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America's Legacy of Xenophobia: The Curious Origins of Arizona Senate Bill 1070

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AMERICA'S LEGACY OF XENOPHOBIA: THE CURIOUS ORIGINS OF ARIZONA SENATE BILL 1070

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> The anger, the hatred, the bigotry that goes on in this country is getting to be outrageous . . . [a]nd unfortunately, Arizona I think has become sort of the capital. We have become the mecca for prejudice and bigotry. . . . I think it's time as a country that we do a little soul-searching. Because I think it's the vitriolic rhetoric that we hear day in and day out, from people in the radio business, and some people in the TV business . . . .[1]

> I believe in the rule of law, always have. I've always believed in the rule of law. We're a nation of laws. . . . I will not back off till we resolve the problem of this illegal invasion. Invaders, that's what they are. Invaders on the American sovereignty and it can't be tolerated.[2]

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1. *A Tale of Two Sheriffs: Arizona's Clarence Dupnik & Joe Arpaio*, MEDIA MATTERS ACTION NETWORK (Jan. 10, 2011), http://politicalcorrection.org/mobile/factcheck/201101100002 (statement of Clarence Dupnik, Pima County, Arizona Sheriff, speaking in 2011 after the shooting of representative Gabrielle Giffords) (citing *Sheriff Clarence Dupnik: Arizona 'Mecca for Prejudice & Bigotry*, HUFFINGTON POST (Jan. 8, 2011), www.huffingtonpost.com/ 2011/01/08/sheriff-clarence-dupnik-a_n_806303.html; Kim Murphy & Seema Mehta, *6 Die in Tucson Rampage*, L.A. TIMES (Jan. 9, 2011), http://articles.latimes.com/2011/jan/09/nation/la-na-gabrielle-giffords-20110109).

2. Ted Robbins, *The Man Behind Arizona's Toughest Immigration Laws*, NAT'L PUB. RADIO (Mar. 12, 2008), http://www.npr.org/templates/transcript/transcript.php?storyId=88125098 (statement of Russell Pearce, Arizona State Senator and sponsor of Arizona Senate Bill 1070, speaking in 2008).

I. INTRODUCTION: LEGALIZING RACIAL PROFILING

In January 2010, Senator Russell Pearce plunged the nation into a conversation about immigration and racial profiling when he introduced Senate Bill 1070, also known as the "Support Our Law Enforcement and Safe Neighborhoods Act," in the Arizona legislature. The initial incarnation of the bill sought to criminalize the status of being undocumented by creating a new trespass law that made it a crime to be present on Arizona state land without an alien registration card.[3] The bill also sought to criminalize the larger Latino community by criminalizing harboring, transporting, or concealing an "unlawful alien."[4] Those who could conceivably be charged under these crimes include teachers, social workers, employers, and clergy. Perhaps the most controversial part of the bill requires local law enforcement, state officials, and agency representatives to apprehend individuals based on "reasonable suspicion" they are unlawfully present in the U.S.[5]

However, it is improper to use the "reasonable suspicion" standard in the immigration context. "Reasonable suspicion" is a term of art that the U.S. judicial system has developed as part of Fourth Amendment jurisprudence, and requires police officers to have "specific and articulable facts" in order to lawfully stop a person and investigate "suspicious" circumstances.[6] The question remains: what articulable facts would a police officer rely on to determine if a person is an alien who is unlawfully present in the United States? This Article argues that the application of a reasonable suspicion standard in this

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3. The purpose of S.B. 1070 is to establish "crimes involving trespassing by illegal aliens, stopping to hire or soliciting work . . . , and transporting, harboring or concealing unlawful aliens" and to require law enforcement agencies to enforce federal immigration laws. *See Fact Sheet for S.B. 1070*, ARIZ. STATE LEGISLATURE (Jan. 15, 2010), www.azleg.gov/legtext/49leg/2r/summary/s.1070pshs.doc.htm.

4. *Id.* Provision 17 classifies "trespassing" as a class 1 misdemeanor, a class 2 felony, or a class 4 felony depending on the circumstances. *Id.* Provisions 20 and 25 classify "soliciting" and "transporting," and "concealing" and "harboring" as class 1 misdemeanors respectively. *Id.*

5. *Id.* Provision 1 "[r]equires a reasonable attempt to be made to determine the immigration status of a person during any legitimate contact made by an official or agency of the state or a county, city town or political subdivision . . . if reasonable suspicion exists that the person is an alien who is unlawfully present in the U.S." *Id.*

6. Terry v. Ohio, 392 U.S. 1, 21 (1968).

context necessarily targets Latinos[7] and those that appear to be of Latin American ethnicity.[8]

This Article uses Critical Race Theory as a vehicle to explore the racial underpinnings of S.B. 1070 and its progeny. Critical Race Theory challenges the ways in which race and racial power are constructed and represented in the legal system and society.[9] It also explores how racial power can be constructed and reproduced within a liberal discourse.[10] Critical Race Theory can therefore be employed to reveal how a "colorblind" law can represent and reproduce a racial hierarchy. This Article thus critically analyzes Arizona S.B. 1070 by uncovering its connection with white supremacist groups and by exploring the legislation's race-coded language, and argues that the impetus for the legislation is anti-Latino animus.

Although state laws that call for local enforcement of immigration law, such as Arizona S.B. 1070 are put forward as race neutral, home-grown responses to federal immigration policy are coordinated responses to demographic changes in the U.S. These policies reflect an animus towards immigrants in general and Latinos in particular because: 1) immigration laws have historically developed in racial terms; 2) S.B. 1070 was drafted by activists with anti-immigrant and anti-Latino predilections, and funded by white nationalists groups; and 3) legislators and pundits use race-coded language to appeal to conscious or subconscious views when introducing and promoting anti-immigrant legislation.

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7. "Latinos" encompass the following: natural born citizens, naturalized citizens, immigrants, children of immigrants, longtime residents, temporary residents, visiting tourists, or international students. *See* Rogelio Saenz, *The Demography of Latino Immigration: Trends and Implications for the Future*, AM. SOC. ASS'N (Apr. 19, 2004), www2.asanet.org/public/saenz_brief.ppt.

8. The term Latino/a does not refer to a specific race, color, or nationality, but rather an ethnicity. Ethnicity here is used to refer to a group of people whose boundaries are marked by a social practice or experience perceived as distinct. The group may share one or all of the following: a history or a religion; customs or traditions; a language or alphabet; and geography. JUAN F. PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 5 (Jean Stefanic ed., 2000).

9. *See* Kimberlé Crenshaw, *Critical Race Theory: The Key Writings that Formed the Movement*, *in* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 238 (Kimberlé Crenshaw et al. eds., 1995).

10. *Id.*

Part II traces the historical evolution of race discourse and explains that as a consequence of the civil rights movement, explicit racial appeals became incompatible with the norm of racial equality. While racial appeals have existed throughout the history of American political life, implicit racial appeals arose in the latter half of the twentieth century as part of political campaigns and policy-making strategies. These implicit racial appeals were termed "race-coding" by critics of the strategy. The twenty-first century brought an even more sophisticated version of "race-coding" that critics have called "dog-whistle racism." Part II also explores the theory of racial appeals, which hold that after the norm of racial equality and equal opportunity was established, political elites turned to using implicit racial appeals that on the surface seemed to adhere to the norm of racial equality. Part II finally explores how and why implicit appeals to unconscious racism are successful.

Part III provides a background on Latinos in the U.S. and a brief history of the racialization of immigration law. Part IV provides evidence that the individuals and organizations that drafted S.B. 1070 are motivated by anti-Latino animus. Part V applies the theory of racial appeals to the discourse around S.B. 1070. Part VI concludes by arguing the implicit racial appeals and coded language should be exposed as racial in nature, thereby rendering the appeals less palatable to the general public.

II. THE CIVIL RIGHTS MOVEMENT, THE WHITE BACKLASH, AND THE EMERGENCE OF RACE-CODING

> You start out in 1954 by saying, 'Nigger, nigger, nigger.' By 1968 you can't say 'nigger'—that hurts you. Backfires. So you say stuff like forced busing, states' rights and all that stuff. You're getting so abstract now [that] you're talking about cutting taxes, and all these things you're talking about are totally economic things and a byproduct of them is [that] blacks get hurt worse than whites. And subconsciously maybe that is part of it. I'm not saying that. But I'm saying that if it is getting that abstract, and that coded, that we are doing away with the racial problem one way or the other. You follow me—because obviously sitting around saying, 'We want to

> cut this,' is much more abstract than even the busing thing, and a hell of a lot more abstract than 'Nigger, nigger.'[11]

The American political discourse on race underwent an unprecedented and profound change in the latter half of the twentieth century. In the span of little more than twenty years, the American legal system went from a system that upheld and legitimized racial segregation to a system that espoused colorblind laws and policies. This momentous shift in political discourse can best be illustrated by the trajectory of Lyndon Johnson's political career. For most of Johnson's career, from 1937 through 1956, he opposed civil rights and voted against every civil rights bill that came to a vote while he was in Congress.[12] Yet by 1965, the great march on Washington, together with the freedom rides and voter registration drives in the South, had led Johnson to famously declare, "We Shall Overcome" while signing landmark civil rights legislation into law.[13]

The seismic shift that took place in the legal system in the 1950s and 1960s shaped the race discourse for decades to come, and continues to shape modern-day racial appeals. While political elites had previously been able to rely on race baiting and overt racialized language to establish authority, particularly in the South where Jim Crow laws were the norm, the political and demographic changes brought on by the civil rights movement and the anti-war movement led to a simultaneous shift in the race discourse. By 1964, only twenty-five percent of whites sampled in national surveys endorsed segregation and two-thirds endorsed the right of blacks to buy homes over the right of whites to keep blacks out of white neighborhoods.[14] By the late 1960s, few non-Southerners wanted to embrace overt racism. This shift in race politics has been termed "the norm of racial

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11. Bob Herbert, *Impossible, Ridiculous, Repugnant*, N.Y. TIMES (Oct. 6, 2005), http://query.nytimes.com/gst/fullpage.html?res=9C04E6DF1E30F935A3575 3C1A9639C8B63 (statement of Lee Atwater, advisor to Ronald Reagan and George H.W. Bush and one-time Chairman of the Republican National Committee, in a 1981 interview).

12. *See* Robert A. Caro, *When LBJ said, "We Shall Overcome,"* N.Y. TIMES (Aug. 27, 2008), http://www.nytimes.com/2008/08/28/opinion/28iht-edcaro.1.15715 378.html? pagewanted=all.

13. *Id.*

14. *See* TALI MENDELBERG, THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGES, AND THE NORM OF EQUALITY 6-7 (2001).

equality" by critical race theorists.[15] It repudiates the notion that blacks are inferior and rejects treating blacks less favorably than whites. It is also refers "to the consensus that the ideology of white supremacy is morally and empirically bankrupt."[16] Once this norm of racial equality was established, political elites could no longer rely on overt racial appeals to win elections.

A. Race Coding: From Implicit Racism to Explicit Racial Appeals

The genealogy of the realignment in race discourse can be traced back to George Wallace and his campaigns for governor and president. Wallace began his political career as a moderate on race and social issues, but became a well-known segregationist when he successfully appealed to southern pro-segregation constituencies in a bid to win the governorship of Alabama. Later, Wallace's presidential campaign introduced implicit racial appeals in the form of "race-coding" into the mainstream political discourse. "Race-coding," as it became known, substituted overtly racial appeals for subtle phrases and symbols that conveyed a racial meaning.[17]

Early in his political career, Wallace was known as a moderate and had a reputation for fairness.[18] But in the 1958 gubernatorial election, Wallace lost to John Patterson, a candidate endorsed by the KKK and a fierce segregationist.[19] After losing to Patterson, Wallace is said to have stated, "Well boys, no other son-of-a-bitch will ever out-nigger me again."[20] In the subsequent gubernatorial campaign Wallace turned to Asa Carter, a prominent Klansmen, to be his main speechwriter.[21] Carter, a professional anti-Semite and hard-line racist who organized riots and assaults on Black citizens, wrote Wallace's 1963 inaugural address where he famously proclaimed, "Segregation

15. *Id.* at 112.

16. *Id.*

17. *See* Richard Dvorak, *Cracking the Code: "De-Coding" Colorblind Slurs During the Congressional Crack Cocaine Debates*, 5 MICH. J. RACE & L. 611, 622 (2000).

18. Dan Carter, *The Politics of Anger, 1963-1968*, *in* A HISTORY OF OUR TIME: READINGS ON POSTWAR AMERICA 336, 345 (William H. Chafe et al. eds., 2008).

19. *Id.* at 337.

20. *Id.*

21. *Id.* at 338.

now . . . segregation tomorrow . . . segregation forever."[22] To make certain no one had any doubts of what he meant, Wallace went on to articulate the White-Supremacist ideology penned by Carter: the "international racism of the liberals seek to persecute the international white minority to the whim of the international colored majority."[23] Soon after the infamous speech, Wallace gained national notoriety when he blocked the entrance of two black students attempting to enroll at the University of Alabama in what became known as the "stand in the schoolhouse door" incident.[24]

B. The Southern Strategy in Presidential Elections

As school desegregation decisions, anti-discrimination housing ordinances, and race riots moved north, "white backlash" grew among whites in the north who believed civil rights legislation had gone "too far."[25] But while Wallace may have won the governorship in Alabama in 1963 with explicit appeals to racism, it was clear the same explicit rhetoric would not translate to the northern electorate. Therefore, when Wallace ran for president in 1968, he adjusted his rhetoric and eschewed explicit racial appeals. Instead of campaigning on segregation, Wallace championed traditional values, law and order, patriotic and militaristic themes, and opposition to "big government."[26] These themes appeared race-neutral, but the subtle racial themes had the effect of appealing to southern segregationist voters and ethnic, working class northerners who had experienced the urban riots. In the 1968 presidential election, Wallace won nearly 10 million votes, about thirteen percent of the total electorate.[27] He

22. *Id.* at 337.

23. *Id.* at 338.

24. *Id.* at 339.

25. Many white northerners believed that racism was a problem unique to the South and that once civil rights laws were passed blacks should have been able to advance on their individual merit and character. These whites did not support the dismantling of the racial hierarchy outside of the South and blamed blacks for the urban riots and social turmoil that to them seemed to dominate the latter half of the civil rights movement. *See* MENDELBERG, *supra* note 14, at 93-95, 112.

26. *See* Dvorak, *supra* note 17, at 611, 663.

27. Richard Pearson, *Former Alabama Governor George C. Wallace Dies*, WASH. POST (Sept. 14, 1998), http://www.washingtonpost.com/wp-srv/politics/daily/sept98/wallace.htm.

carried five southern states, and won forty-six electoral votes.[28] Wallace had successfully transformed explicit racial appeals into "race-coded" states' rights rhetoric that was palatable to southerners and northerners alike.

Subsequent political elites took note of Wallace's success and implemented even more nuanced versions of Wallace's racial appeals that were more in line with egalitarian ideals. Republicans Richard Nixon, Ronald Reagan, and George H.W. Bush, and later Democrat Bill Clinton pursued what became known as the "Southern Strategy." The "Southern Strategy" was an election strategy that was premised on the alleged hostility of ethnic working-class whites towards Blacks and Latinos.[29] Republicans appealed to this hostility by campaigning on wedge issues that were proxies for race, such as "law and order," "welfare fraud," "forced busing," "states' rights," and affirmative action.[30] Republican politicians employed this "Southern Strategy" to appeal to white, working-class voters in an effort to woo them away from the Democratic Party. This strategy was exposed in 1970 in the *New York Times*, when writer James Boyd profiled Republican political analyst Kevin Phillips:

> Most voters, he had found, still voted on the basis of ethnic or cultural enmities that could be graphed, predicted and exploited. For instance, the old bitterness toward Protestant Yankee Republicans that had for generations made Democrats out of Irish, Italian and Eastern European immigrants had now shifted, among their children and grandchildren, to resentment of the new immigrants-Negroes and Latinos-and against the national Democratic Party, whose Great Society program increasingly seems to reflect favoritism for the new minorities over the old.[31]

A clear example of this deliberate "race-coding" took place in 1969, when Nixon filmed a television ad in which he was shown saying, "The heart of the problem is law and order in our schools. I do

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28. *Id.*

29. James Boyd, *Nixon's Southern Strategy: It's All in the Charts,* N.Y. TIMES, May 17, 1970, at 216, *available at* http://www.nytimes.com/packages/html/books/phillips-southern.pdf.

30. Dvorak, *supra* note 17, at 611, 663.

31. Boyd, *supra* note 29, at 215.

not think that we can expect teachers to go into classrooms where there is no discipline and where they are not backed up by local school boards. . . . Discipline in the classroom is essential if our children are to learn."[32] Immediately after recording this, Nixon told his aides, "Yep, this hits it on the nose, the thing about this whole teacher—it's all about law and order and the damn Negro-Puerto Rican groups out there."[33] It was not Nixon's private racism that prompted him to disguise the racial appeals, but rather his grasp of the racial resentment that existed among some whites and his desire to exploit that resentment for political gain.

The Southern Strategy was so successful that political elites in both political parties continued to use "race-coding" throughout the 1980s and 1990s to appeal to the white electorate. In 1988, George Bush made Willie Horton the centerpiece of his campaign. Horton was a young black man convicted of murder who escaped while on a furlough and assaulted a white woman.[34] In 1992, Bill Clinton sparred with Sister Souljah in an effort to distance himself from the black community, and Jesse Jackson in particular.[35]

Today, this type of campaign strategy has been termed "dog-whistle racism" by its critics.[36] According to the Center for Social Inclusion, "dog-whistle racism" is political campaigning or policy-making that uses coded words and themes to appeal to conscious or subconscious racist concepts and frames.[37] For example, the concepts "welfare queen," "states' rights," "Islamic terrorist," "thug," "tough on crime," and "illegal alien" all activate racist concepts that have already been planted in the public consciousness, and can be purposefully or accidentally activated by political elites, campaign activities, or media coverage.[38]

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32. MENDELBERG, *supra* note 14, at 97.

33. *Id.*

34. *Id.* at 3.

35. *Id.* at 264.

36. *Stop Dog Whistle Racism: Tracking Race in This Year's Election*, CTR. FOR SOC. INCLUSION, http://racecardpoliticswatch.wordpress.com/about/ (last visited Jan. 31, 2012).

37. *See id.*

38. MENDELBERG, *supra* note 14, at 97.

C. The Political Psychology of Implicit Racial Appeals

Author Tali Mendelberg has posited that the power of implicit racial appeals is due to the coexistence of two contradictory elements in American politics: powerful egalitarian norms about race, and the continued existence of racial stereotypes, fears, and resentments among whites.[39] Mendelberg's theory holds that political elites are able to exploit white resentment when they wish to avoid violating the norm of racial equality, but they still face incentives to mobilize white voters.[40] Political elites have learned that racial appeals can be very powerful, but they must be implicit in order to appeal to overcome the norm of racial equality.[41]

Today, the majority of Americans conform to the norm of racial equality and believe white supremacy is morally and empirically bankrupt.[42] At the same time, racism is an integral part of our culture and we are exposed daily to racial and ethnic stereotypes. The theory of cognitive psychology states that everyday culture transmits beliefs and preferences at an unconscious level.[43] For example, even if a child is not explicitly taught to dislike people of other ethnicities, the child may nevertheless come to believe people of other races are inferior by observing the behavior of others and being constantly exposed to ethnic and racial stereotypes.

As a result of this cultural transmission of negative racial disposition, many whites have a difficult time reconciling their belief in racial equality with the facts of racial inequality. They may believe that because American laws provide for equal opportunity, racial minorities need only play by the rules to succeed. A focus on individualism leads many whites to believe the high level of poverty among racial minorities is self-imposed. This negative racial disposition primes whites to absorb racial messages and makes them susceptible to implicit appeals.[44] Moreover, implicit appeals are more

39. *Id.* at 112.

40. *Id.*

41. *Id.*

42. *Id.* at 113.

43. Charles R. Lawrence III, *The ID, the EGO and Equal Protection Reckoning with Unconscious Racism*, *in* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, *supra* note 9, at 235, 238.

44. MENDELBERG, *supra* note 14, at 119-21.

effective than explicit appeals because they avoid the conscious perception of racism.

III. HISTORY OF IMMIGRATION LAW AND RACIALIZATION

The theory of implicit racial appeals can be applied to the discourse around Senate Bill 1070 and similar laws that target Latinos while appearing to be facially neutral. Just as it can be said that whites are vulnerable to implicit racial appeals because of the history of discrimination against African-Americans and other racial minorities, Americans can also be said to be vulnerable to implicit racial appeals concerning immigration law, because of the history of race-based immigration policies and the creation of the "illegal Mexican" in the public consciousness.

A. Legacy of Exploitation, Segregation, and Exclusion

When the U.S. invaded and annexed half of Mexico in 1848, custom, rather than law, established the framework of white supremacy. This framework allowed white Anglo-Saxon Protestant Americans to subject the peoples of Spanish and Native American descent that had remained in the U.S. after the annexation of the Southwest to an inferior, caste-like status. The whites maintained this racial hierarchy through segregation and Jim Crow-like customs. Mexicanos were segregated in schools, railroads, hotels restaurants, public bathrooms, and other public accommodations.[45] Signs in public places commonly read "Mexicans and Dogs not allowed."[46] Historians have documented how a large number of Mexicanos were robbed of their land and subjected to a dual wage system, segregation, and lynching.[47]

Although Mexicanos were treated as second-class citizens, they were legally categorized as white because of their Spanish-European

45. Karla Mari McKanders, *Identification of Race in the Law: Sustaining Tiered Personhood: Jim Crow and Anti-Immigrant Laws*, 26 HARV. J. ON RACIAL & ETHNIC JUST. 163, 182 (2010).

46. *Id.*

47. ARMANDO NAVARRO, THE IMMIGRATION CRISIS: NATIVISM, ARMED VIGILANTISM, AND THE RISE OF A COUNTERVAILING MOVEMENT 40-41 (2009).

ancestry.[48] In contrast to the Court's treatment of African-Americans in the *Plessy v. Ferguson*[49] decision, Mexicanos in the Southwest were subjected to de facto, rather than de jure, discriminatory treatment. It was not until 1954 that the Court first legally deemed Mexicanos as an identifiable ethnic group, distinct from whites, in *Hernandez v. Texas*.[50] In *Hernandez*, the Court concluded that the systematic exclusion of Mexicanos from jury duty on the basis of "class" was unconstitutional under the Fourteenth Amendment.[51] To reach its conclusion, the Court relied on evidence of local discriminatory practices against Mexicanos.[52] The Court noted that the residents of the community distinguished between "white" and "Mexican."[53] The Court also noted there were two separate bathrooms for men at the courthouse in question: one that was unmarked (for whites), and one marked "Colored Men" and "*Hombres Aqui*" ("Men Here").[54] The Court nevertheless held that whether an identifiable group exists for purposes of Equal Protection would remain a question of fact.[55] Thus, petitioners of Mexican heritage were denied equal protection as a matter of law, and were required to show they belonged to an identifiable group in every subsequent discrimination suit.[56]

B. Immigration Law and Racialization

> The illegal immigrant cannot be constituted without deportation—the possibility or threat of deportation, if not the fact. The

48. Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals By Race, 1790 to 1990, and By Hispanic Origin*, U.S. CENSUS BUREAU (Sept. 2002), www.census.gov/population/www/documentation/twps0056/twps0056.html.

49. 163 U.S. 537 (1896).

50. 347 U.S. 475 (1954).

51. *Id.* at 479-81.

52. *Id.* at 479-80.

53. *Id.* at 479.

54. *Id.* at 479-80.

55. *Id.* at 478.

56. *See* Castaneda v. Partida, 430 U.S. 482, 494 (1977); Cisneros v. Corpus Christi Indep. Sch. Dist., 324 F. Supp. 599, 606-07 (S.D. Tex. 1970); United States v. Hunt, 265 F. Supp. 178, 188 (W.D. Tex. 1967).

possibility derives from the actual existence of state machinery to apprehend and deport illegal aliens.[57]

The United States essentially had an open door policy from its founding up until 1875.[58] The nation's borders remained effectively unguarded for the first 100 years of its existence. The racialization of immigration laws began when Congress passed a series of explicitly discriminatory laws in 1875, 1882, and 1892 that excluded immigrants from China, Japan, and other Asian countries while continuing to allow for unfettered immigration from European nations.[59] In 1921, Congress decided to restrict immigration to 350,000 a year.[60] In 1924, Congress restricted immigration even further by capping the number of immigrants legally allowed to enter the United States to 150,000 a year, effectively lowering the number of immigrants to fifteen percent of the average number allowed to enter the nation yearly prior to World War I.[61] The 1921 and 1924 Acts also established quotas based on the national origin of Americans.[62] In practice, this resulted in high numbers of allowances for immigrants from Northern Europe.[63]

As a result of the changes in immigration policies, "illegal immigration" came into existence.[64] Prior to the legislation of the 1920s, immigrants were seldom excluded, and even more rarely deported.[65] The prevailing notion was that once immigrants had been in the country for a few years and had established familial and economic ties, they would no longer be eligible for deportation regardless of whether they had arrived without legal permission.[66]

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57. Mae M. Ngai, *The Strange Career of the Illegal Alien: Immigration Restriction and Deportation Policy in the United States, 1921-1965*, 21 LAW & HIST. REV. 69, 72 (2003).

58. NAVARRO, *supra* note 47, at 24.

59. *Id.* at 25-27.

60. Ngai, *supra* note 57, at 75.

61. *Id.*

62. *Id.* at 75. "Quotas were allocated to countries in proportion to the numbers that the American people traced their 'national origin' to those countries, through immigration or the immigration of their forebears." *Id.*

63. *Id.*

64. *See id.* at 74-75.

65. *See id.* at 75-76.

66. *Id.*

Deportations were so rare that between 1892 and 1907 only a few hundred immigrants were deported.[67] Between 1908 and 1920, averages of only two- or three-thousand immigrants were deported per year.[68] However, by establishing racialized quotas, Congress assured that legal status would be forever linked to national origin and race.[69] During this period, immigrants from Great Britain that attempted to enter the U.S. were likely categorized as "legal," while immigrants from Asia or Southern Europe were likely categorized as "illegal."[70]

Despite the quotas, immigrants from around the world continued to enter the United States through Canada and Mexico without legal status. Illegal European immigrants, including Belgian, Dutch, Swiss, Russian, Bulgarian, Italian, and Polish immigrants, entered the United States at both borders.[71] An investigation by the Federal Bureau of Investigation in 1925 reported that "thousands" of immigrants, "mostly late arrivals from Europe," were "coming as fast as they [could] get the money to pay the smugglers."[72] But just as today, the problem of differentiating illegal immigrants from citizens and legal immigrants arose. A contemporary writer captured the racialized enforcement of immigration law: "To capture an alien who is in the act of crawling through a hole in the fence between Arizona and Mexico is easy compared with apprehending and deporting him after he is hidden in the interior, among others of his own race who are legally in this country."[73]

Although Mexicanos were not subject to the racial quotas, they nevertheless became a prime target for Border Patrol in the Southwest. Two great expulsions of Latinos occurred in the twentieth century, which some analysts have described as ethnic cleansing.[74] The first of these expulsions took place when the economy faltered during the Great Depression. Initially the deportations were to be directed at all immigrants, but anti-Mexicano sentiment led to a targeted campaign

67. *Id.*
68. *Id.*
69. *See id.* at 77.
70. *See id.* at 77-81.
71. *Id.* at 83.
72. *Id.*
73. *Id.* at 81.
74. NAVARRO, *supra* note 47, at 61.

against Mexicanos.[75] Nativists at the time proclaimed, "Mexicanos go home! You are not needed any longer!"[76] Mexicanos were accused of taking jobs and holding down wages for "real Americans." The U.S. government responded with an official expulsion campaign, repatriating and deporting 300,000 to 500,000 Mexicanos between 1931 and 1934.[77] Throughout the campaign, immigration agents rounded up immigrants as well as U.S. citizens of Mexican ancestry, regardless of immigration status, in major cities throughout the Southwest and Midwest.[78]

In 1954, the U.S. embarked on a second expulsion campaign, officially named "Operation Wetback," where over one million Mexicanos were deported or repatriated.[79] In the era of the expulsions, U.S. officials did not differentiate between U.S.–born Mexicanos and recent immigrants. Officials explicitly targeted individuals who spoke Spanish or "looked Mexican" for deportation and repatriation based on ethnicity. The official campaigns relied on racial stereotypes and portrayed Mexicanos as parasitic burdens on society that took "American jobs."[80] The media campaign for "Operation Wetback" characterized the expulsion campaign as a national security necessity.[81] Mexicanos were cast as criminals trespassing on American land. Thus, the themes of public safety, national security, public welfare, and jobs were linked with Latino immigrants in general, and Mexicanos in particular.

This legacy of exploitation, segregation, and exclusion casts a long shadow over current American attitudes towards Latinos in the U.S. Ironically, Latinos have historically been exploited for their labor and simultaneously blamed for "taking our jobs." Today, Latinos and Latin American immigrants continue to be portrayed as uneducated, lazy, parasitic, and drains on the economy. But while these stereotypes remain present in the public consciousness, they remain on the

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75. *Id.*

76. *Id.*

77. Ruben Garcia, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law,* 17 CHICANO-LATINO L. REV. 118, 127 (1995).

78. NAVARRO, *supra* note 47, at 63.

79. Garcia, *supra* note 77, at 127.

80. NAVARRO, *supra* note 47, at 62-63.

81. Garcia, *supra* note 77, at 127.

margins of public discourse. Proponents of immigration restrictions today continue to rely on these stereotypes to promote anti-immigration legislation, such as Senate Bill 1070.

IV. THE WHITE SUPREMACIST ORIGINS OF SENATE BILL 1070

While the national debate around Senate Bill 1070 is focused on immigration policy, those familiar with Arizona Senator Russell Pearce may very well appreciate the bill's anti-Latino objectives. Pearce's white separatist views are well known in Arizona. First, Pearce was photographed posing with J.T. Ready, one-time member of the neo-Nazi Nationalist Socialist Movement.[82] Second, and of more evidentiary value, are Pearce's own words. In a radio interview in September 2006, Pearce called for the revival of the 1950s deportation program "Operation Wetback," and refused to apologize for using the pejorative term "wetback."[83] Former governor of Arizona, and current Secretary of Homeland Security, Janet Napolitano said at the time, "I think it's becoming clear that Russell Pearce is out of the mainstream of Arizona. He doesn't speak for Arizonans. He's so far to the right that his contribution to public discourse is limited."[84] Later that same year, Senator Pearce circulated an email from the National Alliance, a white supremacist group, which defended a white person who "looks askance at miscegenation or at the rapidly darkening racial situation in America."[85] The email went on to say the "media masters" force a view of "a world in which every voice proclaims the equality of the races, the inerrant nature of the Jewish 'Holocaust' tale, the wickedness of attempting to halt the flood of non-White aliens pouring across our borders" on the public.[86]

While State Senator Russell Pearce is responsible for introducing Senate Bill 1070 into the Arizona Senate, the intellectual architects of the Bill are from the Federation for American Immigration Reform

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82. *Intelligence Files: J.T. Ready*, S. POVERTY LAW CTR., www.splcenter.org/get-informed/intelligence-files/profiles/jt-ready (last visited Jan. 31, 2012).

83. *Arizona Lawmaker Circulated White Separatist E-mail*, USA TODAY (Oct. 12, 2006), www.usatoday.com/news/nation/2006-10-12-race-supremacy_x.htm.

84. *Id.*

85. *Id.*

86. *Id.*

(FAIR), and its legal affiliate, the Immigration Reform Law Institute (IRLI). FAIR has taken credit for drafting the legislation and has featured it prominently on its website.[87] Kansas Republican Secretary of State, and longtime FAIR attorney, Kris Kobach, has been lauded and criticized as the primary architect of the Senate Bill 1070.[88] Belying FAIR's acceptance as a mainstream group is its anti-Latino bias. An anti-Latino activist, funded by openly-eugenicist groups, founded FAIR, and its past and present leaders have well-known ties with self-proclaimed white supremacists. Through FAIR and its partner organizations, a relatively small group of individuals have dominated the public discourse on immigration over the last three decades and have thus promoted their anti-Latino agenda. The FAIR anti-Latino agenda consists of: 1) establishing shell organizations that create the illusion of a large and multi-faceted restrictionist movement; 2) targeting the media and public opinion by generating race-neutral editorials and media campaigns opposing immigration; and 3) initiating legislation that targets Latinos through seemingly race-neutral immigration policies.

A. FAIR's History of Anti-Latino Animus

Founded in 1979 by John Tanton, FAIR promotes itself as "the only national organization whose sole reason for existence is the promotion of stricter immigration controls."[89] FAIR's activities include "research, public education, media outreach, grassroots

87. "Drafted with the aid of FAIR's legal affiliate, the Immigration Reform Law Institute (IRLI), S.B. 1070 is carefully crafted to conform to federal laws and to protect the civil rights of all legal residents and visitors to Arizona." *SB 1070 Resource Center*, FED'N FOR AM. IMMIGRATION REFORM, http://www.fairus.org/site/PageNavigator/sb1070_resource_center (last visited Jan. 31, 2012).

88. Cristina Corbin, *Legal Architect Behind Arizona Law Becomes South-After Immigration Guru*, FOXNEWS.COM (June 26, 2010), http://www.foxnews.com/politics/2010/06/25/legal-architect-arizona-law-sought-immigration-guru/; Anna Gorman, *A Voice for Arizona's Immigration Law*, L.A. TIMES (May 13, 2010), http://articles.latimes.com/2010/may/13/nation/la-na-kobach-arizona 20100513.

89. GERALD BAUMGARTEN, ANTI-DEFAMATION LEAGUE, IS FAIR UNFAIR? THE FEDERATION FOR AMERICAN IMMIGRATION REFORM (FAIR) 6 (2000), *available at* www.adl.org/civil_rights/is_fair_unfair.pdf.

organizing, government relations, litigation and advocacy."[90] FAIR's legislative arm is State Legislators for Legal Immigration (SLLI), and its legal arm is Immigration Reform Law Institute (IRLI). FAIR and its dozens of spin-offs and partner organizations have one thing in common: John Tanton's ability to raise funds from overtly racist organizations and individuals, and hand those funds over to innocuous sounding organizations. Over its thirty-two years of existence, FAIR and its front organizations have perfected their use of language so as to appear mainstream and hide their white supremacist roots. FAIR has been extremely successful in this endeavor, and is regularly called upon to testify before Congress on immigration issues, providing testimony before congressional committees more than ninety times.[91] Additionally, FAIR utilizes the mainstream media to promote its agenda. The *Los Angeles Times* has noted "FAIR's spokespeople and copious position papers are often the only non-government sources cited by news media in immigration stories."[92]

Tanton may have initially founded FAIR to address his personal fears concerning ecology and population control, but the organization has now grown into a powerful political force for anti-immigrant and anti-Latino policies and legislation at the local and national level.[93] The Southern Poverty Law Center has categorized FAIR as a "hate group," and the Anti-Defamation League calls FAIR a "xenophobic group" that "creates proxy groups that publicly demonize and target Latino immigrants."[94] According to the *New York Times*, "While Tanton's influence has been extraordinary, so has his evolution—from

90. *FAIR's Activism*, FED'N FOR AM. IMMIGRATION REFORM, http://www.fairus.org/about (last visited Jan. 31, 2012).

91. *Legislative Resources*, FED'N FOR AM. IMMIGRATION REFORM, http://www.fairus.org/site/PageNavigator/legislation/legislative_resources.html (last visited Jan. 31, 2012).

92. Patrick J. McDonnell & Paul Jacobs, *FAIR at Forefront of Push to Reduce Immigration: Population: Group's Roots Are in the Environmental Movement. It is Now an Influential Player in Border Issues*, L.A. TIMES (Nov. 24, 1993), http://articles.latimes.com/1993-11-24/news/mn-60272_1_illegal-immigrants.

93. Jason DeParle, *The Anti-Immigration Crusader,* N.Y. TIMES (Apr. 17, 2011), http://www.nytimes.com/2011/04/17/us/17immig.html? pagewanted =all.

94. *Pulling the Curtain Back on FAIR,* ANTI-DEFAMATION LEAGUE, www.adl.org/Civil_Rights/anti_immigrant/FAIR-fact-sheet.pdf (last visited May 2, 2012).

apostle of centrist restraint, to ally of angry populists and a man who increasingly saw immigration through a racial lens."[95]

Tanton's anti-Latino and eugenicist ties are well documented. Tanton released many of his private letters to the University of Michigan, and they reveal he and FAIR were more concerned about the growing ethnic and racial diversity than about immigration.[96] In 1988, the *Arizona Republic Newspaper* published a number of memos written by Tanton and then-executive director of FAIR, Roger Conner.[97] The WITAN memos, as they came to be known, complained about the "high Hispanic birth rate," and warned of a "Latin onslaught."[98] The memos revealed Tanton's view of Latinos when he lamented: "Will Latin-American migrants bring with them the tradition of the mordida (bribe)?"[99] They also revealed his worldview: "As whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion?"[100] In an even more repugnant tone in a 1997 interview, Tanton forewarned that, unless the U.S. border is sealed, people "defecating and creating garbage and looking for jobs" would overrun the U.S.[101] Current FAIR President Dan Stein has also expressed white supremacist views, accusing immigrant groups of engaging in "competitive breeding" aimed at diminishing "white power."[102]

B. FAIR's Web of Shell Organizations

Tanton has founded or funded multiple organizations to promote his views and lend legitimacy to his causes. Together these organizations make up much of the immigration reduction movement: Population-Environment Balance founded in 1980; U.S., Inc., founded in 1982; U.S. English founded in 1983; American Immigration Control Foundation (AICF) founded in 1983; Center for Immigration

95. DeParle, *supra* note 93.
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. *Id.*
101. NAVARRO, *supra* note 47, at 218-19.
102. *Id.* at 218.

Studies (CIS) founded 1985; Californians for Population Stabilization founded in 1986; The Social Contract Press founded in 1990; American Patrol/Voice of Citizens Together founded in 1992; California Coalition for Immigration Reform (CCIR) founded in 1994; ProEnglish founded in 1994; NumbersUSA founded in 1996; and ProjectUSA founded in 1999.[103] Tanton has admitted to founding these new organizations to provide legitimacy to FAIR's work. For example, according to Tanton, FAIR founded the Center for Immigration Studies in 1985 "to make the restriction of immigration a legitimate position for thinking people."[104]

Tanton has also been known to start new organizations to harass Latinos in areas other than immigration policy. In a brilliant move, Tanton co-founded the innocuous-sounding U.S. English in 1983. To charge linguistic minorities with refusing to assimilate and simultaneously propose limiting their numbers would reveal that anti-Latino animus, so Tanton decided to keep the organizations separate. So while FAIR's mission is "to improve border security, to stop illegal immigration, and to promote immigration levels consistent with the national interest,"[105] U.S. English was founded to address Latino culture by opposing bilingual education in schools; banning interpreter services and translated materials in schools, hospitals and government offices; and promoting English-Only initiatives and legislation.[106] But while the organizations held themselves out as separate entities, the two organizations shared an office space, a general counsel, a political action committee (PAC) treasurer, a direct-mail consultant, funding sources, and, of course, John Tanton.[107] Like FAIR, U.S. English uses race-neutral language to support its mission. To that end, their website claims to aspire to "expand opportunities for immigrants" and

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103. *John Tanton's Network,* S. POVERTY LAW CTR., www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2002/summer/the-puppeteer/john-tantons-network (last visited May 2, 2012).

104. DeParle, *supra* note 93.

105. *About FAIR,* FED'N FOR AM. IMMIGRATION REFORM, http://www.fairus.org/site/PageNavigator/about.html (last visited Jan. 31, 2012).

106. DeParle, *supra* note 93.

107. Jean Stefancic, *Funding the Nativist Agenda, in* IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 123 (Juan F. Perea et al. eds., 1997).

"empower immigrants."[108] This kind of race-neutral, pro-immigrant language proved to be disingenuous when it was revealed that Tanton was the founder and funder of U.S. English.

U.S. English's anti-Latino origin was revealed publicly when the Tanton memos were released.[109] In response to the memos, the first Executive Director of U.S. English, Linda Chavez, resigned, calling the memos "repugnant and not excusable," and "anti-Catholic and anti-Hispanic."[110] Advisory member Walter Cronkite also quit, after calling the memos "embarrassing."[111] After the incident, Warren Buffett stopped supporting FAIR, and according to the *New York Times*, "any hope of significant liberal support vanished."[112] Most revealing of all, Tanton himself was forced to resign from the board of U.S. English and U.S. English removed all mention of Tanton from its literature. Not to be deterred, Tanton founded ProEnglish in 1994 to promote an English-only law in Arizona.[113] Like many of Tanton's creations, ProEnglish has gone on to gain legitimacy in the mainstream media and among legislators in its own right. It continues to promote English-only laws, initiatives, and legislation, and in a blatant anti-Latino stance, it has recently initiated a campaign to prevent the U.S. commonwealth of Puerto Rico from becoming a U.S. state.[114]

Over the years, FAIR has had to address accusations of being racist and exclusively conservative. FAIR has tried to counter these accusations by making efforts to recruit non-white and progressive activists to join its anti-Latino causes. In 2008, FAIR initiated a media

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108. *About U.S. English,* U.S. ENGLISH, http://www.us-english.org/view/3 (last visited Jan. 31, 2012).

109. DeParle, *supra* note 93.

110. McDonnell & Jacobs, *supra* note 92.

111. *John Tanton is the Mastermind Behind the Organized Anti-Immigration Movement*, S. POVERTY LAW CTR., http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2002/summer/the-puppeteer?page=0,1 (last visited May 2, 2012).

112. DeParle, *supra* note 93.

113. *Mission,* PROENGLISH.ORG, http://www.proenglish.org/about-us/mission (last visited Jan. 31, 2012).

114. *Our Projects: Puerto Rican Statehood*, PROENGLISH.ORG, http://www.proenglish.org/projects/puerto-rican-statehood.html (last visited Jan. 31, 2012).

campaign to promote its anti-immigrant agenda among progressives.[115] The campaign took out full-page ads in *The New York Times*, *The Nation*, and *Harper's Magazine* that pictured a bulldozer knocking down trees and heavy traffic congestion.[116] The ads argued that high immigration levels would cause environmental damage; traffic congestion; higher taxes; and severe strains on schools, emergency rooms, and public infrastructure.[117] In an effort to gain legitimacy for the campaign, FAIR announced it had "partnered" with four organizations to found "America's Leadership Team for Long Range Population-Immigration-Resource Planning" (Leadership Team) and boasted, "We're the nation's leading experts on population and immigration trends and growth." The truth was the Leadership Team was made up of the same front groups that FAIR and Tanton previously founded: the American Immigration Control Foundation, the Social Contract Press, Californians for Population Stabilization, and Numbers USA.[118]

C. FAIR's Connection with Eugenicist and White Supremacist Groups

Between 1985 and 1994, FAIR accepted $1.2 million in grant money from the Pioneer Fund.[119] The Pioneer Fund was founded by Nazi sympathizers in 1937, and continues to fund studies on "heredity and eugenics," as well as "the problems of race betterment."[120] The Pioneer Fund does not shy away from its origins. It openly claims to

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115. Heidi Beirich, *How Racist Anti-Immigrant Groups Are Trying to Recruit Environmentalists*, ALTERNET.ORG (July 27, 2010), http://www.alternet.org/story/147655/?page=entire.

116. *Id.*

117. *Id.*

118. *Id.*

119. *John Tanton's Network*, *supra* note 103.

120. *See* Paul A. Lombardo, *"The American Breed": Nazi Eugenics and the Origins of the Pioneer Fund*, 65 ALB. L. REV 743, 745 (2002). Pioneer is a foundation chartered in 1937 to support and publicize study on "heredity and eugenics" and "the problems of race betterment." The paper focuses on the role of Harry Laughlin, one of the most successful publicists of the "racial radical" branch of the American eugenics movement, and Wickliffe Draper, a wealthy New Yorker who endowed the Pioneer Fund. The paper explores several archival collections, tracing contacts among Laughlin, Draper, and the Nazi scientists whose work informed Hitler's "racial hygiene" movement. *Id.* at 745-48.

be part of the "eugenics movement," and considers itself based in the "Darwinian-Galtonian evolutionary tradition."[121] The Fund's founding president, Harry Laughlin, argued for a legal definition of "the American race" that would exclude all but Anglo-Saxon immigrants, and dedicated extensive efforts to blocking the immigration of Jews attempting to escape Nazi Germany.[122] The Fund's continuing influence is staggering. For example, sixteen of the researchers referenced in the infamous book *The Bell Curve* received support for their research from the Pioneer Fund.[123] One of the most famous Pioneer Fund grantees is William B. Shockley, the Nobel-winning physicist who argued that African-Americans are genetically and intellectually inferior to whites.[124] In 2006, the Pioneer Fund's current president, J. Philippe Rushton, spoke at a conference organized by American Renaissance, a white supremacist publication and Website.[125]

FAIR and Tanton organizations also received $5.8 million in funds from The Laurel Foundation.[126] A millionaire heiress that favored population control efforts and limiting immigration from non-European countries endowed the Laurel Foundation.[127] The Foundation is known for funding researchers that believe "multiculturalism leads to social chaos" and studies that promote sterilization.[128] FAIR has used funds from the Pioneer Fund and the Laurel Foundation to promote its anti-Latino legislation, disguised as anti-immigration legislation, across the country.

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121. *The Pioneer Fund, Inc.*, PIONEERFUND.ORG, http://www.pioneerfund.org/ (last visited Jan. 31, 2012).

122. Lombardo, *supra* note 120, at 746.

123. *Id.*

124. DeParle, *supra* note 93.

125. *Immigrants Targeted: Extremist Rhetoric Moves into the Mainstream*, ANTI-DEFAMATION LEAGUE, http://www.adl.org/civil_rights/anti_immigrant/fair.asp (last visited Jan. 31, 2012); *see also About Us*, AMERICANRENAISSANCE.COM, http://www.amren.com/siteinfo/index.html#what (last visited Jan. 31, 2012).

126. Stefancic, *supra* note 107.

127. *Id.*

128. *Id.* at 124.

D. FAIR and Anti-Immigration Legislation

In the last few years, FAIR has turned its attention to testing federal immigration laws in the courts in an effort to address the growth in the U.S. Latino population.[129] FAIR's recent "successes" have been credited to attorney Kris Kobach's strategy of using the courts to make immigration policy by "re-thinking the conservative tenet that the courts should not be a forum for policy change."[130] The vigorous campaign involves drafting legislation that targets Latinos through seemingly race neutral policies. Kobach encourages localities to push the boundaries of permissible discrimination, by: requiring landlords to ask families for immigration documents, punishing employers who employ undocumented workers, prohibiting public colleges from allowing immigrant students to pay in-state tuition rates, and requiring law enforcement to use racial profiling to determine a person's immigration status. FAIR tested these anti-Latino policies in towns across the country to varying degrees of success, from small towns, such as Hazelton, Pennsylvania; Fremont, Nebraska; and Valley Park, Missouri, to the more recent state-level legislation in Arizona, Georgia, and Indiana.

FAIR's test case was the "Illegal Immigration Relief Act Ordinance" (IIRAO) passed in Hazelton, Pennsylvania in 2006.[131] FAIR found a willing participant in Hazelton Mayor Lou Barletta, after the town's population surged from 23,000 in 2000 to an estimated 33,000 in a few years.[132] The population increase was the result of an influx of Latinos migrating from New York and New Jersey, following the economic downturn that gripped the area after September 11th.[133] The new residents of Latin American heritage were undoubtedly visible in a small town such as Hazelton, and the town's immigration ordinance aimed to target them. Kobach introduced a trio of ordinances as part of the legal strategy. In addition

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129. Julia Preston, *Lawyer Leads Local Fight Against Illegal Immigration*, N.Y. TIMES (July 20, 2009), http://www.nytimes.com/2009/07/21/us/21lawyer.html?pagewanted =all.

130. *Id.*

131. Julia Preston, *Court Rejects a City's Efforts to Restrict Immigrants*, N.Y. TIMES (Sept. 9, 2010), http://www.nytimes.com/2010/09/10/us/10immig.html.

132. Lozano v. Hazleton, 496 F. Supp. 2d 477, 484 (M.D. Pa. 2007).

133. *Id.*

to the immigration ordinance, he also drafted the language for the "Tenant Registration Ordinance" and the "Official English Ordinance" that together addressed both immigration status and cultural assimilation concerns.

The Puerto Rican Legal Defense and Educational Fund (PRLDEF) immediately initiated a civil rights lawsuit on equal protection and federal preemption grounds. PRLDEF argued that the immigration provisions were a pretense, and in fact, the city's intent was to harass Latinos.[134] PRLDEF noted that all Latinos, including Puerto Ricans, would be targeted by the ordinances based on ethnic stereotypes, despite the fact that Puerto Ricans are U.S. citizens by birth and thus not subject to immigration law. The court in *Lozano v. Hazleton* struck down the ordinances, relying on evidence that the ordinances would disproportionately affect Latinos. While the court struck the ordinances down on federal preemption grounds instead of equal protection, they nevertheless noted the ordinance was prompted by the surge in the Latino population, and that it would "especially affect those who look or act as if they are foreign."[135] The Third Circuit affirmed the District Court, thus giving credence to the plaintiff's argument that the ordinance would necessarily be enforced in a racially discriminatory manner.[136]

V. SENATE BILL 1070'S ANTI-LATINO RHETORIC

Despite these easily discoverable connections to White Supremacist groups, FAIR and Senator Pearce are considered mainstream. FAIR and Senator Pearce have achieved this status because they have mastered the art of implicit racial appeals. Senate Bill 1070 does not explicitly mention the race or ethnicity of the "illegal aliens" it seeks to criminalize, although the original bill did allow officers to consider race, color, and national origin.[137] The

134. *Hazleton Resident Sue to Halt Harsh Anti-Immigrant Law in Hazleton, PA*, LATINOJUSTICE.ORG (Aug. 14, 2006), http://latinojustice.org/briefing_room/press_releases/hazleton_residents_sue/index.html.

135. *Lozano*, 496 F. Supp. 2d at 529.

136. Lozano v. Hazleton, 620 F.3d 170, 224 (3d Cir. 2010).

137. S.B. 1070 originally stipulated that a law enforcement official or agency cannot solely consider "race, color or national origin when implementing" these provisions, "except as permitted by the U.S. or Arizona Constitution," *See Final*

outcry over the original bill's endorsement of racial profiling was so loud that the Arizona House amended the bill to stipulate that a law enforcement official or agency cannot consider race, color, or national origin, except as permitted by the U.S. or Arizona constitutions.[138]

S.B. 1070's proponents have failed to credibly dispute this critique. When Arizona Governor Jan Brewer was asked what criteria would be used to determine a person's immigration status, she admitted she did not know what officers would rely on, but yet declared the law would not be enforced in a discriminatory manner:

> I do not know what an illegal immigrant looks like. I can tell you that I think there are people in Arizona that assume they know what an illegal immigrant looks like. I don't know if they know that for a fact or not. But I know that if [the Arizona Peace Officer Standards and Training Board] gets theirselves together, works on this law, puts down the description, that the law will be enforced civilly, fairly, and without discriminatory points to it.[139]

Congressman and S.B. 1070 supporter Brian Bilbray (R-Cal.) also had a difficult time identifying "non-ethnic" factors that police officers could rely on to inquire into a person's immigration status. Bilbray responded to an interviewer's question regarding these factors as follows:

> They will look at the kind of dress you wear, there's a different type of attire, there's different type of – right down to the shoes, right down to the clothes. But mostly by behavior, it's mostly behavior. . . .[140]

Amended Fact Sheet for S.B. 1070, ARIZ. STATE LEGISLATURE (Apr. 19, 2010), http://www.azleg.gov/legtext/49leg/2r/summary/s.1070pshs_asenacted.doc.htm.

138. Support Our Law Enforcement and Safe Neighborhoods Act, S.B. 1070 as amended by H.B. 2162, "[p]rohibits a law enforcement official or agency of the state or a county, city, town or other political subdivision of the state (political subdivision) from considering race, color or national origin in implementing the requirement for determining and verifying immigration status, except to the extent permitted by the U.S. or Arizona Constitutions."

139. Racewiremultimedia, *Brewer: "I Do Not Know What an Illegal Alien Looks Like,"* YOUTUBE (Apr. 23, 2010), www.youtube.com/watch?v=SJrcVvfv26Q.

140. MediaMattersAction, *Rep. Bilbray Can Spot Immigrants by Their Clothing*, YOUTUBE (Apr. 21, 2010), www.youtube.com/watch?v=e-BlskNRJ7c.

Despite the difficulty S.B. 1070's proponents had explaining reasonable suspicion in the immigration context, they continue to claim the law is race-neutral because it does not specifically refer to any race or ethnicity, and the revised language explicitly prohibits the use of racial profiling. Similarly, the canned rhetoric used to promote Senate Bill 1070 does not include explicit racial language, and instead employs an arsenal of implicit racial appeals.

A. Deconstructing the Rhetoric Behind Senate Bill 1070

Just as politicians employed the "Southern Strategy" in the post-civil rights era to appeal to white resentment, political elites and media pundits today employ metaphors to appeal to white Americans with conscious or subconscious negative views of Latinos. These elites and pundits recognize that explicit appeals to ethnic prejudice are repugnant and offend the norm of racial equality. Elites therefore employ implicit appeals when promoting anti-immigrant legislation. Particularly, proponents of Senate Bill 1070 repeatedly focus on themes that have been historically used to attack Latinos: themes of public safety, national security, public welfare, and jobs. The statement made by Rob Haney, the Maricopa County Republican Party Chairman, when S.B. 1070 was introduced to the Public Safety and Human Services Committee of the Arizona State Senate on January 20, 2010, is a perfect example of the use of metaphor to facilitate implicit racial appeals:

> We are being *invaded.* Twenty to thirty million people, *illegal* immigrants coming into our country is an *invasion.* The federal government isn't doing anything about it. We, claiming *state's rights* and the priority of the state should be doing something about it if the federal government isn't doing something about it. We need to take action to stop it. That it's costing us, *costing the taxpayer* because *illegal immigration* is not being stopped, this *invasion* is not being opposed, it is costing us money. Whether these people *come across with firearms* or not, we are being taxed to support education of *illegal immigrants*, to support their medical benefits, *to support incarcerating them.* This should not be allowed in this country, we have a sovereign country. If we cannot protect our borders and *enforce our laws* we do not have a country. We are

> importing *a culture of corruption.* It's time to stop it, enough is enough.[141]

Haney's speech is chock full of implicit appeals to cultural stereotypes, as well as euphemisms for Latinos. Metaphors and terms used for maximum dog-whistle effect include: "Invasion," "Illegal," "State's Rights," "education" and "medical benefits," "law enforcement," "incarceration," and "culture of corruption."[142]

Haney repeatedly uses the word "illegal" in his appeal.[143] "Illegal" is not defined as a legal term in the Immigration and Nationality Act, or in U.S. criminal codes. Instead, references to "illegal immigrants" facilitate a coded discussion on immigration, and focus on Mexicans and Latinos in particular. "Illegal" has been used improperly as a blanket term to refer to immigrants who find themselves in various legal scenarios. Immigrants that are referred to as "illegal" can be asylees fleeing persecution,[144] students that have overstayed student visas, or immigrants that have entered without inspection to reunite with family members in the U.S. In many cases, immigrants labeled "illegal" have a legal remedy and can adjust their immigration status if given the opportunity. Legal scholar Beth Lyon has noted that referring to people as "illegal aliens" is the equivalent of referring to defendants awaiting trial as "convicted criminals."[145] The word "illegal" has become a derogatory term and immigration advocates have sought to limit its use because of the negative effects it has had on immigrant communities.[146] Using the term "illegal" distorts the

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141. *Public Safety & Human Services*, ARIZ. STATE LEGISLATURE, http://www.azleg.gov/CommitteeInfo.asp?Committee_ID=7&Session_ID=93 (last visited Feb. 14, 2012) (follow Jan. 20, 2010 video hyperlink under "Committee Agenda").

142. *Id.*

143. *Id.*

144. Asylees are eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States. *Asylee*, U.S. CITIZENSHIP & IMMIGRATION SERVS., http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=c533136d2035f010VgnVCM1000000ecd190aRCRD&vgnextchannel=b328194d3e88d010VgnVCM10000048f3d6a1RCRD (last visited Jan. 31, 2012).

145. Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 FORDHAM L. REV. 1545, 1574 (2011).

146. *Drop the I-Word*, COLORLINES.COM, http://colorlines.com/droptheiword/

severity of the immigrant's offense and conflates "illegal" with "criminal" by equating immigrants with murderers, robbers, and drug dealers.[147]

Although "illegal alien" could theoretically refer to any group of immigrants, the term has a definite cultural meaning.[148] Legal scholar Cunningham-Parmeter has shown, through an analysis of judicial opinions, that Justices freely refer to Mexicans as "wetbacks," "illegals," and "aliens," thereby reinforcing stereotypes about Mexicans and Latinos and creating a cultural meaning in contemporary legal discourse.[149] Citizens and immigrants alike are affected by the racial and ethnic implications of the illegal alien metaphor. Cunningham-Parameter argues that "just as the alien metaphor merges every immigrant category into one, thereby raising public opposition to all forms of immigration, the illegal alien metaphor merges all Latino residents into one group of unauthorized outsiders."[150]

Haney also uses the metaphor of "invasion,"[151] which calls to mind an army of non-white intruders. "Invasion" is a favorite euphemism of proponents of strict immigration laws. Conservative commentator Michelle Malkin titled her book, *Invasion, How America Still Welcome Terrorists, Criminal and Other Foreign Menaces to Our Shores*.[152] As its title suggests, Malkin's book opposes immigration, and makes its case by recounting stories of the September 11th hijackers, Arab and Muslim "terrorists," and "criminal aliens" that lobby for driver's licenses, sanctuary cities, and comprehensive immigration reform. It is clear from *Invasion* that the invaders she speaks of are non-white immigrants. Malkin, and others like her, straddle the line between implicit and explicit racial appeals and prime Americans for the dog whistle. When public figures like Haney say the word invasion, most Americans recognize the euphemism and respond to it subconsciously.

(last visited Mar. 27, 2012).

147. Cunningham-Parmeter, *supra* note 145, at 1576.

148. *Id.* at 1557.

149. *Id.* at 1560-68.

150. *Id.* at 1578.

151. *Public Safety & Human Services*, *supra* note 141.

152. MICHELLE MALKIN, INVASION: HOW AMERICA STILL WELCOMES TERRORISTS, CRIMINAL AND OTHER FOREIGN MENACES TO OUR SHORES (2002).

Haney's speech harkens back to the Southern Strategy by evoking "State's Rights," and arguing states should have the power to enforce immigration law.[153] Here, Haney's language parallels the implicit racial appeals invoked by Wallace and Nixon in the 1960s. Haney also evokes the racial appeals of the 1980s and 1990s by arguing that immigrants cost the Arizona taxpayer money in social welfare benefits.[154] Undocumented immigrants, like all other residents, pay their share of taxes; they pay sales and property taxes to local governments, and payroll and social security taxes to the federal government.[155] The Institute for Taxation and Economic Policy, a prestigious, nonprofit, nonpartisan research organization that works on federal, state, and local tax policy issues estimates those undocumented immigrants paid $11.2 billion in taxes in 2010.[156] Haney raises the economic issues not for their truth, but precisely because non-whites have historically been accused of exploiting social welfare benefits.

Haney also raises the specter of crime and violence when he declares, "these people come across with firearms," and speaks of the cost of incarceration and "enforcing our laws."[157] Again, themes of crime and "law and order" have been the bread and butter of implicit racial appeals throughout modern history. Lastly, Haney alludes to Latino ethnicity by declaring: "We are importing a culture of corruption."[158] By this statement, Haney is implicitly stating that Latinos have a specific culture that is less desirable than European-American culture.

The following statement was made by Senator Russell Pearce, chief sponsor of Senate Bill 1070, when introducing Senate Bill 1070 in the Public Safety and Human Services Committee of the Arizona State Senate on January 20, 2010:

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153. *Public Safety & Human Services*, *supra* note 141.

154. *Id.*

155. Albor Ruiz, *Study Estimates that Illegal Immigrants Paid $11.2B in Taxes Last Year, Unlike GE, Which Paid Zero*, N.Y. DAILY NEWS (Apr. 20, 2011), http://articles.nydailynews.com/2011-04-20/local/29470037_1_sales-taxes-tax-revenue-property-taxes.

156. *Id.*

157. *Public Safety & Human Services*, *supra* note 141.

158. *Id.*

> First of all we have a duty. To believe this *illegal* alien problem is somehow a net loss is absolutely the farthest thing from the truth. *The cost to educate, medicate, and incarcerate* illegal aliens, job loss, twenty-six year high unemployment, twenty-six year high, don't you think its time we start *protecting American jobs*? No longer can we stand by on the sidelines and allow our citizens to be *attacked, hurt, injured, jobs taken* from Americans while we don't *enforce our law. . . .* Put *citizens and Americans first, illegal is illegal*, I know what that means, most people with an IQ know what that means, I'm tired of the debate that somehow we should give some *special status* to those that have violated our laws, again the *gangs, the violence, the crimes* and again twenty-six [year high unemployment]. It's about time we *put Americans first*, our citizens first.[159]

Senator Pearce's speech echoes Haney's concerns and reiterates three main issues he relates back to undocumented immigrants: 1) social welfare benefits; 2) jobs and the economy; and 3) crime.[160] Senator Pearce references the cost to "educate, medicate, and incarcerate."[161] This implicit racial appeal is a perfect sound bite the media can repeat with powerful effect.

Senator Pearce also evokes the dire state of the economy and seemingly blames the "twenty-six year high unemployment" rate on undocumented immigrants.[162] By citing the unemployment rate, Senator Pearce is preying on the Arizona public's legitimate apprehensions about the economy. Senator Pearce's appeal bypasses the Wall Street bankers that caused the meltdown and the legislators that failed to regulate the financial industry, and instead places the blame on the least powerful group in the nation: undocumented immigrants. The blatant scapegoating of immigrants for the economic woes of the nation is just another example of the way that implicit racial appeals provide an outlet for white frustration and discontent.

Senator Pearce's most vociferous appeal is a call to "put citizens and Americans first," and deny "special status" to undocumented immigrants.[163] This appeal is a perfect example of dog-whistle racism.

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159. *Id.* (emphasis added).
160. *Id.*
161. *Id.*
162. *Id.*
163. *Id.*

The language confers a special status to White Americans, without regard to the human or civil rights of immigrants and people of color, and without taking into consideration the effect that Senate Bill 1070 will have on Latinos who will undoubtedly be the targets of law enforcement efforts to discern legal status.

Senator Al Melvin, proponent of Senate Bill 1070, echoed both Haney and Pearce in his statement to the Public Safety and Human Services Committee on January 20, 2010:

> I think we often lose sight of the fact our porous border and our cost[s] related to illegal aliens are *costing the citizens* of Arizona in excess of two-billion [dollars] a year. If we could solve this issue and this legislation takes us into that direction, we could in many ways almost eliminate our budget woes. This gut wrenching billion [dollar] budget deficit is directly related to reducing costs to Arizona taxpayers in *hospitalization, education, incarceration* in all of those areas. We have twenty to thirty percent of *students, patients, and inmates* who are *illegal aliens* and the total cost is in excess of two billion. I would ask you to look at a website FAIR.com, the Federation for American Immigration Reform, where it is well documented. These are not fictional numbers, they are real numbers. For too long we've expected the federal government to solve the border issue but we have an obligation as a border state to do all that we can to make sure that this border is secure . . . and I applaud Russell Pearce for sponsoring this bill and I urge all of my committee members to vote for it.[164]

Senator Melvin's statement illustrates how the proponents of Senate Bill 1070 repeat the same concepts and themes over and over. It is no coincidence that Senator Pearce argues about the costs to "educate, medicate, and incarcerate" undocumented immigrants and Senator Melvin refers to the costs of "hospitalization, education, and incarceration." Both senators appreciate the power of those racially charged concepts and consciously resort to implicit racial appeals to manufacture support for Senate Bill 1070. It is also interesting to note that Senator Melvin refers the committee to the Federation for Immigration Reform website. As noted in Part III, a man that has been labeled as xenophobic and racist for his zealous nativism, and has

164. *Id.* (emphasis added).

made his name by making anti-Latino legislation palatable to mainstream Americans, founded FAIR.

B. How Arizona's Sheriff Arpaio and Governor Brewer Exploited Racial Resentment for Their Own Benefit

> He's got a very famous quote about how he wasn't gonna be busting corn vendors or Mexicans on the street looking for work. That there were real criminals out there. But he discovered there were votes in going after Mexicans and he switched his policy 180 degrees.[165]

Senator Russell Pearce is not the only politician to learn the art of implicit racial appeals. In Arizona, Maricopa County Sheriff Arpaio and Governor Jan Brewer are two other politicians that have used implicit racial appeals to hold on to political positions. Both have resorted to anti-immigrant race-baiting to win votes. Jan Brewer, who had taken over the governorship after former governor Janet Napolitano left to head the Department of Homeland Security, was twenty points behind the Democratic nominee when Senate Bill 1070 was passed.[166] Governor Brewer gained national attention when she signed the bill, and her popularity among conservatives surged.[167] As a result, all of her prominent challengers withdrew or stopped actively campaigning.[168] One of her opponents noted, "She essentially flipped the whole election."[169] Governor Brewer won the general election by a large margin six months after signing the legislation.[170] Senate Bill 1070's implicit racial appeal was so powerful that it had allowed Brewer to hang on to the governorship.

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165. Steve Inskeep, *'America's Toughest Sheriff Takes on Immigration,'* NAT'L PUB. RADIO (Mar. 12, 2008), http://www.npr.org/templates/transcript/transcript.php?storyId=88125098 (statement of Michael Lacey, Executive Editor of the *Phoenix New Times*).

166. Paul Davenport, *Jan Brewer's Re-Election Chances Boosted by Arizona Immigration Law*, HUFFINGTON POST (Aug. 8, 2010), www.huffingtonpost.com/2010/08/09/jan-brewers-re-electionc_n_675356. html.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Arizona: McCain, Brewer Re-Elected*, USA TODAY (Nov. 3, 2010), http://www.usatoday.com/news/politics/2010-11-02-az-full-election-results_N.htm.

Sheriff Arpaio has been re-elected on an anti-Latino, law-and-order platform again and again: in 1996, 2000, 2004, and 2008.[171] Arpaio piloted much of Senate Bill 1070 in Maricopa County, where he instructed officers to make immigration sweeps in Latino neighborhoods and stop vehicles for minor infractions to ask for immigration documents.[172] Arpaio received national coverage by publicizing his extreme tactics and jail conditions.[173] Sheriff Arpaio may have become known nationally as the "toughest sheriff" for his treatment of undocumented immigrants, but he did not start out with anti-immigrant views. In fact, it has been reported that Arpaio had a good relationship with the Latino community before he chose to resort to racial appeals.[174]

The pivotal moment came in April 2005, when Arpaio was caught up in a media storm after a white man held seven Latinos at gunpoint on suspicion that they were undocumented immigrants.[175] Arpaio's first statement to the press after the incident was, "You don't go around pulling guns on people. . . . Being illegal is not a serious crime. You can't go to jail for being an illegal alien. . . . You can only be deported."[176] After making these statements Arpaio was accused of being soft on crime and was relentlessly attacked in the media.[177] In a striking parallel to George Wallace's initial decision to exploit racial attitudes for political gain after losing his first run for governor in 1958, Arpaio apparently decided he never wanted to be out "anti-illegal-ed" again. By 2008, Arpaio had changed his public rhetoric on immigration dramatically, and was quoted in the *Washington Post*

171. Associated Press, *Thomas, Sheriff Arpaio Re-Elected in Maricopa County*, TUSCONCITIZEN.COM (Nov. 5, 2008), http://tucsoncitizen.com/morgue/2008/11/05/101725-thomas-sheriff-arpaio-re-elected-in-maricopa-county/.

172. Terry Carter, *The Maricopa Courthouse War: An Arizona Showdown over Populist Politics, Abuse of Power and Pink Boxer Shorts*, ABA J. (Apr. 1, 2010), http://www.abajournal.com/magazine/article/the_maricopa_courthouse_war/.

173. Sherriff Arpaio forced inmates to wear pink underwear, fed them rancid food and housed them in extreme temperature year-round in a tent city. *Sheriff Takes on Immigration,* NAT'L PUB. RADIO (Mar. 10, 2008), http://www.npr.org/templates/transcript/transcript.php?storyId=88002493.

174. Carter, *supra* note 172.

175. *Id.*

176. *Id.*

177. *Id.*

saying, "My message to the illegals is this: Stay out of Maricopa County, because I'm the sheriff here."[178] Like George Wallace before him, Arpaio learned that racial resentment was alive and well.

VI. CONCLUSION

Aside from a minority of extremists, most Americans realize that it is no longer acceptable to be racist. According to Mendelberg, many Americans want to avoid not only the public perception that they are racist, but they also want to avoid thinking of themselves as racists.[179] This theory explains why most advocates of restrictive immigration laws and harsh deportation policies vehemently reject the label of racist. It also explains why only implicit appeals to race are viable as campaign strategies. Politicians that resort to explicit racial appeals are no longer viable candidates in general elections. An effective defense against implicit racial appeals is to challenge the racial appeal in order to neutralize the implicit message.

An example is the 1988 presidential election and the Willie Horton advertisement. Today, media pundits constantly refer to "Willie Horton" when accusing politicians of playing the race card, but when the ad was originally released, most Americans did not recognize the racial intent. It was not until Jesse Jackson exposed the racial intent of the ad that voters and commentators began to recognize the racial appeal.[180] After the Horton ad was exposed as racist, Bush's support dipped a significant amount.[181]

In the fall of 2010, a number of candidates outside of Arizona used implicit racial appeals to bolster their campaigns. One such example was in Nevada, where Sharron Angle was running against incumbent Harry Reid for a U.S. Senate seat. Early on it was predicted that Harry Reid could lose his seat because of his low poll numbers. His challenger, Sharron Angle, gained national notoriety when she released campaign ads targeting immigrants.[182] The ads showed dark-skinned men sneaking through a gate and peering menacingly at the

178. *Id.*

179. MENDELBERG, *supra* note 14, at 7.

180. *Id.* at 7-8.

181. *See id.* at 7.

182. *The Rachel Maddow Show*, MSNBC.COM http://www.msnbc.msn.com/id/26315908/#39880719 (last visited Feb. 6, 2012).

camera.[183] The ads warned about "waves of illegal aliens streaming across our borders, joining violent gangs, forcing families to live in fear," and alleged that immigrants were "putting American's safety and jobs at risk."[184] Although the ads did not explicitly mention Latinos or Mexicans, the images of "immigrants" were all brown-skinned, dark-haired stereotypical images of Latinos, and the images of "Americans" were all white.[185]

Various media commentators and Latino advocates immediately seized on the ads and exposed their racial intent.[186] Many commentators even likened the ad to the Willie Horton ad of 1988.[187] In the end, Sharron Angle lost the election by a very small margin.[188] It can be argued that Sharron Angle not only lost Latino votes but also lost votes that would have been cast by liberal white Americans. In the Sharron Angle case, advocates were able to mount an effective defense and neutralize the implicit message by directly challenging the racial appeal.[189]

The historical record examined in this Article shows that political elites have historically found success in appealing to racial resentment, but have learned to mask racial appeals to conform with America's vision of itself as the land of equal opportunity. The Article also shows that while Senate Bill 1070 has White Supremacist origins, its drafters choose to couch the Bill in race-neutral terms in order to conform with racial equality norms. Political elites that employ implicit racial appeals, as opposed to explicit racial appeals, have been more successful because Americans no longer want to see themselves as racist, but yet are influenced by cultural transmission of racial

183. *Id.*

184. *Id.*

185. *Id.*

186. *See, e.g.*, Adam Serwer, *Sharron Angle's 'Willie Horton' Ad*, WASH. POST (Oct. 6, 2010), http://voices.washingtonpost.com/plum-line/2010/10/sharron_angle_race-baits_harry.html.

187. *Id.*

188. Elyse Siegel, *Sharron Angle Senate Campaign: How to Lose an 11-Point Lead in 7 Weeks*, HUFFINGTON POST (July 29, 2010), www.huffingtonpost.com/2010/07/29/sharron-angle-senate-camp_n_663798.html#s120557&title=Tout_Extremely_Controversial.

189. *See, e.g.*, Cristina Silva, *Sharron Angle 'Not Sure' If Immigration Ads Feature Latinos*, HUFFINGTON POST (Oct. 18, 2010), www.huffingtonpost.com/2010/10/18/sharron-angle-immigration-ad_n_766312.html.

hierarchy. As a result, the only effective defense against implicit racial appeals is to reveal them, as was done in the Willie Horton ad in 1988 and the Sharon Angle ad in 2010.

In the immigration context, this is particular difficult because anti-Latino organizations and pundits drape themselves in anti-immigrant rhetoric and sophisticated legal arguments when attacking Latinos. Latino advocates must learn to identify the words and concepts that anti-Latino activists use as metaphors, and expose them as racially motivated. Advocates should aim to establish a new norm of racial equality by challenging implicit racial appeals, thereby making it untenable for political elites to rely on veiled references to race and ethnicity.