

## LANGUAGE RIGHTS IN ELECTIONS & EMPLOYMENT

Michael Adelson, Staff Editor, Vol. 31<sup>1</sup>

### I. INTRODUCTION

What is language? That may seem like an unusual question. After all, we use language in almost every waking moment of our lives.<sup>2</sup> We use our native language unconsciously, whereby we think, write, and speak with little effort.<sup>3</sup> Ultimately, language is what makes us who we are.<sup>4</sup> Language is the culmination of hundreds of thousands of years of biological development; yet, language is much more than a facet of evolution.<sup>5</sup> It is arguably the single most important facet of human culture,<sup>6</sup> but this unfortunately makes language a prime target for those who would seek to exterminate or forcibly assimilate minority cultures.<sup>7</sup> This lies at the crux of why anti-discrimination laws and their linguistic progeny are essential in any truly pluralistic and representative democracy. One only needs to make the briefest of glimpses into American history to see how Euro-Americans have treated their English-speaking, African-American neighbors.<sup>8</sup> Of

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<sup>2</sup> Alex Shashkevich, *The Power of Language: How Words Shape People, Culture*, STANFORD REP. (Aug. 22, 2019), <https://news.stanford.edu/stories/2019/08/the-power-of-language-how-words-shape-people-culture>.

<sup>3</sup> *Id.*

<sup>4</sup> Nicholas Evans & Stephen C. Levinson, *The Myth of Language Universals: Language Diversity and Its Importance for Cognitive Science*, 32 BEHAV. AND BRAIN SCIS. 429, 429 (2009).

<sup>5</sup> *Id.* at 429–30.

<sup>6</sup> *Id.* at 436.

<sup>7</sup> See Patrice L.-R. Higonnet, *The Politics of Linguistic Terrorism and Grammatical Hegemony During the French Revolution*, 5 SOC. HISTORY 41, 68 (1980) (discussing the suppression of minority languages in France before and during the French Revolution to promote national homogeneity).

<sup>8</sup> See generally MICHAEL ANGELO GOMEZ, EXCHANGING OUR COUNTRY MARKS: THE TRANSFORMATION OF AFRICAN IDENTITIES IN THE COLONIAL AND ANTEBELLUM SOUTH 292 (1998) (describing the Transatlantic Slave Trade and exploitation of Black slaves in American history).

course, this makes no mention of Euro-American interactions with cultures whose native language is not English.<sup>9</sup>

The Civil Rights Act of 1964 and Voting Rights Act of 1965 unequivocally prevent discrimination on the basis of race, color, or national origin in multitudinous areas, notably in employment and voting.<sup>10</sup> Such robust anti-discrimination laws should be the cornerstone of any pluralistic democracy, yet the importance of laws prohibiting discrimination on the basis of language is lost on many ostensibly democratic societies.<sup>11</sup> This article will demonstrate why protections against discrimination on the basis of language must be so robust, using illustrative American cases in two arenas—employment and elections—as a central focus. These will then be compared to a case study of language discrimination in the Federal Republic of Germany.

## II. LANGUAGE DISCRIMINATION IN THE WORKPLACE

Anti-discrimination laws protecting limited-English proficient (“LEP”) or bilingual workers are particularly salient because workplaces are places of communication. It follows, then, that the United States District Court for the Northern District of Texas found an “English-only” mandate by an employer unlawful in *E.E.O.C. v. Premier Operator Services, Inc.*<sup>12</sup> In 1996, the defendant-employer established an “English-only” policy, mandating that all employees (who were native or otherwise fluent Spanish speakers) may only use English for non-business related communication.<sup>13</sup> On threat of termination without notice, employees were required to sign a

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<sup>9</sup> See Luci Tapahonso, *For More Than 100 Years, the U.S. Forced Navajo Students Into Western Schools. The Damage is Still Felt Today*, SMITHSONIAN MAG. (July 2016), <https://www.smithsonianmag.com/history/decades-us-government-forcibly-placed-native-students-western-schools-effects-felt-today-180959502/> (“As a [Navajo] child at a mission boarding school in the 1960s, I was forced to learn English.”).

<sup>10</sup> See 42 U.S.C. § 1971 et. seq.; see also 52 U.S.C. § 10101 et. seq.

<sup>11</sup> See e.g. NICHOLAS HEWITT, *THE CAMBRIDGE COMPANION TO MODERN FRENCH* (2009) (citing the constitution of the French Republic, which states that the sole language of the republic is French. France has no codified laws preventing discrimination on the basis of language use.).

<sup>12</sup> *E.E.O.C. v. Premier Operator Servs., Inc.*, 113 F. Supp. 2d 1066, 1078–79 (N.D. Tex. 2000).

<sup>13</sup> See *id.* at 1068. (“*English* is the official language of Premier Operator Services, Inc. All conversations on these premises are to be in English.”).

memo to demonstrate their commitment to the English-only policy; employees who did not sign the memo and employees who signed it, but later voiced their opposition thereto, were also terminated.<sup>14</sup> Those employees who remained at the company were constantly “on guard,” so as to avoid any potential use of Spanish.<sup>15</sup> A situation such as this lies at the crux of why anti-discrimination laws must be so robust. When we communicate, we necessarily use language, but for those who are bilingual or even LEP, the language used is not always a matter of personal preference or a spontaneous, spur-of-the-moment decision.<sup>16</sup> Indeed, the phenomenon of alternating back and forward between languages in one conversation, known as code-switching, is usually unconscious and is very difficult to arrest.<sup>17</sup> Thus, when bilingual or LEP employees are mandated to speak only English, it is paramount to a directive anathema to our very biology.<sup>18</sup> If any corporation was allowed to enact a similar policy with impunity, what would be the result? As here, it would doubtlessly result in an oppressive atmosphere that disproportionately affects others whose native language and national origin differs from the majority population.<sup>19</sup>

### III. LANGUAGE ACCESS IN ELECTIONS

When it comes to elections, enforcement of anti-language discrimination laws is just as, if not more, important as those protecting the bilingual or LEP worker. Perhaps one of the most insidious ways to restrict voting is on the basis of language. In a multicultural society, where in certain communities LEP is not uncommon, how can one vote if the ballot is written in a language

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<sup>14</sup> *Premier Operator Servs., Inc.*, 113 F. Supp. 2d at 1072–73.

<sup>15</sup> *Id.* at 1076.

<sup>16</sup> Lisa L. Behm, *Protecting Linguistic Minorities Under Title VII: The Need for Judicial Deference to the EEOC Guidelines on Discrimination Because of National Origin*, 81 MARQ. L. REV. 569, 595 (1998).

<sup>17</sup> *Premier Operator Servs., Inc.*, 113 F. Supp. 2d at 1074–75.

<sup>18</sup> See generally Behm, *supra* note 16.

<sup>19</sup> See *Premier Operator Servs., Inc.*, 113 F. Supp. 2d at 1075 (“Defendant’s employees who did not speak Spanish, and who were not of Hispanic national origin, were not subject to the same oppressive monitoring or potential discipline and discharge as were the Hispanic employees. The Hispanic class members were forced to be constantly on guard to avoid uttering their native language, even in their most private moments in the lunch room [sic] or on a break.”).

they ill-understand? This was an issue that the United States District Court for the Northern District of Florida addressed in *Madera v. Detzner*.<sup>20</sup> In 2018, 52 counties in Florida provided ballot materials for elections almost exclusively in English with either non-existent or limited support for LEP native Spanish speakers.<sup>21</sup> The plaintiffs, a class of Puerto Rican voters and allied non-profit organizations, identified thirty-two of these fifty-two counties had sufficient populations of Puerto Ricans under the Voting Rights Act of 1965 (5% of the voting-age population of a political subdivision or 10,000 citizens of a minority group whose native language is not English)<sup>22</sup> to beget the production of non-English election materials.<sup>23</sup> The court eloquently summarized the issue at hand here: “[v]oting in a language you do not understand is like asking this Court to decide the winner of the Nobel Prize for Chemistry—ineffective, in other words.”<sup>24</sup> The right to vote is fundamental to American democracy; after all democracy is the rule or power by the people.<sup>25</sup> Voting is the ability of the citizenry to elect candidates of choice.<sup>26</sup> For those who speak a country’s majority language, reading the materials at the ballot is an unconscious exercise.<sup>27</sup> For those who are LEP, it becomes insurmountable to elect candidates of choice when the greatest vehicle of expressing choice is, through no fault of their own, utterly incomprehensible.<sup>28</sup> If any state entity were allowed to restrict the language in which election materials were printed, regardless of the

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<sup>20</sup> *Madera v. Detzner*, 325 F. Supp. 3d 1269, 1273–74 (N.D. Fla. 2018).

<sup>21</sup> *Id.* at 1274.

<sup>22</sup> 52 U.S.C. § 10503 (b)(2)(A)(i-ii).

<sup>23</sup> *Madera*, 325 F. Supp. at 1275.

<sup>24</sup> *Id.*

<sup>25</sup> The English word “democracy” etymologically originates from the Doric Greek word “dēmos” (meaning “people” and suffix “-kratos” (meaning “rule” or “power”). Combined, it forms the word “dēmokratia”: rule by the people. It is this ancient root that inspires modern notions of popular rule and sovereignty. *See Democracy*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/democracy> (last visited Aug. 9, 2024).

<sup>26</sup> *See generally* 52 U.S.C. § 10101 et. seq.

<sup>27</sup> Shashkevich, *supra* note 2 (Speakers “unconsciously choose and combine” words when “speaking, writing, and reading” their native language).

<sup>28</sup> *See* 42 U.S.C. § 1973 aa-1a(b)(3)(B) (“‘limited-English proficient’ means unable to speak or understand English adequately enough to participate in the electoral process”).

demographics of its salient administrative division, what would be the result? As here, in a multicultural society, it could only lead to the suppression of the freedom of choice, which would have a grossly disproportionate impact on LEP speakers.

#### IV. LANGUAGE DISCRIMINATION BEYOND THE UNITED STATES

##### A. *German Law on Autochthonous Languages*

In a democracy like that of the United States, it falls to the federal government and its agencies to establish the benchmark for fulsome anti-discrimination laws.<sup>29</sup> The Federal Republic of Germany is similarly situated to use its federal government to establish such a benchmark; the status of anti-discrimination laws in the German government is centered around the Minderheitenrat,<sup>30</sup> an advisory council of organizations representing the four legally recognized autochthonous German minorities.<sup>31</sup> Here, the most salient of these minorities are the Sorbs.<sup>32</sup>

Sorbs are native to the historical region of Lusatia, located in eastern Germany.<sup>33</sup> The native language of the Sorbs is distinct from the majority language of the country, High German.<sup>34</sup> Sorbs are represented in the Minderheitenrat by the organization Domowina.<sup>35</sup> The Minderheitenrat ostensibly provides a forum for Sorbs to advocate for themselves in government

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<sup>29</sup> Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577 (2006) (codified at 42 U.S.C. § 1971 and at 42 U.S.C. § 1973) (“The evidence clearly shows the continued need for Federal oversight in jurisdictions covered by the Voting Rights Act of 1965 since 1982, as demonstrated in the counties certified by the Attorney General for Federal examiner and observer coverage and the tens of thousands of Federal observers that have been dispatched to observe elections in covered jurisdictions.”).

<sup>30</sup> The German word “Minderheitenrat” means “minority council” or “council of minorities.” See *Minderheitenrat - English Translation*, LINGUEE, <https://www.linguee.com/german-english/translation/minderheitenrat.html> (last visited Aug. 31, 2024).

<sup>31</sup> *Übersicht und Selbstverständnis [Overview and Self-Conception]*, AUTOCHTONE MINDERHEITEN MINDERHEITENSEKRETARIAT, <https://www.minderheitensekretariat.de/en/autochthonous-minorities/> (last visited Aug. 31, 2024).

<sup>32</sup> See generally *Sorbische Sprache [Sorbian Language]*, AM KLOSTERWASSER, <https://www.am-klosterwasser.de/kultur-freizeit-und-tourismus/sorbische-sprache.html> (last visited Aug. 9, 2024).

<sup>33</sup> Goro Christoph Kimura, *Language Management as a Cyclical Process: A Case Study on Prohibiting Sorbian in the Workplace*, 75 SLOVO A SLOVESNOST 255, 261 (2014).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 263.

and push for the enactment of laws that would benefit their cultural heritage, language, and communities.<sup>36</sup> Unsurprisingly, limiting channels for anti-discrimination laws to what is essentially an advisory board is fraught with troubling legal implications. It ultimately falls to Domowina—a well-connected activist organization—to advocate for and actively defend the linguistic rights of the Sorbs where private causes of action simply do not exist.<sup>37</sup>

## V. SORBIAN LANGUAGE DISCRIMINATION

The downside of this unfortunate legal arrangement is made clear in two specific instances. In both *Premier Operator Services, Inc.* and *Madera*, the respective courts found clear cases of illegal language discrimination.<sup>38</sup> Unfortunately, the following instances will show that the Sorbs are not so protected. In terms of voting rights, Brandenburg and Saxony allow for the publication of election materials in Sorbian, but *only* for state and local elections; the German state apparently has no legal obligation to translate materials for Sorbian speakers who may have limited German proficiency for European and federal elections.<sup>39</sup> This is nothing but a form of disenfranchisement for citizens of limited German proficiency, yet it is also a more subtle form of linguistic discrimination. In the realm of voting, Sorbian speakers are only permitted by the state to employ their language in state and local elections.<sup>40</sup> In other words, Sorbs are mandated by their state government that they are not allowed to use their native language in certain circumstances.

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<sup>36</sup> *Übersicht und Selbstverständnis*, *supra* note 31.

<sup>37</sup> The foundation of German civil and humanitarian law, *Grundgesetz* defines “linguistic discrimination” only as the use of derogatory or prejudiced terms, but comes short of expanding this definition to actual discrimination on the basis of language (i.e. a citizen of limited German proficiency being unable to vote because election materials are not printed in their native, minority language). *See generally Discrimination*, HANDBOOK GERMANY (May 23, 2024), <https://handbookgermany.de/en/discrimination>.

<sup>38</sup> *See* E.E.O.C. v. Premier Operator Servs., Inc., 113 F. Supp. 2d 1066, 1077 (N.D. Tex. 2000); *see also* Madera v. Detzner, 325 F. Supp. 3d 1269, 1284 (N.D. Fla. 2018).

<sup>39</sup> B.D. van der Velden, *Pilot Study for TYPE A REPORT - The position of linguistic minorities during elections*, OPEN UNIVERSITEIT (Jan. 1, 2018), [https://research.ou.nl/ws/portalfiles/portal/45694934/eu\\_citizen\\_type\\_a\\_report\\_position\\_of\\_linguistic\\_minorities\\_during\\_elections.pdf](https://research.ou.nl/ws/portalfiles/portal/45694934/eu_citizen_type_a_report_position_of_linguistic_minorities_during_elections.pdf), at 30.

<sup>40</sup> *Id.*

The strength of German laws protecting employees' use of non-German languages is equally dire. Beginning in 2003, a company in eastern Germany began posting notices to a staff bulletin board stipulating that German is the language of the workplace,<sup>41</sup> which should be a clear violation of the Sorbs' civil rights. Indeed, Domownia demanded to state authorities in Brandenburg that this company be forced to allow employees to speak Sorbian.<sup>42</sup> Brandenburg state authorities responded to this demand and sent a recommendation advising the company to *reconsider* the expressions used.<sup>43</sup> After a leadership change in the company, which occurred independently of this situation, the new director of the company was reportedly more sympathetic to Sorbian employees.<sup>44</sup> Note, however, that this "change of heart" was due to individuals. The state government of Brandenburg (and the federal government for that matter) did effectively nothing to combat a gross violation of language rights and language discrimination, despite objections from Domowina.<sup>45</sup>

## VII. CONCLUSION

As the court wrote in *Madera*, "[i]t is remarkable that it takes a coalition of voting rights organizations and individuals to sue in federal court to seek minimal compliance with the plain language of a venerable 53-year-old law."<sup>46</sup> The German case is particularly illustrative, as it presents an eerily mirrored contrast to the outcomes of *Premier Operator Services, Inc.* and *Madera*. Whereas in both cases, the defendant companies saw their day in court, the German company received nought but the proverbial slap on the wrist. Such is the natural consequence of

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<sup>41</sup> Kimura, *supra* note 33, at 263.

<sup>42</sup> *Id.* at 262.

<sup>43</sup> *Id.* at 263.

<sup>44</sup> *Id.* at 264.

<sup>45</sup> *Id.* at 262–64.

<sup>46</sup> *Madera v. Detzner*, 325 F. Supp. 3d 1269, 1283–84 (N.D. Fla. 2018).

a lackadaisical attitude toward anti-discrimination laws: wanton language discrimination in civil society.