

“Monolingualism is Racism!”: *Lau v. Nichols*, Equal Education, and Linguistic Minorities’ Rights

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Abstract:

In San Francisco in the late 1960s, California, the local Board of Education and judges maintained English-only instruction for increasing public school students whose native tongues were not English. In response to *Lau v. Nichols* in 1974, the Supreme Court broadened the protection of the Civil Rights Act of 1964 to bilingual education, firstly recognizing non-English-speaking Americans’ privilege. Equal education activists mobilized the language minority community to force the neglectful School District to conduct the Court’s decision. However, Californian voters abolished bilingual education with the passage of Proposition 227 in 1998, and the Supreme Court abrogated *Lau* in *Alexander v. Sandoval* in 2001. Twisting and turns of bilingual education’s lawsuits, implementation, and abolishment revealed ignorance of linguistic minorities’ rights and nativists’ ingrained belief of American linguistic and racial homogeneity.

This paper revisits *Lau v. Nichols* through the lens of linguistic minorities’ rights and political activism. *Lau* legitimized bilingual education and bilingual ballots, laying the foundation of language access rights for non-English-speaking Americans. Bilingual courses also taught cultural knowledge, keeping the local racial community’s culture alive. Therefore, *Lau* is best described as the “*Brown v. Board of Education* for language minority students.”¹ This case demonstrates how the Asian American Movement promoted Asian American political participation, community self-determination, and cultural existence.

Keywords: Bilingual education, Self-determination for communities, Asian American movements.

¹ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 251.

Contents

Origins: Unenforced Bilingual Education Plans and Asian American Community's Rage.....	- 7 -
Temporary Victory: Bilingual Education in Courts and Federal Law	- 14 -
Nativists' Backlash: Supreme Court and White House's Compromise.....	- 23 -

On February 27, 1969, a firecracker blasted under the chair of the San Francisco Unified School District (SFUSD)'s Superintendent Robert Jenkins, who was in a meeting about numerous Chinatown education problems with unexpected over 300 Chinese students and graduates. Students petitioned about lacking enough bilingual courses and textbooks. Jenkins prevaricated with enumerating the number without practical solutions, provoking the audience who dissatisfied with white education officials who were ignorant of the priority of bilingual education for non-English-speaking students. A student yelled, "quit hitting us with numbers. Stop frightening us off, you liberal!"² Later, someone threw this top official a cherry bomb. That night, angry students pelted eggs and firecrackers at him, smashed a principal's car windows, and clashed with police.³ Jenkins had to escape from the auditorium under the ushering of this meeting's moderator, Ling-Chi Wang.⁴ This stormy meeting was a microcosm of tensions between language minority communities and education officials about the essential of equal education. SFUSD provided "language-handicapped" students with very limited bilingual classes from federal funds, which they regarded as a burden. However, the Chinese American

² "Angry Chinatown Debate on Schools," *San Francisco Chronicle*, February 28, 1969, 2.

³ Ken Wong, "Galileo's Crisis Sets off Row at School Meet," *East West*, March 5, 1969, 1, 8, 13.

⁴ Stephanie McPherson, *Lau v. Nichols: Bilingual Education in Public Schools* (Berkeley Heights, NJ: Enslow Publishers, 2000), 10.

community required universal bilingual education to remedy for students with limited English proficiency.

This paper will reexamine the origins and the legacy of lawsuits on bilingual education, *Lau v. Nichols*, on immigrants' language access rights and Asian Americans' activism. In 1974, the U.S. Supreme Court unanimously ruled in *Lau v. Nichols* that English-only instruction violated "the Civil Rights Act because it deprived Chinese-American students of an opportunity to participate in the public education program."⁵ This landmark decision popularized public schools' bilingual education or supplemental English language instruction to students of non-English speaking groups. I will explore the emergence of Chinese American students' language problems in San Francisco public schools at the end of the 1960s to the political mobilization of community members to make bilingual education a reality for Chinatown students after Lau's verdict in the 1970s. I will highlight the proceedings of *Lau* and subsequent community struggle during the Asian American Movement.

I will address two questions: First, what was the legacy of *Lau v. Nichols*, especially how did it contribute to the recognition of non-English-speaking citizens' rights in general? It was the first time that the U.S. Supreme Court recognized the privilege of linguistic minorities in *Lau*. According to the Civil Rights Act of 1964, the Court judged that the school district discriminated against linguistic minority students based on their national origin. The verdict of *Lau* laid the legal foundation of passing the Equal Educational Opportunities Act of 1974 that perpetuated bilingual education and amending the Voting Act of 1965 in 1975 to add bilingual ballots. Today, the legacy of *Lau* extends beyond just education to voting, health care, and other

⁵ "Lau v. Nichols." Oyez. Accessed February 9, 2021. <https://www.oyez.org/cases/1973/72-6520>.

language access service. I argue that this case laid the foundation for granting language access rights for non-English-speaking Americans.

Second, how did racists and nativists use the narrative of monolingualism to marginalize non-English-speaking groups? The judge of *Lau*'s trial court made racist comments, rejecting *Lau*'s petition. And nativists abolished bilingual education in California in 1998. Furthermore, in 2001, textualism justices claimed that if governments published policies written only in English without intentional discrimination, governments would meet the equal protection clause of the U.S. Constitution. By contrast, the U.S. Supreme Court and equal education activists in 1974 managed to achieve equity by providing disadvantaged groups with supplemental remedies. I argue that nativists advocated for English-only policies to maintain American linguistic and racial homogeneity.

Therefore, *Lau* is best described as the “*Brown v. Board of Education* for language minority students.”⁶ The Civil Rights Act didn't protect linguistic minorities before 1974 because legislators did not specify limiting language access as one of discrimination based on national origins. Bilingual education decreased illiteracy and helped integrate non-English-speaking students who immigrated to the United States during their childhoods into American society. Furthermore, bilingual courses that taught affiliated culture to promote language learning kept the local racial community's culture alive. For Asian American community, community participation in advocating for bilingual education promoted Asian American political participation, community self-determination, and cultural existence.

⁶ Asian American Bilingual Education Class, *California Aggie-Third World Forum*, vol. 3, no. 7, February 23, 1978, 1; Gilbert Martinez, chair of the California's Bilingual-Bicultural Task Force, described *Lau* as the “decision of the century” (Gilbert Martinez to William E. Webster, May 20, 1974, File 3279, Bilingual-Bicultural Task Force, California State Archives) in Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 251.

My study will rethink previous historians' and legal scholars' findings through the lens of immigrants' rights.⁷ Most scholars amplified *Lau*'s lawsuits but ignored the community discussions out of the courts. Mark Brilliant analyzes *Lau* from the viewpoint of race relations.⁸ Brilliant compares *Lau* with a concurrent case, *David Johnson v. San Francisco Unified School District*, led by the National Association for the Advancement of Colored People (NAACP) for desegregation in San Francisco.⁹ Brilliant argues that conservative politicians used *Lau* to break up the interracial coalition. Brilliant argues that conservative politicians used *Lau* to break up the interracial coalition.¹⁰ Scholar and activist Ling-Chi Wang introduced community mobilization in complying with the Supreme Court's decision from 1974 to 1976.¹¹ I will combine Chinese-language primary sources and oral history sources with Brilliant's Mexican and African American sources to present the Chinese response to desegregation and to disassemble the misunderstanding between linguistic minorities and African Americans.

⁷ Eileen H. Tamura, "Asian Americans in the History of Education: An Historiographical Essay," *History of Education Quarterly* 41, No. 1 (Spring, 2001), 68; Ling-Chi Wang, "Lau v. Nichols: The Right of Limited-English-speaking Students," *Amerasia* 2, vol. 2, 1974, 16-45; Ling-Chi Wang, "Lau v. Nichols: History of A Struggle for Equal and Quality Education," in *Counterpoint: Perspectives on Asian Americans*, ed. Emma Gee et al., (Los Angeles: Asian American Studies Center, UCLA, 1976), 240-59; Ling-Chi Wang, *Revisiting the Lau Decision: 20 Years After – Symposium Proceedings*, November 3–4, 1994 (Oakland: ARC Associates, 1996), Stephanie McPherson, *Lau v. Nichols: Bilingual Education in Public Schools*. (Berkeley Heights, NJ: Enslow Publishers, 2000).

⁸ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012).

⁹ *David Johnson v. San Francisco Unified School District* was a concurrent case led by the National Association for the Advancement of Colored People for desegregation in San Francisco. Desegregation activists initially did not support bilingual education to take priority. Meanwhile, Chinatown's parents boycotted against mandatory school bus.

¹⁰ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 255.

¹¹ Ling-Chi Wang, "Lau v. Nichols: History of A Struggle for Equal and Quality Education," in *Counterpoint: Perspectives on Asian Americans*, ed. Emma Gee et al., (Los Angeles: Asian American Studies Center, UCLA, 1976), 240-59.

Literature of legal and education studies concluded two points on *Lau*.¹² First, *Lau* justified and stimulated the explosive growth of bilingual education across the country. Educators reviewed the effect of bilingual education and concluded its positive role on immigrant students' integration into the United States. Second, bilingual education can theoretically reconcile with desegregation that placed non-English-speaking students into schools away from their racial community to meet the racial balance. The supplemental English language courses quelled Asian and Latino parents' discontentment and relieved the paradox between bilingual education programs and desegregation goals.

This paper will draw primary sources from legal and government documents, national and community newspapers, and oral sources. I interviewed Wang and Edwards Steinman, who was *Lau*'s attorney, for oral history. I will track the trajectory of this case from the grassroots levels, reviewing Chinese language newspapers. Meanwhile, I will also study nativists' opposition to the expansion of immigrants' rights. I will compare sources from supporters and opponents of *Lau* and different racial groups to discover contested narratives.

¹² Legal study works include: Rachel Moran, "Undone by Law: The Uncertain Legacy of *Lau v. Nichols*," *Berkeley La Raza Law Journal* 16, no. 1, 2005, 1–10; Edward W. Lew, "Bilingual Education and Resegregation: Reconciling the Apparent Paradox Between Bilingual Education Programs and Desegregation Goals," *UCLA Asian Pacific Law Journal* 7 (Spring 2001), 88–104; Christina M. Rodriguez, "Accommodating Linguistic Difference: Toward a Comprehensive The Story of Language Rights in the United States," *Harvard Civil Rights-Civil Liberties Law Review* 36 (Winter 2001): 133–223. And Education study works include: Josué M. González, *Encyclopedia of Bilingual Education* (Los Angeles: Sage, 2011), 510-20, 929-53; Kara Brown, *Lau v. Nichols*, in *Encyclopedia of Educational Reform and Dissent* 2, (Sage Publications, Inc., 2010), 510-12; August, D., & Hakuta, K. (1997). *Improving Schooling for Language-minority Children: A Research Agenda* (Washington, DC: National Academy Press); Baker, C., & de Kanter, A. (Eds.). (1983). *Bilingual Education: A Reappraisal of Federal Policy* (Lexington, MA: Lexington Books); Crawford, J. (2004). *Educating English learners: Language Diversity in the Classroom* (5th ed) (Los Angeles: Bilingual Education Services); Del Valle, S. (2003); *Language Rights and the Law in the United States: Finding Our Voices*. In *Bilingual Education and Bilingualism Series* (Clevedon, UK: Multilingual Matters); Hakuta, K. (n.d.). *Evolution of Important Events in California. Bilingual Education Policy*, accessed from <http://faculty.ucmerced.edu/khakuta/policy/ELL/timeline.html>.

Origins: Unenforced Bilingual Education Plans and Asian American Community's Rage

The origin of the conflict between the school district and linguistic minority parents was the lack of law guaranteeing linguistic minority students' right to receive bilingual education. At the end of the 1960s, San Francisco Unified School District relied on federal grants to design the bilingual education plans but only provided a fraction of students with supplemental English language courses. SFUSD did not place bilingual education as their priority, so not subsidize it with local tax revenues. Asian American parents expected comprehensive bilingual courses covering all subjects in school. SFUSD, controlled by white commissioners, cannot understand linguistic minorities' urgent demands. The Bilingual Education Act of 1968 just recommended school districts to provide bilingual courses rather than requiring them to do that.

The reason for linguistic minorities' urgent demand for equal education is their children's marginalization in school because of their limited English proficiency. Non-English-speaking immigrants disappointedly found that desegregated schools provided English-only instruction for their children raised in a different language environment with limited English proficiency. They expected their children to integrate into the United States with their mother tongues, maintaining the assimilation and ethnic qualities simultaneously. Only 52.28% of 3 to 34 years old persons of Spanish language attended schools.¹³ By contrast, 54.22% of whites in the same age period attended school.¹⁴

Linguistic minorities appealed to make up what desegregation and Civil Rights Movement ignored in education. *Brown v. Board of Education* (1954) integrated not only African Americans but also Chinese Americans and other non-English-speaking students into

¹³ U.S. Census Bureau, Table 3. Enrollment Status and Year Spanish Language, and Sex: in Which Enrolled of Persons 3 to 49 Years Old by Age, Race, 1970, 1970 Census of Population, Subject Reports: School Enrollment, <https://www2.census.gov/library/publications/decennial/1970/pc-2-5a/42045400v2p5a5cch01.pdf>

¹⁴ Ibid.

public schools. Section 601 of the Civil Rights Act of 1964 ruled no person shall, on the ground of race, color, or national origin, be discriminated under federally funded programs. However, both of them ignored the characteristics of linguistic minorities. Public schools located in linguistic minority communities hired more bilingual teachers. In 1971, Chinese parents in San Francisco boycotted school buses for desegregation because they preferred the freedom of choice and schools in their neighborhoods.¹⁵ Meanwhile, the Civil Rights Act of 1964 did not list language as one of discrimination's grounds.

The Immigration and Nationality Act of 1965 changed not only the demographic structure of the United States, but also the linguistic structure. In 1965, the reformation of immigration abolished the quotas of immigrants' national origins, thus, naturalizing more non-English-speaking immigrants. The percentages of non-English-speaking foreign-born Americans increased from 80.97% in the 1960 Census to 82.34% in the 1970 Census.¹⁶ Moreover, the Immigration and Nationality Act of 1965 preferred family reunification and well-educated immigrants. An unprecedented number of Asian American immigrants flooded the United States.¹⁷ A large number of post-1965 Asian immigrants were well-educated and paid attention to their offspring's education. The 1970s were a turning point for Asian American civil rights in their activism and demographic changes.¹⁸

¹⁵ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 243.

¹⁶ U.S. Census Bureau, Table 111.- Mother Tongue of the Foreign Born, by regions, divisions, and states: 1960, 1960 Census <https://www2.census.gov/library/publications/decennial/1960/population-volume-1/vol-01-01-j.pdf> ; U.S. Census Bureau, Table 19. Mother Tongue of the Population by Nativity and Parentage: 1970, 1970 Census of Population, Subject Reports: National Origin and Language <https://www2.census.gov/library/publications/decennial/1970/pc-2-1a/42043782v2p1a1cch4.pdf>.

¹⁷ Xiaojian Zhao, *The New Chinese America: Class, Economy, and Social Hierarchy* (New Brunswick, N.J.: Rutgers University Press), 2010.

¹⁸ See Ellen Wu's upcoming book, *Overrepresented: The Surprising Story of Asian Americans and Racial Justice*. (in contract with Princeton University Press).

At the end of the 1960s, some public schools in San Francisco provided limited bilingual courses and hired a few bilingual teachers. In 1967, a California state law permitted “a language other than English to be used as a medium of instruction.”¹⁹ In 1968, President Lyndon B. Johnson signed the Bilingual Education Act (Title VII of the Elementary and Secondary Education Act) and provided federal appropriation to local schools for optional bilingual education programs. A scholar thought, “it was the first time the federal government had addressed the unique needs of students with limited-English proficiency.”²⁰ However, the amount of appropriation was minimal for each school and cannot meet the need since the immigration wave of the 1970s.

SFUSD did endeavor to design bilingual courses, but the small scale of the implementation cannot meet demand. The California State Department of Finance deleted the appropriations for bilingual education programs in 1972.²¹ In the early 1970s, the appropriation of bilingual education was often at stake.²² SFUSD did not prioritize bilingual education because of the limited budget and unlimited affairs to resolve. Nevertheless, SFUSD designed bilingual instruction policies, teacher manuals, and a directory of bilingual teaching resources.²³

¹⁹ Peter Chacon to Alan Cranston, October 14, 1971, Box 1, Folder September-October, 1971, Peter Chacon Papers, California State Archives, Sacramento, California, in Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 247.

²⁰ James Crawford, “Bilingual Policy Has Taken Shape Along Two Federal Tracks,” *Education Week*, April 01, 1987, <https://www.edweek.org/teaching-learning/bilingual-policy-has-taken-shape-along-two-federal-tracks/1987/04>.

²¹ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 247.

²² “Citizens’ Group Questions School Aid,” *East West*, January 10, 1973, 7.

²³ Bilingual Policy Statement, Administrative Regulations, p. 6121.3, box 3, folder 11, the San Francisco Unified School District Records 1854-2005, San Francisco Public Library: San Francisco History Center; A Directory of Chinese American Resources, box 74, folder 12, the San Francisco Unified School District Records 1854-2005, San Francisco Public Library: San Francisco History Center; Helene Lew, Level 1 Chinese as a Second Language Teachers’ Manual, box 74, folder 14, the San Francisco Unified School District Records 1854-2005, San Francisco Public Library: San Francisco History Center.

Bilingual education taught affiliated culture, keeping local racial community's culture alive. A common sense of bilingual education is teaching affiliated culture can encourage students to learn its language. For example, in 1976, SFUSD funded a Chinese Bilingual Pilot Program that published a Chinese cultural resource book.²⁴ This book introduced Chinese traditional culture and the Chinese American experience, impacting students' self-identify as Chinese Americans.

English-only instruction was the primary complaint of the educational discrimination Asian American K-12 students faced.²⁵ Most Asian American minor immigrants had limited English proficiency. A study in 1983 showed "over 50% of all API (Asian and Pacific Islanders) children come from homes where a primary language other than English is spoken, and up to 90% of the most recent arrivals have no fluency in the English language."²⁶ Historian Mark Brilliant found, before the Supreme Court's decision, "the San Francisco schools met the Fourteenth Amendment's equal protection mandate by treating English-speaking and non-English-speaking students the same."²⁷ However, *Lau*'s decision asked for extra instruction for disadvantaged students to achieve equity rather than superficial equality. Integrationists expected SFUSD to prioritize integrating students and giving them equal instruction. This case will clarify the inherent conflict between equal protection and immigrants' benefits. Bilingual education helped the integration of Asian Americans. *Lau*'s decision broadened the protection of the Civil

²⁴ Chinese Cultural Resource Book (For Elementary Bilingual Teachers), box 74, folder 11, the San Francisco Unified School District Records 1854-2005, San Francisco Public Library.

²⁵ Brilliant, *The Color of America Has Changed*, 245.

²⁶ K.S. Chan, "Limited English Speaking, Handicapped, and Poor: Triple Threat in Childhood," 1983, In M. Chu-Chang with V. Rodriguez (Eds.), *Asian and Pacific-Americans Perspectives in Bilingual Education: Comparative Research* (New York: Teachers College Press), 153-71.

²⁷ Brilliant, *The Color of America Has Changed*, 248.

Rights Act of 1964 to Asian Americans' education issue. Therefore, this case will also help us understand Asian Americans' civil rights in the post-Brown era.²⁸

Wang's advocacy for bilingual education typically reflected on features of the Asian American Movement. Dr. Ling-chi Wang was born in China and went to colleges in the United States. He established Asian American Studies courses at the University of California, Berkeley, serving Asian American community for most of his life. Wang participated in this mobilization. On October 21, 1968, Wang and other minority leaders questioned the top official, Superintendent Robert Jenkins, of SFUSD on California State Assembly. As the chairman of the North Beach-Chinatown Education Committee, he stated the fact that "in Galileo High School a number of Chinese children who do not speak or understand English attend classes."²⁹ He requested bilingual education: "they should be given special schooling to learn English before they are made to sit in these classes." Meanwhile, he asked for Chinese participation in leadership: "We have yet to see a Chinese in decision-making bodies in education in this City."³⁰ His questioning, including facts, requests, and structural changes, was a powerful approach for Asian American activists. The Asian American Movement was a social movement advocating for racial equality, self-determination for communities, and anti-imperialism during the late 1960s through the mid-1970s.³¹ Wang joined the interracial array and spoke in the legislature, which was a common scene during the Asian American Movement.

²⁸ Ling-Chi Wang, "Lau v. Nichols: History of A Struggle for Equal and Quality Education," in *Counterpoint: Perspectives on Asian Americans*, ed. Emma Gee et al., (Los Angeles: Asian American Studies Center, UCLA, 1976), 248.

²⁹ Donocans Bess, "Minority Gains Claimed for S.F. Schools," *San Francisco Chronicle*, October 21, 1968, 6.

³⁰ Donocans Bess, "Minority Gains Claimed for S.F. Schools," *San Francisco Chronicle*, October 21, 1968, 6.

³¹ Daryl Maeda, "The Asian American Movement," in *Oxford Research Encyclopedia of American History*, article published June 2016, DOI: 10.1093/acrefore/9780199329175.013.21.

The increasing number of Hong Kong refugees who arrived in San Francisco at the end of the 1960s made the youth problem in Chinatown serious. In a meeting with the city's Supervisors Social Service Committee on October 29, the Chinese Chamber of Commerce, a major Chinese businessmen's association, claimed inadequate education was one of the "chief causes of youth unrest in Chinatown."³² Juvenile delinquency prevailed in Chinatown at that time. Many dropouts joined gangs.³³ Wang also attended this meeting and asked for "communication with the entire Chinese community" rather than "a handful of leaders."³⁴ The statistics of this meeting indicated about 8,000 refugees arrived in San Francisco from Hong Kong annually. They generally agreed that those refugees needed English training.³⁵ Even non-citizen public students had bilingual educational rights. Historian Sarah Coleman argues, *Plye v. Doe* (1984) expanded the education rights of non-citizens in the United States.³⁶ In this case, Texas state statute allowed public schools to charge tuition to non-citizen students to compensate for lost state funding. The Supreme Court invalidated it and ruled non-citizen children were people "in any ordinary sense of the term" of the Fourteenth Amendment that protected their equal educational rights. By this logic, public schools cannot charge an extra fee to non-citizen students in bilingual education programs. In the case of *Lau*, nearly 18,00 Chinese students without bilingual education were both native-born and foreign-born.³⁷

In that stormy meeting on February 27, 1969, Chinese activist Wang planned to ask Superintendent Jenkins to hear approximately 400 Chinese students' and parents' voices. Wang

³² Jerry Burns, "Blunt Talk on the Tough Problems of Chinatown," *San Francisco Chronicle*, October 30, 1968, 4.

³³ The origin of juvenile delinquency in Chinatown refers to Ellen Wu, *Color of Success: Asian Americans and the Origins of the Model Minority* (Princeton, NJ: Princeton University Press, 2014), 183-87.

³⁴ Jerry Burns, "Blunt Talk on the Tough Problems of Chinatown," *San Francisco Chronicle*, October 30, 1968, 4.

³⁵ Jerry Burns, "Blunt Talk on the Tough Problems of Chinatown," *San Francisco Chronicle*, October 30, 1968, 4.

³⁶ Sarah Coleman, *The Walls Within: The Politics of Immigration in Modern America* (Princeton: Princeton University Press, 2021), 13.

³⁷ Oral arguments of *Lau v. Nichols*, 414 U.S. 563 (1974).

said in the meeting, “language and cultural barriers are keeping thousands of Chinese and Spanish speaking children from getting their education in this city.”³⁸ A student from Galileo High School claimed that their school offered only one bilingual class and no textbooks in this one class. Behind Jenkins’s abstruse and technical response was Jenkin’s clear message to the students: He did not intend to not do anything about the students’ concerns. SFUSD’s “sink or swim” approach threw non-English-speaking students into an English environment and expected students to learn English by themselves. On the site, those Chinese students who survived from English-only classes and witnessed their “sunken” Chinese schoolmates learn nothing yelled to Jenkins, “quit hitting us with numbers! Stop frightening us off, you liberal!”³⁹ A man leaped onto the stage and forced Jenkins to read a note. Suddenly, someone threw a firecracker under Jenkins’ chair. After the blast and eggs assault, Wang had to end up this meeting.⁴⁰

In the fall of 1969, a six-year-old Chinese boy, Kinney Lau, attended Jean Parker Elementary School in San Francisco, California, as a first-grade student. However, young Kinney could not get interested in the class because he only spoke Chinese. He immigrated to this city from Hong Kong and spent almost all his pre-school time at San Francisco Chinatown. His teachers in Parker School only spoke English. Wang visited Chinatown and nearby schools. What he saw was “widespread poverty and a lot of school children who were totally silenced because they didn’t understand the language.”⁴¹ After all, attempts failed, they had to seek judicial remedy to help Lau and his Chinese schoolmates.

³⁸ “Angry Chinatown Debate on Schools,” *San Francisco Chronicle*, February 28, 1969, 2.

³⁹ “Angry Chinatown Debate on Schools,” *San Francisco Chronicle*, February 28, 1969, 2.

⁴⁰ Stephanie McPherson, *Lau v. Nichols: Bilingual Education in Public Schools* (Berkeley Heights, NJ: Enslow Publishers, 2000), 10.

⁴¹ McPherson’s interview with Wang, April 1999, in McPherson, *Lau v. Nichols*, 7.

Temporary Victory: Bilingual Education in Courts and Federal Law

Since the end of the 1960s, Chinese activists complaint with state and city officials like the aforementioned meeting but were ignored. Then, they unsuccessfully sued SFUSD in the U.S. District Court and the Court of Appeals. In 1974, the U.S. Supreme Court reversed the lower courts' decisions based on the Civil Rights Act of 1964 rather than the fourteenth Amendment of the U.S. Constitution, laying hidden dangers of being overturned in the future. Fortunately, the Equal Educational Opportunities Act of 1974, based on the fourteenth Amendment, perpetuated the legacy of *Lau*.

Lau's mother, Mrs. Kam Wai Lau, visited lawyer Edward H. Steinman's office in Chinatown. Steinman's father was a Russian immigrant who learned English from zero by himself at an American public school without bilingual courses.⁴² Therefore, Steinman could feel the same as Chinese students. In 1970, he was a 25-year-old new law school graduate who had an office in Chinatown. Mrs. Lau originally came for her dispute with the landlord, then "began hesitantly answering his question about her 6-year-old son."⁴³ Steinman acknowledged Chinese students' struggle in public schools. He visited several classes in Commodore Stockton School and "found the teachers unable to communicate with many of the students."⁴⁴ To help them, he worked with Wang to file this public interest lawsuit.

Steinman and Wang found the need for bilingual education was huge, but courses were insufficient. According to their research, 2,856 Chinese students in San Francisco had limited English proficiency. Among them, 1,790 students received no special help at all, even the 40-

⁴² Cynthia Gorney, "The Suit That Started It All, The Lau Case: When Learning in a Native Tongue Became a Right," *The Washington Post*, July 7, 1985, A12.

⁴³ Cynthia Gorney, "The Suit That Started It All, The Lau Case: When Learning in a Native Tongue Became a Right," *The Washington Post*, July 7, 1985, A12.

⁴⁴ Stephanie McPherson, *Lau v. Nichols: Bilingual Education in Public Schools* (Berkeley Heights, NJ: Enslow Publishers, 2000), 12.

minute English as a Second Language (ESL) course a day. Only 1,066 students got bilingual education, 623 received part-time help, and 433 received full-time instruction. Only 260 of 1,066 received special instruction in English was taught by bilingual teachers.⁴⁵ Even if some of them had bilingual courses, they lacked textbooks and qualified teachers. The difference between ESL and bilingual education was ESL teachers did not know a secondary language. Bilingual education was believed more efficient for non-English-speaking students but more expensive. Finally, Steinman collected students' declarations to testify in Court.⁴⁶ He filed the lawsuit to the U.S. District Court for the Northern District of California on March 23, 1970.

In the District Court, Steinman declared that education was a fundamental and constitutional right. For more than one thousand non-English-speaking students without a bilingual teacher, their educational rights were deprived. Steinman also claimed that SFUSD's acceptance of federal funds obligated it to provide programs for all non-English-speaking students. If corrective measures were not taken at once, the children would "suffer irreparable injury."⁴⁷ SFUSD's attorney explained that the governmental appropriations for bilingual education programs were not enough for all Chinese students to take this course. District Judge Lloyd Burke agreed with SFUSD and refused to offer Chinese students supplemental resources. Surprisingly, Steinman accepted his failure but asked Judge Burke to allow him to write the opinion against himself because he knew Burke and the school attorney's workload. Judge Burke agreed to it and inadvertently left Steinman an opportunity to prepare words for the Court of

⁴⁵ Ling-Chi Wang, "Lau v. Nichols: History of A Struggle for Equal and Quality Education," in *Counterpoint: Perspectives on Asian Americans*, ed. Emma Gee et al., (Los Angeles: Asian American Studies Center, UCLA, 1976), 242.

⁴⁶ McPherson, *Lau v. Nichols*, 43.

⁴⁷ United States District Court for the Northern District of California, Civil Action No. C-70 627LHB, 22, in McPherson, *Lau v. Nichols*, 44.

Appeals.⁴⁸ Steinman knew Judge Burke would approve his draft that can be used by a higher court to challenge this case.

Judge Burke's racist bias influenced his judgement on the trial court. Steinman knew Judge Burke well because he worked as a clerk in the Ninth Circuit. "Once I get Burke I know that's it," Steinman recalled. "Lloyd Burke would come in at 11 o'clock and leave at 2 o'clock every day. . . Very much a right winger. . . I knew his politics. I knew his style. I knew I had no chance to win."⁴⁹ Wang recalled that Burke made racist comments several times, identifying Burke as a racist.⁵⁰ Burke smashed a group of Chinese immigrants convicted for American citizenship fraud when he worked as a federal prosecutor.⁵¹ His anti-Chinese mood impacted his standing on Chinese petitioners' appeal for bilingual education. He interpreted laws in originalism to deny students' rights.

In 1971, NAACP also sued this school system in *David Johnson v. San Francisco Unified School*. This case fought against racially imbalanced elementary schools in San Francisco. NAACP claims some schools that contained a high percentage of African American students received fewer resources. The settlement between plaintiffs and defendants required the composition of schools should reflect on the ethnic demographic structure in balance. The San Francisco Board of Education's integration policy in 1978 ruled that each school should have no more than 45% of a single racial group.⁵² Chinese parents boycotted this settlement because they

⁴⁸ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 246-47.

⁴⁹ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 246.

⁵⁰ Shouyue Zhang's interview with Wang, August 16, 2021.

⁵¹ Tom Hall, "A History-Making Judge," *San Francisco Examiner*, September 19, 1968, 24.

⁵² The San Francisco Board of Education, *Politics of the San Francisco Board of Education*, p. 5100, box 3, folder 7, the San Francisco Unified School District Records 1854-2005, San Francisco History Center, San Francisco Public Library.

preferred schools in their neighborhoods where had more percentage Chinese students and more teachers who spoke Chinese. *Lau*'s and *Johnson*'s plaintiff attorneys' requirements were in opposite ways. *Lau* required extra instruction taught by bilingual teachers, most of whom were Chinese, but *Johnson* expected "complete desegregation of the student bodies, faculties, and administrative personnel."⁵³ In other words, *Lau*'s remedy would lean to a Chinese-concentrated school against desegregation goal. That was why African Americans hesitated to support *Lau*.

Conservative politicians used conflicts between proponents of bilingual education and proponents of desegregation to break up the interracial coalition. In 1972, California Governor Ronald Reagan proposed and signed the Bilingual Education Act of 1972 (AB 2284) to \$5 million appropriations for "more effective bilingual education programs in California."⁵⁴ However, he rescinded a federal proposal to enforce bilingual education after he took office of U.S. President in 1981. The essence of bilingual education is multiculturalism rather than liberalism. Conservative politicians who believed American cultural homogeneity wrapped their desire for linguistic minorities' votes. They publicized the Bilingual Education Act in a liberalism narrative, as a win of "freedom of choice," irritating African American proponents of school busing.⁵⁵ Historian Charles Wollenberg argues, "*Lau*'s decision seemed potentially in conflict with the 1971 integration order (from *Johnson*'s judge Stanley Weigel on forced school

⁵³ "Civil Rights Action for Injunctive Relief," June 24, 1970, Box 657, Folder 7, Mexican American Legal Defense and Educational Fund Records, 1967-1984, Department of Special Collections, Stanford University Libraries, Stanford, California, in Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 246.

⁵⁴ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 247-48.

⁵⁵ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 247-48.

bus).”⁵⁶ Reagan intended to make African Americans think that Chinese and Mexican Americans stood against them.

Unfortunately, this trick worked. African American activists changed from applauding to bilingual education in the early 1970s to criticizing it privately after *Lau*. In a meeting of San Francisco Human Rights Committee in 1970, African American committee members requested for integration as “a goal of every school district in California.”⁵⁷ Meanwhile, they participated in the discussion of establishing Spanish bilingual education programs in same meeting, which meant Latino and African Americans did not regard each other’s agenda as an interference.⁵⁸ However, after the Bilingual Education Act of 1972 divided them, in 1976, NAACP-West Coast regional director Virna Canson complaint in a letter, ‘the concept of bi-lingualism which has culminated in the *Lau* decision,” and criticized “the Chinese community. . . offensive against . . . integration.”⁵⁹ Desegregation activists did not support bilingual education to occupy priority than their agenda of integration. The tension between desegregation and bilingual education remained until the late 1970s.⁶⁰

Although Steinman set a good foundation in his draft of the district court’s opinion, the Ninth Circuit Court of the United States supported SFUSD again in *Lau*’s appeal. The Court’s opinion claimed that limited English proficiency was “appellants’ handicaps” rather than school

⁵⁶ Charles Wollenberg, “‘Yellow Peril’ in the Schools (I),” *The Asian American Educational Experience*, New York: Routledge, 1995, 10.

⁵⁷ Human Rights Commission of the City and County of San Francisco, Minutes of April 9, 1970, p. 4, BANC MSS 78/180, box 24, folder 8, Bancroft Library, University of California, Berkeley.

⁵⁸ Human Rights Commission of the City and County of San Francisco, Minutes of April 9, 1970, p. 2, BANC MSS 78/180, box 24, folder 8, Bancroft Library, University of California, Berkeley.

⁵⁹ Virna Canson to Nathaniel Colley, 1976, Box 21, Folder Colley, Nathaniel 1976, NAACP-West Coast Office Record (previous), Bancroft Library, University at Berkeley, in Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 255. I visited Bancroft Library but not find this letter because archivists recatalogued this collection.

⁶⁰ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 255.

discrimination. Therefore, schools did not have an “affirmative duty to provide language instruction.”⁶¹ However, Steinman regarded the Court of appeal’s opinion as an opportunity to prove his argument because the limited English proficiency was definitely not children’s fault.⁶² He persuaded his client to appeal in the U.S. Supreme Court.

Steinman filed for a writ of certiorari to the Supreme Court on April 9, 1973. The Court granted it on June 11, 1973. In the oral debate, Steinman quoted Justice Felix Frankfurter’s words, “here is no greater inequality than the equal treatment of unequals.”⁶³ He argued, “equal treatment sometimes entailed different treatment.”⁶⁴ His goal was for students to be taught English and to understand English in bilingual programs. He emphasized that “The school system to do was to take whatever steps are reasonable to guarantee that these students are able to benefit with the instruction they are given.”⁶⁵ In this way, he justified the rationality of “different treatment.”

The Supreme Court made its decision based on the principles of the Civil Rights Act of 1964. Chinese, Mexican, Puerto Rican and Jewish community organizations and the U.S. attorney general submitted amici curiae briefs to support *Lau*. However, no African American organizations submitted amici curiae brief. The United States Attorney General claimed that SFUSD’s a violation of the Civil Rights Act of 1964. The Supreme Court mainly bought this approach rather than discussing the Equal Protection Clause of the Fourteenth Amendment. The

⁶¹ *Lau v. Nichols* , 483 F.2d 791 (1973), paragraph 18, accessed on May 6th, 2021, <https://law.resource.org/pub/us/case/reporter/F2/483/483.F2d.791.26155.html>.

⁶² Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 248.

⁶³ *Lau v. Nichols*, Supreme Court of the United States, October Term, 197, No. 72-6520, Brief for the Petitioners, Edward H. Steinman, Clarence Moy, Kenneth Hecht, 14.

⁶⁴ Mark Brilliant, *The Color of America Has Changed: How Racial Diversity Shaped Civil Rights Reform in California, 1941-1978* (Oxford: Oxford University Press, 2012), 249.

⁶⁵ Oral arguments of *Lau v. Nichols*, 414 U.S. 563 (1974).

unanimous opinion supported Lau and judged that SFUSD “violates § 601 of the Civil Rights Act of 1964, which bans discrimination based ‘on the ground of race, color, or national origin,’ in ‘any program or activity receiving Federal financial assistance.’”⁶⁶ Insufficient bilingual programs had the effect of subjecting non-English-speaking students to discrimination based on their national origin.

Meanwhile, Justice Harry Blackmun wrote an opinion concurring with the result. He insisted the large amount of 1,800 Chinese students was the reason for his support. In other words, if a school district did not have so many non-English-speaking students, they would not have to offer bilingual courses. Republican President Richard Nixon nominated Blackmun in 1970. When Blackmun delivered this opinion, he was not as liberal as later. This concurring opinion reflects on the conservative powers’ adjustment to their liberal colleagues’ decision.

After this five-year marathon, Lau and his non-English-speaking schoolmates won the universal bilingual education in American public schools. Justices remanded the case for “the fashioning of appropriate relief.”⁶⁷ *East-West*, Chinese American community newspaper, announced this news in an excited tone in the front page, “A Victory Day.”⁶⁸ However, they did not imagine that the Chinese American community took another two-year community struggle to comply with this decision.

⁶⁶ Opinion of *Lau v. Nichols*, 414 U.S. 563 (1974).

⁶⁷ Opinion of *Lau v. Nichols*, 414 U.S. 563 (1974).

⁶⁸ “A Victory Day,” *East-West*, January 23, 1974, 1

The legislative and executive branches recognized the judicial branch's exploration on bilingual education. The Congress passed the Equal Education Opportunity Act of 1974 whose Section 1703 (f) codified English language learner students' bilingual education right.⁶⁹

To comply with the Supreme Court's decision, the U.S. Office of Civil Rights issued a set of guidelines for school districts that were "instructed to file voluntary plans" of bilingual instruction.⁷⁰ Meanwhile, the U.S. Office of Education established General Assistance Centers, also known as, "Lau Center," to technically assist school districts to develop plans. However, the voluntary guidelines delayed the compliance of Court's decision and infuriated the immigrant communities. James Crawford, former editor of Education Week, claims, "under the Lau regulations, bilingual education would be mandated in schools with at least 20 Limited-English-Proficiency children of the same minority-language group."⁷¹

Wang claimed, "the national significance of the *Lau* is attested by the prompt decision by Congress to conclude a series of public hearings, from March 12 to May 10, 1974 on the effects of that decision on local school districts and the states."⁷² As a result, both houses of Congress passed a Reauthorization of the Bilingual Education Act. The Congress reiterated that "(Bilingual) instruction is given with appreciation for the cultural heritage of such children" and created a national advisory council on bilingual education.⁷³ In 1975, the federal government

⁶⁹ "TYPES OF EDUCATIONAL OPPORTUNITIES DISCRIMINATION," U.S. Department of Justice(website), accessed June 30, 2021, <https://www.justice.gov/crt/types-educational-opportunities-discrimination>.

⁷⁰ M. Reyes Mazon, Alberto Ochoa and Harriett Romo, *Overview of the Lau Center Technical Assistance Process and the Office for Civil Rights Task Force Remedies*, Phase I Manual, (San Diego, CA: The Institute for Cultural Pluralism, July 1, 1976), 36.

⁷¹ James Crawford, "Bilingual Policy Has Taken Shape Along Two Federal Tracks," *Education Week*, April 01, 1987, <https://www.edweek.org/teaching-learning/bilingual-policy-has-taken-shape-along-two-federal-tracks/1987/04>.

⁷² Ling-Chi Wang, "Lau v. Nichols: History of A Struggle for Equal and Quality Education," in Nakanishi and Yamano, eds, *The Asian American Educational Experience: A Sourcebook for Teachers and Students*, 84.

⁷³ "What Lawmakers and the Courts Have Said About the Education of Linguistic minorities," *Education Week*, February 08, 1984, unknown page.

filed a policy-clarification report, known as the “Lau remedies,” and ruled three acceptable plans for schools: bilingual-bicultural, multilingual-multicultural, and transitional bilingual education.

Lau’s legacy extends beyond just education to political fields. As a political science study shows, “linguistic minorities have a more difficult time completing and having their absentee ballots counted than native English speakers.”⁷⁴ Tova Wang, in her book *The Politics of Voter Suppression*, claims, “studies have shown that when language assistance is not made available to these voters, they are much less likely to participate. By contrast, where bilingual services are offered, participation rates are higher.”⁷⁵ Therefore, the English-only ballot was one of voter suppression. Wang persuaded Senator Alan Cranston of California to add the requirement of bilingual ballots to the Voting Rights Act of 1975.⁷⁶ The Voting Acts of 1965 only stated the principle of protecting non-English-speaking citizens’ voting right without a practical remedy.⁷⁷ Therefore, they amended the Voting Rights Act by adding Section 203. This section provided language minority groups with translated ballots.⁷⁸

Bilingual education is not no-English education. Opponents’ common propaganda against bilingual education was criticizing bilingual education’s retreat from Americanization. However, bilingual education trained bi-cultural Americans, which was exactly the quality of an American. In 1984, Californian Proposition 38 required California Governor to write to U.S. President

⁷⁴ Michael Alvarez, Thad Hall, and Betsy Sinclair, “Whose Absentee Votes Are Counted: The Variety and Use of Absentee Ballots in California,” CalTech/MIT Voting Technology Project, July 2005, in Tova Wang, *The Politics of Voter Suppression: Defending and Expanding Americans’ Right to Vote* (Ithaca, NY: Cornell University Press, 2016), 140.

⁷⁵ Tova Wang, *The Politics of Voter Suppression: Defending and Expanding Americans’ Right to Vote* (Ithaca, NY: Cornell University Press, 2016), 147.

⁷⁶ McPherson, 93.

⁷⁷ “Transcript of Voting Rights Act (1965),” the Avalon Project at Yale Law School, accessed on June 30, 2021, <https://www.ourdocuments.gov/doc.php?flash=false&doc=100&page=transcript>.

⁷⁸ “SECTION 203 OF THE VOTING RIGHTS ACT,” U.S. Department of Justice (website), accessed May 5, 2021, <https://www.justice.gov/crt/language-minority-citizens>.

requesting that voting materials be in English only was on the ballot. Commentator Guy Wright supported this backlash and claimed, *Lau* was abusive to justify “federal edicts that made bilingual education the only choice and even decreed that ‘bilingual’ teachers do not need to know English.”⁷⁹ He appealed to Californian voters to approve of this Proposition. They did, but this letter to U.S. President seemed not effective.

Lau also encouraged Chinese immigrants to challenge English as a precondition of U.S. citizenship. All non-English-speaking U.S. permanent resident aliens must pass the civics tests in English to get citizenship. In 1971, motivated by the success of *Lau*, Steinman worked with Chinatown-North Beach office of the San Francisco Neighborhood Legal Assistance Foundation to file *Look v. Farrell* at the U.S. District Court for the Northern District of California. They claimed, English “is totally unrelated to the rights and duties attributable to the status of United States citizenship.”⁸⁰ They are required to take civics tests in their native languages. Nevertheless, this challenge failed. Today, only qualified seniors can be exempt from the English language requirement in civics tests.⁸¹

Nativists’ Backlash: Supreme Court and White House’s Compromise

The victory of *Lau* was temporary because federal and local governments, as well as Supreme Court in 2001, compromised to nativists’ appeals to maintain American linguistic homogeneity. Officials, up to U.S. Presidents, down to SFUSD, rarely guaranteed bilingual education programs. SFUSD procrastinated implementing *Lau*’s decision until the late 1970s.

⁷⁹ Guy Wright, “A Bilingual Boy,” *San Francisco Sunday Examiner and Chronicle*, May 13, 1984, B9.

⁸⁰ “English Challenged as Condition of Citizenship,” *San Francisco Chronicle*, February 25, 1971, 2.

⁸¹ “Exceptions and Accommodations,” United States Citizenship and Immigration Services (website), accessed June 30, 2021, <https://www.uscis.gov/citizenship/exceptions-and-accommodations>.

And only a rescinded proposal attempted to popularize bilingual education at the federal level. Nativists lobbied Californian voters to abolish bilingual education in 1998 and the Supreme Court to abrogate *Lau* in 2001.

The Supreme Court did not clarify the specific remedy in their opinions on *Lau*, which laid a foundation for the slow implement of bilingual education. Steinman did not require specific remedy in his petition because he would like amici curiae to specify remedies. However, the Supreme Court only ruled school districts to take “affirmative steps” to open bilingual instructional programs and asked the trial court, where a racist judge ruled, to design appropriate relief. A year after *Lau*’s decision, there were still between “1,900 and 2,500 students in the SFUSD (Out of an estimated total of 10,000) who were not being served by either bilingual or ESL classes.”⁸² Steinman was not surprised at “the slowness of the board in implementing it; it reflects that they don’t feel a unanimous opinion of the U.S. Supreme Court has any authority.”⁸³

To accelerate it, Wang pushed the Superintendent of SFUSD to appoint a bilingual task force.⁸⁴ Wang contacted fifty parents from Chinese, Spanish, and Japanese-speaking communities to make it up. The task force consulted with linguistic experts to make a master plan approved by the City’s Board of Education. The master plan required school districts to survey, identify and implement appropriate bilingual programs (details in Appendix). However, as Wang claimed, the SFUSD had not accepted the master plan until 1976.

⁸² Dexter Waugh, “Bilingual Education: 2 years later,” *San Francisco Chronicle*, February 1, 1976, 23.

⁸³ Dexter Waugh, “Bilingual Education: 2 years later,” *San Francisco Chronicle*, February 1, 1976, 23.

⁸⁴ Ling-Chi Wang, “Lau v. Nichols: History of A Struggle for Equal and Quality Education,” in *Counterpoint: Perspectives on Asian Americans*, ed. Emma Gee et al., (Los Angeles: Asian American Studies Center, UCLA, 1976), 250.

Linguistic experts also confirmed the effect of bilingual education. In 1966, National Education Association's conference in Tucson, Arizona, "marked the birth of the 'bilingual movement.'"⁸⁵ Conference participants discussed and agreed on the role of bilingual education in integrating non-English-speaking students.

However, some American politicians insisted that immersive English instruction was more efficient and less expensive. They thought bilingual education might spoil students. In fact, they ignored that the aim of bilingual education was not only to teach students English but to preserve their primary cultures. In 1981, some groups advocating for "English Only movement" introduced a Constitutional Amendment to make English the United States' official language. They argued that immersive education would be better than bilingual education. The immersive education was essentially similar to the "sink or swim" approach. Lau himself actually disagreed with the necessity of bilingual education. He recalled he could not catch up with the class because he was lazy, "it's nothing to do with understanding what an instructor's saying."⁸⁶ Although this movement failed, it revealed that language had been used as a weapon of xenophobia.

From Wang's recall, no U.S. President took actions to enforce Lau remedies except a political move to win Hispanic support by Carter. In the summer of 1980, a tense time of the Presidential election of 1980, the Carter Administration proposed a regulation even more

⁸⁵ James Crawford, *Bilingual Education: History, Politics, Theory, and Practice*, 3rd ed. (Los Angeles: Bilingual Educational Services, Inc., 1995), 41 in McPherson, 33.

⁸⁶ Cynthia Gorney, "The Suit That Started It All, The Lau Case: When Learning in a Native Tongue Became a Right," *The Washington Post*, July 7, 1985, A12.

prescriptive than the *Lau* remedies.⁸⁷ Reagan's administration rescinded this proposal less than two weeks after they took office.

However, in 1998, California voters abolished bilingual education with the approval of Proposition 227. Education scholar James Crawford explain it for two reasons: anti-immigrant sentiment and proponents of anti-bilingual education' assault.⁸⁸ Californian schools have to apply for waivers if they want to teach bilingual courses.

What's worse, in the Supreme Court's 5-4 decision in *Alexander v. Sandoval* (2001), the major opinion delivered by Justice Antonin Scalia rejected private individuals to enforce federal agencies to provide bilingual services. A Spanish-speaking individual, Sandoval, sued the Alabama Department of Public Safety who administered state driver's license examinations only in English. "Sandoval argued that the English-only policy... had the effect of subjecting non-English speakers to discrimination based on their national origin."⁸⁹ Nevertheless, Alexander's major opinion analyzed Section 602 of the Civil Rights Act, which is an implementation to authorize federal agencies "to effectuate the provisions of [§601] ..." by issuing regulations.⁹⁰ The major opinion interpreted Section 602 as to proscribe activities that have an intentional disparate impact on racial groups. Scholars think "intentional discrimination" is "a more difficult

⁸⁷ Lawrence Feinberg, "Reagan Denounces Carter's Proposed Rules on Bilingual Education," *Washington Post*, March 4, 1981, <https://www.washingtonpost.com/archive/local/1981/03/04/reagan-denounces-carters-proposed-rules-on-bilingual-education/6c272104-174c-41cc-bcb6-16b946503184/>; Judith Valente, Mrs. Carter, Education Chief Visit Bilingual Oyster School, *Washington Post*, May 8, 1980, <https://www.washingtonpost.com/archive/politics/1980/05/08/mrs-carter-education-chief-visit-bilingual-oyster-school/0440affc-16ae-4560-a634-8b73a1e78870/>.

⁸⁸ James Crawford, *At War With Diversity: US Language Policy in An Age of Anxiety* (Buffalo, NY: Multilingual Matters, 2000), 104.

⁸⁹ <https://www.oyez.org/cases/2000/99-1908>

⁹⁰ Antonin Scalia, Opinion of the Court, *Alexander v. Sandoval*, 532 U.S. 275 (2001), <https://www.law.cornell.edu/supct/html/99-1908.ZO.html>

standard to prove.”⁹¹ Therefore, this regulation implicitly undermined the theoretical foundation of *Lau*. Steinman admits *Alexander* “implicitly rendered the Lau case as no longer good law.”⁹² Furthermore, the major opinion argued that Section 602 does not confer a private right of action to enforce agencies to issue disparate-impact regulations. By contrast, dissent opinion delivered by Justice John Stevens points out that “Section 602 exists for the sole purpose of forwarding the antidiscrimination ideals laid out in Section 601.”⁹³

Nevertheless, *Lau*’s legacy on bilingual education is unquenchable for two reasons. First, a federal law, the Equal Education Opportunity Act of 1974, legalized bilingual education and recognized its necessity. *Alexander* did not overthrow this Act. Second, education scholars acknowledged *Lau* as a turning point in the development of bilingual education. Bilingual teachers “were not permitted but also required to educate” non-English-speaking students since *Lau*.⁹⁴ The Supreme Court’s decision stimulated both legislative efforts and the popularization of bilingual programs all over the country.

⁹¹ Helen Tran and Déodonné Bhattarai, From Lau v. Nichols to the Affordable Care Act, *Asian American Policy Review*, vol. 24, 2013, 11, <https://aapr.hkspublications.org/2014/05/31/233/>

⁹² Edward Steinman, “Re: [External] Re: Request for oral history interview,” email from Shouyue Zhang to Edward Steinman, June 4, 2021.

⁹³ John Stevens, Dissent, *Alexander v. Sandoval*, 532 U.S. 275 (2001), <https://www.law.cornell.edu/supct/html/99-1908.ZD.html>

⁹⁴ Charles L. Glen, *Bilingual Education*, in *Encyclopedia of Educational Reform and Dissent 2*, (Sage Publications, Inc., 2010), 97.