IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ROSS C. "ROCKY" ANDERSON, ROBERT "ARCHIE" ARCHULETA, PETE SUAZO, JESSIE GARCIA, MARK MARYBOY, JAMES YAPIAS, UTAH HISPANIC CHAMBER OF COMMERCE, MULTICULTURAL LEGAL CENTER, and ALICIA ALVAREZ,	:	MEMORANDUM DECISION
Plaintiffs,	:	CASE NO. 000909680
vs.	:	
STATE OF UTAH, MICHAEL O. LEAVITT, Governor, and JAN C. GRAHAM, Attorney General,	:	
Defendants.	:	

BACKGROUND

In the November 2000 general election, the voters of Utah approved by a two-to-one margin Initiative A. This initiative, which bore the title "Declaring English the Official Language of Utah", became codified as Utah Code Ann. §63-13-1.5 (the "Act"). Prior to the effective date of the Act, plaintiffs challenged its constitutionality through this lawsuit which seeks declaratory and injunctive relief.

Plaintiffs are elected officials, government employees, a citizen with limited English proficiency, and non-profit organizations which promote multi-lingual communication with government. In December 2000, I issued a preliminary injunction blocking implementation of the Act. A trial was held on January 30 and 31, 2001.

Plaintiffs claim that the Act is unconstitutional on its face. They claim that it impermissibly restricts the expressive conduct of governmental officials by prohibiting them from communicating with constituents and clients in languages other than English. Plaintiffs also claim that the Act invades the constitutional rights of non-English speaking persons by denying them the means to communicate with government effectively at all levels. I conclude that the plain language of the Act yields an interpretation which causes no unlawful interference with protected expressive activity.

Although plaintiffs attack the constitutionality of the Act on many fronts, the analysis of their claim should clearly begin with their assertion that the Act "gags" government officials and employees who would otherwise communicate fully with constituents or clients. (Plaintiff's Memorandum in Support of Motion for Temporary Restraining Order, at 11). Much of plaintiffs' argument and analysis is borrowed from the challenge to Arizona's ill-fated constitutional amendment which mandated that all government

officials and employees performing government business "act" in English. The amendment was struck down by the Arizona Supreme Court in Ruiz v. Hull, 957 P.2d 984 (Ariz. 1998), on multiple grounds, all of which have found a home in plaintiffs' briefs. Plaintiffs' central premise is that the Utah Act is the evil twin of Arizona's amendment. As I will discuss more fully below, this premise is false. The Ruiz court determined that "[e]xcept for a few exceptions, the Arizona amendment prohibits all elected officials from acting in a language other than English while carrying out governmental functions and policies." Id. at 998. The Act does not contain the proscriptive elements which made the Arizona amendment offensive. It is, in all but one minor respect, descriptive rather than proscriptive, prohibitive of nothing, and therefore does not jeopardizes any communication between government officials and employees.

Any constitutional handicap imposed on constituents of government officials and employees is a derivative one. If no burden is placed on the ability of governmental officials and employees to communicate with constituents, those constituents cannot be the victims of unconstitutionally discriminatory

treatment based on speech.[1] Because I find that the Act does not compromise the free-speech rights of government officials and employees, I conclude that the Act does not discriminate against those who seek to communicate with government officials and employees.

ANALYTICAL MODEL

I am guided to these conclusions through the application of the so-called "overbreadth" doctrine and its tool kit of principles developed to assess facial challenges to statutes based upon First Amendment free-speech grounds. In general, courts have a responsibility to honor the power of the ballot by construing statutes, enacted through either legislation or initiative, so as to carry out their intent while avoiding constitutional defects. Logan City v. Huber, 786 P.2d 1372 (Utah Ct. App. 1990). To this end, courts may narrowly interpret statutory language so long as that exercise keeps faith with the plain meaning of statute. Id., at 1375.

As a general proposition, a facial challenge to a statute

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[1]The parties are at odds over the issue of whether a statute which attempts to regulate choice of language implicates speech, and therefore is a fundamental right subject to heightened due process scrutiny. Similarly, the parties have raised the question of whether language is a surrogate for race, a question relevant to the selection of the proper equal protection analysis. I decline to reach either of these issues based on my conclusion that the Act does not compromise free expression.

confronts long odds, "since the challenger must establish that no set of circumstances exists under which the Act would be valid." United States v. Salerno, 481 U.S. 739, 745, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987). The overbreadth doctrine is an exception to this rule. Where free-speech is at issue, a statute may be invalidated for overbreadth if it compromises constitutional guarantees in a substantial number of applications, thereby rendering it "substantially overbroad." State v. Jordan, 665 P.2d 1280 (Utah 1983) (quoting New York v. Ferber, 458 U.S. 747, 771, 73 L. Ed. 2d 1113, 102 S. Ct. 3348 (1982)). When a fair reading of the text of the initiative is subjected to an overbreadth analysis the result is clear: the Act is not substantially overbroad and it is constitutional.

TEXTUAL ANALYSIS

Against this background, I turn to the text of the Act. The primary goal in interpreting statutes is to give effect to legislative intent, as evidenced by the plain language, in light of the purpose the statute is meant to achieve. State v. Burns, 2000 Utah 56, ¶5. Where doubts or uncertainties in the application of a statute or a provision arise, an attempt must be made to resolve them by analyzing the statute in its entirety with a view toward harmonizing its provisions in accordance with the legislative

intent and purpose. Id. at ¶25.

The first four subsections of the Act contain the key components of "official English". They provide:

> (1) English is declared to be the official language of Utah.
> (2) As the official language of this state, the English language is the sole language of the government, except as otherwise provided in this section.
> (3) Except as provided in subsection (4), all official documents, transactions, proceedings, meetings, or publications issued, conducted, or regulated by, on behalf of, or representing the state and its political subdivisions shall be in English.
> (4) Languages other than English may be used when required:
> (a) By the United States Constitution, the Utah State Constitution, federal law, or federal regulation;
> (b) By law enforcement or public health and safety needs;
> (c) By public and higher education systems according to rules made by the State Board of Education and the State Board of Regents to comply with subsection (5);
> (d) In judicial proceedings, when necessary to insure that justice is served;
> (e) To promote and encourage tourism and economic development, including the hosting of international events such as the Olympics; and
> (f) By libraries to:
> (i) collect and promote foreign language materials;
> (ii) provide foreign language service and activities.

The designation of English as the official language of Utah in subsection (1) is clearly symbolic and of no constitutional consequence. Standing alone, it would be at home in the company of

the State flower (sego lily), State gem (topaz), and State cooking pot (dutch oven). Utah Code Ann. tit. 63 §§13-6,-7.1,-7.6 (1997).

Plaintiffs point to the clause in subsection (2) stating that, "[t]he English language is the sole language of government," as a prominent constitutional defect in the Act. The State of Utah and Attorney General have joined plaintiffs in suggesting that this phrase may create an unconstitutional restriction on free-speech. I disagree.

The "sole language of government" clause in subsection (2) can be interpreted in a manner compatible with the structure of the Act as a whole and the protections guaranteed by the Constitutions of the United States and the State of Utah.

The designation of the English language as the "sole language of the government" is expressly limited by the phrase immediately following it, "except as otherwise provided in this section." An assessment of the implications of the "sole language of government" phrase cannot, therefore, be limited to the language of Section (2) standing alone, but rather must consider all relevant provisions of the initiative. When considered in the light of the Act as a whole, the "sole language of government" clause is constitutionally inoffensive.

Subsection (3) of the Act mandates that "all <u>official</u> documents, transactions, proceedings, meetings, or publications

issued, conducted, or regulated by, on behalf of, or representing the state and its political subdivisions shall be in English." (emphasis added). By defining a discreet category comprised of "official" documents, transactions, proceedings, meetings and publications, this subsection recognizes by implication the existence of a category of "unofficial" documents, transactions, proceedings, meetings and publications. Such unofficial documents and acts are free of any language restrictions imposed by the Act.

The Act makes no attempt to define "official." The parties and *amicus curiae* have all taken up the challenge of giving the term meaning. Their labors were unnecessary. I submit that no definition of "official" is necessary in order to achieve a comprehensible and constitutional interpretation of the Act. It is irrelevant for purposes of the Act what type of government documents or acts might be labeled official. The Act simply mandates that if the document or other communication, whatever it may be, is to be eligible for "official" status, it must be in the English language unless it qualifies for exemption under subsection (4). When read in light of subsection (3), the "sole language" clause takes on this less ominous meaning: the official acts of government are limited to those which appear in English unless they fall within an exception under subsection (4).

This classification based interpretation of the Act also renders irrelevant claims that the Act may impermissibly abridge the free-speech rights of government employees. While government may under certain circumstances restrict the speech and expression of its employees, the Act imposes no limitations on employees speech. See, Kelly v. Johnson, 425 U.S. 238, 47 L.Ed 702, 96 S.Ct 1440 (1976). Instead, it merely serves as a tool to classify government speech as either official or unofficial.

The classification of official and unofficial government speech created in subsection (3) of the Act is augmented by subsection (4). Subsection (4) enumerates six categories of government activities in which official communications, of the types listed in subsection (3), can occur in languages other than English.

This court's responsibility to narrow the Act, if possible, and to preserve its constitutionality, requires that the exceptions to potential limitations of free expression be broadly construed. Because I find that the Act generally contains no restrictions on speech, the importance of undertaking close examination of subsection (4)'s exceptions is diminished.

Owing, however, to its provocative presence in the debate surrounding the Act, the fate of non-English communications by employees of the Driver License Division merits specific discussion

in the context of subsection (4). The Drivers License Division is vested with general authority over granting drivers licenses. Utah Code Ann. §53-3-104(1998). The Division is part of the Department of Public Safety. Utah Code Ann. §53-3-12(10)(1998). Subsection (4)(b) of the Act permits the use of languages other than English when required "[b]y law enforcement or public health and safety." Where such a direct nexus exists between the licensing of drivers and the State's public safety mission, the activities of the Division would clearly fall within the broad definition of the "public safety" exception to the Act.

Subsection (6) of the Act restricts the use of State funds for non-English activities stating, "[u]nless exempted by Subsection (4), all State funds appropriated or designated for the printing or translation of materials or the provision of services or information in a language other than English shall be returned to the general fund." This subsection contains the only prohibitory language in the initiative. Although roundabout in its phrasing, this subsection would have the effect of forbidding the expenditure of State money for the translation of unofficial or nonexempt materials into a language other than English. This prohibition does not extend to the political subdivisions of the State which are at liberty to allocate funds to translate materials of any kind into languages other than English.

I conclude that the prohibition on the use of State money for translation services does not raise a constitutional issue meriting relief. By forbidding the expenditure of State funds for the translation of State materials, the Act gives substance to the State's tacit declaration that it does not intend to provide State-sponsored materials in languages other than English. Courts have uniformly upheld the right of governmental entities to reject requests for non-English notices, examinations and other materials. See generally, Soberal-Perez v. Heckler, 717 F.2d 36 (2nd Cir. 1983); Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977); Frontera v. Sindell, 522 F.2d 1215 (6th Cir. 1975). The Act's prohibition on State expenditures for translation services is consistent with this line of cases.

Finally, subsection (7) of the Act expressly preserves rights protected by the First Amendment of the United States Constitution and by Article I, Sections 1 and 15 of the Utah Constitution. Contrary to the plaintiffs' contention that this provision is at best mere surplusage and at worst compounds the Act's vagueness, subsection (7) actually reinforces my conclusion that the Act is descriptive rather than proscriptive. Plaintiffs cite subsection (7) as a "classic example" of Professor Lawrence Tribes' illustration of a vague statute: "It shall be a crime to say anything in public unless speech is protected by the First and

Fourteenth Amendment." Plaintiffs' Memorandum in Support of Motion for Temporary Restraining Order, at 17. (quoting, L. Tribe, American Constitutional Law, §§12-29, 1031 (2nd Ed. 1988)). I find, to the contrary, that the Act's reaffirmation of constitutional guarantees of speech and expression are incongruent with Professor Tribe's example. Subsection (7) underscores effectively the fact that the preceding provisions of the Act are not intended to be proscriptive but merely set out language-based criteria for ascertaining whether a particular government act is official or unofficial.

THE ACT'S PURPOSE AND INTENT

When interpreted in a manner consistent with its plain meaning, the Act fails to portend the dire consequences suggested by the plaintiffs, and does not threaten constitutional rights of non-English speaking persons in the manner found offensive by the Arizona Supreme Court in Ruiz v. Hull, 957 P.2d 984 (Ariz. 1998).[2] An interpretation of the Act which characterizes its content as descriptive rather than proscriptive, suggests that the Act's effect will be largely symbolic. This is not what many of the

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[2]Possibly the most moving words uttered by a President of the United States during the Cold War era were spoken by John F. Kennedy, in German. Had President Kennedy been subject to the Arizona amendment when he stood at the Berlin wall in June 1963 and said "Ich bin ein Berliner," he would have invited a lawsuit or impeachment. Under Utah's Act, the statement would have simply left pundits puzzling over whether the phrase was official or unofficial.

supporters of Initiative A had in mind.

A review of expressions of statutory purpose, although a useful interpretive tool, is subordinate to textual analysis. It takes on increased importance only when statutory language is ambiguous. State v. Burns, ¶25. Divining intent is especially difficult when a law is the product of a passionate initiative process. Initiative A stimulated vigorous and contentious debate. The robust give and take over the merits of the initiative vividly demonstrated our Constitutional guarantees of free expression at work.

What the public debate over the initiative did not do, however, was provide reliable statements of intent which could be used to supplement an interpretation of the text of the Act. Moderation is seldom a hallmark of the rhetoric used by either proponents or opponents of a controversial initiative. Moderation was in scarce supply in the debate over the Act. More evident was the rhetorical ploy, employed by both sides of the debate over the Act, of maneuvering the opponent into appearing extreme, marginalized and out of the mainstream. I therefore reject for interpretive purposes the rhetoric injected into the debate by either side.

Other statements of the Act's purpose are both relevant to and compatible with the plain language interpretation adopted in this

decision. The Act is unique among initiatives because the Utah Supreme Court expressed its views about its purpose before it was passed by the voters.[3] Stavros v.Office of Leg. Research & Gen. Counsel, 2000 UT 63, 402 Utah Adv. Rep. 3. Before the general election, the Act's sponsors challenged the content of the ballot title as prepared by the Office of Legislative Research and General Counsel, claiming that it unfairly characterized the Act. The Supreme Court agreed and rewrote the ballot title to conform to its view of the Act's purpose. As stated by the Court, the purpose of the Act is to "declare English to be the official language for the conduct of government business in Utah." Id. ¶20. This statement of purpose is compatible with a textual interpretation which recognizes an intention to declare English to be the sole language for the conduct of official government business in Utah.

According to the Act's proponents who testified at trial, the more general objectives of the Act are to promote assimilation by encouraging English language acquisition by non-English speakers and to defend the public fisc against demands for translation services. There is nothing in the plain language interpretation of the Act to frustrative these aims.

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[3] The issue decided Court in Stavros did not, of course, require the same method of analysis of statutory intent and language which the Court would have undertaken if faced with a constitutional challenge.

SUMMARY OF DECISION

In summary, the "Official English" Act is constitutional. Under the plain language the Act, government officials and employees are free to communicate with clients and constituents in any language. The Act establishes language-based criteria for classifying communications as official and unofficial, but does not make non-English communications unlawful. The Act is therefore distinguishable from the Arizona amendment which banned much non-English speech by government employees. The Act's prohibition against the allocation of State funds for translation services is a constitutional exercise of its right to decline to accommodate non-English speakers. This prohibition does not extend to municipalities or other political subdivisions.

Based on the foregoing, the preliminary injunction entered in this action is dissolved and plaintiff's Complaint dismissed, with prejudice.

Dated this 5 day of March, 2001.

RONALD E. NEHRING
DISTRICT COURT JUDGE