "Treat a person like a human being and you'll get a human being" (19).

Varieties of Rights: Civil and Political and Economic and Social Rights

The human rights framework acknowledges that there are two main classes of rights: political and civil rights and economic and social rights. Civil and political rights are often equated with “legal” and “personal rights” (Donnelly 34) while economic and social rights pertain to basic human needs, many of which are necessary for survival. Rather than delineate between them, however, the human rights framework describes each individual human right as an important element of a unified whole. This holistic perspective, which refers to “the indivisibility and interdependence of all human rights” (Donnelly 28; United Nations, “Fact Sheet No.16”), implies that neither class of human rights is more important than the other (Campbell 104). Instead, each is necessary for the implementation of the full tableau

of human rights. In the following paragraphs, the two main classes of human rights will be clarified and their interconnectedness will be demonstrated.

First, these two classes of rights denote distinct categories of entitlements. Civil and political rights include, among others, the right to life (International Covenant on Civil and Political Rights, Section II, Article 6.1), freedom from torture (Article 7) and freedom from slavery in all of its forms (Article 8). They also include freedom from “arbitrary arrest or detention” (Article 9.1), the right to a “fair and public hearing” (Article 14.1) and freedom “of thought, conscience and religion” (Article 18.1). Economic and social rights include the right to work, with “safe and healthy working conditions” (International Covenant of Economic and Social Rights, Articles 6-7), the right to participate in unions (Article 8), the right “to an adequate standard of living, including adequate food, clothing and housing” (Article 11), the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (Article 12.1) and “the right of everyone to education”, which “shall be directed to the full development of the human personality” (Article 13.1).

Second, civil and political rights and economic and social rights differ, in part due to the costs associated with securing them. Negative rights are those rights that “do not have to be created, only protected” (Dasgupta). Positive rights, on the other hand, necessitate “resources” (Ibid) and therefore, their accessibility is impacted by a country’s availability of resources. Civil and political rights fall into the category of negative rights, thus they do not generally necessitate a “direct resource cost” (Ibid). For example, to secure a person’s right to practice his or her religion, a country is not

required to allocate money. It simply must not interfere when a person practices his or her beliefs. Economic and social rights, on the other hand, are dependent on a country's financial commitment and are, therefore, positive rights. A country must allocate significant financial resources to guarantee the right to education for all people.

Civil and political rights are those rights that most Americans might recognize as bona fide rights, perhaps due to their supposed inviolability. Indeed, many human rights groups criticize the United States for its refusal to accord to economic and social rights the same commitment it demonstrates towards civil and political rights. That refusal may be based on an understanding that to secure them, the United States must allocate significant resources. For example, students who are learning English may need additional supports that other students do not require, but those extra learning tools are not free. Yet some politicians may hesitate to allocate additional funding.

Despite the differences between civil and political rights and economic and social rights, they are not mutually exclusive. Civil and political rights do not automatically guarantee economic and social rights, but certainly, without the first, the latter are absent. Tom Campbell alludes to the notion that certain civil and political rights, such as freedom from slavery, directly impact the implementation of economic and social rights (Campbell 159). While he does not elaborate, one may conclude that being enslaved precludes an individual from fully enjoying his or her rights to education and to health care, which are rights enumerated among economic

and social rights. Such is the unfortunate nature of slavery; those who are enslaved are unable to enjoy benefits that the rest of us take for granted. Protecting legal entitlements to civil and political rights, such as freedom from slavery, opens the door for the enjoyment of other benefits or rights, such as education.

Martin Luther King Jr. once said, “it did no good to be allowed to eat in a restaurant if you had no money to pay for a hamburger.” His words speak of the need for an individual to enjoy both freedom from discrimination (freedom from discrimination is found in Article 26 of the International Covenant on Civil and Political Rights) and freedom from hunger. The latter, the right to food, is one of many economic and social rights.

As noted by the late Reverend King, prohibiting discrimination may be insufficient to realize the full implementation of economic and social rights. For an African American to enjoy eating in a restaurant next to whites, he or she must have the monetary means by which to do so. In other words, simply eliminating racial discrimination by making it illegal is insufficient if lingering disparities persist, thus making it impossible for minorities to make a living wage and afford to feed themselves and their families. If a person will not be prohibited from entering a grocery store, attending a school or applying for an apartment, but he or she cannot afford food, rent or pencils, have his or her rights been guaranteed? If human rights are guaranteed, then all people should have equal *access* to the same basic needs. Equal access to eating establishments and the financial capacity to purchase food must be parallel and interdependent goals.

The International Human Rights Framework

This section of the thesis provides the reader with a brief history of the United Nations, the role of the United States in the creation of human rights law and an outline of the primary human rights instruments. International human rights law is what Donnelly refers to as “international regimes” or “systems of norms and decision-making procedures accepted by states as binding”(Donnelly 205). It institutionalized human rights (Ishay 199), providing written standards for states to follow in order to implement human rights, and thus to achieve human dignity. This section will show that the United States was a key player in the development of human rights law and should abide by its precepts.

Creation of the United Nations

International human rights law of the 21st century had its inception with the creation of the United Nations. The Organization of the United Nations was created in 1945 when “representatives of 50 countries” gathered in the United States to write and later, to sign the United Nations Charter. The UN achieved formal and legitimate existence when, on October 24, 1945, its Charter was ratified by those 50 nations (United Nations, “History of the United Nations”).

Primarily created as an international response to the horrors of the World Wars, the United Nations was conceived as an international organization composed of states and through its Charter, declared its purposes to be the following:

to maintain international peace and security; to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples; to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and to be a centre for harmonizing the actions of nations in the attainment of these common ends (Charter of the United Nations, Preamble).

Through negotiations that began on April 12, 1945, the major administrative “organs” of the United Nations were created. The duty of maintaining peace was given to the Security Council, the General Assembly received the chief function as the “global town meeting”, with each member of the United Nations having a vote, and the Secretariat was created to carry out any and all administrative, linguistic and management needs of the other bodies. A Secretary-general would serve as the head of the Secretariat, effectively serving as the “chief executive” of all activities of the United Nations. Additional councils and committees were eventually created to more effectively implement human rights pursuits, including a “human rights commission” designed to monitor human rights abuses and reprimand perpetrators of those abuses (Ishay 212-215).

The Role of the United States

The United States played an important role in the creation of international human rights law. Mary Robinson, the former president of Ireland and former UN High Commissioner for Human Rights, writes, “U.S. leadership was critical in building the global human-rights agenda from the ground up.” Robinson and Berman

remind us that the United States was at the helm of drafting the Universal Declaration of Human Rights (Berman 770).

One of the most poignant quotes about human rights has been attributed to our very own Eleanor Roosevelt, who became the face of the United States' effort to codify international human rights law. She said,

Where do universal human rights begin? In small places, close to home. So close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works (Massimino).

Gay McDougall writes that “the end of World War II created an opportunity for the United States to position itself as not only the military leader but also the moral leader of the world” and through the work of Eleanor Roosevelt, the United States “promoted the creed of democracy, freedom and human dignity around the world.”

The United States was a key player in the creation of human rights law and also prescribed a responsibility to abide by it in its constitution. Specifically, the Constitution of the United States clearly gives to the federal government the right to enter into treaties with other nations. Article I, Section 10 of the U.S. Constitution states, “No state shall enter into any Treaty, Alliance, or Confederation” and “No State shall, without the consent of Congress ... enter into any Agreement or Compact with another State, or with a foreign power”. Thus, treaties are made between the United States and other nations at the federal level. Article II, Section 2 of the

Constitution limits the power to make treaties, stating that the President “shall have Power ... to make treaties”, but only with the “advice and consent of the Senate ... providing two thirds of the Senators ... concur”.

The process of making and agreeing to a treaty may prove arduous. Once made, however, any treaty must be respected and upheld by “Judges in every state”. As enunciated in Article VI, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.” Thus, courts in the U.S. must make decisions that abide by international law when that law has been accepted by the United States.

Primary international human rights instruments

There are seven core international human rights treaties. They exist in tandem with the International Bill of Rights (a conjunction of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights) and the UN Charter, which was signed upon concluding the United Nations Conference on International Organization in 1945. The seven core treaties are the International Convention on the Elimination of All Forms of Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). They also

include the Convention on the Rights of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). For purposes of simplicity, this thesis will refer to these treaties most often by using their respective acronym.

Chapter one has demonstrated that human rights are authentic rights that all people can claim, even if the lands in which they live fail to recognize those rights. It is crucial to understand that human rights are inviolable because the right to education is held by all people, regardless of their national origin or language. Moreover, states have the obligation to eliminate all barriers that might impede a person from enjoying that right.

The United States played an important role in the creation of international human rights law and has also included in its constitution the responsibility of U.S. courts at all levels to comply with international treaties. Thus, courts within Kansas must adhere to the human rights standards described by those treaties. Chapter two will outline in greater detail the human right to education and will describe how Kansas can ensure that right.

Chapter 2: Education is a human right

Education and International Human Rights Law

Education is a key economic and social right. How to provide education for all children has been the theme of multiple international conferences. It is also a fundamental human right that is supported by multiple core international human rights treaties and declarations. Moreover, education is also a means by which other rights may be realized. For example, the international community recognizes the link between improving access to education and both alleviation of poverty and reduction of infant mortality. As such, education strengthens linkages to a full spectrum of human rights that together, ensure equality and dignity for all members of the human family.

This chapter provides an outline of the human right to education as well as the impact of education on the realization of the principles of equality and dignity for all. A synopsis of global conferences and actions will be provided to describe events that impacted human rights law on education. The chapter will conclude with a snapshot of how to achieve the right to education for all children using the standards established by international law.

Education is a basic right

Education is a universal human right that is supported by multiple international instruments. As a universal right, education must be made available to all and means by which that right is appropriated must also reflect international human rights standards. Education policy must adhere to human rights standards.

Human rights are expressed through written standards that have been agreed upon by members of the United Nations. These standards take the form of treaties that are enumerated in Chapter 1. With the exception of CAT, each of the seven core treaties supports the right to education, either directly or indirectly.

Three international instruments, the Universal Declaration of Human Rights (Universal Declaration), the International Covenant on Economic and Social Rights (ICESCR) and the Convention on the Rights of the Child (CRC) cite the right to education. Specifically, these documents note that “everyone” has the right “to education” (Universal Declaration, Article 26.1; ICESCR, Article 13.1). The CRC “recognize(s) the right of the child to education” (Article 28.1).

The treaties and declarations that constitute international human rights law do more than just voice collaborative support for the right to education. Those documents also protect the equal right to education. Core international human rights instruments use the Universal Declaration as the backbone of their defense of human rights and often cite it regarding the “inherent dignity and inalienable rights of all members of the human family” (Preamble).

Education is a human right and as such, the right to education can never be taken away. The Universal Declaration indicates that “everyone has the right to education” (Article 26.1) and moreover, that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind” (Article 1). According to the Universal Declaration, “distinction” means discrimination based on “race, color, sex, language, religion, political or other opinion, national or social

origin, property, birth or other status” (Article 2). The human rights “set forth” in the Universal Declaration of Human Rights, therefore, must be guaranteed by states to all persons, without discrimination based on any or all of these criteria. Education must also be guaranteed without distinction.

The right to education without discrimination is supported further by the ICESCR, the CRC and the CEDAW. Each of these treaties cites the Universal Declaration of Human Rights regarding the right to education without distinction of sex (ICESCR, Article 2.2; CRC, Preamble). Specifically, the CEDAW seeks to “eliminate discrimination against women in order to ensure to them equal rights with men in the field of education” (Article 10).

Discrimination on the basis of culture, language, race and/or national origin is also refuted by international law. In addition to the Universal Declaration of Human Rights, the Preamble of the CRC, Article 2.2 of the ICESCR and Articles 1.1 and 7 of the ICRMW note that all rights therein must be guaranteed, without distinction. ICRMW specifically states that the children of migrant families have the right to an education on par with the quality of education received by their citizen counterparts (Article 30).

Education for the full development of mankind

Human rights law protects the inalienable right to education, including one’s access to an education without suffering discrimination of any kind. Buttressing the right to education is the notion that ensuring access to an equal education aids in the realization of all human rights. What does this mean?

This section has outlined which international human rights instruments indicate the human right to education and where those treaties and declarations stipulate that education must be guaranteed for all, without distinction. International human rights law, in particular the Universal Declaration of Human Rights, notes that the value of education is more than just acquiring knowledge of arithmetic and reading. Education should also promote respect and tolerance for others. Only by promoting respect for all members of the human race will the full spectrum of human rights be realized; and the classroom is perceived as an important vehicle for the accomplishment of the fulfillment of all human rights.

First, international human rights law indicates that one's education should encourage one's knowledge and appreciation of one's own individual dignity as a human being. Specifically, the Universal Declaration of Human Rights and the ICESCR emphasize that education should encourage "the full development of the human personality" (UNDHR, Article 26.2; ICESCR, Article 13.1). The CRC, which specifically addresses the needs of children, adds that each "child should be fully prepared to live an individual life in society, and brought up...in the spirit of peace, tolerance, freedom, equality and solidarity" (Preamble).

In addition to teaching each person about his or her worth as a human being, education should also encourage "tolerance and friendship among all nations, racial or religious groups" (Universal Declaration of Human Rights, Article 26.2). Teaching tolerance includes allowing and promoting instruction about each student's own

culture and language while also providing opportunities to learn, in a non-discriminatory manner, about other cultural and ethnic heritage and traditions.

Specifically, the ICRMW insists that states must “respect...the cultural identity of migrant workers and members of their families” (Article 31.1) and the Universal Declaration of Human Rights includes language regarding one’s right to “participate in the cultural life of the community” (Article 27.1). Non-discriminatory education must include these principles; students cannot be deprived of the right to express their culture, language and heritage, even while they receive a formal education in a dominant culture. The scope of teaching tolerance and respect for others broadens to include an environment and curriculum that excludes discriminatory or sexist and racist ideals or motifs. This means that teaching each student to respect his or her own background is insufficient if that same student is not simultaneously being provided with respectful and unprejudiced instruction regarding backgrounds and beliefs that differ from his or her own. While international treaties and declarations do not provide substantial examples of how to teach tolerance and respect, the CEDAW does allude to the removal of sexist statements from textbooks in order to ensure equal access to education among both men and women (CEDAW, Article 10, c). If textbooks include negative stereotypes about women or if teachers themselves propagate negative information about women, students are not learning to respect women on equal status with men.

Achieving Education for All (EFA): An International Challenge

International efforts to achieve equal access to education are not limited to legal, written agreements. For more than two decades, world leaders have gathered together to discuss what hinders children and adults from attending school, particularly in the poorest nations, and to arrive at evidence-based methods by which countries can work towards guaranteeing to everyone the right to education.

Prior to modern world conferences on education, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the educational appendage of the UN, was created as a “specialized UN agency” that would serve to promote international understanding among nations. UNESCO was intended to function as a “laboratory of ideas, ... a standard-setter to forge universal agreements on emerging ethical issues (and)... a clearinghouse...for the dissemination and sharing of information and knowledge” (UNESCO, “About UNESCO”). It exerts considerable influence in creating and implementing international educational policy and prepares and publishes annual reports on regional and global progress towards the goals of Education for All (EFA).

Education for All (EFA) is an international call for action that resulted from two prominent international conferences on how to achieve the human right of education for all people. The first conference was the World Conference on Education for All in Jomtien, Thailand in 1990 and the second was the World Education Forum in Dakar, Senegal in April 2000, during which the commitments made during the 1990 Conference were reiterated and elaborated. Between these two

conferences, leaders reconvened in June of 1996 in Amman, Jordan to assess global progress and to recommit themselves to the goals established during the first conference (UNESCO, “About Education for All”).

The participants at the World Conference on Education for All in Thailand insisted on greater global cooperation to strengthen equity in education. The conference concluded with the adoption of 10 goals by which Education for All (EFA) could be achieved. These goals, Articles 1-10 of the World Declaration on Education for All, established a set of expectations towards which each nation should strive. Those goals became a blueprint for future international conferences on education and served also as the foundation of the World Education Forum in 2000 (Ibid).

The roadmap drawn by the participants of the 1990 conference in Thailand does not steer away from previous UN statements regarding education. Rather, the EFA goals buttress the holistic nature that the United Nations ascribes to education; they emphasize respect for diversity, an understanding of the multitude of barriers that impede children from attending or succeeding in school and they highlight the obligations and duties of governments to alleviate if not eliminate those barriers. The text adopted during the World Education Forum in Dakar, Senegal in 2000 utilizes the same EFA goals, but elaborates more detailed approaches to make the goals of EFA a reality. During the 2000 Forum, commitment to education was not only restated but also strengthened through a framework that specifically outlined how to

increase equal access to education. The text conceived during the World Education Forum is called the Dakar Framework for Action.

The human right to education: Easier said than done?

Despite notable international efforts to achieve education for all, the numbers continue to lag behind the goals of EFA. For example, Goal 2 of the Dakar Framework is the provision of “free and compulsory primary education” for children worldwide by 2015 (15). While eight years remain to achieve that goal, world leaders are worried.

According to the Dakar Framework, 113 million children did not have access to primary education in 2000 (8). The EFA Report 2007 indicates that enrollment in some form of primary education has “increased” worldwide and the percentage of children not enrolled in school decreased almost “4%” per year over a 5-year period (30). It also states that in 2004, approximately 76.8 million children worldwide were not enrolled in either primary or secondary education (Ibid), which is a significant decrease from the 113 million mark in 2000. This is important progress, but the report is careful to add that despite the increase in primary school enrollment, several Arab nations have seen decreases in their enrollment (28). In addition, many of the children who are out of school live in Sub-Saharan Africa (30). The world’s poorest nations, therefore, continue to struggle to achieve the goal of primary school enrollment for all children.

The 4-A Scheme and International Human Rights Law

Katarina Tomasevski was instrumental in researching and publishing reports and policy briefs on the human right to education. She served as the first Special Rapporteur on the Right to Education of the United Nations, a position with the specific responsibility of monitoring the implementation of the right to education worldwide. As the Special Rapporteur, she routinely visited nations and educational facilities throughout the world and subsequently published her findings and recommendations.

In addition to her work as the Special Rapporteur to the Right to Education, perhaps Ms. Tomasevski's most enduring contribution to research on the right to education is the 4-A Scheme that she expanded as a means by which governments might fulfill their obligations to ensure education for all children. This 4-A Scheme is unusual in the sense that it summarizes and synthesizes international standards on education and turns those standards into four easily understood terms. The following section will highlight the 4-A Scheme and identify key international human rights instruments, declarations and treaties, including the Dakar Framework for Action, that support and strengthen the scheme's key elements.

The 4-A Scheme describes 4 characteristics of inclusive education that must be satisfied for the right to education to be realized worldwide. The four characteristics described by this scheme provide governments with increased insight into barriers to education that must be eradicated for all students to have equal access to an education and those four characteristics demonstrate ways to overcome barriers

to education. The 4-A Scheme is a useful tool to assess whether Spanish speakers in Kansas have equal educational opportunities in education.

The four elements of the 4-A Scheme are Available, Accessible, Acceptable and Adaptable. According to Tomasevski's Manual, to make education available means "ensuring free and compulsory education for all children", an accessible education "prioritizes the elimination of discrimination", an acceptable education makes reference to the imperative of a "quality" education and if education is adaptable, it "should respond and adapt to the best interests of each child" (i). Here, each A of the scheme will be described in greater detail.

An available education: More than just opening the school doors

An available education is both a free education and one that is mandated by the government. Specifically, this means that removing fees and other financial burdens from the equation makes education available. Providing an available education also implies that governments must remove all impediments that might hinder parents from sending their children to school. When education is available, families are not faced with the task of choosing between whether their children will work to bring additional income into the home or will attend school.

The International Covenant on Economic and Social Rights clarifies that any given nation must guarantee the rights therein "to the maximum of its available resources with a view to achieving progressively the full realization of [these] rights" (Article 2.1). This means that while education is a fundamental human right, guaranteeing access to an education for all children is a considerable financial burden

for poorer nations. Time is necessary for developing countries to achieve the goals of education for all children and substantial international assistance is needed for that goal to be achieved (Tomasevski, Right to education primer, No. 3 17).

Strategy 1 of the Dakar Framework indicates that a government's political commitments to education are fulfilled when the government allocates "sufficient resources to all components of basic education" (17). This means that political posturing is insufficient; the realization of education for all is contingent upon the actions of individual nations, so governments must appropriate money from their own budgets for schools, teachers and other components of education. While the countries that adopted the Framework understood that ensuring education for all would result in enormous financial burdens for many poorer nations, they also insisted that to make it work, governments would have to use "resources with greater efficiency and integrity" and even reallocate resources, removing money destined for lower priorities and redirecting those resources towards education (17).

Making education available is not confined to funding public schools. Katarina Tomasevski indicated that in addition to financial commitments, governments must also ensure that parents are able to voice their preferences with regards to the type of schooling they desire for their children. Specifically, Ms Tomasevski's Manual indicates that parents should be able to opt between public and private schools (4). Tomasevski states in the Manual and in Primer No. 3 that governments should provide financial resources that are sufficient to enable parents to freely choose the school that their children attend (Manual 4; Primer No. 3 19-20).

While Tomasevski voiced criticism of school vouchers, she did make reference to school vouchers as a method for governments to provide opportunities for children from lower-income families to attend private educational institutions (Primer No. 3 19-23).

Parental freedom is supported by international instruments, including Article 26 of the Universal Declaration of Human Rights, which states, “parents have a prior right to choose the kind of education that shall be given to their children” (Article 26.1). The Convention on the Rights of the Child follows suit, noting in its Preamble, “family” is the “fundamental group of society” and Article 5 of the same convention declares, countries “shall respect the responsibilities, rights and duties of parents” in the process of guaranteeing the rights therein for their children.

The Dakar Framework for Action, the text that concluded the World Education Forum in 2000 and that is predicated upon international declarations and treaties, also highlights the need to include parents in the process of ensuring an adequate education for their children. Specifically, Goal 1 indicates, “activities centered on the child” and “focused on the family” can help governments “ensure” quality education. These so-called “partnerships between governments...and families” (15) constitute an important strategy for the realization of education for all. Indeed, Strategy 3 of the Framework indicates, “civil society has much experience and a crucial role to play in identifying barriers to EFA goals” (18). Parents are members of civil society and as such, their input is necessary for governments to

create and fund schools and to pass educational initiatives that satisfy the unique needs of their students.

Accessibility: Education for all without distinction

Tomasevski states that access to education is “guided by non-discrimination” (Primer No. 3 27). This element of the 4-A Scheme alludes to the notion that constructing schools is not enough; governments must also work towards eliminating discrimination that results in obstacles to education. But what is discrimination? As this chapter has already stated, the Universal Declaration of Human Rights describes discrimination as the refusal of basic rights on the basis of individual characteristics that include gender, race and national origin. Tomasevski adds, “discrimination is a moving target” (Manual 4). This means that as society evolves, the target of discriminatory practices also changes. Racial differences have frequently fueled discrimination and prejudice. Individuals living with HIV/AIDS, on the other hand, have been visible targets of discrimination in modern history, as AIDS and the virus that causes AIDS have been discovered and increasing numbers of people living with HIV and AIDS have been diagnosed. With the advent of globalization, there are new barriers to education and governments have been faced with new challenges to remove inequities in education.

Discrimination in education has also been visible with regards to school funding, as funding mechanisms have prioritized higher-income students at the expense of minority and lower-income children (Tomasevski, Manual 4). Ensuring that education is accessible implies eliminating such discrimination by establishing

funding mechanisms that adequately and equally fund all schools and therefore, all children.

International human rights instruments have clearly articulated an anti-discriminatory stance towards education. An outline of anti-discrimination language in human rights declarations and treaties has already been provided in the first section of this chapter. In addition to human rights instruments, the Dakar Framework for Action also declares discrimination in education to be adversarial to the goals of education for all. Specifically, Goals 2 and 5 of the Dakar Framework indicate that governments must work to remove all barriers to education experienced by minorities and women, respectively. Broadly, while discriminatory obstacles to education of any kind exist, the goal of education for all children cannot be achieved.

Acceptability: the quality imperative

Within the scope of the Dakar Framework and Ms Tomasevski's work, the notion of acceptability refers to the necessity of creating and maintaining a quality education for all children. A quality education is dependent on "standards of education" that are developed by the state and that are "essential for achieving equality of access [to education] and elimination of discrimination in schools" and "for establishing an environment within [schools] which every child can be offered the chance to develop to his or her own full potential" (Tomasevski, Manual 5). Briefly, a quality education is contingent upon academic standards that are guaranteed in all schools and for all children. Those standards are developed with the academic

and personal development of all children in mind, including minorities and children from poorer backgrounds.

An adaptable education: making schools work for all students

The notion of adaptability implies that students should not be expected to adapt themselves to the structure of the school, but rather that the schools have the responsibility of modifying their curriculum to meet the needs of each student while keeping in mind the best interests of all students (Manual 6; Primer No. 3 31).

Children with disabilities have received prominent attention with regards to the question of adapting education to satisfy their academic and emotional needs. Making a school and the learning process adaptable for children with disabilities means that schools do not conclude that such children are incapable of learning. Instead, schools seek ways to instruct those students by accommodating their needs and acclimating to their level.

Goal 2 of the Dakar Framework concurs and indicates, “School systems must be inclusive” and must respond “flexibly to the needs and circumstances of all learners” (16). Thus, students in Kansas schools who are learning English and require special accommodations must receive them so that their right to an education will not be violated.

The 4-A Scheme holds multiple implications for Hispanic students in Kansas. First, state government must recognize the financial burdens of lower-income families and help them overcome those barriers. For example, chapter three will discuss poverty in Kansas and will demonstrate the relationship between high levels

of poverty and high rates of school attrition. The 4-A Scheme supports the right to education, free from discrimination, and explains that external factors, such as a family's inability to pay school fees, must be remedied in order to guarantee that right. In addition, the 4-A Scheme clearly articulates the responsibility of state government to provide equal educational opportunities to all students by providing equitable levels of funding. Chapter three will describe the high rates of poverty that plague Hispanic families and children and chapter four will show that in addition to poverty at home, Hispanic children may also be suffering from poverty at school. The implication is that high rates of poverty and poorly funded schools are harmful to Hispanic students. According to international human rights law and the 4-A Scheme, the state must take action in order to eliminate these elements of systemic discrimination that violate a person's right to an education.

Chapter Three: Poverty, Ethnicity and School Attrition

As poverty increases, school enrollment and completion decrease, and vice versa. At the international level, efforts to increase education equity emphasize primary school enrollment in developing countries. For example, the annual Education for All (EFA) reports, which are tools of UNESCO to monitor global progress towards universal access to basic education, prioritize the poorest countries. Those reports indicate that while wealthy, industrialized countries have achieved universal primary school access, the majority of the world's children who are not enrolled in some form of primary education live in the world's least developed areas.

The relationship between poverty and school attrition holds true in the wealthiest nations. Specifically, students living in poverty in the United States are more likely to abandon their studies. Moreover, not only do Hispanics in the United States have the highest rates of poverty, but Hispanic students demonstrate the highest drop out rates among all ethnic groups, including Blacks.

So poor, predominantly minority, students in the United States lag behind their wealthier counterparts, yet international documentation of human development largely ignores the grave discrepancies between the rich and the poor in the United States with regards to education. This chapter demonstrates the parallel between the poverty that hinders students in poor nations from completing school and poverty in the United States, which is also a primary risk factor for school attrition.

Goal 2 of the Dakar Framework is to achieve access to primary education for all children by 2015(15). Yet in lower-income nations, children are less likely to

attend school. Specifically, data prepared and published by the World Bank indicates that 89.5% of children in low-income countries were enrolled in some form of primary education in 2000 (“Country Data 2007”), compared to 100.2 % in high-income nations (Ibid). Thus, as poverty increases, the number of children enrolled in primary school declines.

A 2005 report by the World Bank that ranked countries according to their Gross Domestic Product (GDP) illustrates this point. It placed the United States at number one, Morocco at 58 and Rwanda at 148 (Total GDP 2005). A comparison of these rankings with net percentages of primary school enrollment provided by the World Bank demonstrates that the higher the rank on the 2005 report, the greater the percentage of children enrolled in primary school. Specifically, the United States, which earned the number one slot with the highest GDP in the world in 2005, had 92.4% of its children enrolled in primary school. At number 58, Morocco had primary school enrollment of 86.1%. But Rwanda, whose ranking among the world’s nations was 148, had a primary school enrollment figure of only 73.7% (“Country Data”).

GDP is macro-level data, but poverty on a micro level also impacts school enrollment and attendance. Within nations there are disparities in school enrollment based on family income. Specifically, studies indicate a positive correlation between poverty in the U.S. and school attrition rates.

What is poverty? And who is living in poverty in the United States?

According to the U.S. Census Bureau, the federal government determines poverty using set income thresholds that are based on family size and ages of family members

(“How the Census Bureau measures poverty”). If the combined income of all of the members of a given household is less, but not equal to, the income threshold that matches their household size and age characteristics, that household is considered to be living in poverty.

For example, the poverty threshold in 2006 for an individual less than 65 years was an annual income of \$10,488, and \$9,669 for an individual 65 years and over (“Poverty Thresholds 2006”). What does this mean? Consider that an average college student may work 20 hours each week and with an hourly pay of \$8.00. In a year, he or she earns \$7,680. That figure falls below the income threshold of \$10,488. Unless he or she receives a student aid refund or monthly pocket money from his or her parents or lives in the college dorms, this college student lives below the poverty threshold. If this same college student were to take a shift at McDonald’s, earning \$7.25 per hour and averaging 40 hours each week, he or she would earn \$13,920 in one year, which would push him or her out of the poverty bracket and above the poverty threshold.

A single parent household with one child has a poverty threshold of \$13,896. Imagine a single mother who works 40 hours each week providing personal care to adults with disabilities. She earns \$8.00 per hour and a gross annual income of \$15,360. This household exceeds the poverty threshold. Imagine, however, that she has two children. The threshold for a household consisting of one adult and two children is \$16,242, thus this single mother of two is living below the poverty threshold.

The US Census Bureau prepares an annual report on poverty. These reports help the Census Bureau analyze the changes in the percentage of households living in poverty and the duration of time those families spend below the prescribed income thresholds for their family size. DeNavas-Walt et al. demonstrated in the 2005 US Census Bureau report on poverty that the number of Americans living in poverty has increased since 1999, from more than 30 million in 1999 to 37.0 million in 2005 (13). But, between 2004 and 2005, the rate of poverty did not statistically change. Thus, despite the increase in the poverty rate since 1999, from 30 million to 37 million in 2005, this growth has stabilized in the last few years. According to the report however, minority households constitute substantial majorities of the lowest income quintiles and have the lowest per capita incomes (12-13).

Specifically, the poverty rate for the overall population in 2005 was 12.6% but only white households saw their poverty rates decrease in that same timeframe – from 8.7% to 8.3% between 2004 and 2005 (Ibid). By comparison, the poverty rate was 21.8% for Hispanics and 24.9% for Blacks in 2005. These figures indicate a substantial gap between the average income of whites and minorities. Indeed, in 2005 the overall per capita income in the United States was \$25,036. But while non-Hispanic Whites had a per capita income of \$28,946, it was \$16,874 for Blacks and \$14,483 for Hispanics (12). Moreover, these figures demonstrate that while the overall poverty rate may have stabilized, there is a growing gap between whites and minorities; not only do minorities consistently have higher poverty rates than whites,

but only among whites has the poverty rate declined. The poverty rates for both Blacks and Hispanics have remained unchanged.

Poverty thresholds are not intended to denote the income that a given family needs to subsist. Rather, they are statistical measures that are used for the purposes of the U.S. Census to track the number of Americans and American families living in poverty and the trends of poverty in this country. State and federal agencies also use these thresholds to establish a family's eligibility for assistance such as the food stamps program ("How"). Taking a closer look at a hypothetical family's income calls into question whether those thresholds realistically and accurately describe what the status of poverty is in the United States or whether they hide higher actual poverty rates.

Reconsider, for example, the single mother with two children. Georgia works 40 hours per week at \$8.00 per hour, thus earning \$320 per week and approximately \$1280 per month. Given that the poverty threshold for a family consisting of a single parent and two children is \$16,242, one knows that she is, by Census Bureau standards, living in poverty. If one examines her monthly expenses, the picture of poverty appears bleaker. At \$8.00 per hour, this hypothetical mother earns \$1280 per month. Subtract her monthly rent of \$500 that she pays for her 2-bedroom apartment and she is left with \$780. Subtract her light bill of \$40, her gas bill of \$100 and her monthly telephone bill of \$50, and Georgia is left with \$590 to cover her monthly expenses.

She works 40 hours each week and must pay for childcare. The provider closest to her apartment charges her \$500 per month to care for her two children while she works. After paying for childcare, she is left with only \$90 to cover gas for her car that gets her to and from work and to pay for food for herself and her two children. She spends nearly \$80 each month to fill her gas tank and easily could spend \$200 on groceries. Subtracting those expenses from the \$90 that she has left after paying her rent, utilities and childcare obligations, her account is \$192 in the negative. Luckily, she receives \$150 in food assistance from the federal government. Georgia uses this assistance to buy food, which leaves her \$10 in extra spending money each month.

The income thresholds established by the US Census Bureau demonstrate that this woman is living in poverty; after all, her income falls below the income threshold for her household size. But how are those other families, whose income surpasses the poverty threshold, doing? Are they better off? Examining the monthly expenses of families whose income exceeds the poverty threshold indicates that while these families might not be living in poverty according to the standards of the Census Bureau, they are still struggling to pay their bills.

The second hypothetical family consists again, of a single mother and only one child. Sally works for the same employer as Georgia and earns \$1280 each month. She pays \$550 for her 2-bedroom apartment but since heating is electric, she is only responsible for the electricity bill, which runs approximately \$50 each month. Sally bought a used car last year and has a monthly car payment of \$340. She pays

car insurance and a speeding ticket last year raised her car insurance premium to \$220. Sally pays a neighbor to care for her son after school and the neighbor charges \$10 per day. Sally works Monday-Friday, so her weekly childcare expenses are \$50. Sally pays \$200 per month for childcare. Sally also pays approximately \$25 each month to cover telephone charges.

After subtracting these necessities from her paychecks, only \$95 remain in Sally's pocket each month. Her remaining income is insufficient to put gas in her car or to pay for groceries. Sally must find other avenues, such as food assistance, to cover those other basic needs. And in the event of an emergency, such as when Sally's daughter fell at school, cut her lip and needed stitches (which required a \$50 co-pay), Sally finds herself scrambling to make ends meet.

Yet, according to the Census Bureau, Sally is not counted among the Americans who are living in poverty, since her annual income exceeds the threshold for her family size. Her financial needs and the limitations of her resources, however, are very real. Sally is not living in poverty, although a closer examination of her income and expenses certainly demonstrates her poverty. She is undeniably poor.

Poverty in Kansas reflects the national predicament. The U.S. Census Bureau's Small Area Income and Poverty Estimates (SAIPE) indicates that at 11.1%, the 2004 rate of poverty in Kansas was below the overall rate of poverty for the U.S. However, in 2004, nearly 25 counties in Kansas had rates of poverty at or above the national average. Moreover, the ten counties in Kansas with the highest rates of poverty had rates that exceeded 14%. Wyandotte County, with 17.6%, had the highest

rate of poverty in 2004 but was closely followed by Crawford County with a poverty rate of 16.4%. At 15.6%, Riley, Elk and Cherokee counties were tied. Bourbon followed, with a poverty rate of 15.2%. Labette and Allen counties were also tied, with 14.6%. And at the bottom of the top ten were Chatauqua and Cowley counties, with poverty rates of 14.4% (“SAIPE”).

The Kansas Association of Community Action Programs (KACAP) indicates that poverty in Kansas is most severe for families with children. Indeed, according to its report, Living on the Edge, between 2000 and 2004 the percentage of families who needed food assistance increased by “34%”. And between 2002 and 2004, the number of families dependent on TAF, a government-issued cash assistance program for needy families, increased by “14%” (2).

Perhaps what is more telling are the rates of poverty for individuals in families who are between the ages of 5 and 17. For Kansas, the overall poverty rate for children was 12.5% in 2004, which is barely less than the current national average for the overall population. Kansas Action for Children reports that in 2006, more than 1 out of 3 children in Kansas were living in poverty (“Kansas Kids Count”). For the 10 Kansas counties with the highest rates of overall poverty, the rates of children living in poverty in 2004 were 16.9% for Allen county, 16.4% for Chatauqua county, 16.1% for Cowley county, 18.6% for Crawford county, 19.1% for Bourbon county, 19.0% for Cherokee county, 21.9% for Elk county, 16.6% for Labette county, 14.0% for Riley county and 21.6% for Wyandotte county (“SAIPE”).

Table 1: Demographics of 10 Kansas counties with the highest rates of poverty

County	White, non-Hispanic (%) 2005	Black (%) 2005	Hispanic (%) 2005	Median household income, 2004	Persons below poverty (%) 2004
Allen	93.3	2.0	2.3	\$33,459	14.6
Bourbon	93.2	3.4	1.4	\$32,584	15.2
Chatauqua	93.3	0.4	1.7	\$30,674	14.4
Cherokee	91.5	0.8	1.3	\$33,151	15.6
Cowley	86.1	3.3	5.9	\$36,990	14.4
Crawford	90.5	2.1	3.1	\$31,661	16.4
Elk	95.2	0.2	2.6	\$28,338	15.6
Labette	87.6	5.0	3.1	\$32,582	14.6
Riley	82.6	6.9	4.7	\$34,177	15.6
Wyandotte	48.2	27.0	21.4	\$33,266	17.6

Source: US Census Bureau, "State and County QuickFacts."

Table 2: Demographics of 10 Kansas counties with the lowest rates of poverty

County	White, non-Hispanic (%) 2005	Black (%) 2005	Hispanic (%) 2005	Median household income, 2004	Persons below poverty (%) 2004
Gray	86.4	0.3	12.8	\$41,404	8.6
Jefferson	95.0	0.6	1.9	\$48,712	7.9
Johnson	85.8	3.7	5.2	\$68,013	5.4
Lane	96.9	0.0	2.1	\$33,909	8.2
Leavenworth	83.1	9.8	3.6	\$51,459	8.7
McPherson	95.2	1.0	2.3	\$45,392	8.1
Miami	94.5	1.6	1.8	\$51,673	8.0
Ottawa	96.2	0.6	2.0	\$41,093	8.2
Scott	90.9	0.2	8.5	\$40,751	7.3
Wabaunsee	96.3	0.5	2.3	\$44,997	7.6

Source: US Census Bureau, "State and County QuickFacts."

Sally and Georgia are fictional, but their hypothetical lives accurately portray the financial quandaries of working families in Kansas. KACAP assessed the real needs of families in Kansas and determined that a significant gap existed between the poverty threshold established by the federal government and the actual income needed to satisfy a family's basic needs. For example, while the 2004 poverty

threshold for a single parent with two children was \$15,670, the Association estimated that to cover basic needs, which included rent, health care, childcare and other necessities, a family could spend \$33,432 each year. Thus, a gap of \$17,762 exists between how the federal government quantifies poverty and the state of poverty in which families in Kansas try to survive (11-12).

This analysis underscores an aspect of poverty that persists, nationally and in Kansas; that is, that working families are poor. They bring home enough income to be considered to be living outside of the poverty threshold yet they still cannot cover their basic necessities. KACAP estimates that while roughly 11% of Kansans live in poverty according to the federal thresholds, nearly 19.7% of Kansans have incomes below what is necessary for them to meet their basic needs (22).

Working families in Kansas struggle ever more to meet their basic needs. And among Kansans, Hispanics have poverty rates well above the state and national averages. The Kansas Advisory Committee on Hispanic Affairs reports that in 1990, Hispanics in Kansas had the lowest median income (\$8,007 for Hispanics, \$8,465 for Blacks and \$13,817 for Whites) and 18.2% of Hispanics were living in poverty. Moreover, 24.37% of Hispanic children in Kansas were living in households with incomes below the federal thresholds, compared to 8.5% of white children (3,4).

The hypothetical Sally and Georgia were struggling to make ends meet. What would their situation be if they were Hispanic? In Kansas, Hispanic female single parent households fare worse than their male counterparts. Specifically, according to the 1990 census, 62% of Hispanic families with female heads of household were

living in poverty, compared to only 21.83% of Hispanic male single parent households (Kansas Advisory Committee on Hispanic Affairs, 4).

Hispanics have higher poverty rates and lower median incomes than both Whites and Blacks. That discrepancy holds true nationally and in Kansas. These income inequalities between ethnic groups are discouraging for two primary reasons. One, as families increasingly struggle, and often fail, to satisfy their basic needs of shelter, health care and appropriate childcare, their basic human rights have been denied. Two, without access to basic necessities, Hispanic children are at risk of dropping out of school or becoming pregnant. Indeed, attrition rates at the national level are higher among Hispanics than Whites and Blacks.

The precursor to the Dakar Framework for Action and the subsequent Education for All (EFA) annual reports was the EFA 2000 Assessment. UNESCO describes the 2000 Assessment as “the most in-depth evaluation of basic education ever undertaken”. The 2000 Assessment was conducted in 180 different countries. It served to assess global progress since the 1990 Conference in Jomtien, Thailand and the results of the assessment were presented at the World Education Forum in 2000. Thus, the 2000 Assessment fueled the energy that authored the text of the Dakar Framework and provided the international attendees of the Forum a strong foundation upon which to build their arguments for devoting heightened international attention to basic education (UNESCO, EFA 2000 Assessment).

Each participating country had the opportunity to assess its own progress towards the goal of achieving basic education for all children and a national

coordinator prepared a report, which was submitted to the international body. The national coordinator for the country report on the United States was the Academy for Educational Development (AED), which is a nongovernmental organization based in Washington D.C. that works towards achieving the goals of quality education and healthcare for children here in the United States and overseas.

Interestingly, the country report on the United States indicates that following the Jomtien conference in 1990, a national coalition was developed to provide logistical assistance as the United States worked towards achieving the goals of Jomtien. The U.S. Coalition for Education for All (USCEFA), as it was called, consisted of members of the US Department of Education. The coalition ceased its operations in 1996 (Fiske).

Overall, the report on the United States for the 2000 Assessment was positive. Specifically, it states that in comparison to most countries, the U.S. has achieved universal primary education. Thus, “virtually all U.S. children and adults have completed primary school and can demonstrate competency in basic literacy and numeracy”. The report on the United States is less favorable with regards to school completion. Specifically, it states that more recently, other industrialized countries have caught up to and even surpassed the United States in the number of students who graduate from high school (Fiske Part II). Moreover, it indicates that in the United States, dropout is most prevalent “among students from racial and ethnic minorities and low-income families” (Ibid).

Inequality in education in the United States is a consistent theme in the U.S.

Country Report. The report later states, “academic achievement in the United States correlates closely with socioeconomic status. Other inequities relate to the racial and ethnic background of students, gender, geography, mother tongue, and immigrant status” (Ibid). These statistics date from 2000 yet racial and income disparities in education persist in the American education system.

According to a 2004 report by the National Center for Educational Statistics (NCES), the dropout rate for individuals between the ages of 15 and 24 who dropped out of grades 10-12 was 4.7% in 2004. While that rate decreased dramatically between 2001 and 2002, from 5.0% in 2001 to 3.6% in 2002, the dropout rate has since then, increased. And it is higher among minority and low-income students. The rate of attrition is markedly different for individuals from lower and higher income households. Specifically, the 2004 dropout rate was 10.4% for low-income families, 4.6% for middle-income families, and 2.5% for families from high-income families (Laird et al. 21).

Dropout rates are also higher for minorities than they are for non-Hispanic Whites. In 2004, the dropout rate for whites between the ages of 16 and 24 was 6.8%. But for Blacks, it was 11.8% and for Hispanics, it was a staggering 23.8% (Laird et al. 24). Interestingly, other studies have placed the rate of attrition for Hispanics much higher, sometimes as high as 30%. The Pew Hispanic Center, for example, qualifies the 30% figure, noting that it includes immigrants who never enrolled in the American school system and therefore, do not qualify as traditional dropouts.

However, a report by the Center demonstrates that the dropout rate for Hispanics is glaringly high – nearly 15% among 16-19 year olds (Fry iii).

National rates of attrition demonstrate that Hispanics drop out of school more often than any other group. And much like the national statistics, minorities in Kansas drop out of school at much higher rates than do Whites, although the gap between the rates of Blacks and of Hispanics is narrower in Kansas. Specifically, during the 2004-2005 academic year, the overall rate of attrition was 1.4% in Kansas (KSDE). And for the past 7 years, Hispanic and Black students have consistently had higher dropout rates than Whites. Only beginning in 2004 did the dropout rates for Hispanics decrease slightly. Indeed, in the past two academic years, the dropout rates of Black students have just barely surpassed those of Hispanics.

During the 1999-2000 and 2000-2001 academic years, Hispanic male and female students had higher rates of attrition than their White and Black counterparts. Specifically, Hispanic males maintained the same rate of 5.2% for both academic years. The dropout rate for Hispanic females, however, decreased slightly from 4.5% to 4.2% but yet was higher than any other group, with the exception of Hispanic males (KSDE). In 2001-2002, the dropout rate among Black males (3.9%) slightly overtook the rate for Hispanic males (3.8%). Hispanic females, however, maintained the highest rates of attrition among female students; for white, black and Hispanic females, the rates of attrition were 1.5%, 3.1% and 3.6%, respectively (Ibid).

The rates of attrition for Hispanic students, both male and female, surpassed those of Whites and Blacks during the 2002-2003 academic year. Specifically,

Hispanic males had an attrition rate of 3.8%, which was higher than any gender or ethnic group. And among White, Black and Hispanic *females*, drop out rates were 1.1%, 2.0% and 2.4%, respectively (Ibid).

In 2003-2004, the rate of attrition was again higher among Hispanic males (3.1%), while Hispanic and Black females had identical rates of 2.3% (Ibid). However, the rates of attrition among Black males and females overtook Hispanics in 2004-2005 (Ibid).

Although dropout rates among Hispanics have decreased slightly since 2004, they are currently higher than those of Whites and Blacks in the majority of counties in Kansas with the highest rates of poverty and in little less than half of the Kansas counties with the lowest rates of poverty. Specifically, Hispanics have higher attrition rates than Whites *and* Blacks in 6 out of 10 of Kansas' poorest counties. And among the 10 Kansas counties with the lowest poverty rates, Hispanics have the highest drop out rates in 4 out of 10 (Ibid).

Table 3: 10 Kansas counties with the highest poverty rates & Corresponding dropout rates by Ethnicity and Gender for 2005-2006

County	White males (%)	White females (%)	Black males (%)	Black females (%)	Hispanic males (%)	Hispanic females (%)	Total (%)
Allen	4.3	3.3	0.0	12.5	14.3	0.0	3.7
Bourbon	2.5	1.9	4.2	4.0	0.0	16.7	2.3
Chatauqua	1.5	1.5	0.0	0.0	0.0	0.0	1.3
Cherokee	2.6	0.7	36.4	0.0	16.7	4.0	1.9
Cowley	2.1	2.0	2.1	1.8	2.8	1.8	2.1
Crawford	1.3	0.7	0.0	2.5	0.0	0.0	1.0
Elk	0.0	1.3	0.0	100.0	0.0	0.0	1.0
Labette	2.2	1.2	0.0	3.6	8.7	0.0	1.7
Riley	0.2	0.2	0.9	0.0	0.0	1.8	0.4
Wyandotte	3.6	2.9	3.1	1.5	6.0	2.9	3.2

Source: Kansas Department of Education, “Data: K-12 School Reports.”

Table 4: 10 Kansas counties with the lowest poverty rates & Corresponding dropout rates by Ethnicity and Gender for 2005-2006

County	White males (%)	White females (%)	Black males (%)	Black females (%)	Hispanic males (%)	Hispanic females (%)	Total (%)
Gray	0.5	2.0	0.0	0.0	2.3	0.0	1.2
Jefferson	0.7	1.0	0.0	0.0	0.0	3.6	0.8
Johnson	0.4	0.6	0.7	2.0	1.6	1.2	0.6
Lane	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Leavenworth	4.4	3.2	16.2	10.1	5.6	6.9	6.2
McPherson	1.3	1.1	0.0	0.0	0.0	0.0	1.1
Miami	2.5	1.6	5.3	0.0	0.0	5.6	2.1
Ottawa	0.7	1.5	0.0	0.0	0.0	0.0	1.0
Scott	0.5	0.0	0.0	0.0	0.0	9.5	0.7
Wabaunsee	2.8	1.7	0.0	0.0	0.0	0.0	2.4

Source: Kansas Department of Education, “Data: K-12 School Reports.”

The relationship between poverty and dropout implies that eliminating discriminatory barriers to education must include efforts to decrease poverty in the home. This means that if Hispanic and Latino children are not receiving the supports

that they need from their families, it is not enough for states to simply build schools and purchase textbooks. The state and schools must remain aware of the impact of poverty on a child's academic success.

Schools should work within their own communities to identify the needs of their students and so that the schools and communities will come to mutually beneficial solutions to remedy any deficiencies. For example, partnering with local food and health providers to educate families about the financial assistance available to them in their communities could ease stress at home, make parents feel welcomed by their children's schools, and could help students academically. The earlier that schools help families, the earlier they help students who might be at-risk for dropping out of school.

Chapter 4: School funding and inadequacy

Almost all 50 states have experienced litigation pertaining to school finance. Primarily, the basis for such litigation has been that higher levels of funding are necessary to improve academic success for all students. Moreover, plaintiffs have contended that school districts with minority, low-income and special need students receive less funding than districts with wealthier students. Chapter three shows that students living in poverty are less likely to graduate. Supporters of increased funding for schools believe that as more money is directed towards schools with higher percentages of at-risk students, all students will achieve the desired levels of academic competency.

Some studies emphasize the integrity of school *spending*. This means that the efficiency with which schools appropriate the funding given to them is a greater determinant of the impact of that funding on student success. For example, a study conducted by Standard and Poor's analyzed school districts in Kansas, both in Kansas' poorest and wealthiest counties, and indicated exemplary models of efficient allocation of available resources. Interestingly, at least one school district located in one of the ten Kansas counties with the highest rates of poverty, was listed among the 17 highly resource-effective districts. Indeed, Arkansas City school district, which is located in Cowley county, was cited as "top performing" among districts with high levels of student poverty (30). Student poverty is not synonymous with the countywide rates of poverty but a correlation exists nonetheless.

Most concur that more money is closely linked to a proclivity towards academic success. The international community also recognizes that link. Indeed, the Dakar Framework for Action implores governments to make education a reality for all children by financing schools. Strategy one states, “governments must make firm political commitments and allocate sufficient resources to all components of basic education” (17). Indeed, school finance is not merely a preoccupation among U.S. states, but also one that has been adopted by the international community.

This chapter describes the current funding formula authorized by the Kansas Legislature to appropriate money to school districts, my involvement in research on school finance and the timeline of events of school finance litigation in Kansas. The school finance debate in Kansas endured nearly 7 years and included two cost studies and a special session. The Kansas Legislature has authorized appropriations that fall below the minimum standards proffered by two different research bodies. School finance litigation in Kansas began when school districts with large minority populations contended that they were receiving unequal and inadequate funding yet it is still unsure whether those inadequacies have been remedied.

The Kansas Constitution mandates that the Kansas Legislature allocate money for schools. Specifically, Article 6.1 states, “The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law”. The Constitution also appeals to the legislature to “establish” (Ibid) schools by allocating

appropriate financial resources. Article 6 states, “the legislature shall make suitable provision for finance of the educational interests of the state”. Notably, the Kansas Constitution does not qualify what is meant by suitable.

The current funding formula in Kansas is largely a two-tiered system using a base aid amount given to school districts for every student enrolled in their schools, coupled with additional weights, which are dependent on the special needs of each student. The notion behind this formula is that a standard base aid for each student is a starting point by which to determine the cost of educating a child. However, special needs, such as disabilities, limited English proficiency or poverty necessitate additional financial measures. Thus, it costs more to educate a child who has a learning disability than a child with no diagnosed physical or mental impairment.

Senate Bill 549, passed in 2006, authorized a base state aid per pupil (BSAPP) of \$4,316 for the 2006-2007 school year (a \$59 increase). At-risk students (defined as those who receive free or reduced cost meals) receive an additional weight of 0.278. And school districts with high densities of at-risk students are eligible for additional per pupil weights, depending on the percentage of their students who are classified as at-risk (Kansas Legislative Research Department, Report Brief 1-2). Finally, to maximize the usefulness of state aid, school districts may now use their at-risk funding “for at-risk, preschool at-risk, and bilingual education programs interchangeably” (4).

This means that districts receive a minimum of \$4, 316, but students whose needs incur additional costs for the district are weighted, resulting in an adjusted

enrollment. So districts receive the base state aid per student plus additional money per student based on that student's needs due to limited English proficiency or a disability.

The funding scheme for English as a Second Language (ESL) students is unique. Instead of relying on enrollment, districts must use the number of hours during which a student receives one-on-one instruction from a teacher, which replaces the common headcount figure in the funding formula. Thus for ESL/bilingual students, the BSAPP is multiplied by the average number of contact hours times the per pupil weight (Kansas Legislative Research Department, School District Finance 1, 6). Interestingly, Kansas is the only state in the region that allocates resources for ESL students using a funding formula that measures contact hours instead of student enrollment.

By the time the Kansas Legislature began its special session during the summer of 2005, I was already following media coverage of school finance litigation. The Lawrence Journal World reported that the Kansas Legislature had called on the Legislative Post Audit to conduct a cost study on the costs necessary to achieve desired academic results in Kansas schools. Eager to add a school finance component to my thesis research, I contacted the Legislative Post Audit in August 2005 and applied to be an intern. My internship lasted from August 2005-December 2005, approximately the duration of the Legislative Post Audit cost study.

Recent events in school finance litigation in Kansas have made the most profound impact on the levels of school funding abrogated by the Legislature,

although major lawsuits brought against the state of Kansas to increase funding were first filed in 1990 (Dodge City Daily Globe). In May 1999, a group of minority students and school districts with large numbers of poor, minority students filed a lawsuit, questioning the constitutionality of the funding formula, while contending that the formula, as written, violated the rights of minority students and students with disabilities (Lawrence Journal World, “Timeline”). Shawnee County District Court Judge Terry Bullock dismissed the lawsuit in 2001 (Dodge City Daily Globe) but when after an appeal and the Supreme Court sent the case back to Judge Bullock for reconsideration, he ruled in favor of the plaintiffs. He stated

It is important to note that the reason for essentially equal funding is to guarantee an *equal educational opportunity* for every child. At bottom, this constitutional requirement is about *education*. In other words, small-minded people with calculators could worry about small differences in per pupil expenditures and still miss the point: it’s about equal *educational* opportunities. Accordingly, whether any Kansas child is of a minority race, or is a slow learner, or suffers a learning disability, or is rich or poor, or lives east or west, or any other consideration that child is “our child” and our Constitution guarantees that child an equal educational opportunity consistent with his or her natural abilities (Montoy I 34).

Judge Bullock added, “total school funding must be such that it provides every Kansas student, commensurate with their natural abilities, the [knowledge and] skills necessary to understand and successfully participate in the world around them (41).

Judge Bullock remarked that the school districts in question had, since 1994, seen increases among categories of students needing additional financial remedies in order to receive equal educational opportunities. According to Judge Bullock, those

categories included students receiving free or reduced school lunches and students for whom English is a second language (51). Yet, noted Judge Bullock, during the hours of testimony heard, no one had proven to him that the funding formula in place in Kansas in fact, took into account the level of funding necessary to provide to these students an education that was “consistent with his or her natural abilities” (34). Indeed, Judge Bullock was astonished to discover that although appropriations for education constituted nearly half of the state’s budget, “no one, in the history of Kansas, has ever asked our schools what resources they need to provide a suitable education for our children” (54). Judge Bullock opined that the existing funding formula, rather than being grounded on the financial realities of providing an education to Kansas’ children, was instead based on fairly *unsound* political maneuvering, “where various funding levels were proposed until, finally, a political majority could be achieved in the Legislature” (54). Judge Bullock found this reality to be shocking, yes, but more importantly, inadequate.

Regarding English language instruction, Judge Bullock did not restrain his candor. He indicated that the funding formula at the time for English language classes for English language learners was inexplicable. He noted that it was based on the number of hours that a student spent with an instructor, rather than the actual costs of providing instruction and learning materials to that student, although the reasoning behind that formula had not been fully explained to him (59-60).

Finally, Judge Bullock remarked that while research and testimony supported the claim of the plaintiffs that current funding levels were inadequate to satisfy the

educational needs of Kansas' children, "not one witness took the stand for the Defendants to testify the current funding level was suitable" (76). Judge Bullock concluded that "many categories of Kansas students (minorities, the poor, the disabled, and the limited English) are failing at alarming rates" (81) and that "the funds provided to Kansas school districts by the Legislature under the present financing scheme as applied is clearly and grossly inadequate to provide Kansas children a suitable education [and that] as such [are] in violation of Article 6 of the Kansas Constitution. " (83-84). Judge Bullock ruled, therefore, that the funding formula was unconstitutional, as the levels of funding were inadequate to satisfy the mandate of the Kansas Constitution.

Moreover, he ruled that the most vulnerable students may suffer the most, since "disadvantaged students (whether poor, minority language deficient, or disabled) are more costly to educate" yet their schools do not receive funding that is sufficient to provide for their educational needs (90, 98). Indeed, Bullock noted that these vulnerable students "find themselves in the Kansas schools which receive the least in per pupil funding" (91). Judge Bullock appeared baffled that the students who necessitated higher education costs may be receiving the least amount of money from the state. He refused to mandate the corrective actions that the Legislature should take, but rather gave them until July 1, 2004, to resolve the insufficiencies inherent in the school funding formula (101).

Judge Bullock issued his order in December 2003, but when the Kansas Legislature adjourned in May 2004, the Legislators had failed to compromise on any

school funding bill. Subsequently, on May 11, 2004, Bullock issued another order, effectively blocking the “expenditure of funds under all education funding statutes for the purposes of operating schools” (“Timeline”; Montoy (remedy) Section VIII). He stated his reasoning as being, “the legislative and executive branches failed to utilize the time provided by the Court and none of the adjudicated constitutional defects in the school funding scheme were addressed and none corrected” (Montoy (Remedy) Section I).

Shortly thereafter, the Kansas Supreme Court rescinded Bullock’s order and took over the case (Lawrence Journal World, “Timeline”). Ultimately, the Kansas Supreme Court disagreed with Judge Bullock on two counts, that Kansas’ funding formula violates the equal protection clause of the constitution and that the funding formula in place demonstrated a disparate impact on minority students and students with limited English proficiency. The Supreme Court noted that to demonstrate disparate impact, it must be shown that the state of Kansas acted with a “discriminatory purpose”. The school districts in question could not prove that the funding formula had been designed with the purpose of discriminating, thus disparate impact had not been convincingly proven (Montoy II 2-4). However, the Kansas Supreme Court conceded that the current funding formula was inadequate. Specifically, the Court ruled, “the legislature has failed to meet its burden as imposed by Art. 6, § 6 of the Kansas Constitution to "make suitable provision for finance" of the public schools” (3). The Kansas Supreme Court allowed time for the Legislature

to rectify the funding inequalities. Specifically, the Court gave the legislature until April 12, 2005 to enact “corrective legislation” (5).

The forthcoming legislative session did not produce corrective measures that satisfied the injunction of the Court, being that they allocated roughly \$142 million for schools, while allowing individual districts to increase property taxes to optimize their funding availability. Critics argued that by allowing local school districts to raise property taxes as a means by which to increase school funding, wealthy districts would again, be at an advantage. Alan Rupe, an attorney from Wichita who was representing the plaintiffs said, “the affluent school districts in Johnson County and northeast Kansas will be able to raise taxes \$25 million. In terms of all at-risk students across the state, the legislative proposal provides \$25 million” (Rothschild, “Plan likely to increase disparity among districts”).

The Supreme Court agreed, stating that HB 2247, which appropriated additional funds, permitted local tax options and commissioned another cost study to determine the actual costs of funding education, was yet “unsatisfactory” (Montoy III). The Court then argued that the legislature had known for a considerable amount of time that funding for schools must increase, yet the \$142 million abrogated by HB 2247 did not meet the standards set out by the only cost study which they had available to them. Specifically, the Court noted that a previous education cost study ordered by the legislature had indicated that school districts would require “\$1,118 to \$4,510” per ESL student, but HB 2247, while appropriating a 115.7% increase in

funding for English language learners, still fell below what the research showed was needed (Ibid).

In addition, the Court expressed concern that while HB 2247 indicated that an additional cost study would be conducted if the funding appropriated by said bill was deemed insufficient by the Supreme Court, the cost study as described by the bill would only consider education “input” without determining if the finances put into education would result in the desired “outputs”. Specifically, the Court said, “[HB 2247] does not appear to demand consideration of the costs of "outputs" -- achievement of measurable standards of student proficiency. Without consideration of outputs, any study ... is doomed to be incomplete” (Ibid).

Thus the Court did not accept, as satisfactory, the funding increase appropriated by the Kansas legislature and instead, ordered the legislature to enact additional legislation “no later than July 1, 2005” which would give to schools an additional minimum increase “of \$285 million” ... which includes the \$142 million presently contemplated in H.B. 2247” (Ibid). Finally, the Court decreed that while HB 2247 called for another cost study, if said cost study was not completed timely, the Court would mandate that, at a minimum, the “remaining two-thirds (\$568 million) in increased funding based upon the A&M study be implemented” (Ibid). The Court’s overall analysis of HB 2247 was that the legislature’s effort, although insufficient, demonstrated significant increases in funding levels. Thus, the Court chose to keep the schools open.

With the July 1 deadline looming, Kansas Governor Kathleen Sebelius ordered the Legislature to return for a special session, which was slated to begin June 22 (“Governor officially calls for special session.”). The special session was marred as political tensions flared, fueled by the actions of the Supreme Court, which some legislators deemed inappropriate and as stepping out of bounds of the Court’s authority. Senator Kay O’Connor, a conservative legislator from Johnson County, called the Supreme Court “goofy” and said, “This thing just smacks of nonsense. How do the courts try to order the Legislature around?” (Rothschild, “Tensions run high as conservatives try to defeat bill funding schools”). Some Republicans submitted a constitutional amendment that would curtail the authority of the Supreme Court and then indicated that they would refuse to sign any increase in funding until such measures were approved to limit the ability of the Court to intervene in future school funding debates (Kansas Legislature, Senate Concurrent Resolution No. 1603; Rothschild, “Republicans vow to reject bills until court limits approved”).

As the July 1, 2005 deadline approached, the state of Kansas requested an extension, which the Supreme Court summarily denied (Kansas Supreme Court, Order Denying Extension). The Kansas Supreme Court went further, stepped up the ante, and like Bullock, threatened again to close the schools and issued an order calling on attorneys for the state to explain why the Court should not order an injunction (Kansas Supreme Court, Order to appear and show cause). Finally, the Kansas legislature forged a compromise and passed legislation providing an additional \$148.4 million in funding for schools (Rothschild, “School funding

increase passes.”), which the Court did approve (Rothschild, “Supreme Court ok’s School Finance Law.”). The Court indicated, however, that the funding authorized thus far was only part of the total increase necessary.

Once the Supreme Court ruled that the Legislature had satisfied their order to increase funding by July 2005, the Legislative Post Audit cost study that had been ordered by HB 2247 still remained. Until HB 2247 ordered that cost study, the only piece of relevant research that the Legislature had at its disposal that described the levels of funding necessary for Kansas schools was the Augenblick & Myers (A&M) study, of which the Legislature was dismissive, since legislators perceived the study as out of sync with the realities of the state and its students (“Crucial study.”). The A&M study was initiated in 2001 at the behest of the Kansas Legislature, was coordinated by the Legislative Coordinating Council and was made available in 2002. The A&M study demonstrated that 58% of school staff and administrators interviewed “believed the [ESL] bilingual weight was too low ” (VII-3). The study suggested, however, that rather than utilize one pupil weight, Kansas should designate pupil weights based on the size of the school district (VII-9). Overall, the study demonstrated that nearly \$852 million were necessary to satisfy the educational needs of Kansas’ neediest children.

The cost study prescribed by HB 2247 and further defined by the Supreme Court would analyze both the inputs (money) needed to fund schools, based on the outputs (academic results) that the school districts desired. The Kansas Legislative Division of Post Audit is the “audit agency” of the Kansas Legislature (Kansas

Legislative Post Audit, “About the Legislative Post Audit”). When the Legislature seeks to understand how resources are being used by state agencies, they turn to the Post Audit to produce an analysis of the efficiency with which monies are being used (Ibid).

The Post Audit cost study was released on January 9, 2006. The Legislative Post Audit indicated that an additional \$316-\$399 million were needed to adequately fund schools (5). Moreover, the results of the cost study determined that the current funding formula in Kansas did not accurately reflect the costs related to providing educational services to English language learners. Specifically, the cost study demonstrates a weight (0.100) that is lower than the current (0.395). But the cost study notes that English language services “are provided to students in settings or districts where there are no “bilingual-endorsed” teachers” (11-12), which affects the pupil weight.

The Legislature reconvened and in May 2006, they authorized a three-year increase totaling more than \$466 million (Kansas Legislative Research Department, Second Conference Committee Report Brief Senate Bill 549.; Rothschild, “After 7 years, litigation is dismissed.”). Senate Bill 549, which authorized the increase in school funding, refuted both the Augenblick & Myers study and the Post Audit study, which suggested an immediate school funding increase of almost \$400 million was needed for the upcoming school year. Instead, SB 549 spread the funds over 3 years.

Attorneys for the plaintiffs contended in oral arguments that the funding levels were still insufficient, based on the results of even the most recent cost study.

Specifically, they said

This matter is now before the Court for consideration of 2006 Senate Bill 549 (“S.B. 549”) and a determination of (1) whether the legislation is “based upon actual and necessary costs” of providing a suitable education to *all* Kansas students; and (2) whether the legislation makes suitable provision for the financing of education to achieve state-mandated outcomes. Once again, Plaintiffs return to this Court to report that the Legislature ignored this simple directive. Because the answer to both questions is “no,” this Court should conclude that S.B. 549 is unconstitutional on its face in violation of Article VI of the Kansas Constitution (Brief of Appellees, 3).

The attorneys for the plaintiffs proffered that SB 549, as written, provided severely inadequate funds, under funding schools by as much as \$1 billion (“Plaintiffs.”). The plaintiffs indicated also, that since the Post Audit cost study demonstrated the actual costs of providing an education for English language learners, the Post Audit strategy of determining funding for those students based on a weighted headcount rather than on enrollment hours more accurately and realistically determined funding levels for those students (Brief 6-7). Yet, SB 549 did not include changes to the ESL funding formula, although the Post Audit study the legislature commissioned determined that the actual cost of providing an education to ESL students required such a change.

Despite the objections of the plaintiffs, the Kansas Supreme Court ruled in July 2006 that the Legislature had satisfied their constitutional mandate, thus the Court ended the 7-year litigation. Specifically, the opinion of the Court stated,

Our prior orders have made it clear that we were concerned that the then existing financing formula was distorted and provided disparate funding because it was based on former spending levels with little or no consideration of the actual costs and present funding needs of Kansas public education. The legislature has responded to this concern. The legislature has undertaken the responsibility to consider actual costs in providing a suitable system of school finance (Montoy v. State, Supreme Court Decision).

School finance litigation in Kansas achieved substantial increases in funding for Kansas schools. The legal process also underscored a dedication among Kansans to the value of education. As Judge Bullock stated in Montoy I, “education has always been a very high priority for Kansans” (3). Moreover, the debate demonstrated that not just education but also equal educational opportunities are important.

From a human rights perspective, school finance litigation in Kansas also raised the question of whether or not education is a human right. Neither the U.S. Constitution nor the Kansas Constitution indicates that education is a right. Indeed, the U.S. Constitution makes no mention of education, but Amendment 10 of the Constitution says, “the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people”. Moreover, the Kansas Constitution obligates the Legislature to provide for education but does not accord to education the status of a right.

Yet Supreme Court Justice Beier stated in Montoy II that education is a fundamental right. Her rationale is that while the Constitution does not explicitly declare education is a right, it does mandate the Legislature to appropriate funds for schools. Justice Beier stated,

First, the language of the education article is mandatory. The legislature "*shall* provide for intellectual, educational, vocational and scientific improvement" and it "*shall* make suitable provision for finance of the educational interests of the state." Kan. Const. Art. 6, § 1, 6. Neither the provision of progressive educational improvement nor the financing of it is optional (10).

If the Legislature is mandated to provide funding for a service, then that service must be guaranteed. Justice Beier notes that the Legislature must provide sufficient funds for schools and so education must be a fundamental right.

Chapter 5: Language Rights and the United States

The Universal Declaration of Human Rights clearly prohibits discrimination on the basis of language or national origin (Article 2). This seminal human rights document inspired the texts of all international treaties and declarations, thus all statements regarding human rights that originate in the United Nations also support the entitlements of one to access his or her rights without suffering prejudice as a result of his or her language or languages. Specifically, 6 of the 7 core international instruments cite the Universal Declaration of Human Rights, which denounces distinction “such as language” (Ibid). The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) eludes to the UN Charter, which indicates that all nations must ensure “respect for human rights...without distinction as to ...language” (Chapter 1, Article 1.3).

Subsequent international conferences and declarations also sustain the foundation established by the Universal Declaration, although they are not included among the 7 core international treaties. Together, these declarations bolster the notion of human rights without discrimination on the basis of language and call for states to enforce those rights through the passage of legislation. For example, the UN Millennium Declaration “reaffirms” the value of “tolerance”. Specifically, the Millennium Declaration states, “Human beings must respect one other, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed”. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adds that states

should not only protect linguistic identities but also “encourage conditions for the promotion of that identity” (Article 1.1). Moreover, states should enact legislation in order to create an environment conducive to the promotion of minority linguistic identities (Article 1.2). And Article 2.1 continues, “linguistic minorities...have the right...to use their own language in private and in public”.

International efforts to end discrimination on the basis of language have effectively insinuated that such discrimination is a class of racism. Specifically, the United Nations held the September 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa. The conferees sought to protect the rights of all minorities, including refugees and migrants, who might be victims of “racial discrimination” (“World Conference on Racism”). The Durban Declaration and Program of Action indicates, discrimination against “non-nationals, particularly migrants, refugees and asylum-seekers [is] one of the main sources of contemporary racism” (12). And with regards to language, the Durban Declaration declares that victims of racism may suffer discrimination on the basis of grounds, which are “related” to racism, “such as... language” (10).

Protections of language minorities in the United States vary from assurances that one receives an interpreter in court as needed to obligating schools to provide educational resources that help English Language Learners (ELLs) learn English and achieve proficiency in courses alongside English speakers. However, despite attempts at the federal and state levels to enact laws to protect rights without discrimination on the basis of national origin, prejudice persists. Moreover, 30 states have passed

Official English or English only laws, Kansas being the most recent state to do so. Passionate debate, by both opponents and proponents, preceded the passage of those laws, as proponents depicted the English language legislation as being necessary to unite despite diversity and opponents argued that such legislation was both unnecessary and had the potential of driving greater wedges between different cultural and linguistic groups.

This chapter assesses protections of language minorities in the United States and finds that despite certain laws that broadly protect certain classes, including national origin, speakers of languages other than English have become targets of restrictive laws and legislation as public concerns over illegal immigration have clouded and misrepresented the linguistic realities of immigrants and Limited English Proficient (LEP) persons. First, this chapter provides an overview of federal protections with regards to language and in particular, emphasizes federal and state laws that mandate additional resources for LEP students in American schools. Next, this chapter demonstrates that minority languages have become subject to criticism and skepticism, which has resulted in legislation, successful or not, to limit their use. The Official English movement receives particular emphasis and HB 2140, recently passed by the Kansas Legislature, serves as a case study. Finally, this chapter concludes that persistent prejudice and discrimination in the United States regarding undocumented immigrants have been the strongest force behind efforts to curtail the use of other languages in government and educational services. And this discrimination has led to legislation that has targeted speakers of minority languages.

Protection of language minorities in the United States

In the United States, federal and state laws have provided certain protections to speakers of languages other than English. The Civil Rights Act of 1964 and the 14th Amendment both served as fundamental bases for lawsuits and ultimately, laws, that helped secure the rights of illegal immigrant children to attend school in the United States and when necessary, to receive reasonable language accommodations. The 14th Amendment of the United States Constitution prohibits any state from denying “to any person within its jurisdiction the equal protection of the laws”. Thus, any individual residing within the jurisdiction of the U.S. bears the right to receive equal treatment, regardless of their country of origin. This clause of the 14th Amendment has the moniker of Equal Protection Clause. Actions that possibly violate the Equal Protection Clause are scrutinized when states grant to one party the right to engage in a given activity while denying the same entitlement to a second party. Title VI of the Civil Rights Act of 1964 specifically prohibits any entity receiving federal funding from discriminating on the basis of “race, color or national origin” (Sec. 601). The Office for Civil Rights of the Department of Education investigates violations of Title VI, which include the denial of “equal educational opportunity” to “national origin minority students who have a limited proficiency in English” (US Dept of Education. OCR, [The Provision of an Equal Education](#)). Thus, while Title VI does not include specific terminology regarding language, students of national origin other than the United States often speak a mother tongue besides English and therefore, require additional services in order to access the same educational

opportunities as native English speakers within the same jurisdiction. Public schools are largely funded by federal monies, thus they are prohibited from discriminating on the basis of language and must provide equal educational opportunities for all students, regardless of their language.

The Equal Protection Clause was the basis for the landmark Supreme Court case, Plyler v. Doe, in which the opinion of the Court found that children who have illegally entered the United States with their families should not be denied a public education. In May 1975, the Texas Legislature added language to the state's education laws that effectively denied funds to school districts providing schooling to undocumented children. In addition, the Texas Legislature enabled school districts to refuse enrollment for children who had "entered unlawfully" into the country (Plyler v. Doe). In September 1977, a class action lawsuit was filed on behalf of children who were Mexican nationals, could not demonstrate that they had entered the country legally but still sought to enroll in and attend schools in the Tyler Independent School District. The lawsuit argued that such legal revision violated the 14th Amendment, the Equal Protection Clause, of the U.S. Constitution. In Plyler v. Doe, the Supreme Court held that denying enrollment to undocumented immigrant children did violate the Equal Protection Clause (Ibid). Thus states and school districts may not refuse enrollment for children who reside within their jurisdiction, regardless of their immigration status.

Title VI of the Civil Rights Act of 1964 and the Brown v. Board of Education Supreme Court case both impacted rights legislation in the United States with regards

to education and in particular, they led to federal mandates that required equal educational opportunities for students who speak languages other than English. The Supreme Court opined in 1954 that the “segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal” does deprive minority children “of equal educational opportunities”. Moreover, the Court noted that separating minority children from whites fueled feelings of inferiority, “which affects the motivation of a child to learn” (Brown v. Board).

So Title VI mandates that entities receiving federal monies must provide services without discrimination while Brown v. Board of Education incorporates terminology that constrains states to provide equal educational opportunities. They may include the provision of supplemental learning tools. Therefore, providing identical facilities and textbooks does not parallel equality. The Supreme Court opinion in Lau v. Nichols of 1974 used terminology similar to that of Brown v. Board of Education. The opinion of the court was that if students’ limited English proficiency precluded them from participating in any “meaningful” way in the classroom, providing such students with “the same facilities, textbooks, teachers, and curriculum” as other students, without also furnishing the tools needed for them to learn English, denied them the right to “any meaningful education” (Lau v. Nichols). Moreover, the Court intoned that denying equal opportunities to speakers of languages other than English violated Title VI of the Civil Rights Act, which “bans discrimination [based on] race, color, or national origin” (Syllabus). Thus, as the

Court ruled in Brown that separate facilities, although identical, were inherently unequal, so did the Court hold in Lau v. Nichols that the provision of identical facilities, without the additional support of English language instruction, effectively precluded minority language students from equal educational opportunities. Today, the conjunction of these rulings, coupled with Title VI of the Civil Rights Act of 1964, stipulate that school districts must provide equal access to educational opportunities for LEP students through English language coursework, bilingual education or other methods of instruction.

Narrating the official English movement

Efforts to pass legislation regarding the status of the English language have swept the United States. When Governor Sebelius of Kansas signed House Bill 2140 on May 11, 2007, Kansas became 1 of 30 states to pass some form of Official English legislation. Not all of those 30 states have enacted laws that denote English as the *only* official language. Hawaii, for example, claims both English and Hawaiian, although Hawaiian is “for public acts and transactions only as provided by law” (Constitution of the State of Hawaii, Article XV, Section 4).

This narrative of the official English movement will address three central questions: What do the terms, Official English and English-only imply? What bases do proponents of such legislation utilize to further their goals? How have opponents of official English legislation confronted efforts to pass such laws?

The main distinction between official English and English-only is their level of severity; that is, the extent to which they restrict the use of any language in

government business. Official English legislation implies that all government functions as dictated by the law are to be officiated or carried out in English. Official English policy does not, by definition, exclude the use of other languages in government, nor does it inherently prohibit government work from being conducted in a language besides English. However, official English laws do seek certain leverage or control of language use in government (Stalker 18). By comparison, a national language designation proffers no such control; a national language only denotes a “cultural” sentiment, not a political motive (Fountain).

English-only legislation also seeks to regulate the use of English and/or other languages in government business. English-only legislation is, however, more restrictive (Stalker 18). English-only could dictate any number of constraints, including stipulating that voter ballots and applications for welfare assistance must be provided in the English language only. Thus unlike official English, English-only laws leave little room for negotiations. English-only curtails the use of other languages in government business.

US English, Inc. and Pro English, two non-profit organizations based out of Washington, D.C. and Virginia respectively, have been consistent proponents of such legislation, thus urging states to pass laws that identify English as the official language of the state. Both organizations cite national unity as a primary reason for enacting official English legislation and feel that making English the official language is one important step towards achieving that goal. Both organizations contend that multilingual and bilingual practices in education and government dissuade

immigrants from learning English and galvanize non-English speakers to isolate themselves from the general population, thus harming national solidarity.

For example, Pro English describes itself as “the English language advocates” and on its website, indicates, “We work through the courts and in the court of public opinion to defend English's historic role as America's common, unifying language, and to persuade lawmakers to adopt English as the official language at all levels of government” (Pro English). Similarly, the website for US English, Inc. notes, “U.S. English, Inc. is the nation's oldest, largest citizens' action group dedicated to preserving the unifying role of the English language in the United States” (US English, Inc.).

Pro English and US English, Inc. present the goal of English language acquisition among immigrants as the driving force behind their lobbying work. Specifically, US English, Inc. states, “U.S.ENGLISH believes that the passage of English as the official language will help to expand opportunities for immigrants to learn and speak English” (Ibid). And Pro English also notes, “Our nation's public schools have the clear responsibility to help students who don't know English to learn that language as quickly as possible” (Pro English). In addition, these two organizations believe that through official English legislation, which favors English language use in government work and transactions, English language acquisition will increase as obstacles to acquiring the language will decline. US English, Inc. opines, “Declaring English the official language...encourages immigrants to learn English in order to use government services and participate in the democratic process”.

Moreover, the organization's website declares that providing government services in other languages insinuates that for immigrants, "it is not necessary to learn English because the government will accommodate them in other languages." Similarly, Pro English's official website says, "instead of encouraging new immigrants to acquire the English fluency needed to succeed in our society, the policy of our government is to promote "diversity" by operating in ever growing numbers of foreign languages."

Both organizations seem aware of the arguments made by their opposition. Pro English states on its website, "Opponents of making English the official language charge that it is "anti-immigrant," or that it is merely symbolic and therefore unnecessary. These charges are false." And US English, Inc. attempts to rebuff several ideas that the organization frames as misconceptions of official English legislation. For example, the Myth v. Reality section of the US English, Inc. website depicts as a myth the notion that "Official English would deprive criminal defendants of their right to an interpreter". The organization contends that any official English legislation supported by US English, Inc. "would provide a specific exception for "actions that protect the rights of ... criminal defendants" (US English, Inc.).

So how do opponents of official English legislation frame their arguments? Certainly, some assertions of opponents resemble the myths outlined by US English, Inc. and the "charges" refuted by Pro English. The main arguments made by official English opponents are that such laws are unnecessary and could galvanize prejudiced and insensitive perceptions of immigrants. Moreover, opponents of official English

legislation claim that rather than promote needless legislation, governments should actively encourage Americans to learn languages other than English.

First, the English language is not being threatened. Not only is the primacy of English felt by immigrants in the U.S., the English language is recognized world wide as a necessary means of communication and a vital tool for business. Notably, 1.5 billion people in the world use English, either as a first or a second language, English is spoken on a regular basis in over 60 countries and 80% of computer data in the world is in English (Lee).

Immigrants to the U.S. also acknowledge the value of English. In written testimony to the U.S. House of Representatives Committee on Education and the Workforce, John Trasvina, President and General Counsel to Maldef, said, “latinos, both native-born and newly-arrived, embrace English and place tremendous importance and value upon attaining English-language fluency. By wide margins, Latinos believe that learning English is essential for participation and success in American society” (1). Through my professional experience with the Kansas Department of Social and Rehabilitation Services in Kansas City, Kansas and Keys for Networking, Inc. in Topeka, Kansas, I have learned that a vivid desire to learn English, in order to better one’s own life in addition to the life of one’s children, is held by the vast majority of individuals whose families receive government benefits or who receive training and assistance from Keys. I receive, on nearly a weekly basis, requests for English language class referrals. And according to research conducted by

El Centro, Inc. in Kansas City, Kansas, 94% of Latino immigrant adults indicated, “English proficiency is ‘essential’ or ‘important’ to survival in the U.S.” (Lewis 3).

Second, immigrants are learning English. According to Shin, 17.9 % of the population 5 and over spoke a language other than English at home (5). Only 8.1% of those surveyed said they spoke English “less than very well” (Ibid). In the Midwest, that percentage is lower than in any other region in the U.S. Specifically, the percentages of the population aged 5 and over who spoke English less than very well were 14 % in the West, 9 % in the Northeast, 7 % in the South, and 4 % in the Midwest (Ibid). In 2000, 8.9% of the population in Kansas aged 5 and over spoke a language other than English, yet only 3.9% responded that they spoke English less than very well (Ibid). Interestingly, despite these figures, Pro English asserts on its website that bilingual education and the provision of government services in languages other than English are “keeping immigrant children from learning English” and “causing a growing underclass” (Pro English).

Third, more restrictive language policies are not going to help immigrants acquire proficiency in English. That is, without funding, the demand for English classes will continue to outpace the supply. John Trasvina notes that in Phoenix, Arizona, “a large ESL provider reported an 18-month long waiting period for [ESL] evening classes” and in Boston, “16, 725 adults” are waiting for an opportunity to enroll in English classes” (3).

This chapter has demonstrated that federal law regarding speakers of languages other than English in schools largely complies with international human

rights standards. Both federal law and mandates and human rights assert that all students may enroll in school and must receive necessary accommodations in order to benefit fully from an education. Moreover, federal law and U.S. Supreme Court decisions have mirrored the sentiments of international human rights law by stating that a person's national origin or language should not preclude them from enjoying the benefits of an education. Thus, speakers of languages other than English and immigrant children in Kansas have the right to enroll in public schools and to receive the accommodations, including English language instruction, they need to learn.

Yet the growing trend of Official English legislation in the United States has provoked the question of whether Americans embrace these precepts of equality in education, regardless of a person's linguistic or national origins, or whether their distrust of immigrants takes precedence over ideologies of equality. Specifically, this chapter has demonstrated that proponents of Official English legislation have emphasized immigration over respect for speakers of other languages. Thus, any recognition of or respect for other languages has been overshadowed by the immigration debate. As the following case study will show, this debate has also become center stage in Kansas.

Case Study: Official English and Kansas

The timeline of events in Kansas that culminated with Governor Sebelius signing House Bill (HB) 2140, making English the official language of the state of Kansas, involved national actors promoting the bill and local activists and lobbyists filling committee rooms to listen to testimony. This case study summarizes the chronology of events that preceded the passage of HB 2140 and the different arguments made by both proponents *and* opponents of the bill. This case study also describes the public speculation that surrounded the bill as it progressed through the legislative process. First, this case study briefly outlines my personal involvement. Next, it describes HB 2140 and the changes made to the bill. Finally, through this case study, I demonstrate that while proponents of the bill argue that they are advocates of the English language, the consensus that emerges from the dialogue is that immigration is the focus, rather than language. Opponents of HB 2140 used arguments that are similar to those already outlined in Chapter 5. This case study will focus, when possible, on talking points that have not previously been discussed in this chapter.

As early as the summer of 2006, lobbyists and activists speculated that the 2007 legislative session in Kansas would witness the proposal of an official English law. My involvement began in June 2006 when I contacted Melinda Lewis, the Director of Policy Advocacy and Research of El Centro, Inc. in Kansas City, Kansas, and queried if I could provide research assistance. She agreed. Through meetings with her in her office and via e-mail communication, we developed talking points with the

goal of sharing those points with others who wished to oppose the official English legislation. An excerpt of those talking points can be found in Appendix B.

While I eagerly read every newspaper article that pertained to language, the online comments that followed each article also caught my attention. The Lawrence Journal World allows readers to register, create a user name and then to post their opinions about articles. The posts are often anonymous and the process becomes very interactive as each post is viewed immediately and can be read by any reader, whether or not he or she has registered as an online user. The Topeka Capital Journal, on the other hand, permits posts by readers but a moderator regulates the process; if the post is deemed too vulgar or inappropriate for the readership, it is not made available for others to read. Appendix A consists of a timeline, which uses headlines and citations from the Lawrence Journal World (LJW). The “online responses” were also taken from the LJW and correspond to the article they follow.

Eager to participate more fully in the debate, I opted to register as an online user and chose “languagerights” as my username. My first post was as a participant in an online chat with former Commissioner of Education Tompkins. I broached my concerns that American students were not acquiring proficiency in languages other than English.

I continued to post online regarding the proposed Official English legislation and often, other readers attacked my opinions. I was called an “idiot” and it was insinuated that I hated America. In January 2007, I wrote and presented testimony in

opposition to HB 2140. Following that initial legislative hearing, I continued to monitor media coverage of the bill.

As passed, House Bill No. 2140 designates “English as the official language of the state of Kansas” (Section 1.a). The bill defines official language and states, “the official language is designated as the language of any official public document or record and any official public meeting” (Section 1.b). HB 2140 appears harmless. It does not specifically prohibit the use of other languages in government transactions, “so long as the document or record is also published in English” (Section 1. (c)(1)). Moreover, the text of the bill carefully explains that it should not be misconstrued and does not infringe on the rights of members of Native American tribes or of minority groups to use their native languages in public meetings or interactions (Section 3,4). Section 2 also provides a concise list of instances in which languages other than English may be used, including, but not limited to, to “provide information orally to individuals in the course of delivering services to the general public, [to] comply with federal law, [and] to protect the public health or safety”.

The Legislature made two significant changes to this bill before it became law. First, Section 1 of the original bill stipulated that government agencies were not “required” to provide documentation “in any language other than English”. Second, the bill in its original form included language that allowed citizens of the state to file grievances if they felt the bill was not being enforced. Lobbyists and advocates successfully lobbied to have those

elements of the bill altered. Indeed, HB 2140, as amended, neither prohibits nor encourages the use of languages other than English.

The bill was amended as a result of successful lobbying from activists. How did they accomplish this? During the preliminary hearing for the bill, opponents decried the strictness of the bill and lambasted it for its uselessness. In essence, opponents argued that HB 2140 outlined unnecessary and potentially legally cumbersome restrictions. In addition, several opponents contended that the bill should merely emphasize the necessity of all persons to learn languages other than their native language.

On January 31, 2007, the Kansas House Committee on Veterans, Military and Homeland Security convened its first hearing on HB 2140. Nine individuals appeared to share testimony regarding the bill. Notably, only one conferee appeared as a proponent of the bill. Of the remaining eight, seven testified in opposition while one person's testimony was in opposition but with the caveat that if amended, that testimony would be stated as neutral.

There were similarities among conferees' tactics. Both Melinda Lewis of El Centro, Inc. and Sandy Jacquot of the League of Kansas Municipalities noted that as written, HB 2140 made the work of government agencies cumbersome and that as a result, its effects could be harmful. Specifically, Ms. Jacquot said, "Don't tie our hands" and asked that the bill reflect the absolute need for agencies to provide some documents in other languages. It would appear that her amendment was successful, as HB 2140, as amended,

does not prohibit agencies from providing information in languages other than English but instead asks that the same information also be provided in English.

Other conferees touted diversity and asked the Committee to abandon the bill altogether or to include an amendment that emphasizes the value of learning other languages. Arthur Solis, who appeared in opposition to the bill, suggested that the bill die in committee. Steve Cadue, Chairman of the Kickapoo Tribe of Kansas, testified that in his travels, he had learned that Americans were behind the rest of the world with regards to second language acquisition and suggested amendments that included encouraging Kansans to acquire proficiency in a language other than their native one. My own testimony also suggested an amendment to the bill that would encourage all residents of Kansas to learn a second language; thus, immigrants should learn English and native speakers of English should learn a second language. A copy of my testimony can be found in Appendix C. And in a similar vein, Reverend Rene Tario, from the Wichita Hispanic Ministerial Alliance, declared that the bill was unnecessary, because the language of the U.S. is the “language of peace”.

After the bill passed the House Committee, albeit with alterations, it was debated by the entire House and underwent its most substantial amendment. As members of the Kansas House debated the bill, Representative Sue Storm, a democrat from Johnson County, suggested an amendment that created a \$500,000 competitive grant to fund English classes for limited English proficient adults (Rothschild, “House passes 'official English' bill.”). Her amendment passed, which seemingly provided the

impetus for the House to pass the bill and send it to the Senate. However, the Senate later removed the \$500,000.

The final version of the bill, therefore, includes substantial changes as a result of lobbying during the initial stages of the process. However, without the \$500,000 grant and with Jacquot's amendment that neither encourages nor discourages agencies from providing documents in other languages, the bill does not appear to do much at all. Indeed, it declares the right of persons to use their native language in public, does not prohibit any government entity from using languages other than English when necessary, and even declares the responsibility of the Regents to actively work with community groups to promote English language classes. Most of these declarations were already a part of federal law and mandates. So what, exactly, has this bill accomplished?

With the exception of the removal of the grant money, the amendments made to the bill have been positive. Yet without the teeth of the original legislation and most importantly, without the \$500,000 for English classes, the bill comes across as flimsy. So, why introduce such legislation and why pass it? One must conclude that an overt emphasis on immigration, rather than on language, drove this bill.

The media, legislators and the general public seem to feel that language and immigration are linked. The assumption is that by passing strict ordinances regarding language, a step towards resolving the immigration problem has been accomplished. Indeed, an examination of the dialogue that occurred as the bill was debated

underscores the opinion that official English legislation would solve immigration problems.

First, the bill emerged from the Kansas House Committee on *Veterans, Military and Homeland Security* (italics added). While the amended bill does speak of the need for individuals with limited proficiency in English to have opportunities to acquire the language, the bill did not originate in an *education* committee. Second, legislators debating the bill and participants in online discussions consistently indicated that they felt the bill was about immigration.

For example, as the bill passed the House Committee, an online user posted, “with 3000 to 8000 crossing the border illegally DAILY, they have invaded. [T]hey are here to reclaim the country they believe ... we stole from them” (Asbestos). Another reader responded, “Why is it that some people always equate this debate with illegal immigration ... this will not stop the thousands crossing the border each day” (Preebo). That which is most telling is the media coverage of the bill as it passed the Senate, received the House’s final approval and was sent to the Governor. Both the legislators and the media portrayed the bill as one that did little, but was the most successful among a number of immigration bills. How could a bill that purportedly accomplishes so little find support, and pass? Senator Brungardt, a Republican from Salina, summed it up best when he said, “Generally speaking, bills that don’t actually do anything have a high rate of passage” (Rothschild, “Bill Advances to Full Senate.”).

Indeed, frustration over immigration became the major driving force behind the bill. For example, a March 7, 2007 Lawrence Journal World article had the headline of “Legislators seek ways to deal with illegal immigrants” and stated that while critics of several bills proposed during the legislative session perceive the bills as punitive, “backers say they’re responding to demands from constituents to do something about illegal immigration”. The article went on to say that the Official English bill had received the most attention. And it seems that the general public concurs that solving immigration problems should include a bill about English. On March 7, 2007, a reader posted: “This bill may be reactionary...but it's time...the illegals...and their enablers know that their marches are over and there will be repercussions therfrom!” (jimincountry). As the bill was debated by the House, Representative Owens, a Republican from Overland Park, R-Overland Park, “said the bill was based in anti-immigrant feelings “born out of fear more than anything else” and would send out another “negative message” about Kansas” (Rothschild, “House passes 'official English' bill”).

HB 2140 has served little purpose but to add additional fuel to the fire surrounding the immigration debate in Kansas. Opponents of the bill initially argued that it could result in negative or harmful consequences. And for some, the worst fears have already been imagined. In Garden City, following the passage of HB 2140, a Hispanic woman went to the post office with her parents, who both speak English. They were standing in line and engaging in a personal conversation in Spanish. As they approached the cashier, they were wrapping up their conversation and the

woman made one last remark to her parents in Spanish before turning to the cashier, fully prepared to speak English. The cashier said, rather dismissively, “Kansas is an English state”.¹ One might wonder, is this what the authors of HB 2140 foresaw when they first introduced the measure?

¹ As related to me through personal communication, 31 May 2007.

Conclusion

Education policy in the U.S. and Kansas that pertains to minorities, especially those who have different linguistic heritages, is a contradiction. On one hand, the United States has a rich heritage of defending education for all children. The historic Brown v. Board of Education heralded significant changes in the American public education system for minority students, including speakers of languages other than English. Yet nationally, Official English legislation has proven immensely popular. Kansas has adopted similar legislation, while refusing to authorize additional funding for English classes for adults.

In addition, as Hispanics are more likely to live in poverty and have the lowest median incomes, they also drop out of school at higher rates. The Kansas Legislature had the opportunity to enact legislation that would have appropriated grants for English classes for adults who are speakers of other languages, yet chose to remove that funding from the bill before its passage. Additional opportunities to learn English would have helped adults whose children are attending public schools. Proponents of HB 2140 indicated that learning English would increase opportunities for adults to find and maintain better-paying jobs. One can extrapolate that higher incomes would help many immigrants, predominantly Hispanic and Spanish speakers, be better equipped to care for their families. Indeed, learning English would prove beneficial for many families to move *out* of poverty. Yet while Hispanic immigrants want to learn English, the opportunities for them to do so are limited. HB 2140 fails to provide increased opportunities while, at least as it was initially written, criminalizing

speaking other languages. Granted, significant changes have been made, but without the necessary funding, the bill accomplishes nothing.

And the effects of discriminatory sentiments with regards to language were already being felt in Kansas prior to the passage of HB 2140. Its passage may just exacerbate those feelings. Indeed, prior to the passage of HB 2140, a 16 year-old student enrolled in a Kansas City, Kansas public school was suspended from school for speaking Spanish in the hallway. While the school district rescinded his suspension and later, officially declared that “speaking a foreign language is not grounds for suspension” (Reid), this incident is indicative of a growing trend in Kansas to effectively criminalize speaking other languages.

How can we have court rulings such as Lau v. Nichols and Plyler v. Doe and yet a teacher in Kansas City, Kansas can feel vindicated to suspend a student for speaking Spanish in school? What the United States and Kansas need, besides immigration reform (into which this thesis will not delve) is an approach that recognizes the right of one to use their native language in all functions. HB 2140, as amended, purports to do this, but its supporters are more interested in battling immigration than providing real opportunities for immigrants to acquire English language skills. Moreover, the bill is misleading and encourages those who hear of its passage to assume that it is attacking speakers of other languages.

Kansas obeys the precepts of Supreme Court rulings, thus not overtly prohibiting other languages, while enacting legislation that results in misconceptions about when one may use languages other than English. It seems that Kansas (along

with other states) has not adhered to the spirit of the law. Providing equal educational opportunities for all children means integrating their families into the process as well, by promoting respect for other languages and real opportunities for adults to acquire English skills. If limited English proficient adults were given real opportunities to increase their English skills, they could in turn help their children. As Hispanic students drop out of school at higher rates, they continue the cycle of poverty. There are solutions, including expanding opportunities for immigrants to obtain gainful employment and to enroll in meaningful English language courses. Official English laws are not the answer and may only aggravate the problem.

Supreme Court Justice Beier may have set an enormous precedent by stating that education is a fundamental right. Kansas should officially adopt that stance, perhaps through a constitutional amendment. As an economic and social right, education is a positive right and therefore, necessitates the allocation of additional resources. Judicial review in Kansas has already demonstrated tremendous support for education by demanding that equal educational opportunities should be made available to all children. The Kansas Legislature, on the other hand, has been reticent. A constitutional amendment that declares that education is a fundamental right would be a worthy addition to Kansas law.

The spirit of federal law regarding speakers of other languages in schools reflects the ideology of equality promoted in international human rights law. In addition, the emphasis on equal educational opportunity in Kansas court decisions that forced the Kansas Legislature to increase funding for schools also echoes the

general sentiment of human rights. However, to fully embrace human rights, Kansans must shed any belief that one does not have the right to use his or her language. The right to learn and use one's language is part of human rights. To ensure human rights, communities in Kansas must let go of any vestiges of anti-immigrant sentiments to which they cling and instead, support the fundamental rights of all human beings. Only when a respect for human rights at all levels of society is certain, will human rights be guaranteed for all residents of Kansas.

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Appendix A

HB 2140: A TIMELINE OF EVENTS*
<p>August 16, 2006</p> <p>“There are many Kansans who feel that English is slowly being minimized,” Barnett said. “The intent is to preserve and protect the English language.”</p> <p>Sebelius’ office said the governor “believes it makes it easier for all of us to communicate, in school and in business, with English as the official language.”</p>
<p>September 27, 2006</p> <p>Chat with former State Education Commissioner Andy Tompkins</p> <p>Languagerights: <i>One challenge faced by our State Department of Education and by our school board is preparing our students to succeed in an increasingly globalized society. As immigration rates swell, our schools are being faced with the challenge of providing a curriculum that serves the linguistic and cultural needs of our LEP students. But, what about preparing students, whose first language is English, to conduct business in a world in which languages other than English are spoken and in which students from other nations are learning English, while WE are not learning THEIR languages? Multiple reports from the Government Accountability Office suggest that we are entering the military and foreign service without the language proficiency we need to protect our country and promote healthy foreign policy. And KSDE does not even have a Foreign Language Consultant (I checked). Mr Tompkins, what do you think can and should be done in order to alleviate this problem? Should we begin teaching languages at a younger age? Must we just provide better funding for foreign language programs? This is a serious deficiency and one that our state board of education must take very seriously.</i></p> <p>Andy Tompkins: <i>I agree that this is an area of concern. One of the problems we face is an understanding by our society that this is important for our children. We know that the earlier that a child learns a foreign language the easier it is for them to learn it and appropriate speak it. Therefore, the research would certainly suggest that we need to introduce students to foreign language at an earlier age. We have some school districts who have done this but nothing on a statewide basis. I feel that this is a topic that school districts and the state board need to address so that some beginning progress can be made.</i></p>
<p>December 20, 2006</p> <p>Officials lament that Kansas students are not studying the foreign languages they need for the future.</p> <p>“Education officials Tuesday said the United States, including Kansas, must increase language training, especially in so-called strategic languages such as Chinese, Arabic and Russian”.</p> <p>Online response: <u>Solomon</u> (Anonymous) says...</p>

Many in Europe begin learning English in elementary school, and continue right through high school. That's the way to learn a language. If I'm not mis-remembering, in Holland all children take English as a second language starting very young. Later in their education they may elect to take another language such as German, French, Italian, etc.

The problem with language education in the U.S. is that it does not focus on speaking the language.

...

We need to throw out the traditional course structure and get people talking (the way a small child learns to talk) before we ask them to read and study the structure.

January 14, 2007

Kansas House of Representatives pushes bill to make English the official language

“Under the bill, no state agency or political or taxing entity would be allowed to issue written materials in any language other than English. Exceptions to the law would allow use of another language to protect public health, to protect a person’s rights in a criminal or civil proceeding, to provide instruction to people learning English, to promote international commerce or to use phrases from other languages”.

If you’re going to be here and get ahead, you’ve got to know the native language,” said House Majority Leader Ray Merrick, R-Stilwell.

Senate Minority Leader Anthony Hensley, D-Topeka, agreed learning English was important but said state government shouldn’t do anything to shut out individuals not fluent in the language. He noted members of the Legislature in the 1800s voted to publish copies of state documents in German.

January 31, 2007

Official English’ bill draws crowd to committee hearing

“It would reaffirm our melting pot tradition,” Ben Piper, a spokesman for the Arlington, Va.-based ProEnglish.

Opponents of House Bill 2140 said the measure was discriminatory, divisive and could hinder efforts by local governments to provide necessary information.

Myers said the bill was necessary to help “those who are not proficient to move in that direction.”

“The tone of this proposal is isolationist and narrow-minded and unfriendly,” said state Rep. Marti Crow, D-Leavenworth.

“Our customers speak a variety of languages,” City Manager Robert Halloran of Garden City said in written testimony. “Limiting your audience to just English in Garden City dramatically reduces the number of people you effectively serve.”

Steve Cadue, chairman of the Kickapoo Tribe of Kansas, said the measure would inhibit those who speak other languages.

“Let us genuinely embrace diversity and learn from each other,” Cadue said.

He and several others asked the committee to endorse “English Plus,” which emphasizes the

importance of learning English while also promoting the learning of other languages.

Online responses:

KS (Anonymous) says...

Does Mexico print all their signs, etc. in English for us?

white mountain (Anonymous) says...

“Let us genuinely embrace diversity and learn from each other”

Yes.. let's. In English. It's hard to learn from you when I can't understand you.

TheEleventhStephanie (Anonymous) says...

“I'm trying to imagine moving to a foreign country and expecting them to pay for printing out & maintaining all their official documents in English for me so that I could function perfectly well there without ever having to learn their language..”

I don't know if it's so much that they EXPECT it, it's just that it's what we've always done and the immigrants have grown used to it. We have made it easy for people to get by with very little English. But for the record, it isn't really going to kill any of us to learn a bit of Spanish—might even help with that whole “diversity” thing

Baille (Anonymous) says...

“Does Mexico print all their signs, etc. in English for us?”

And if Mexico jumped off a bridge...

“It would reaffirm our melting pot tradition,” Ben Piper.

I have always preferred a salad to queso. Maybe Piper should return to spreading his waste-of-time ideas in Virginia.

February 8, 2007

To the editor:

The Feb. 1 article concerning English as the official language of Kansas, with comments by those opposed, brings back deeply held and felt memories.

Several years ago, my wife and I lived and worked in the many islands and atolls of Micronesia, many of which were hosts to Peace Corps volunteers, but their inhabitants knew little English. These energetic and eager young volunteer educators brought with them many of the talents and skills needed, but they knew next to nothing about the many different languages and dialects of these peoples.

Solution: The volunteers were quickly transported to outlying islands or remote locations where they were “force fed” the local language by living it in a family situation.

Result: In roughly two weeks, these Peace Corps volunteers were able to fulfill their purposes and objectives; i.e., they could communicate and teach. It should go without saying, but it is impossible to overemphasize, that assimilating oneself and learning the indigenous language is the only path to escape mediocrity.

Jim Winn,

Lawrence

Online responses:

just another bozo on this bus (Anonymous) says...

“It should go without saying, but it is impossible to overemphasize, that assimilating oneself and learning the indigenous language is the only path to escape mediocrity.”

Which is precisely what the vast majority of immigrants do, without the need of any xenophobic “English-only” laws.

Jamesaust (Anonymous) says...

“where they were “force fed” the local language by living it in a family situation.”

Funny. I believe the Nazis tried a similar approach. “Force fed” haha “living it in a family situation” - I’m all giggly now. Where can I catch this author doing stand up?

February 13, 2007

But the debate was not over whether most people in Kansas speak English. . . That’s obvious. The question is whether that fact needs to be written in the law books.

“The bottom line is that English is going to be the official language of Kansas,” stated Representative Candy Ruff, a Leavenworth Democrat.

“I’m not sure if it really accomplishes anything we’re not trying to accomplish already,” rebutted Rolla Republican, Representative Bill Light.

Representative Dan Johnson believes the bill could have unintended consequences.

“I don’t understand the need for the bill. I’m concerned about certain things,” Johnson (R- Hays).

“Not everything in my opinion needs to be taken care of by a new statute or law,” Rep. Eber Phelps (D-Hays) said.

Lawmakers did pass the bill out of committee. It will now go to the full House.

February 14, 2007

House Bill 2140 was recommended for approval by the House Committee on Veterans, Military and Homeland Security.

“English is the common language of Kansas, and this bill affirms that by not unnecessarily interfering with state agencies’ or localities’ essential communications in other languages,” Chairman Don Myers, R-Derby, said.

Originally, Myers’ bill said no governmental entity was required to provide written materials in languages other than English unless it was needed in certain circumstances, such as to protect the public’s health or in legal proceedings.

The changed bill keeps that provision but also makes clear that no governmental entity shall be prohibited from publishing records and documents in languages other than English.

The new version also urges the state education department to assist non-native speakers in finding

English language classes.

"I don't see the need for it," said Rep. Eber Phelps, D-Hays.

Online responses:

ASBESTOS (Anonymous) says...

Immigration Laws

There will be no special bilingual programs in the schools, no special ballots for elections, all government business will be conducted in our language. Foreigners will NOT have the right to vote no matter how long they are here.

Foreigners will NEVER be able to hold political office.

Foreigners will not be a burden to the taxpayers. No welfare, no food stamps, no health care, or other government assistance programs.

Foreigners can invest in this country, but it must be an amount equal to 40,000 times the daily minimum wage.

If foreigners do come and want to buy land that will be okay, BUT options will be restricted. You are not allowed waterfront property. That is reserved for citizens naturally born into this country.

Foreigners may not protest; no demonstrations, no waving a foreign flag, no political organizing, no bad-mouthing our president or his policies, if you do you will be sent home.

If you do come to this country illegally, you will be hunted down and sent straight to jail.

Harsh, you say?.....

The above laws happen to be the immigration laws of " MEXICO "

Marion (Marion Lynn) says...

We make room for all foreigners who speak their native tongues.

We must insist however, that they learn English and to do so we must make English our official language.

Thanks.

Marion

Redzilla (Anonymous) says...

It just seems like wasted effort. I doubt this measure will have any real effect on the way foreign languages are used or accomodated, and it just makes us look like jerks. Having lived and worked in a foreign country for two years, I have all the sympathy in the world for people who are struggling to get by in America as non-native speakers.

ljreader (Anonymous) says...

As far as I can see, for the most part, the only group who refuses to learn English are Spanish speakers. This is probably due to the fact that they are given NO incentive to learn another language. They are able to spit out babies whose birth, education and medical care are provided by American taxpayers. They don't have the number of children they can afford, but rather the number the taxpayer can afford. Their children will never learn to speak English because their free education is in Spanish.- At great expense again to American taxpayers.

They get jobs, food stamps, housing, their own Bank of America credit cards, home loans, etc- all without speaking English- or even being in this country legally for that matter.

They have their own Spanish speaking TV and radio stations- and with 3000 to 8000 crossing the border illegally DAILY, they have invaded and taken over entire communities and have their own commerce and signage- Is it any wonder they do not learn English??

Many have no intention of learning English, as they are here to reclaim the country they believe, in all their ignorance, we stole from them.

As far as printing official documents in English only- what good does that really do? In return for the billions of dollars per year the illegal immigrants cost us, they bring us poverty and very little education. Most are probably incapable of reading in ANY language

preebo (Anonymous) says...

Why is it that some people always equate this debate with illegal immigration. Let me start off by saying, not all non-english speaking people are mexican. Follow up to that is, not all mexicans are here illegally. And my final comment to those who equate an English-Only mandate to halting the Illegal Immigration debate, this will not stop the thousands crossing the border each day. I repeat, this will not stop the thousands crossing the border each day.

white_mountain (Anonymous) says...

adopting an official language is only one component of a national identity, but you're right in that it certainly won't fix the problem of illegal border crossings. We do need to fix the problem at the source: the employers, and a policy of non-enforcement, that encourages them to come.

logicsound04 (Anonymous) says...

US: Hey, Mexican, you need to learn English is you're gonna live in OUR country

Mexican: Okay—I was going to learn English anyway so that I can get a better paying job

US: Hey Mexican, do you hablo English, por favor? You need-o to learn-o English or you are going to jail-o

Mexican: Jeez, quit freaking out—there is no choice to be made. I was already trying to learn English

US: Damn Mexicans never listen. Too bad they don't speak English—they're tearing the fabric of our carefully constructed society.

ASBESTOS (Anonymous) says...

Bank of Amrica is going to give illegal aliens credit cards that do not require a SSN. The only requirements are to have an address, a 3 month bank account with Bank of America and pay a large fee.

February 20, 2007

House passes 'official English' bill

The Kansas House on Tuesday gave preliminary approval to a bill making English the official language of Kansas, after the measure was amended to include a possible \$500,000 to help fund English classes for adult immigrants.

“It’s more an English promotion bill now instead of an anti-other languages bill,” said Lewis, director of public advocacy and research at El Centro Inc. in Kansas City, Kan.

The proposed \$500,000 competitive grant for adult education English classes was placed in the bill by an amendment by state Rep. Sue Storm, D-Overland Park.

Rep. Thomas “Tim” Owens, R-Overland Park, said the bill was based in anti-immigrant feelings “born out of fear more than anything else” and would send out another “negative message” about Kansas.

“Let’s put our money where our mouth is,” Storm said in advocating for the \$500,000 English instructional funds.

Online responses:

Baille (Anonymous) says...

Seriously?

A bill that makes English the official language but gives state agencies and localities discretion in whether to print official documents in languages other than English, and that provides \$500,000 to teach English to adults but doesn't really provide the money.

What could be a bigger waster of time?

ASBESTOS (Anonymous) says...

118-2 was the vote. It appears as the “elected representatives” when voting for their constituents concerns apparently the majority is no longer tolerant of illegal aliens, and no longer tolerant of those refusing to learn English.

languagerights (Anonymous) says...

During the hearing for this bill, a member of the Kickapoo tribe appeared in opposition to the bill. And in Alaska, efforts to pass Official English legislation failed, largely because Native tribal groups fought against it. I wish that we could all recognize the tangible damage that restrictive language policies have had in our country and could continue to have unless we change our perspective.

ASBESTOS (Anonymous) says...

“I wish that we could all recognize the tangible damage that restrictive language policies have had in our country and could continue to have unless we change our perspective.”

And I wish idiots like you would look at Europe and the lack of assimilation when groups are not

allowed to or not encouraged assimilate. As in France, you get a lot of burned cars and nights of riots because of the self-disenfranchisement that comes from not assimilating. The first step in assimilation is communication! and that MUST be the prevailing language. Language is the only commonality usually in a culture. ANd in the american culture (yes ther is one but it is eroding) the language of commonality is english!!!!

You idiots need to understand the hippie crystal gripping nonsense does not work in today's world and is only nostalgia for the 1960's. It is not a viable principal, philosophy, or political position.

Get over it, everyone does not have the right to come here. Everybody in the world is not necessarily a good person. Additionally, THE US of A is a GREAT country and will ony continue to do so with some "cultural maintenance". ANd that is control the borders, and moke those coming here adjust to the US< and not make THE US adjust TO THEM!!!!

idiots!!!! you are the bigoted ones, Anti American self haters.

Get a clue!

March 7, 2007

Legislators seek ways to deal with illegal immigrants

While critics see that message in proposals before the Republican-controlled Legislature, backers say they're responding to demands from constituents to do something about illegal immigration.

Lawmakers are considering designating English the state's official language and cracking down on voter fraud. There's talk about denying government services to illegal immigrants, while efforts to impose tougher penalties on employers who hire illegal immigrants have proven problematic.

"All of the bills send a message of a preoccupation of immigration. It's not based on anything rational," said Melinda Lewis, policy and research director for El Centro, Inc., an advocacy group in the Kansas City area.

The English bill has received the most comment so far.

"It's a type of racism," said Rodrigo Bonilla, of Salina, state director of the League of United Latin American Citizens. "Some people are uncomfortable to hear people speaking other languages."

March 7, 2007

Senate takes up 'official English' bill Supporters, opponents clash about the meaning

"This bill is a slap in the face of all the good people of this state -- loyal Americans, loyal Kansans -- who happen to speak languages other than English," Phillip DeLaTorre of Lawrence told the Senate Federal and State Affairs Committee.

But state Rep. Mario Goico, R-Wichita, said, "What this bill will do is unlock the door and allow

people to thrive.”

House Bill 2140 was approved by the House and is now being considered in the Senate.

State Rep. Candy Ruff, D-Leavenworth, urged approval of the bill because she said an amendment added in the House would provide \$500,000 in English adult education classes. That amendment, however, is subject to appropriations by the Legislature.

But opponents of the bill said the proposed funds for English classes could be considered in legislation separate from the official English proposal

Online responses:

jimincountry (Anonymous) says...

This bill may be reactionary.....but it's time somebody notifies the illegals/migrants/undocumented/criminals and their enablers know that their marches are over and there will be repercussions therfrom!

March 14, 2007

**'Official English' bill advances to full Senate
Opponents expect it to become law**

“Generally speaking, bills that don’t actually do anything have a high rate of passage,” said Sen. Pete Brungardt, R-Salina, and chairman of the Senate Federal and State Affairs Committee.

Brungardt called House Bill 2140 a “nothing bill” that “acknowledges that English is what we speak here.”

The committee removed a provision that sought to allocate \$500,000 for adult language programs to help immigrants trying to learn

April 28, 2007

Official language bill goes to governor

A bill declaring English the official language of Kansas gained final legislative approval Friday, sending the measure to Gov. Kathleen Sebelius for her consideration.

The House had initially put \$500,000 into the bill to go toward teaching English to adults. But the Senate took those funds out of the bill.

Online responses:

kubacker (Anonymous) says...

This law has come to pass soley and entirely because of the every-day-in-your-face disrespect by illegal Mexicans (not all immigrants) to American citizens.

If these illegal Mexicans (18-25 yr. old males) made any effort to learn and use even rudimentary English this law would never have been introduced.

May 4, 2007

Sebelius tepid on English bill – Legislators had vowed to be tough on immigration

Most legislation dealing with illegal immigration failed this year, but a bill making English the state's official language passed language.

Lawmakers ended their annual session Wednesday, having started it in January vowing to deal with illegal immigration.

While the governor said she might sign the bill, she called it "sort of status quo" and expressed disappointment no money was provided for teaching English.

"The notion, somehow, we are going to mandate English as the language of the state and then make it difficult for people to learn the language of the state doesn't seem to me to make a lot of sense," she said.

May 12, 2007

Gov. signs bill making English the official language of Kansas

Gov. Kathleen Sebelius signed legislation Friday making English the state's official language, joining at least 29 other states that have made English their official or common language.

Last week, Sebelius expressed reservations about the English bill, saying she didn't think it was necessary and didn't go far enough to help people learn the language.

"Having money for the programs is something that makes sense, and she hopes the Legislature does something next year about providing money for teaching English," said Sebelius spokeswoman Nicole Corcoran.

After protests from advocates for immigrants, legislators reworked the bill with an eye toward making it appear less punitive.

*All stories and online posts were taken from the Lawrence Journal World and correspond to the date that prefaces them.

Appendix B

Excerpts from talking points developed to oppose Official English legislation

(Joint-developed with Melinda Lewis of El Centro, Inc.)

Both English-only and Official English laws have the potential of creating significant barriers to the use of languages other than English in government functions.

Following the passage of Official English legislation, would certain areas have to be designated in the Statehouse where non-English languages could, or could not, be spoken? Would individuals who visit Kansas from outside of the U.S. be allowed to tour the Statehouse with the assistance of language interpreters? Would state employees feel justified in admonishing visitors to Kansas for not speaking English, even if those visitors were tourists?

Could state agencies retain *Ad astra per aspera* on their official government letterhead and business cards, or would our Latin motto be removed from government websites and replaced with its English translation?

Would language restrictions spread to public areas, generally not related to government business, as a result of public perceptions that Official English legislation condemns the use of other languages in the public sphere? Would a shop owner feel justified in criticizing a patron who, after placing their order or, while perusing the store, chats privately with their friend in a language other than English? Would passersby feel justified in insulting an exchange student studying at KSU who is speaking in his native language?

Kansas Senators and Representatives might be restricted from using languages other than English with their constituents and similar restrictions could follow in state agencies and commissions.

If a Kansas Representative spoke Hmong, would he or she be disallowed, under Official English laws, to speak to constituents in their native language?

The Kansas Hispanic and Latino American Affairs Commission (KHLAAC) was first established in 1974. Its official website includes a section in Spanish. Would the Commission be instructed to remove Spanish language material from its website? Could Official English/English-only laws restrict the use of languages other than English in social services? Would a Human Services Specialist with Kansas SRS continue conducting interviews in Spanish or French or would Official English laws end that practice? Would such a restriction, in fact, violate federal regulations

forbidding discrimination on the basis of national origin, officially interpreted to include language?

English-only and Official English laws carry with them the potential to jeopardize the health, safety, and well-being not only of English Language Learners (ELL), but of our community as a whole.

Farmworkers are eligible for certain medical services, regardless of their immigration status. The Statewide Farmworker Health Program provides health information to migrant farmworkers in many languages, including English. Among other services, the Program provides information about Tuberculosis. Could the health of our entire community be put at risk because, under Official English laws, this program would no longer be able to provide this health and farm safety information in Spanish or Low German?

One of the main functions of the Kansas Department of Health and Environment is disease prevention. The department has developed the Handwashing Education Campaign to prevent the spread of infectious diseases, which includes the placement of “Did You Wash ‘Em” stickers in both English and Spanish in restrooms throughout Kansas. Could the breadth of this public health campaign diminish because the Department, which is a state agency, is no longer able to print public health notices in Spanish?

Would emergency personnel under state supervision or receiving state funds be prohibited from communicating in languages other than English with residents, thus impairing disaster, homeland security, or other emergency relief?

Official English legislation could result in discrimination against American Sign Language (ASL) and limit its use in government agencies and offices.

American Sign Language (ASL) is a visual language with its own, distinct grammar. It is NOT English. Indeed, several U.S. states have passed legislation recognizing ASL as a foreign language, permitting high schools and universities to allow students to fulfill their foreign language requirements by studying ASL.

The Kansas Commission for the Deaf and Hard of Hearing (KCDHH) is a state agency that lists, among its services, assistance to Kansans setting up meetings with their Senators or Representatives. If Kansas were to pass legislation to make English the only legal language, would ASL interpreters be allowed on the floor of the Kansas Senate? Would lobbyists for the hearing-impaired, who, might, themselves, be deaf, be allowed to address Senate or House committees using interpreters who speak and understand English and ASL? Would KCDHH staff members, as state employees, be allowed to conduct business in American Sign Language (ASL)?

Vague and ambiguous language of Official English and English-only policies could rescind rights grounded in the Civil Rights Act and result in increased vulnerability to lawsuits.

“Executive Order 13166...Improving Access to Services for Persons with Limited English Proficiency...which prohibits discrimination on the basis of race, color, or national origin by recipients of federal funding” could be violated if entities receiving federal funding, including SRS, KDHE, state and local law enforcement bodies, hospitals and clinics, K-12 and postsecondary schools, and others, are not allowed to make accommodations for Limited English proficient individuals.

Official English laws at the state level, in Alaska and Arizona, were struck down under the First and Fourteenth amendments. State and federal courts ruled that, while advancing no compelling public interest, these measures violated free speech and equal-protection guarantees.

In order to ratify Official English legislation that passes judicial muster and does not jeopardize public safety, many states have passed laws that are so watered down, they are virtually meaningless.

With so many loopholes to consider and so many exceptions to carve out, why not just leave well enough alone? Language-specific legislation is unnecessary. Official English is truly a ‘solution in search of a problem’.

Appendix C

Testimony in opposition to HB 2140 Before the Kansas House Committee on Veterans, Military and Homeland Security January 31, 2007

Mr. Chairman and committee members, thank you for convening this hearing. My name is Anna Lambertson. I appear today to express concerns over HB 2140.

As a graduate of the Kansas higher education system, I have been privileged to learn languages other than English, to study overseas and to apply those skills here in Kansas. I have taught English to Limited English Proficient (LEP) individuals and French and Spanish to native English speakers of varying grades and ages. I am proud to note that my alma mater, the University of Kansas, now ranks 8th in the nation in the percentage of students who study abroad and that top-notch universities across Kansas, including the University of Kansas, Kansas State University and Wichita State University, offer coursework and degree programs in French, Spanish, German, to name a few, and in International Studies and Business.

Whether you hail from legal, agricultural, educational or business backgrounds, I doubt that this committee would disagree that cross-cultural and multilingual communication skills are invaluable. Indeed, global literacy is increasingly imperative if Kansas is to secure and maintain the laudable goals of economic and political security.

HB 2140 will not bolster economic growth in Kansas through increased global literacy nor will it further the important goal of improving English proficiency in the public schools. HB 2140 is about language use and it seeks to limit the use of other languages, except when necessary. It provides instances in which languages other than English may be used, including “to provide instruction in foreign or Native American language courses”, to help Limited English Proficient students make a “timely transition to the use of English” and to “promote international commerce”. HB 2140 fails to recognize, however, that proficiency, if not fluency, in a language other than English may be a necessary element to ensure that those exceptions are effectively implemented. And despite initiatives to close gaps in global literacy, a number of sources indicate that when it comes to foreign language proficiency, Americans are lagging.

- The need for proficiency in foreign languages is, perhaps, no more apparent than among working adults, who conduct our commerce and represent our nation overseas. Yet, when the U.S. Senate proclaimed 2005 the Year of Foreign Language Study, the resolution noted that a scant 9.3% of Americans speak both

their language and another language fluently. And according to a 2002 Business Week article, the U.S. Department of Commerce reports that while the vast majority (97%) of U.S. export growth in the '90s owed itself to small to midsize businesses, only 10% of those companies were exporting. Limited knowledge of culture and language was a primary reason for choosing not to export their products. Finally, multiple studies conducted by the Government Accountability Office have found that university graduates entering the foreign, civil or military service, lack the language expertise necessary to competently carry out the duties of their positions.

- Research has found that foreign language courses in the early years prepare students for high school and university-level coursework. Yet, a report by the American Council on the Teaching of Foreign Languages (ACTFL) indicates that only 33.95% of 7-12 grade students in Kansas and less than half (43.83%) of Kansas public high school students, grades 9-12, were enrolled in foreign language courses in 2000. And between 1994 and 2000, foreign language enrollment as a percentage of public secondary school enrollment increased by a mere 3.50% (national growth was 1.06%). These enrollment numbers are insufficient to prepare secondary school students for the rigors of college and professional life. Moreover, foreign language instructors in Kansas public schools would benefit if they themselves were exposed to foreign languages throughout their education, including in middle and high schools.
- While Kansas does not require proficiency in a language other than English to obtain ESL endorsement, organizations such as Teachers of English to Speakers of Other Languages (TESOL) have proposed “guidelines” for ESL teacher certification. Those suggestions include learning another language in addition to English.

Promoting English and expanding the study of foreign languages are not disparate goals. They run parallel. HB 2140 could, if amended, speak to the value of proficiency in foreign languages in order to promote English acquisition among LEP public school students. This bill could promote the learning of foreign languages as a necessary element of international commerce. HB 2140 could even, if amended, promote the notion that by exposing students at an early age to foreign languages, those students are gaining sensibilities towards and respect for other languages and cultures, and are, therefore, less likely to misconstrue the official English language of HB 2140 and to criticize non-English speakers in private life, including speakers of American Indian languages.

Instead, HB 2140 diminishes the importance of learning other languages by assuming that those instances in which other languages may be used are “covered” by staff and teachers who are sufficiently schooled in other languages to bridge the gap. The brief

facts and figures offered by this testimony demonstrate the opposite; in reality, we are often falling behind.

I urge you to amend HB 2140 to reflect a philosophy similar to English Plus, which touts the importance of English while it also promotes the learning of other languages.

Again, I thank you for holding this hearing and I thank you for your time.