

Robert Park is chairman of English Language Advocates (ELA), 4870 Butterfly Drive, Yavapai Hills, Prescott, AZ 86301; voice and fax: (502) 778-5811.

The Status of "Official English"

By Robert D. Park

What's new on the language front? Recent weeks have seen a great deal of political interest focused on so called "Official English", a term that means different things to different people. A court has given it new and far reaching meaning.

In his book *To Renew America*, Newt Gingrich, Speaker of the U.S. House of Representatives, refers to "English as the American language" and speaks of the dangers of bilingualism, but he doesn't go so far as to promote "official English" legislation.

On the other hand Peter Brimelow, in *Alien Nation: Common Sense About America's Immigration Disaster*, addresses the need for an English language requirement for potential immigrants which he believes would make Americanization easier and would result in doing away with bilingual education. "A Constitutional amendment making English the official language could be a decisive step," he writes.

Presidential candidates, notably Bob Dole and Pat Buchanan, have voiced the need for an official language. In his speech before the American Legion national convention Dole warned of "ethnic separatism" but seemed to focus on the need to teach English to immigrant youngsters.

Buchanan said that if elected he will order the Justice Department to back Arizona's "English only" law. Looking to Quebec, he said "I think we need English as a common bond and a common language."

Nothing in recent years, however, focused more attention on the hazards of language separatism than the October 30, 1995 vote in Quebec on the issue of secession from Canada. In the narrowest of outcomes, a slim loss for the separatists, leaves that troubling question for another time.

Meanwhile, Judge Stephen Reinhardt of the U.S. Ninth Circuit Court of Appeals, writing for the majority in a 6 - 5 split, set the record straight on October 5, 1995 in *Yniguez v. Arizona*. It seems that everyone, heretofore, has missed the point. In clear terms and for the first time in jurisprudence, he ruled that "...language is by definition speech, and the regulation of any language is the regulation of speech."

Thus, at least for the moment, as to the question of whether the people, acting directly (via initiative as in Yniguez) or through a legislative body, may determine the language to be used in government functions, the answer is, according to Judge Reinhardt, no! The First Amendment protects a government employee in the choice of language for all official functions.

In a dissenting opinion Circuit Judge Alex

Kozinski called this an extraordinary ruling with explosive and far-reaching consequences. Judge Kozinski points out that employees may force their employer into federal court to prove, to the exacting standard of the First Amendment, that its interest in enforcing its rules outweighs the employees' right not to make statements they find objectionable. In his dissenting opinion Judge Kozinski wrote:

Mana-Kelly Yniguez was hired by the State of Arizona to perform various functions connected with processing medical malpractice claims. The people of Arizona - Yniguez's ultimate superiors - then augmented her duties: they charged her with promoting English by using only that language for official business.... What Yniguez says, and in what tongue, is thus, no longer a business judgement by her employer; it's a constitutional question.

Alluding to "zillions" of other government employees, Judge Kozinski gives other examples:

- A city adopts a bilingual policy to give non-Anglophone residents better access to government services, but an employee claims a First Amendment right to speak only English. In his view, use of other language denies minority groups a fair opportunity to assimilate;

- A deputy sheriff thinks the Miranda warning is silly and tells suspects, "Lawyers are slimeballs. Fess up, and the judge'll go easy on you."

Stay tuned. With the support of English Language Advocates, petition for certiorari is being filed. ■