Changing the Language of Industry:
Setting Standards for the Protection of Indigenous Languages in the Workplace

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In June 2000, the owners of a small restaurant located on the periphery of the Navajo Indian Reservation implemented a workplace policy prohibiting employees from speaking the Navajo language during work hours.1 Four Navajo employees refused to acknowledge the discriminatory policy in writing and were discharged from their employment as a result. Acting on behalf of the discharged employees, the United States Equal Employment Opportunity Commission (“EEOC”) filed a federal lawsuit against the owners of the restaurant, alleging that the “English-only” policy discriminated against Navajo employees on the basis of their national origin.2 The lawsuit, which was the first in EEOC history to challenge a workplace language policy that targeted a Native American language, marked the official injection of Native American languages into the ongoing public discourse about language diversity in the American workplace.3

For a variety of reasons, Native American languages occupy a unique and interesting space in the discourse about workplace language diversity. First, unlike the “immigrant” languages that are often targeted by discriminatory workplace policies, Native American languages are indigenous to the land that is now the United States of America. For that reason, Native American languages have the same inherent rights to exist and flourish within the United States as the members of their respective linguistic communities. Furthermore, because the vast majority of Native American languages are likely to disappear within the next few decades—along with the distinct cosmologies, epistemologies, worldviews and understandings imbedded within them—there is a heightened urgency associated with their protection and promotion. Moreover, the United States government has a duty, created by its own stated policy, to preserve, protect, and promote the rights of Native Americans to use, practice and develop their ancestral languages.4

In light of all the foregoing, one would think that the status of Native American languages in the American workplace would be the subject of a robust discussion. Sadly, this is not the case. There has actually been very little focused discourse about the nexus between workplace language policies in the United States and the survival of Native American languages. This presentation aims to begin filling that void by: (1) exploring the reasons that workplace presence is essential to the survival of Native American languages; (2) explaining why a space must be carved out for Native American languages in the workplace; (3) providing examples of United States federal, state and tribal standard setting instruments that endeavor to protect and promote the use of Native American languages in the workplace; and (4) proposing an effective multi-layered system of international, national, state and tribal standard setting.

I. The Importance of Workplace Presence to Language Survival

Somewhere in the shuffle to revive Native American languages in the educational, domestic and social spheres of society, the question of language presence in the workplace got lost. However, as explained in detail below, Native American languages cannot continually be allowed to remain in the margins of the work sphere of society because that position can have a profound impact on their prevalence, prestige, socio-economic utility and, ultimately, their
A. The Workplace Is Where People Live Out Their Lives

As Cristina Rodriguez notes, “most people’s daily lives, as they are lived out in public, are lived out in the workplace.” This is especially true in the United States of America, where the average worker spends approximately 1,804 hours per year at work—more hours than workers in most other countries with “advanced economies” in the Americas, Asia and Europe. Given the disproportionate amount of time that many American workers spend in the workplace, the languages of the workplace, by default, become the prevalent languages in the workers’ daily lives. Marginalizing or suppressing Native American languages in the workplace precludes them from operating in that capacity, which effectively speeds the process of linguistic assimilation.

B. Communities Engage in Self-Definition in the Workplace

Professor Rodriguez also notes that “in [the work] dimension of the public sphere, individuals and communities engage in self definition.” Citing the work of Cynthia Estlund, Professor Rodriguez explains that American workplaces become major sites for the negotiation of social differences between communities as the level of interaction between those communities diminishes in spaces such as schools, churches and civic associations. With respect to the negotiation of language differences, specifically, workplace language policies and practices shape workers’ understandings of the status and worth of their languages as compared to other languages. Accordingly, if certain languages are marginalized or suppressed in the workplace, the speakers of those languages may lose pride in them. Several scholars believe that loss of pride in a language can lead a linguistic community to shift to another language that is perceived to be more prestigious, which can ultimately result in loss of the original language. If one assumes this to be true, it necessarily follows that a diminished workplace presence for Native American languages can lead to a loss of pride in those languages and a detrimental shift toward languages that are perceived as more prestigious.

C. The Languages of the Workplace Are Languages of Advantage and Opportunity

In addition to the foregoing, socio-economic factors also play a significant role in determining the future viability of a language. Scholars such as Salikoko S. Mufwene perceive language loss to be a direct consequence of the “external ecology” surrounding a language (i.e., the sociohistorical setting in which the language is spoken). These scholars contend that socio-economic factors, rather than a loss of pride and prestige, lead linguistic communities to abandon their primary languages. According to this reasoning, the dominant languages of the economic market endanger other languages because they lure speakers away with promises of socio-economic advancement and opportunity that other languages cannot provide. In the context of Native American languages, specifically, Professor Mufwene describes this phenomenon as follows:

[T]he current loss of Native American languages is undoubtedly a continuation of the same process that led earlier, or concurrently, to the death of European languages other than English, e.g. Dutch in New Netherland (New Jersey and New York) or French in Maine, and of African languages…. With English establishing itself as the language of the economic machinery and of the colonial and post-colonial administrative structure,
everybody else that functioned or was involved within the evolving system (including the African slaves) had to learn it. Gradually the prevalence of English as a lingua franca and ultimately as a vernacular was at the expense of those who were integrated, willfully or not, in the system. 

[W]e may argue that English has spread among Native Americans and endangered their ancestral languages not necessarily because of school systems which have dispensed knowledge in English but because of a socio-economic system in which it has been increasingly necessary to command English in order to function in the work place and interact with the larger population. 

Based on Professor Mufwene’s logic, workplace policies and practices that marginalize or suppress Native American languages can lead workers to perceive their ancestral languages as lacking socio-economic utility. This can force workers to abandon ancestral languages out of “practicality,” pursuant to “the principle of least effort.” It can also affect the likelihood that workers will successfully transmit their ancestral languages to younger generations because adults are more likely to transmit, and young people are more likely to acquire, languages that are perceived as economically “useful” or “marketable.” If a language is believed to lack these traits, its rate of intergenerational transmission will almost certainly suffer as a result.

While this presentation focuses on the case of Native American languages in the United States, the dangers described in this section are equally present in a global context. As markets throughout the world become increasingly integrated, certain languages gain value and status because they provide broader access to the increasingly monolingual “global” workplace. Resultingly, other languages become devalued because they cannot provide the same level of access to the marketplace. The perception that these languages lack socio-economic utility can prevent intergenerational transmission and, thus, preclude their survival.

II. Native American Languages Must Be Safeguarded and Promoted in the Workplace

Given that workplace presence is essential to the survival of Native American languages, it is imperative, for the reasons set forth below, that a space be carved out for Native American languages in the American workplace immediately and without reservation.

The first and most important reason that Native American languages should establish an immediate workplace presence is the critical status of the languages as a group. As stated above, the vast majority of Native American languages are in danger of imminent extinction. Specifically, 155 of the approximately 175 extant Native American languages are expected to die by the year 2060 if significant efforts are not made to protect and revitalize them. In light of the points raised in Section I, above, establishment of a workplace presence is vital to language revitalization and survival and the reversal of these grim statistics.

Another reason that Native American languages should be proliferated in the workplace is the fact that it is the stated policy of the United States government to preserve, protect, and promote the rights of Native Americans to use, practice and develop Native American languages. In light of this government policy, special efforts should be made to safeguard and actively promote the use of Native American languages in the workplace.

Native American language use should also be encouraged in the workplace because the transformative presence of Native American languages in the workplace will inure to the benefit
of not only Native American communities, but also employers and society at large. Because Native American languages are built upon entirely different philosophical, cosmological and epistemological frameworks than the English language, they have the potential to expose employers to entirely new thought processes and notions of economic relations, which could, in turn, lead to alternative modes of operation and social relations in the workplace that advance indigenous thought and further promote indigenous languages.

In addition to the foregoing, there are no legitimate reasons that a space should not be carved out in the workplace for Native American languages. As alluded to above, there is no philosophical justification for restricting the use of Native American languages in the workplace. The main philosophical support for English-only workplace policies that restrict the use of immigrant languages is the notion that persons who voluntarily enter a community to avail themselves of the benefits of living and working in that community have a duty to conform to the dominant language and culture of that community. That logic simply does not apply to Native Americans in the United States. Native Americans have occupied the land that is now the United States since time immemorial, and their languages, like their communities, have an inherent right to exist and thrive in the United States. It defies reason that Native Americans should refrain from using their ancestral languages to appease a western culture that has been present in the United States for only a few hundred years. To the contrary, the dominant majority should endeavor to embrace Native American languages or, at the very least, to allow Native Americans to choose for themselves whether, and to what extent, they will conform to the language of the dominant majority.

Similarly, the commonly cited “obstacles” to maintaining a multilingual workplace do not present a legitimate challenge to the promotion of Native American languages in the workplace because they are nothing more than expressions of fear and hegemonic tendencies. For example, as noted by the United States Court of Appeals for the Ninth Circuit, the notion that all employees must speak only English to reduce the fears and suspicions of English-speaking co-workers is, in itself, an expression of unjustifiable prejudice that “has an adverse impact on other persons based on their national origin.” Likewise, while the belief that all employees in a workplace should be able to communicate in a mutually intelligible manner is valid, the idea that the mutually intelligible language must always be English is narrow-minded. Where possible and appropriate, English speaking employers should endeavor to acquire and use the language of their Native American labor base, rather than impose English upon their workers for purposes of the employers’ own comfort and convenience. Finally, the notion that a multilingual workplace reduces efficiency and decreases profits is not only unsubstantiated, it also fails to provide sufficient justification for contributing to the imminent death of a language. Employers who reap the benefits of a diverse labor force have a moral obligation to bear the slight economic burden of multilingualism that a diverse labor force may create. To require Native American communities to endure language loss so that employers can maximize profits is patently unjust.

III. Setting Standards for the Safeguarding and Promotion of Native American Languages in the Workplace

Having established that a space must be created for Native American languages in the workplace, the ensuing question is “[h]ow far should the law go in policing the ways in which…employers…construct the mainstream through their formal and informal policies
governing the spaces and people under their control?"21 I suggest that the law should empower Native American communities to preserve, protect and perpetuate their languages by prohibiting employers from marginalizing or suppressing Native American languages in the workplace and providing guidance and funding to Native American communities seeking to set their own standards for language preservation. As explained in detail below, these goals are partly addressed by existing standard setting instruments, but the United States federal government, the governments of the several States, Native American tribal governments and the international community must continue to develop standards to fully accomplish this end.

A. National Standard Setting: United States Federal Law

(1) Title VII of the Civil Rights Act of 1964

The principal federal law governing workplace language rights in the United States is Title VII of the Civil Rights Act of 1964 (“Title VII”).22 Title VII provides, in pertinent part, that:

(a) It shall be an unlawful employment practice for an employer23

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.24

The EEOC defines “national origin” discrimination to include the denial of equal employment opportunity because an individual has the physical, cultural or linguistic characteristics of a national origin group.25 Therefore, Title VII’s prohibition against national origin discrimination forms the basis for most federal administrative charges and lawsuits that challenge policies restricting language use in the workplace. The EEOC lawsuit described at the beginning of this presentation is an example of a language rights lawsuit brought pursuant to Title VII.

Despite being the main legal protection for workplace language rights in the United States, Title VII, as interpreted and enforced by the EEOC, is an inadequate legal protection. As Professor Rodriguez explains, Title VII does not protect employees’ expressive interests, does not provide redress for unequal working conditions created by language restrictions, and only marginally protects employees from hostile work environments.26 Title VII protects language rights only incidentally, in conjunction with the broader category of national origin discrimination. The concept of workplace language rights, however, is a complex one that should be given independent consideration. Accordingly, a statute like Title VII cannot stand alone as a sufficient legal protection for Native American languages.

(2) The Native American Languages Act and the Esther Martinez Native American Languages Preservation Act of 2006
In 1990, the United States Congress passed the Native American Languages Act based on its recognition and acknowledgement that: (1) “federal policy ... has often resulted in acts of suppression and extermination of Native American languages and cultures;” (2) these “acts of suppression and extermination are in conflict with the United States policy of self-determination for Native Americans”; and (3) the traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values.”

The Act provides that it is the policy of the United States to preserve, protect, and promote the rights of Native Americans to use, practice and develop Native American languages, specifically in education, tribal affairs and public proceedings. It sets forth the government’s intention to support the use of indigenous languages in education and recognizes the right of native governments to make their languages “official” and order instruction in their native languages. It also encourages the inclusion of native language instruction, where appropriate, at all levels of education and states that students proficient in Native languages shall be given comparable academic credit to students proficient in other languages. At the time of its passage, the Act also required the President to direct the heads of federal departments and agencies to evaluate the laws they were administering, along with their policies and procedures, to determine amendments and changes necessary to bring those laws, policies, and procedures into compliance with the Act.

While the 1990 Act was a strong gesture of support for Native American languages, it appropriated no funds, created no positive rights, and had no practical effect. Accordingly, in 1992, Congress amended the Act to establish a grant program to provide funds for, among other things, establishing community language projects to facilitate the transfer of language skills from older to younger Native Americans; training Native Americans as language teachers, interpreters and translators; and participating in television or radio programs broadcast in Native languages. However, even as amended, the Act has been criticized as an inadequate and disproportionate response to the linguistic crisis of “drawing back from the brink of extinction over 150 languages.” The same commentators have also suggested that the Act does not “demonstrate a serious and sustained commitment on the part of Congress to attempt to undo the damage to the languages caused by past government policies.”

In December 2006, presumably in an effort to allay these criticisms and fill the gaps left by the Native American Languages Act, Congress enacted the Esther Martinez Native American Languages Preservation Act of 2006. This Act authorizes the Secretary of Health and Human Services, as part of the Native American languages grant program, to make three-year grants for educational Native American language nests, survival schools, and restoration programs. While the Act does provide added funding for Native American language programs, it focuses specifically on educational programs and does not address the condition of Native American languages in the workplace.

Neither Title VII, the Native American Languages Act nor the Esther Martinez Native American Languages Preservation Act of 2006 are sufficient, standing alone, to provide a basic model for a national or international standard-setting instrument aimed at protecting indigenous languages in the workplace. However, a combination of the three, along with supplemental provisions specifically addressing the promotion of Native language use in the workplace could potentially serve as a good starting point.
B. State Standard Setting: Individual State Laws

A few individual States with particularized interests have enacted laws protecting the use of non-English languages in the workplace. Of these laws, only the provision established by the State of Hawai‘i specifically pertains to an indigenous language. The other laws contain broad prohibitions against the restriction of non-English languages, including Native American languages, in the workplace.

(1) California Government Code § 12951 and the Illinois Human Rights Act

In 2001, the State of California enacted California Government Code § 12951 in order to “statutorily implement the constitutional protections provided by Section 8 of Article I of the California Constitution, that no person may be disqualified from entering or pursuing a business, profession, vocation, or employment because of national or ethnic origin, among other factors.” Section 12951, entitled “Workplace language policies,” makes it an unlawful employment practice for an employer to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless: (1) “the language restriction is justified by a an overriding legitimate business purpose such that the language restriction is necessary to the safe and efficient operation of the business;” (2) “the language restriction effectively fulfills the business purpose it is supposed to serve;” and (3) “there is no alternative practice to the language restriction that would accomplish the business purpose equally well with a lesser discriminatory impact.”

Like California Government Code § 12951, Section 2-102 of the Illinois Human Rights Act makes it unlawful for an employer to impose a restriction that has the effect of prohibiting employees from speaking their native tongues in communications that are unrelated to their job duties.

It is not entirely clear whether the California or Illinois workplace language laws have had any positive impact on the perpetuation of Native American languages. Conventional wisdom suggests that they have not. These laws are effectively copies of Title VII and they create no affirmative duty to support, fund, embrace or promote Native American languages in the workplace.

(2) Hawai‘i State Constitution

In 1978, the Hawai‘i State Legislature amended the State Constitution to declare the Hawaiian language the co-official language of the State, along with English. In the years that followed, immersion programs based on the Māori model began in the islands, and, at present, approximately 7,500 students are learning Hawaiian, either as a medium of instruction or a second language, in universities, colleges, high schools, immersion schools, preschools, and community programs. To date, Hawaiian is the most widely studied indigenous language in the United States, and it is the only indigenous language that is used officially by a state government.

Historical accounts of the time period suggest that a renaissance of Hawaiian culture and a renewed respect for the Hawaiian language prompted the declaration of Hawaiian as co-official language of the State, not vice versa. Accordingly, one cannot confidently assert that the co-official language designation of the Hawaiian language is responsible for its present day
proliferation. However, assigning the language such a status does provide some measure of legal support for Native Hawaiians working to preserve and protect their language.

C. Tribal Standard Setting: Tribal Laws

Rather than rely on federal or state laws, a number of Native American Tribes have enacted tribal laws to protect and promote their native languages. Tribal laws governing native languages take several different forms, including, but not limited to, laws that prohibit restriction of native languages in the work sphere, laws that impose an affirmative duty on tribal governments or tribal communities to protect native languages, laws that make native language proficiency a required job qualification and laws that make native language proficiency a preferred job qualification.

1. Civil Rights Code of the Mille Lacs Band

Title I, Section 13 of the Mille Lacs Band Annotated Statutes affirmatively requires the legislative branch of the Band’s government, to “in all its actions seek to preserve and protect the official language of the Band as Ojibwe…” While the language of the statute is broad, it could reasonably be interpreted to impose a duty on the Band’s legislature to enact laws that both protect Ojibwe from restrictive workplace policies and affirmatively promote the use of Ojibwe in the workplace.

2. Constitution of the Little Traverse Bay Bands of Odawa Indians

The Little Traverse Bay Bands of Odawa Indians protect their native language, Anishinaabemowin, through a two constitutional provisions. The first is an affirmative provision that, similar to Title I, Section 13 the Civil Rights Code of the Mille Lacs Band, “directs the Legislative, Executive and Judicial branches of the government to…promote the preservation and revitalization of Anishinaabemowin.” The second is a prohibitory provision, which states that “[n]o law shall be passed that precludes the use of Anishinaabemowin in the conduct of the Little Traverse Bay Bands of Odawa Indians’ official business, or in the daily affairs of the Tribe and its members.” Although it is similar in form to Title VII of the federal Civil Rights Act, California Government Code § 12951 and Section 2-102 of the Illinois Human Rights Act, Article IV, Section C of the Band’s Constitution provides stronger protection for Anishinaabemowin because it contains no exception for business necessities or official job duties. The affirmative and prohibitory provisions, in combination, create an exemplary legal framework for language preservation and protection.

3. Navajo Nation Code

1. Diné Customary Law

Title I, § 204(C) of the Navajo Nation Code states that “[i]t is the right and freedom of the people that the sacred Diné language (nihiineéí’) be taught and preserved.” Title I, § 205(D) further provides that “[t]he Diné have the sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward for these relatives through our use of the sacred gifts of language and thinking.” Like Title I, § 13 of the Mille Lacs Band Annotated Statutes, §§ 204(C) and 205(D) of the Navajo Nation Code create an affirmative duty to protect and promote the use of the Navajo (a/k/a, Diné) language. Pursuant to
this affirmative duty, the Navajo people have promulgated multiple rules that affirmatively promote the use of their native language in the workplace.

2. Language Proficiency as a Qualification for Judicial Appointment

Title 7, § 354(A)(5) of the Navajo Nation Code states that applicants seeking judicial positions in the district courts of the Navajo Nation must be able to speak the Navajo language in order to be considered for judicial appointment. Requiring native language proficiency as a prerequisite for a prestigious job position, such as district court judge, increases the perceived utility of the language and provides economic and social incentives for language acquisition. As explained in Section II, infra, improving the perceived marketability of the native language may increase intergenerational transmission, as parents seek to equip their children for academic and economic success.

3. Language Proficiency as a Preferred Trait in Employment

Similarly, Title 10, § 108(B) of the Navajo Nation Code makes knowledge and familiarity with the Navajo language a preferred qualification for educational and support personnel in schools and school districts. In addition, Title 15, § 603(J) of the Navajo Nation Code categorizes the ability to speak and/or understand the Navajo language as a qualification to be considered by all employers doing business in or near the Navajo Nation when giving preference in employment to Navajos.

IV. Conclusion

Not surprisingly, the tribal laws governing native language use in the workplace create more affirmative duties to protect and promote Native American languages than state and federal laws, and they are more specifically tailored to the needs and sensibilities of the linguistic communities. Accordingly, I propose that the most effective standard-setting instruments for the protection of Native American languages in the workplace are those created by the linguistic communities themselves. The linguistic communities possess a unique localized knowledge and, for that reason, are the only entities fully equipped to set standards for the protection and perpetuation of their languages. This does not mean, however, that state, federal and international governing bodies should remain silent. To the contrary, all levels of government share an obligation to help preserve Native American and other indigenous languages for the benefit of indigenous peoples and all mankind. I believe that the most effective and culturally sensitive way for states, national governments and international governing bodies to achieve this end is to focus their standard setting instruments on empowering and enabling indigenous peoples to develop their own standards and programs for preserving and perpetuating their languages. External standard setting documents should prohibit governments, employers and other entities from restricting the use of indigenous languages in any sphere of society, and should provide direct guidance and financial support to indigenous communities seeking to preserve their native languages. They should not take a paternalistic approach, but rather, should protect the rights of indigenous communities to exercise their self-determination with respect to the future of their languages and their cultures.

1 EEOC v. Kidman, et al, d/b/a RD’s Drive In/Exxon, CIV 02 1911 PHX LOA (D.Az. 2002).
2 *Id.*


7 Rodriguez, *supra* note 5, at 1724.

8 *Id.* at 1703.

9 *Id.* at 1704.


11 Scholars have not reached a consensus on this issue. Some scholars, such as Salikoko S. Mufwene, dispute the contention that loss of pride and prestige cause language loss. *See, e.g.*, Salikoko S. Mufwene, *Language Endangerment: What Have Pride and Prestige Got to Do With It?* in *When Languages Collide: Perspectives on Language Conflict, Language Competition, and Language Coexistence* (2003).

12 *Id.* at 3 n.2.

13 *Id.*

14 *Id.* at 5.

15 *Id.* at 10, 13.

16 *Id.* at 14.

17 Some may argue that the workplace occupies a diminished role in the life Native Americans because of high unemployment rates and traditional practices. However, the role of the workplace as an institution in Native American communities is currently expanding as a result of large urban Indian populations and the expansion of tribal governments and commercial operations. Accordingly, to the extent that the workplace has not historically played a major role in Native American communities, it is growing increasingly influential as an institution and will likely continue to do so.


20 *Gutierrez v. Municipal Court*, 838 F.2d 1031, 1043 (9th Cir. 1988).

21 Rodriguez, *supra* note 5, at 1717.
For purposes of Title VII, the term “employer” includes private employers, and state and local governments employers, but it does not include Indian Tribes, the federal government of the United States, the District of Columbia or any corporations wholly owned by the United States federal government or an agency of the District of Columbia.


Rodriguez, supra note 5, at 1738-44.


For purposes of the Act, “Native American” is defined as Indian, Native Hawaiian, or Native American Pacific Islander.


Id.

Id.


Fife, supra note 20, at 357.


Id.

775 ILCS 5/2-102 (A-5).

Hawai‘i State Constitution, Article XV, Section 4.


45 1 N.N.C. § 204.C.

46 1 N.N.C. § 204.D.

47 7 N.N.C. § 354.A.5.

48 10 N.N.C. § 108.B.

49 15 N.N.C. § 603.J.