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respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

Confederate Flag Makes Waves Over Free Speech in Schools

by Barbara Sheehan

When you wear a T-shirt with a picture or a saying on it, how much thought do you put into it? Do you wear it because you simply like the way it looks or are you trying to make a statement?

In the South, there is concern about the statement being made by students who wear clothing displaying the Confederate flag. Viewed by some as a proud symbol of their heritage, the flag is perceived by others as a symbol of divisiveness and racial intolerance.

For this reason, the Confederate flag, which is also sometimes called the “rebel flag,” has caused controversy in public displays in the South for years. Schools are now finding themselves on the front lines of this debate, with the most recent case being in Maryland.

At issue in these cases are students’ free speech rights and whether it is lawful for schools to ban the display of this controversial symbol.

What does the flag represent?

The history of the Confederate flag explains in part why it evokes such strong emotions in some people. The flag was created during the U.S. Civil War to represent the Southern Confederate states that seceded from the Union; and it was used as a symbol of the South in battles during the war.

Partly due to problems on the battlefield where it was confused with the flag of the North, the Confederate flag underwent several revisions during the

1860s. Today, the most recognizable version of the flag is the Confederate Battle Flag, which depicts a blue Southern Cross on a red background. Inside the cross are 13 white stars representing the 11 states (South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, North Carolina and Tennessee) that seceded from the union around the time of the Civil War, along with Kentucky and Missouri, which attempted to secede but were unsuccessful. *>continued on page 2*

Is it Ever Too Late to Apologize?

by Cheryl Baisden

Strange as it may seem, early last year the state of New Jersey officially apologized for something that happened more than 140 years ago. In January 2008, lawmakers voted on a resolution apologizing for the state’s involvement in slavery, a practice that was officially abolished nationwide by the 13th Amendment to the U.S. Constitution in 1865.

The state’s decision to pass the resolution, which is a formal statement or opinion voted on by a governing body but not a law, made it the first Northern state to apologize for allowing African-Americans to be enslaved in America for nearly 250 years. In a way, although a lot of time has passed, the distinction is significant, since New Jersey was the last Northern state to abolish the practice of slavery, and one of the last states altogether to muster enough votes to ratify the 13th Amendment.

New Jersey’s history with slavery

Many assume that slavery was strictly a Southern practice. In fact, all 13 colonies practiced slavery, with Vermont being the first state to abolish it in 1777. New Jersey—which was once home to more than 12,000 slaves, giving it one of the largest slave populations among the Northern colonies—had a history of being indecisive when it came *>continued on page 6*

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Confederate Flag Makes Waves Over Free Speech in Schools *continued from page 1*

Even though the Civil War was ultimately won by the North and ended slavery, the Confederate flag continues to evoke racial tension and frequent protests.

"Flag fans often speak of their banner as a reminder of local history, a symbol of rebellion against authority and political correctness, and pride in their rural lifestyle," Charles Woods, an African-American leader in his community told *The Washington Post*. "But one man's symbol of pride is another man's symbol of terror."

Maryland school says no to flag

In March 2008, a Maryland high school ran into problems concerning the display of the Confederate flag, which resulted in a school policy change. According to news reports, racial tensions had been brewing at Maryland's Fort Hill High School for some time. The problem came to a head when a 16-year-old boy at the school made a racist remark to a female student in the school cafeteria line. Shortly after that, students at the school reportedly began wearing clothing bearing the Confederate flag and displaying the flag on their vehicles in support of the boy.

"The flag turned into a weapon," Bill AuMiller, superintendent in Allegany County where the school is located, told *The Washington Post*.

The Washington Post reported that the African-American girl involved in the case and her family left town after the incident because of tensions in the community. As a result of the controversy, students at Fort Hill High School are now banned from displaying the Confederate flag. Fort Hill High is not the first school to ban the Confederate flag. Many times, however, prohibitions against the rebel flag are met with legal challenges by students who do not accept no for an answer.

"In a campaign sweeping the South, legal challenges have been filed against more than a dozen school districts that have banned students from wearing Confederate symbols," *The Chicago Tribune* reported in November 2008. "At least 60 districts from Virginia to Texas have been targeted for federal lawsuits alleging violation of free speech or complaints to the Department of Education charging civil rights violations," *The Tribune* article stated.

Even in New Jersey

While most of these schools are located in the South, at least one New Jersey school had a run-in with the rebel flag about a decade ago. That case involved a group of students in the Warren Hills School District known as "the Hicks," who reportedly observed "White Power Wednesdays" by wearing Confederate flag clothing.

After receiving complaints about the Hicks and their friends, the school board concluded that there was enough disruption in the school, including the risk of physical violence, to warrant action by the school. So the board approved a policy that among other things prohibited students from wearing racially divisive clothing, including clothing displaying the Confederate flag.

Shortly after the policy took effect, a student named Thomas Sypniewski wore a Jeff Foxworthy T-shirt to school that gave the top 10 reasons why a person "might be a Redneck Sports Fan." Given the recent tension, the vice principal at the school was concerned that the T-shirt might ignite a violent response and asked Sypniewski to turn the T-shirt inside out. Sypniewski received a three-day suspension when he refused.

Later, Sypniewski and his two brothers, who owned similar Jeff Foxworthy T-shirts, filed a lawsuit challenging the constitutionality of the school's policy and arguing that the school violated their rights to freedom of speech. In a close decision, the court sided with the Sypniewski boys, finding that the word "redneck" on the Jeff Foxworthy T-shirt was not used to intimidate or harass other students and that the school in that instance violated Sypniewski's First Amendment rights.

"Even if [schools] are justified in prohibiting racially divisive clothing because of a history of racial turmoil at their schools, they will likely face challenges from belligerent, but clever students wearing clothing sufficiently similar to the banned fare to threaten problems, but sufficiently different to make the issue a debatable one," the Southern Poverty Law Center noted in its 2003 *Intelligence Report*.

Tennessee & Missouri bans upheld

While the school lost the challenge in the Sypniewski case, other schools have prevailed. For

example, a federal appeals court panel ruled in August 2008 to support the dress code policy of a Tennessee school system that banned the display of the Confederate flag.

In that case, *Barr v. Lafon*, some students in Tennessee's Blount County School District asserted that their school's Confederate flag ban prohibited them from "expressing their Southern heritage." The students brought a lawsuit against school officials in 2005.

It was revealed in the case that the school adopted its policy as a result of racial tensions at the school, including racist graffiti that made general threats against the lives of African-Americans, as well as graffiti containing "hit lists" of specific students' names. Taking this and other information into consideration, the Sixth U.S. Circuit Court of Appeals concluded that school officials had cause to "reasonably forecast" that the displays of the Confederate flag would "substantially and materially disrupt the school environment," thereby upholding the school's policy and a lower court's dismissal of the lawsuit.

In the unanimous three-judge panel opinion, the Hon. Karen Nelson Moore wrote, "The school did not merely find the Confederate flag offensive to some students but rather found that in the context of high racial tensions, race-related altercations, and threats of violence, the flag would disrupt the school's educational process."

In news reports, the students' attorney Van Irion said, "It's very clear this panel doesn't like the Confederate flag. That was their starting point in coming to the decision they did. The subject matter of the ban is not supposed to be relevant at all in a First Amendment analysis." Irion plans to appeal the court's decision to the U.S. Supreme Court.

Most recently, a federal appeals court ruled in January 2009 that Missouri school officials were justified in their ban of the Confederate flag due to racially-charged incidents at Farmington High School. Those incidents ranged from a fight that broke out during a basketball game where racial slurs were exchanged between the two teams to another incident where several white students from the high school shouted racial slurs outside the home of a black student.

Again, the unanimous three-judge panel opinion, written by the Hon. Lavenski R. Smith for the Eighth U.S. Circuit Court of Appeals, stated, "*Tinker* and its progeny allow a school to 'forecast' a disruption and take necessary precautions before racial tensions escalate out of hand. As a result of race-related incidents both in and out of school, the administration reasonably denied the display of the Confederate flag within the school."

While the students in the case, who were suspended for wearing Confederate flag clothing, argued that school officials committed "viewpoint discrimination," Judge Smith wrote, "viewpoint discrimination by school officials [does not violate] the First

Amendment if the *Tinker* standard requiring a reasonable forecast of substantial disruption or material interference is met."

Robert Herman, the students' attorney, told the Associated Press, "It's a sad day when a court rules someone's opinion is not protected because it offends other people. The essence of this ruling is [a student] can be punished because he expressed an opinion others found offensive." Herman also plans to appeal to the U.S. Supreme Court.

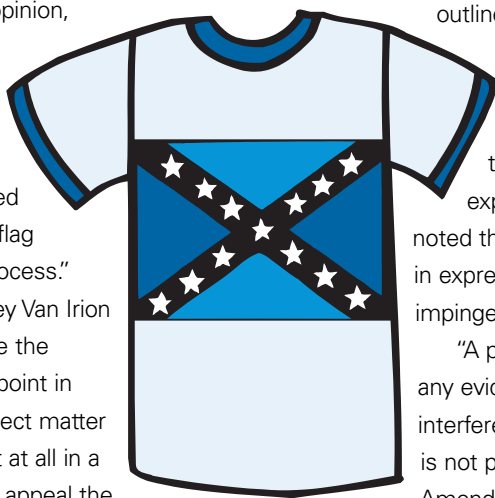
Just ask *Tinker*

When courts consider free speech matters in schools, they almost always look to the legal principles established in the landmark U.S. Supreme Court decision *Tinker v. Des Moines*. This 1969 case in many ways set the standard for how First Amendment cases are judged.

In *Tinker*, the Court upheld the free speech rights of a group of students who wore black armbands to protest the Vietnam War and outlined when and why a school might otherwise intervene in a student's First Amendment rights.

Perhaps the most notable finding of the Court in *Tinker* is that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." In *Tinker*, the Court noted that the student petitioners were "quiet and passive" in expressing their protest to the Vietnam War and "did not impinge upon the rights of others."

"A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments," the Court found.



What does this all mean?

Given the U.S. Supreme Court's finding in *Tinker*, as well as the recent rulings of other courts, it is clear that schools must meet certain criteria before they can limit the ability of students to express themselves through clothing or other means.

"The courts have given schools the authority to determine what students wear to school, but there are parameters," said Mike Yaple, a spokesperson for the New Jersey School Boards Association. "It must be reasonable, with a legitimate reason behind it. Dress code violations are those that would interfere with the appropriate discipline in the operation of the school; cause disruption to the educational environment; or be lewd, vulgar or plainly offensive."

Yaple went on to say that schools are allowed to ban clothes and T-shirts that have messages advertising alcohol, tobacco or drugs, as well as clothes that could be considered to be affiliated with gangs. Recently in New Jersey, some schools made news headlines when they considered a controversial policy banning students from wearing hooded sweatshirts during school hours

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English-Only Laws: Unification or Discrimination?

Phyllis Raybin Emert

Despite the United States' reputation as a "melting pot," the merits of instituting English-only laws are currently being debated across the country. There is also a movement to designate English as the country's official language.

Some feel English-only laws unfairly penalize immigrants, while others feel it is the responsibility of those who live in this country to learn the language and **assimilate** into American society. Historically, the U.S. has been an English-speaking nation, however, America has no official language. According to a June 2006 Rasmussen survey, 85 percent of Americans believe English should be our official language.

The Asian American Justice Center (AAJC), formerly the National Asian Pacific American Legal Consortium, contends that approximately 97 percent of all immigrants speak English already and have learned the language "at the same or faster rates than in previous times in history." A non-profit, **nonpartisan** civil rights organization whose mission is to protect the rights of Asian Pacific Americans, AAJC believes that English-only laws can prohibit or limit

important medical and safety services, job training, law enforcement, court proceedings and the right to make informed voter choices. Such laws, according to AAJC, "do not promote our country's longstanding principles of tolerance and equal access...They are...motivated by intolerance and bigotry."

According to the 2000 Census, Spanish is the most common foreign language spoken in the U.S. with more than 28 million people speaking the language in their homes. French and Chinese follow, each with 2 million people speaking those languages.

A little history

While Spanish may be dominant today, back in the 1750s it was German that created the same animosity toward immigrants. In his essay, *The Legendary English-Only Vote of 1795*, Dennis Baron,



English-Only in the Garden State

While the bills to make English the official language of New Jersey are currently in committee, one New Jersey town has already weighed in on the controversial subject.

In 2006, Steve Lonegan, the then-mayor of Bogota, noticed a billboard in his town that annoyed him. It advertised McDonald's new iced coffee, and it was completely in Spanish. Mayor Lonegan believed that the billboard sent "an offensive message to Hispanics. The message is, 'We will not assimilate. We will not share in this culture,'" he said in local news reports.

When he called McDonalds to request the company replace the billboard with an English language equivalent, it refused. The mayor then proposed an English-only, non-binding ballot question to ask residents whether they would support a law declaring English as the official language of Bogota.

According to the 2000 U.S. Census, Hispanics made up 21 percent of the Bogota population of 8,249 and 99 percent of the residents spoke English.

After a heated debate, the Bogota Borough Council voted 4-2 to place the question on the November ballot. Mayor Lonegan declared, "English is the language that binds us together as a community...The [billboard] controversy demonstrated the need to clarify this issue...It guarantees consistency in the years to come and encourages people to

speak English." Critics said such a law was unnecessary as well as being anti-immigrant, racist and polarizing to the town. The ordinance would have required all town business to be conducted in English only. Ironically, under federal law, the ballot would need to be printed in English and Spanish.

Shortly after the Borough Council vote, Bergen County Clerk Kathleen Donovan challenged Bogota's action in a lawsuit. Donovan rejected the proposed ballot question because of the legal opinion that only the state or federal government could designate English as the official language. State Superior Court Judge Estela De La Cruz agreed and upheld Donovan. The New Jersey Supreme Court declined to hear the case on appeal. Lonegan did not seek reelection in 2007 and is now the executive director of a conservative advocacy group called Americans for Prosperity New Jersey.



a linguistics professor at the University of Illinois, wrote, "Language became a political and an emotional issue when British settlers in Pennsylvania began to fear and resent the fact that a third of their fellow Pennsylvanians were German speakers." According to Professor Baron, there were enough influential Germans in colonial America for the U.S. House of Representatives to consider translating federal statutes into German. After some debate, President Washington signed a bill in 1795 stipulating that all statutes would be printed in English.

Benjamin Franklin was reportedly one of those who feared German immigrants. In his personal papers, he wrote, "Why should Pennsylvania, founded by the English, become a colony of aliens,

who will shortly be so numerous as to Germanize us instead of our

Anglifying them, and will never adopt our language or customs..."

Anti-German feelings surfaced with a vengeance during and after World War I.

According to Professor Baron, many states dropped the

teaching of German in schools and Governor Harding of Iowa banned the speaking of German in public places. In a 1919 letter to the President of the American Defense Society, former U.S. President Theodore Roosevelt wrote, "We have room for but one language in this country, and that is the English language, for we intend to see that the **crucible** turns our people out as Americans, of American nationality, and not as dwellers in a **polyglot** boarding house."

English-only legislation is driven by "fear of immigrants and their languages," Professor Baron noted in his essay. "As many as 18,000 people were charged in the Midwest during and immediately following World War I with violating the English-only statutes," he wrote. In 1923, the U.S. Supreme Court ruled in *Meyer v. Nebraska* that anti-German laws were unconstitutional.

English-only legislation across the country

Thirty states have passed English as official language laws by constitutional amendment or by statute. Ten states, including New Jersey, have introduced legislation to make English the official language of their state. The current bills in the Garden State were referred to their respective state government committees in January and February 2008.

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Other notable English-only court cases

In December 1996, Martha Sandoval initiated a class action lawsuit against the Alabama Department of Public Safety for administering state driver's license exams in English only. It was argued that this policy violated Title VI of the Civil Rights Act of 1964 and discriminated on the basis of national origin, since the non-English speaking individuals in the class action were only able to understand the exam in Spanish. The District Court and the Eleventh Circuit appeals court ruled in favor of Sandoval and ordered the Alabama Public Safety Department to give the exam in Spanish.

The state of Alabama argued that Title VI did not allow private citizens to take such legal action and appealed to the U.S. Supreme Court. The High Court agreed to hear the case, however, before a decision was made, President Clinton issued Executive Order 13166, which in effect upheld the lower court's decision, since the state of Alabama receives federal funding. The U.S. Supreme Court ended up reversing the lower court's decision in *Alexander v.*

Sandoval in 2001, stating "there is no private right of action" for individuals to enforce federal law and file lawsuits under Title VI of the 1964 Civil Rights Act. The Court did not address the issue of discrimination on the basis of national origin.

In 2002, the state of Iowa passed the Iowa Language Reaffirmation Act, which established English as the language of government in that state. Beginning in 2003, voter registration forms were provided online in languages other than English. In 2006, Iowa Congressman Steve King and the organization U.S. English Only sued Iowa's Secretary of State for making voter materials available online in Spanish, Bosnian, Vietnamese and Laotian, thereby violating the law. In March 2008, an Iowa District Court judge for Polk County ruled in favor of King, prohibiting all multi-lingual voter registration forms. As of June 2008, the Attorney General's Office was reviewing whether federal law overrode the ruling and the state's English-only law.

In 2007, the principal of St. Anne Catholic School in Wichita, Kansas implemented an

English-only policy among its student body, which comprised 75 Hispanic students and 168 white students. The English-speaking students felt excluded and believed the Spanish-speaking students were talking about them. The Spanish-speakers felt discriminated against by not being allowed to converse with friends in the language of their culture. In May 2008, four Hispanic families sued the school asking for an end to the policy.

A federal judge ruled in August 2008 that the school's English-only policy did not violate civil rights laws and could not be considered a "hostile educational environment." In his opinion for the court, U.S. District Judge J. Thomas Marten said that "in order to meet the legal standard for being a hostile environment, the policy would have to impede learning." The judge denied the request to end the school's English-only regulation and criticized both sides in the resolution of the conflict. ■

—Phyllis Raybin Emert

Is it Ever Too Late to Apologize? *continued from page 1*

to the issue of slavery, the resolution points out. In 1786, lawmakers passed legislation that prohibited residents from bringing slaves into the state from other locations, and ruled that owners could be punished for *mistreating* their slaves, but *slave ownership* remained an accepted practice.

According to Douglass Harper, an historian, author and journalist who has conducted extensive research on slavery in the Northern states, the slave population in New Jersey actually increased during the Civil War, unlike most states in the North where there was a decrease. When New Jersey was still a colony, Harper cites the existence from 1713 to 1768 of a “separate court system to deal with slave crimes.” Harper also notes “special punishments for slaves remained on the books in New Jersey until 1788.”

In 1804, the New Jersey Legislature passed what it called a gradual **emancipation** law. An Act for the Gradual Abolition of Slavery freed girls born to slave parents once they reached the age of 21 and boys when they turned 25. Slave owners, however, were free to sell their young slaves to people living in states that still supported slavery before they reached their emancipation age. Slavery did not actually end in the Garden State until 1865.

In his book, *Black Bondage in the North*, Edgar J. McManus states, “New Jersey’s emancipation law carefully protected existing property rights. No one lost a single slave, and the right to the services of young Negroes was fully protected. Moreover, the courts ruled that the right was a ‘species of property,’ transferable ‘from one citizen to another like other personal property.’” McManus contends, “New Jersey retained slaveholding without technically remaining a slave state.”

In 1846, New Jersey became the last Northern state to abolish slavery, but even then it failed to come out strongly against the practice. In fact, the state was one of only a few Northern states to support the Fugitive Slave Act of 1850, a law that was vehemently opposed by **abolitionists**. The act allowed authorities in free states like New Jersey to return runaway slaves to their owners.

Better late than never?

When the slavery apology resolution was proposed in 2008, some New Jersey lawmakers spoke out against it, not because they supported slavery, but because they believed too much time had passed to give the apology any real meaning.

“Who living today is guilty of slave holding and thus capable of apologizing for the offense?” asked New Jersey Assemblyman Richard Merkt. “And who living today is a former slave and thus capable of accepting the apology? So how is a real apology even remotely possible, much less meaningful, given the long absence of both oppressor and victim?...Today’s residents of New Jersey, even those who can trace their ancestry back to either slaves or slave holders, bear no collective guilt or responsibility for unjust events in which they personally played no role.”

In general, New Jersey lawmakers viewed the apology as a way to acknowledge the state’s part in slavery, an institution where, the resolution explained, “the fundamental values of the Africans were shattered; they were brutalized, humiliated, dehumanized, and subjected to the indignity of being stripped of their names and heritage;...and families were disassembled as husbands and wives, mothers and daughters, and fathers and sons were sold into slavery apart from one another...”

As one of the sponsors of the resolution, New Jersey Assemblyman William Payne explained, apologizing today was better than never apologizing at all. “Making a stand for human decency, whether one generation too late or many generations too late, is never a waste of time,” he said when the resolution was up for a vote.

With its approval, New Jersey lawmakers hope that their public apology will encourage “all citizens to remember and teach their children about the history of slavery, Jim Crow laws, and modern-day slavery, to ensure that these tragedies will neither be forgotten nor repeated,” as stated in the resolution.

Others follow suit

At least five other states—Alabama, Maryland, North Carolina, Virginia and Florida—have passed similar resolutions. In July 2008, the U.S. Congress took action as well, apologizing for both slavery and the racially discriminating laws and policies known as Jim Crow laws, which continued to deny African-Americans equal rights until civil rights laws were passed in 1965.

The slavery resolution is not the first time Congress has issued an apology for its actions against a group of people. Resolutions have been approved in the past apologizing for the government taking land from Native Americans while settling the West and for imprisoning Japanese Americans in internment camps during World War II.

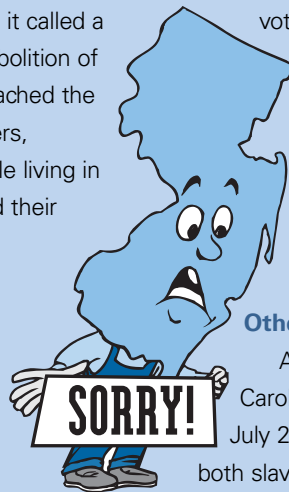
In the case of the Japanese Americans, the U.S. government paid \$20,000 in financial compensation, or **reparations**, to each of the 60,000 survivors in 1988.

Seeking reparations

Today, legal action is underway that seeks reparations for the descendants of slaves. This is the first time compensation has been sought for *descendants* of a wrong rather than the actual *victims*.

Originally filed in 2002, the class action suit would benefit an estimated 35 million African-Americans and cost trillions of dollars if decided in favor of the plaintiffs. The lawsuit seeks reparations from 17 major financial institutions for their involvement in financing and supporting slavery. In 2006, a federal appeals court ruled that companies that lied about their past ties to slavery because they were afraid it would chase away customers could be held liable for their actions. That decision reversed a

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English-Only Laws: Unification or Discrimination? *continued from page 5*

The first state to pass an English-only law was Louisiana in 1807. When Louisiana joined the union, French was the predominant language since it was a territory obtained from France by Thomas Jefferson in the Louisiana Purchase. The state was required to adopt a constitution that stated all laws and records would be printed in English. However, until the Civil War, both French and English were used by the state legislature and public schools taught both languages as part of the state's educational curriculum. This bilingualism was eliminated by the late 1860s as a punishment for supporting the Southern cause. Although some French-language rights were restored after Reconstruction, assimilation began to take place throughout the state, and English asserted itself as the dominant language. Today, Cajun and Creole dialects are still spoken in some areas of Louisiana.

The most recent states to pass English-only laws are Idaho and Kansas in 2007. Idaho's legislation states, "the purpose of this bill is to have an official language become our common language." In Kansas, the bill requires local community groups "to offer English language classes [and] English language training or citizenship classes for non-native speakers."

At the federal level

The Voting Rights Act, initially passed in 1965, guaranteed that no person could be denied the right to vote because of his or her race or color. The Act was amended in 1975 to ban the use of literacy tests and English-only election materials, as well as any discrimination that was based on race, ethnicity or national origin. Section 203 of the Voting Rights Act specifically provides language assistance to four groups—American Indians, Asian Americans, Alaska Natives and Latinos—who are not fluent in English. All election material that is printed in English, including registration information, ballots, forms and instructions must also be printed in the language of these groups. This Act only affects jurisdictions in which the population of any of the four groups number more than 10,000, or make up more than five percent of those over 18.

The U.S. Congress renewed the Voting Rights Act in 2006 to remain in effect through 2032. This renewal continues "the prohibition against the use of tests or devices to deny the right to vote in any federal, state or local election," and "the requirement for certain states and local governments to provide voting materials in multiple languages."

In August 2000, President Bill Clinton signed Executive Order 13166 to improve access to federal programs for those with Limited English Proficiency (LEP). This order required that all federal agencies "ensure that the programs and activities they normally

provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of Title VI of the Civil Rights Act of 1964."

English-only proposals in Congress

Since the 1980s, many bills have been introduced in the U.S. Congress proposing English as the official language of the U.S. government. All of them have failed to become law, either passing in only one house or dying in committee. Many of these bills are linked with immigration legislation or tougher border enforcement.

Samuel Ichiye Hayakawa, a Republican senator from California, was the first to introduce an English Language Amendment in the U.S. Congress in 1982. After he left office in 1983, he founded U.S. English, Inc., "the nation's oldest, largest citizens' action group dedicated to preserving the unifying role of the English language in the United States," and served as its honorary chairman until his death in 1992. Senator Hayakawa was born in Canada of Japanese immigrant parents and became a U.S. citizen in 1955.

In a speech announcing his introduction of the English Language Amendment Act, Senator Hayakawa said, "Bilingualism for the individual is fine, but not for a country. When you go to other parts of the world, you find to your amazement that China is full of Chinese; that Russia is full of Russians and practically nobody else. Italy is full of Italians and Korea is full of Koreans, and so on around the world, But we are full of people from all parts of the world having learned one language and ultimately having learned to get along with each other to create institutions of a multiracial, multicultural democratic society... That is what I want to preserve when I say I want an amendment that says the English language shall be the official language of the United States."

In the workplace

In response to the rising number of discrimination charges filed with the Equal Employment Opportunity Commission (EEOC) against private employers who have English-only rules, Senator Lamar Alexander of Tennessee introduced the Protecting English in the Workplace Act of 2007. The act "would clarify that it is not against the law to prohibit foreign languages from being spoken while engaged in work. The legislation would not apply to a worker's lunch hour or other designated breaks." The bill was referred to the Senate Committee on Health, Education, Labor and Pensions.

Senator Alexander acted after the EEOC filed a lawsuit against the Salvation Army in Framingham, Massachusetts for allegedly discriminating against two Hispanic employees "on the basis of national origin," who were required to

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**We the
People**
**must always
speak
English**

abolitionist — someone who believes in abolishing slavery. assimilate — to absorb or make part of, as in a community.
 crucible — a test or trial. emancipation — the release from slavery. nonpartisan — not adhering to any established political
 group or party. polyglot — a mixture of several languages. progeny — offspring, descendant. reparations — financial
 compensation.

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2005 federal decision that dismissed the case because the court determined the plaintiffs did not have the proper standing to bring the lawsuit and the statute of limitations had been exceeded. The 2005 decision also noted that the claims in the lawsuit raised political questions, which were “beyond the scope of the federal judiciary.”

The U.S. Supreme Court was expected to consider whether too much time has passed under the statute of limitations to be able to seek compensation from companies like New York Life Insurance, JP Morgan Chase and Aetna. However, in October 2007, the High Court declined to hear the case.

So far, slavery descendants have not sought reparations from states or the federal government. In hopes to prevent their resolutions from being used as

evidence against them in possible lawsuits, states like New Jersey have included in the approved apologies the fact that they are not to be used in litigation.

In January 2007, 25 members of Congress introduced a bill to establish a commission that would study the reparations issue. So far, no action has been taken on the bill.

When he was running for election, President Barack Obama said he was against offering reparations to the descendants of slaves in any form, and would rather see money spent to improve the schools, healthcare and job opportunities for African-Americans.

“I have said in the past, and I’ll repeat again,” then Senator Obama said in news reports, “the best reparations we can provide are good schools in the inner city and jobs for people who are unemployed.” ■

English-Only Laws: Unification or Discrimination? *continued from page 7*

speak English while on the job. The employees were given a year by the Salvation Army to learn English and were fired when they failed to do so. The case is still working its way through the court system.

EEOC representative David Grinberg told *The National Law Journal*, “English-only rules, when applied at all times, are presumed to violate Title VII [of the Civil Rights Act of 1964] and will be closely scrutinized. However, limited English-only rules that apply only at certain times may be lawful if the employer can show they are justified by business necessity.”

In its article, *The National Law Journal* cited two 2007 English-only cases in New York with different outcomes. In *Gonzalo v. All Island Transportation*, a federal court ruled “in favor of an English-only policy at a Long Island Taxi Company, holding that the rule—imposed only at the main dispatch center—was a necessary business decision to avoid miscommunication.” In *EEOC v. Flushing Manor Geriatric Center Inc.*, however, the geriatric center was required to pay a \$900,000 settlement of a suit claiming that it barred Haitian employees from speaking in Creole while allowing other foreign languages to be spoken.”

Other recently introduced federal legislation includes the National Language Act of 2008, which would declare English as the national language of the government of the United States. The bill was placed on the Senate calendar in March 2008. English as the Official Language Act of 2008 was introduced in the U.S. House of

Representatives and referred to the Committee on Education and Labor in April 2008. In August 2008, the Pledge Language is English Declaration and Government Endorsement Act of 2008 was introduced in the House and also referred to the Committee on Education and Labor. This act would “withhold federal funds from schools that permit or require the recitation of the Pledge of Allegiance or the national anthem in a language other than English.” ■

Confederate Flag Makes Waves Over Free Speech in Schools *continued from page 3*

on the grounds that some students have used the hoods to hide their identities and have hidden banned items in the pockets.

“Not all schools will have the same rules,” Yaple said, “but the dress codes should be reasonable and they’re usually based on concerns of creating a safe and effective learning environment.”

So, back to the original question: Should students be allowed to display the Confederate flag at school?

As with so many other legal issues, the answer is—it depends. It depends on the policy at the school, the environment at the school, the intent of the speech, and perhaps the interpretation by a court if the speech is challenged under the law. ■