

Lone Citizen Defends Official English Movement

By John Tanton

In November 1988, Proposition 106, English as Arizona's official language, became Article XXVIII of the Arizona Constitution via the citizen initiative process. Within hours of its passage, Maria - Kelly F. Yniguez, a state employee, filed suit in Federal Court alleging violation of her First Amendment right of free speech. Federal District Judge P. G. Rosenblatt ruled Article XXVIII was an unconstitutional violation of the First Amendment. Governor Rose Mofford declined to appeal; the Attorney General had already been excused, leaving no one to defend the measure. The will of the people be damned.

As chairman of Arizonans for Official English (AOE), the committee that carried the initiative to the ballot, Robert Park asked Judge Rosenblatt to allow him to intervene post-judgment for the purpose of making an appeal. The motion was denied. Park appealed Rosenblatt's decision to the U.S. Ninth Circuit Court of Appeals. Judge Stephen Reinhardt, writing for the court, granted Park's motion.

The Yniguez case was accepted for review by the U.S. Ninth Circuit Court of Appeals. On December 7, 1994, Judge Reinhardt, writing for a three-judge panel, struck down Article XXVIII as unconstitutional in its entirety. Rehearing *en banc* has been granted (also a very rare occurrence). Oral arguments are set for July 21, 1995 in San Francisco before an eleven-judge panel.

The importance of this legal case is simple: short of a constitutional amendment, no amount of lobbying, letter writing, political influence or legislative action can make English our official language; success comes only in the courts, which have the final say. ■

[Mr. Park is chairman of **English Language Advocates** (ELA), the only group lending financial support to the case. For more information, contact Mr. Park directly at 4870 Butterfly Drive, Yavapai Hills, Prescott, AZ 86301, (502) 778-5811.]

"How common is it for a private citizen to be left as the sole defendant of a state's constitution? The answer, according to Park's attorney: 'It almost never happens...'"

(ela logo)

In granting Park standing, Judge Reinhardt cited four criteria: (1) timeliness (of the lower courts denial); (2) Park's interest in the subject matter of the litigation; (3) absent intervention the party's interest may be practically impaired; (4) other parties inadequately represent the intervenor. As described above, (AOE and Park) were found to have standing on all accounts. They were not, as Yniguez asserted, "mere bystanders."

How common is it for a private citizen to be left as the sole defendant of a state's constitution? The answer, according to Park's attorney: "It almost never happens — it is very, very rare. You must walk in the shoes of the legislature to qualify...." Judge Reinhardt wrote, "AOE, ... as principal sponsor of the initiative, stands in an analogous position to a state legislature." Ordinarily the state would defend its own Constitution. For the reasons mentioned above, Park is the only one with legal standing.