

## Court Strikes Down Arizona Official English Law

On December 7, 1994, a federal appeals court in San Francisco struck down the Arizona Official English constitutional amendment, saying that government employees have a First Amendment-protected right to choose the language they will use on the job. The U.S. District Court of Appeals for the Ninth Circuit decided that a government may "encourage" the use of English by government workers performing official actions, but may not compel it.

The constitutional amendment was adopted by the voters in November 1988 after an initiative drive led by Arizonans for Official English. The initiative declared English the official language of Arizona, and said that almost all official actions had to be in English. Government workers were required to use English for official acts.

Four Arizona courts have upheld the constitutionality of the initiative. The Arizona Attorney General has also said that the initiative was constitutional if it only applied to official acts.

The day after the election, Maria-Kelly Yniguez filed suit in federal court to have the law declared unconstitutional. Yniguez was a state worker who wanted to write official documents in Spanish even though her supervisor couldn't read Spanish.

The federal trial court in Phoenix agreed with Yniguez and declared the initiative unconstitutional in 1990. The then-governor of Arizona, Rose Mofford, who had opposed the Official English initiative, refused to appeal the decision. Arizonans for Official English and its chairman, Robert Park, then intervened in the case to defend its initiative.

The appeals court decision, written by Judge Stephen Reinhardt, is the first to find a First Amendment right to choice of language on the job. Reinhardt found that choice of language is speech, protected by the First Amendment. "Language is by definition speech, and the regulation of any language is the regulation of speech." Yet most observers believe that the First Amendment protects only the *content* of speech, not the mode of expression.

Reinhardt also said that a state must provide services in a language other than English if it is "normal" to do so, and if government services claimants want those services. Many other courts have found that in the Equal Protection and Due Process clauses of the Fourteenth Amendment do not require government to provide services in languages other than English. Reinhardt overruled these 14th Amendment cases in his decision.

Reinhardt declared that providing non-English information protects the claimants' "right to receive" information. Prior cases held that the "right to receive"

information applies only to commercial advertising, not to government services.

This new First Amendment right to choice of language will affect every language-related law in the country. Current non-English activities (like bilingual education and bilingual ballots) would be protected by the new First Amendment rights. Current state declarations that English is the official language would be vulnerable to lawsuits that they unconstitutionally affect government workers' free speech rights. New Official English declarations would be barred by the first amendment.

This is not Reinhardt's first attempt to strike down an official English rule. In 1988 and 1993, he wrote opinions which would have allowed employees to hurl racist insults in Spanish at their co-workers. In the 1988 case, involving an Orange County, California municipal court clerk, Reinhardt suggested hiring bilingual supervisors to replace the African-American employees who were concerned about the racist insults. Both earlier Reinhardt opinions were rejected by the U.S. Supreme Court.

Arizonans for Official English Chairman Robert Park says he intends to appeal Judge Reinhardt's decision to the U.S. Supreme Court, if necessary. As a first step, Arizonans for Official English has asked other judges on the 9th Circuit Court of Appeals to review Judge Reinhardt's decision.

Mr. Park is also chairman of English Language Advocates (ELA). He may be reached at 4870 Butterfly Drive, Yavapai Hills, Prescott, AZ 86301. Phone (602) 778-5811, fax (602) 778-2432. Tax-deductible contributions to ELA to pay for the appeal are urgently needed and may be sent to ELA, 316½ E. Mitchell St., Suite 4, Petoskey, MI 49770. Copies of the court's 23-page decision are available for \$5.00.