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# THE BAY STATE BURIES BILINGUALISM: ADVOCACY LESSONS FROM BILINGUAL EDUCATION'S RECENT DEFEAT IN MASSACHUSETTS

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## I. INTRODUCTION

Silicon Valley millionaire Ron Unz continues to attack educational opportunities for immigrant and minority children across America with relish — and success. On November 5, 2002, Massachusetts' proud tradition of bilingual education died when voters overwhelmingly voted to end bilingual education in the Commonwealth of Massachusetts ("Commonwealth").<sup>1</sup> By a vote of 68 to 32 percent, Massachusetts voters endorsed Question 2, a ballot initiative sponsored by anti-bilingual education activist Ron Unz that eviscerates bilingual education and erodes parents' and teachers' rights.<sup>2</sup> Question 2 replaces existing state law providing for transitional bilingual education in public schools with a law requiring that all public school children must be taught English by being taught all subjects in English and being placed in English language classrooms.<sup>3</sup> The successful passage in Massachusetts of Question 2 marked another legislative triumph for Unz, who previously crafted Propositions 227 and 203 (successful bills similar to Question 2 banning bilingual education as an instructional method in California and Arizona, respectively).<sup>4</sup>

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\* B.A., Yale University, 1998, J.D., Harvard Law School, 2004. The author dedicates this note to the bilingual students at Cambridge Community Services, Cambridge, MA.

1. Tom Gorman, *Ready or Not, Voters Had Chances to Take the Initiative: Of 202 Ballot Measures, Marijuana Legalization And Bilingual Education Were Hot-Button Issues*, L.A. TIMES, Nov. 7, 2002, at A31.

2. Jim Boulet, Jr., *Guest Comment, Win Some, Lose Some*, THE NATIONAL REVIEW ONLINE, (Nov. 7, 2002), at <http://www.nationalreview.com/comment/comment-boulet110702.asp>.

3. ENGLISH LANGUAGE EDUCATION IN PUBLIC SCHOOLS, THE OFFICIAL MASSACHUSETTS INFORMATION FOR VOTERS: THE 2002 BALLOT QUESTIONS, at <http://www.state.ma.us/sec/ele/elebq02/bq022.htm> (last visited Jan. 8, 2003).

4. William Ryan, Note, *The Unz Initiatives and the Abolition of Bilingual Education*, 43 B.C.L. REV. 487, 487 (2002) (noting that Unz led the 1998 passage of Proposition 227 in California, which ended bilingual education in the state, and the passage in Arizona of similar legislation in 2000, known as Proposition 203). *See also*

Question 2 will also override a Massachusetts state law enacted in 2002 that aimed to preserve bilingual education as an option for school districts.<sup>5</sup> As 40,000 of Massachusetts' 49,000 students are currently enrolled in bilingual education programs,<sup>6</sup> the successful passage of Question 2 constitutes a devastating attack on educational opportunities for immigrant and minority students in the Commonwealth.

## II. QUESTION 2 IN THE CONTEXT OF BILINGUAL EDUCATION IN MASSACHUSETTS

### A. *Question 2's Substance*

Question 2 contains several troubling components. First, Question 2 requires Massachusetts' public schools to educate English learners (children who cannot do ordinary class work in English and who either do not speak English or whose native language is not English) through a "sheltered English immersion program" not lasting more than one year.<sup>7</sup> All books and curricular materials will now be in English, while waivers will be provided only in extremely limited cases.<sup>8</sup> Furthermore, Question 2 erodes teachers' rights through the creation of a private right of action for parents and guardians, who can sue to enforce the law and, if successful, can recover attorneys' fees, costs, and compensatory damages from the teachers.<sup>9</sup> Question 2 also specifically forbids insurance companies or other "third party payers" from

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Barbara J. Brunner, *Bilingual Education Under the No Child Left Behind Act of 2001: Se quedara atras?*, 169 ED. LAW. REP. 505, 510 (2002) (noting Arizona's passage of Proposition 203, which replaced bilingual education programs with intensive English immersion instruction for the state's sizable bilingual student population); Kirsten Gullixson, Note, *California Proposition 227: An Examination of the Legal, Educational, and Practical Issues Surrounding the New Law*, 17 LAW & INEQ. 505, 505-06 (1999) (noting that California's Proposition 227 calls for "English learners" (meaning students with limited English proficiency) to be taught in sheltered English immersion classrooms for a temporary transition period of one year prior to being transferred to English language mainstream classes; Proposition 227 also requires that instruction be in "nearly all" or "overwhelmingly" in English and only allows waivers in extremely limited cases).

5. Mary Ann Zehr, *Colorado Extends Bilingual Education, But Massachusetts Voters Reject It*, EDUCATION WEEK, NOV. 13, 2002, at 22-23.

6. *Id.*

7. ENGLISH LANGUAGE EDUCATION IN PUBLIC SCHOOLS, *supra* note 3.

8. *Id.* Parents or guardians of certain children can apply for a waiver if the child: 1) already knows English; 2) is at least 10 years old, and the school principal and staff believe that another course of study would be better for the child's educational progress and rapid learning of English; or 3) have special physical or psychological needs (other than lack of English skills), have already spent 30 days in an English classroom during that school year, the school principal and staff document their belief that the child's special needs make another course of study better for the child's educational progress and rapid learning of English, and the school superintendent approves the waiver. *Id.*

9. *Id.*

indemnifying teachers from having to pay such costs.<sup>10</sup> Furthermore, Question 2's mandate of English instruction comes with a hefty price tag: estimates of the cost of implementing Question 2's requirements range from \$30 million to \$125 million.<sup>11</sup> As Massachusetts currently faces severe budgetary shortfalls,<sup>12</sup> Question 2 may require spending cuts in other valuable programmatic areas of the state's budget.

### B. *Bilingual Education's Proven Benefits*

Bilingual education is a general instructional method that teaches students English while simultaneously ensuring that they master core academic subjects, like science, math, and social studies, through supplemental instruction in their primary language until they have mastered enough English to learn solely in English.<sup>13</sup> Bilingual programs are transitional programs that aim to mainstream Limited English Proficiency (LEP) students.<sup>14</sup> Bilingual education programs have been implemented in several different forms across the nation.<sup>15</sup>

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10. LAURA BARRETT, MASSACHUSETTS TEACHERS ASSOCIATION, TEACHERS COULD FACE FINES UNDER ANTI-BILINGUAL BALLOT INITIATIVE, at [http://www.massteacher.org/issues/bilingual/be\\_fines.cfm](http://www.massteacher.org/issues/bilingual/be_fines.cfm) (last visited Jan. 8, 2003).

11. Rob Fetter & Stephanie Luce, *Bilingual Education Yes, Ron Unz No*, ECON-ATROCITY BULLETIN, (Oct. 30, 2002), at <http://www.fguide.org/Bulletin/bilingual.htm>. See also Michael Kurtz, *Officials Weigh Changes to English Immersion*, BOSTON GLOBE, Nov. 7, 2002, at B9 (noting potential \$30 million cost of implementing bilingual education in Boston).

12. See Shaun Sutner, *Honeymoon for Romney, Legislature is Over; Bloodier Fight Lies Ahead With Fiscal 2004*, TELEGRAM & GAZETTE (Massachusetts), Feb. 16, 2003, at A1 (noting massive budget cuts totaling hundreds of millions of dollars enacted by Massachusetts Governor Mitt Romney).

13. Cf. Marilyn Farquharson, Note, *Proposition 227: A Burning Issue for California's Bilingual Students*, 8 B.U. PUB. INT. L.J. 333, 333 (1999), citing MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, QUESTIONS & ANSWERS ON THE UNZ INITIATIVE, 1 (Sept. 19, 1997).

14. *Id.* (citations omitted).

15. See, e.g., Amy S. Zabetakis, Note, *Proposition 227: Death For Bilingual Education?*, 13 GEO. IMMIGR. L.J. 105, 109 (1998) (listing different bilingual pedagogical options, including: 1) Structured English Immersion – class is taught in English, but the teacher knows the student's native language and can help the student; 2) English as a Second Language ("ESL") – A group of students from different backgrounds spend part of the school day being taught by a teacher trained in ESL, but who does not necessarily speak the students' native languages; 3) Transitional Bilingual Education – Students spend time in a class being taught in their native language, and are eventually mainstreamed into English classes; 4) Bilingual Education (Maintenance) – Students spend their entire education in a class taught primarily in their native language; 5) Bilingual/Bicultural – The aim of the class is to promote both the students' native languages and native cultures; 6) Two-way Bilingual – Both limited English proficient students and English speaking students spend one-half of the day learning in one language, and the other half learning in the other language; or 7) Multilingual/Multicultural – Every student learns more than one language and more than one culture) (citation omitted).

Multiple studies have demonstrated that students enrolled in successful bilingual education programs enjoy long-term academic achievement.<sup>16</sup> Furthermore, extensive research has documented the benefits of sustained bilingual education, as opposed to the one-year “sheltered English immersion” characteristic of the Unz initiatives, in aiding LEP children with English acquisition. Bilingual education programs are more effective than English-only programs in teaching English because students perform better in a variety of subjects in a system of native language instruction.<sup>17</sup> A report by the Association for Supervision and Curriculum Development cites numerous studies that indicate, “the more the student’s native language is incorporated into English instruction, the better their results on English language tests in reading and writing.”<sup>18</sup> As such, this research demonstrates that primary language instruction does not impede acquisition of English; rather, students with a strong academic background in their first language are more likely to develop higher levels of English proficiency than those who do not possess such an advantage.<sup>19</sup>

Several different bilingual education programs across the nation have enjoyed success in helping LEP immigrant and minority students achieve academic excellence.<sup>20</sup> As such, Question 2’s elimination of bilingual education subverts vast social science research strongly demonstrating the efficacy and importance of bilingual education programs.<sup>21</sup>

### C. *The Adverse Consequences of the Elimination of Bilingual Education for LEP Students*

Social science research findings, in tandem with an analysis of Proposition 227’s detrimental impact on the academic performance of LEP pupils in California, reveal that the denial of bilingual education opportunities to LEP students adversely im-

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16. See, e.g., Jacinta Ma, *What Works for the Children? What We Know and Don’t Know About Bilingual Education*, June 1, 2002, at [http://www.civilrightsproject.harvard.edu/research/bilingual02/bilingual\\_paper02.pdf](http://www.civilrightsproject.harvard.edu/research/bilingual02/bilingual_paper02.pdf) (last visited Jan. 14, 2003) (noting that “[t]he 1997 Thomas and Collier study found that bilingual education programs – i.e., native-language academic instruction – are the most effective in obtaining high levels of long term academic achievement. Many researchers have found that bilingualism improves cognitive development and most agree that bilingualism does not impair existing cognitive abilities.”). See also PORTRAITS OF SUCCESS, NATIONAL ASSOCIATION FOR BILINGUAL EDUCATION, at <http://www2.lab.brown.edu/NABE/portraits.taf> (last visited Jan. 14, 2003).

17. Cf. Farquharson, *supra* note 13, at 352 (citations omitted).

18. Cf. *id.* at 352 n.186 (citations omitted).

19. Cf. *id.* (citations omitted).

20. See, e.g., Ma, *supra* note 16, at 5-6. See also PORTRAITS OF SUCCESS, *supra* note 16.

21. See, e.g., Ryan, *supra* note 4 (describing the benefits of bilingual education).

pacts their long-term educational performance. First, the tight one-year timetable for English acquisition advocated by Unz ignores the complicated cognitive dynamics of language acquisition. Scholars have documented the fact that English language development cannot be “squeezed” into a one-year time frame; rather, at least four years of the “sheltered instruction” advocated by Unz may be necessary for students to become sufficiently fluent to participate fully in an English taught curriculum.<sup>22</sup>

Moreover, the failure of Unz’ prior anti-bilingual education initiatives in California and Arizona to improve educational opportunities for LEP immigrant and minority children suggests that LEP immigrant and minority children in Massachusetts will suffer educational setbacks as a result of Question 2. For example, advocates of California’s Proposition 227 asserted that the program would make children fluent in English in one year and reduce the number of non-English speaking children in California’s school system by 90 percent.<sup>23</sup> However, data suggests that less than *ten percent* of California children are currently being “re-designated” as sufficiently fluent each year to leave the program to enter “mainstream” classes.<sup>24</sup> Almost one million LEP students in grades two through eleven failed to become mainstreamed in English-only classes after the *third* year of Proposition 227 passage — up from over 800,000 failures the year before.<sup>25</sup> As such, only a sliver of the students whom Proposition 227 aimed to assist with English-language acquisition have gained English proficiency.<sup>26</sup> Moreover, since Proposition 227’s passage, English-immersed students have been trailing English-only students on standardized test performance, demonstrating

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22. Cf. Farquharson, *supra* note 13, at 353 (noting that “[n]umerous studies have indicated that it takes ‘at least five to seven years to become orally proficient in a second language and by the seventh year . . . reading and writing in the second language can approach that of a native English speaker . . . . One credible study has shown that achieving proficiency may take as long as ten years.’”) (citations omitted).

23. Ana-Maria Patino, *Bad Language: The Problems with English Immersion As An Approach To Bilingual Education*, HARV. POL. REV. (Jan. 25, 2003), available at <http://www.hpronline.org/news/357217.html>.

24. *Id.*

25. Press Release, League of United Latin American Citizens, Widening Gap in Reading, Math, Language Arts and Spelling Shows Failure of English Immersion Program, (Mar. 17, 2002), available at <http://latinonline.com/cabe/showarticle.cfm?titleID=692>.

26. *Id.* See also James Crawford, *A Few Things Ron Unz Would Prefer You Didn’t Know About English Learners in California*, at <http://ourworld.compuserve.com/homepages/JWCRAWFORD/castats.htm> (last visited Jan. 22, 2003) (noting, *inter alia*, that “Proposition 227 had a 92% ‘failure rate’ last year, by Unz’s own standard; in 2001-02 it failed at least 1,393,849 children who remained limited in English.”).

Proposition 227's detrimental impact on educational advancement for immigrant and minority children.<sup>27</sup>

Implementation, tracking and monitoring problems have also plagued the execution of Proposition 227's anti-bilingual education mandate, suggesting that Question 2 will face similar procedural challenges to execution. Like Question 2, Proposition 227 mandated that classroom instruction be "overwhelmingly" in English — a vague directive that poorly equipped California school districts to standardize structured English immersion programs across the state.<sup>28</sup> Similarly, California school districts and parents have grappled with consistent interpretation of the waiver requirements.<sup>29</sup>

By imposing a "one-size-fits-all" pedagogical approach on heterogeneous groups of students, the Unz initiatives — Proposition 227, Proposition 203 and Massachusetts' Question 2 — erode teachers' ability to undertake effective pedagogy that best suits their students' needs.<sup>30</sup> The provision of Unz' Question 2 initiative that exposes teachers to unlimited liability will certainly discourage Massachusetts' teachers from entering or remaining in the profession.<sup>31</sup> Indeed, studies of California teachers post-Proposition 227 revealed that teachers encountered fear, confusion, frustration and demoralization as a consequence of having to conform to a forced educational policy crafted by outsiders with little nuanced understanding of the needs of LEP students.<sup>32</sup> Other studies suggest that teacher expectations for LEP students have plummeted post-Proposition 227.<sup>33</sup>

Moreover, Question 2's passage also represents an attack on the constitutional rights of language minority parents. Parents possess constitutionally enshrined rights to determine the scope of their children's education and upbringing.<sup>34</sup> Although Question 2 permits parents to *apply* for a waiver, parents possess no

27. *Id.* (noting that Stanford 9 test scores for English-only speaking students have surpassed the scores of English-immersed students, leaving immersed students "further behind in reading, math, language arts and spelling").

28. Gullixson, *supra* note 4, at 528.

29. *Id.* at 530-33.

30. *Cf.* Farquharson, *supra* note 13, at 350 (noting that "Proposition 227 encourages government intrusion into every classroom").

31. *Id.* at 351 (noting that "[t]his unlimited liability could spark fear among teachers and preclude effective instruction of the English language because qualified teachers may refuse to work with LEP students to avoid personal liability. This disincentive could decrease the number of bilingual teachers willing to teach LEP students, impeding their ability to participate in educational programs").

32. *See, e.g.,* Ma, *supra* note 16, at 9-10 (citations omitted).

33. *Id.*

34. *See, e.g.,* Troxel v. Granville, 530 U.S. 57, 66-7 (2000) (finding a Due Process violation of fundamental parental rights where a state statute permitted any person to petition for visitation rights at any time and authorized state courts to grant such rights whenever they were in the best interest of child); Pierce v. Society of Sisters of

guarantee that school authorities will heed their wishes for their children's education.<sup>35</sup> Finally, the financial costs of implementing Question 2 will be severe. California school districts have witnessed costs rising by \$300 million per year, while Arizona districts have seen costs rise by \$100 million per year, as consequences of the implementation of the Unz initiatives in those states.<sup>36</sup>

Finally, Question 2's long-term impact will undermine the economic and social advancement of immigrant and minority populations in Massachusetts. Many LEP students come from low- or no-income households and attend local schools in the impoverished neighborhoods in which they reside. In turn, schools with high concentrations of poor students tend to be poorly maintained, structurally deficient, under-funded and staffed with incompetent teachers.<sup>37</sup> The lack of English language ability can further frustrate a poor student's ability to learn in circumstances that are already academically abysmal. The negative impact of limited English proficiency on impoverished immigrant and minority students in America is particularly severe, as the poorest families cannot afford or undertake ameliorative measures (such as additional tutoring or coaching) to help their LEP children learn in English dominated schools.<sup>38</sup>

In turn, the failure to master English constitutes a permanent disability that, coupled with the absence of adequate academic opportunity, cripples an immigrant or minority student's potential for economic advancement in contemporary America. Furthermore, Question 2's dismantling of bilingual education programs sends troubling and inaccurate signals about the role of multiculturalism in America. The eradication of bilingual programs devalues the importance of multiple language skills and

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Holy Names, 268 U.S. 510, 534-5 (1925) (holding that parents can choose to send children to private schools).

35. Cf. Gullixson, *supra* note 4, 534 (noting that "[a]lthough school districts are allowed a great deal of flexibility in interpreting the provisions of Proposition 227, there is no guarantee that parents' requests for waivers will be granted. Certain school districts may choose to deny parents' requests for children with 'special needs,' while other districts may decide to grant these requests. Because parents' waiver requests are subject to approval by the school's principal and educational staff, parents' rights are limited . . . . Proposition 227 allows schools and school districts too much discretion to limit parents' rights to choose the kind of education they feel is appropriate for their children.").

36. Fetter & Luce, *supra* note 11.

37. Gary Borden, *Creating An Underclass Through Benign Neglect: The Plight of Ethnic Minorities With Limited English Proficiency*, 8 GEO. J. ON POVERTY L. & POL'Y 395, 404-07 (2001).

38. *Id.* at 404-05.



the importance of diversity within the academic context.<sup>39</sup> In an increasingly global and multicultural world, bilingual education programs should be embraced as a sign of the strength of America's cosmopolitanism, not renounced as part of a xenophobic retreat towards isolationism.

D. *Massachusetts: The Bilingual Education Pioneer Rejects Bilingualism*

Given Massachusetts' preeminence in the bilingual education movement, and landmark success with bilingual education and vibrant immigrant communities, Question 2's victory in Massachusetts was startling. In 1971, Massachusetts became the first state to establish a bilingual education law that ultimately surpassed federal bilingual education requirements.<sup>40</sup> Massachusetts is one of only nine states to require bilingual education in each district in which a certain sufficient number of students fail to demonstrate English proficiency; over fifty such districts exist in the Commonwealth.<sup>41</sup> Massachusetts General Laws, Chapter 71(A) requires that school districts with twenty or more limited English proficient (LEP) students — one of the lowest and most accommodating thresholds for mandatory bilingual education in the country — belonging to the same language group must provide a Transitional Bilingual Education (TBE) program run by a bilingual certified teacher.<sup>42</sup> Under TBE, students are primarily taught in their native language in the first year of instruction, with increasing English instruction over the subsequent two years.<sup>43</sup> Approximately 80 percent of the TBE students move into mainstream classrooms after three years, demonstrating the success of Massachusetts' bilingual education programs.<sup>44</sup> Key

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39. Cf. Farquharson, *supra* note 13, at 350 (noting that Proposition 227 fails to recognize that bilingual abilities are an asset in contemporary society given increased trends towards economic globalization and integration).

40. MASSACHUSETTS ASSOCIATION OF SCHOOL COMMITTEES, BILINGUAL EDUCATION IN MASSACHUSETTS: POSITION OF THE MASSACHUSETTS ASSOCIATION OF SCHOOL COMMITTEES, at <http://www.masc.org/bilingual.asp> (last visited Jan. 8, 2003).

41. *Bilingual Education in Massachusetts: A Troubled Program*, MASSNEWS, at [http://www.massnews.com/past\\_issues/2000/Schools/sch13.htm](http://www.massnews.com/past_issues/2000/Schools/sch13.htm) (last visited Jan. 8, 2003).

42. MASSACHUSETTS ASSOCIATION OF SCHOOL COMMITTEES, *supra* note 40, (noting that TBE programs normally provide up to three years of both native and English language instruction with a goal of transitioning all students into a traditional English curriculum at the conclusion. With appropriate documentation, students who require a longer transition may remain in the program for a longer period of time).

43. BARRETT, *supra* note 10.

44. *Id.* See also LORNA RIVERA, MAURICIO GASTON INST. FOR LATINO COMMUNITY DEV. & PUB. POL'Y, LATINOS IN MASSACHUSETTS: EDUCATION. A REVIEW OF THE LITERATURE ON BILINGUAL EDUCATION, April 2002, at <http://www.gaston.umb.edu/factsheethtml/biling.html> (last visited Jan. 8, 2003) (noting that

provisions of the state's bilingual education law also mandate that school districts track demographic data to determine the number of students who are appropriately classified as "limited English proficient" (LEP).<sup>45</sup> Furthermore, Massachusetts' laws also prohibit discrimination against students on the basis of "limited English-speaking ability."<sup>46</sup> Indeed, this piece of Massachusetts state anti-discrimination law exceeds the requirements of federal law, which includes Title VI of the Civil Rights Act of 1964<sup>47</sup> (prohibiting national origin discrimination by federally funded institutions) and the Equal Educational Opportunities Act<sup>48</sup> (requiring school districts to "take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.")<sup>49</sup> Massachusetts has also been a laboratory for bilingual education innovation. The state has identified various models of bilingual education in addition to the "TBE method," such as Modified Bilingual-World Language, Structured Immersion, flexible uses of English as a Second Language, native language instruction and integrated special education services for LEP students with learning disabilities.<sup>50</sup>

Furthermore, Massachusetts is home to thousands of immigrants — and immigrant children — from around the globe. Massachusetts has the seventh largest immigrant population in the U.S., while over 700,000 Massachusetts residents were born outside of the United States.<sup>51</sup> Over 300,000 immigrants entered Massachusetts between 1990 and early 2000, accounting for 101 percent of the Commonwealth's population growth.<sup>52</sup> In particular, Massachusetts has drawn thousands of immigrants from Latin America and the Caribbean: between 1990 and 1998, 54 percent of Latin American and Caribbean immigrants to New England settled in Massachusetts.<sup>53</sup> Nearly one-quarter of all

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most bilingual education programs transition students into mainstream classes within their first three years; only a small percent (17 to 25 percent of students) stay in bilingual education programs up to five years) (citations omitted).

45. MASSACHUSETTS ASSOCIATION OF SCHOOL COMMITTEES, *supra* note 40.

46. *Id.* (citing Massachusetts General Laws Chapter 76, Section 5 and Chapter 603 of the Code of Massachusetts Regulations, Section 26.03, aimed at protection against discrimination aimed at students based on, *inter alia*, "limited English-speaking ability.").

47. 42 U.S.C.A. § 2000d (West 2002).

48. 20 U.S.C.A. § 1703(f) (West 2002).

49. MASSACHUSETTS ASSOCIATION OF SCHOOL COMMITTEES, *supra* note 40.

50. *Id.*

51. MASSACHUSETTS IMMIGRANT AND REFUGEE ADVOCACY COALITION, MANY VOICES JOINED FOR JUSTICE . . . IN A NATION BUILT BY IMMIGRANTS, at <http://www.miracoalition.org/welcome.htm> (last visited Jan. 14, 2003).

52. *Id.*

53. ENRICO A. MARCELLI, MAURICIO GASTON INST. FOR LATINO COMMUNITY DEV. & PUB. POL'Y, LATINOS IN MASSACHUSETTS: IMMIGRATION—LEGAL IMMI-

Massachusetts children are either immigrants or the children of immigrants.<sup>54</sup> In turn, student enrollment in bilingual education programs steadily increased during the 1990s.<sup>55</sup> Realizing the benefits of bilingual education, those communities most impacted by bilingual education's elimination in Massachusetts voted decisively against Question 2: 92 percent of Massachusetts' Latino community voted against the Unz initiative.<sup>56</sup>

Given Massachusetts' proud tradition of bilingual education and substantial immigrant population, Question 2's victory represents a troubling and surprising legislative upset. Question 2's success in Massachusetts provides a rallying point for bilingual education opponents eager to aid Unz in achieving similar success with other state and federal anti-bilingual education initiatives. Indeed, Unz appears to be poised to launch a federal campaign to eliminate bilingual education, declaring that "[i]t seems to be clear that this [bilingual education] should be dealt with at the federal level"<sup>57</sup> and that "I would hope that a big victory in a state like Massachusetts would help galvanize this as a national issue."<sup>58</sup>

### III. CONCLUSION: ADVOCACY LESSONS FROM BILINGUAL EDUCATION'S DEFEAT IN MASSACHUSETTS

Question 2's success *in spite of* Massachusetts' sizable immigrant and minority populations is troubling. Indeed, Question 2's triumph in Massachusetts mirrors the inexplicable and unjustifiable passage of Unz' initiatives in California and Arizona — other states with sizable immigrant and minority populations.

In turn, bilingual education advocates must draw upon the lessons from the passage of Question 2, as well as from the failure of Colorado's Amendment 31, a legislative measure nearly identical to Question 2 that Colorado voters defeated by a 56-44 margin on the same day that Question 2 passed.<sup>59</sup> The circumstances surrounding Amendment 31's defeat differed considera-

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GRATION TO NEW ENGLAND DURING THE 1990s, April 2002, at <http://www.gaston.umb.edu/factsheethtml/immi.html> (last visited Jan. 14, 2003).

54. MASSACHUSETTS IMMIGRANT AND REFUGEE ADVOCACY COALITION, *supra* note 51.

55. THE FEDERATION FOR AMERICAN IMMIGRATION REFORM, INDEX TO MASSACHUSETTS IMMIGRANT TOPICS, at <http://www.fairus.org/html/042ma702.htm#MSA> (last visited Jan. 14, 2003).

56. Gorman, *supra* note 1. See also Eun Lee Koh, *Many Parents to Miss Bilingual Program*, BOSTON GLOBE, Nov. 10, 2002, at 1 (noting that Massachusetts communities with large immigrant and minority families experienced large voter turnout in an attempt to defeat the Unz initiative).

57. Zehr, *supra* note 5, at 22.

58. Ryan Davis, *Bilingual Education Eliminated*, DAILY HAMPSHIRE GAZETTE, (Nov. 6, 2002) at <http://www.gazettenet.com/11062002/politics/1583.htm>.

59. Zehr, *supra* note 5, at 22.

bly from the context of Question 2's passage. First, the anti-Amendment 31 campaign gained strength from a three million dollar advertising campaign.<sup>60</sup> In contrast, Question 2 opponents lacked funding and advertising resources.<sup>61</sup>

However, the defeat of Amendment 31 did not hinge solely upon campaign funding levels. Pointed anti-Question 2 lobbying, education and coalition-building efforts might have guaranteed Question 2's defeat at the ballot box last November. The fact that minority populations overwhelmingly voted against Question 2 in spite of the measure's overwhelming passage suggests a strong cultural divide and comprehension gap regarding Question 2's consequences between the Commonwealth's white and minority voters. Given that all of the members of Massachusetts' immigrant and minority population do not possess citizenship and the concomitant right to vote, publicity highlighting the harmful consequences of Question 2 should have targeted registered voters, not only immigrant and minority communities. Similarly, the successful passage earlier in the year of a bilingual education bill that would have preserved bilingual education as an option for schools also suggests that, in approving Question 2, voters did not comprehend the nuances of the bilingual education debate, including the adverse consequences of Question 2's passage. Furthermore, the absence of debate during the 2002 Massachusetts Gubernatorial election on Question 2's potential impact on immigrant and minority communities also illustrated the failure to galvanize broad cross-cultural and coalitional opposition to Question 2. Although Governor-Elect Mitt Romney vigorously supported Question 2 during his election campaign (which likely facilitated the measure's passage<sup>62</sup>), Romney acknowledged the pressure from teachers' lobby by assuring educators that he would aim to drop Question 2's provision permitting parents to sue teachers who teach in languages other than English.<sup>63</sup> The fact that Romney made no such overtures towards addressing the educational needs of immigrant and minority communities in spite of the state's large immigrant and minority population indicates that Question 2's deleterious educational consequences for LEP immigrant and minority students attracted insufficient attention.

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60. *Id.*

61. See Anand Vaishnav, *Dissecting Bilingual Education's Poll Defeat: Movement Lacked Money, Message*, BOSTON GLOBE, Nov. 10, 2002, at B9 (noting that Question 2 opponents lacked resources to publicize and campaign effectively).

62. See *id.* (noting that Governor Mitt Romney's election campaign included promises to end Massachusetts' "failed" bilingual education program, helping Question 2 gain positive publicity).

63. Michele Kurtz, *Officials Weigh Changes to English Immersion*, BOSTON GLOBE, Nov. 7, 2002, at B9.

In contrast, opponents of Question 2 in Massachusetts focused their battle exclusively upon the impact of the legislation upon teachers. By exposing teachers to infinite liability for choosing not to teach pupils in English, Question 2 certainly undermines the professionalism of the teaching profession. However, Question 2 opponents focused their discourse *solely* upon the legislation's impact on teachers' rights, failing to draw broader connections to the legislation's adverse implications for LEP immigrant and minority students, as well as on parents' rights. For example, the text of the language provided by Question 2 opponents in the Massachusetts Voters Guide failed to discuss these concerns.<sup>64</sup> The language's failure to address the impact of the bill on LEP immigrant and minority students suggests the absence of strong coalitions between teachers and immigrant/minority groups to fight Question 2's passage.

The lessons for bilingual education advocates from Question 2's shocking triumph in Massachusetts are simple, but powerful. If Ron Unz' juggernaut of anti-bilingual education initiatives is to be overcome, bilingual education advocates must strengthen coalitions across immigrant and minority groups, teachers' groups, and parents' groups. As much of the population impacted by anti-bilingual education initiatives may not possess the right to vote, education must target sympathetic registered voters who, in turn, can influence elected officials to address the needs of immigrant and minority communities. Advocates for LEP students must emphasize that Unz' initiatives are reductive, simplistic and ineffective and will result in the creation of an immigrant and minority "underclass." Furthermore, advocates must emphasize the benefits of multilingualism and ethnic diversity as assets to America's continued vitality and global leadership.

Immigrants' rights advocates around the nation must capitalize upon this country's proud tradition of bilingual education and

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64. ENGLISH LANGUAGE EDUCATION IN PUBLIC SCHOOLS, *supra* note 3. The anti-Question 2 position articulated in the voter's guide stated:

If passed, this law [Question 2] would allow teachers to be personally sued for using a child's native language to help them learn. Teachers should focus on teaching kids English, not worrying about being sued for helping a child learn. The law says: "The parent or legal guardian of any school child shall have legal standing to sue for enforcement of the provisions of this chapter, and if successful shall be awarded reasonable attorney's fees, costs, and compensatory damages." Children need to learn English in a reasonable period of time, but the system mandated by this measure has failed in California, where immigrant children stay in separate classes longer than they currently do in Massachusetts, and it will cost taxpayers millions of dollars that we can't afford. Teach kids English. Don't sue teachers. Vote no. *Id.*

mobilize a broad activist coalition to ensure that Ron Unz' upset victory in Massachusetts will ultimately represent an aberration in the bilingual educational landscape.