

SUMMARY OF ARGUMENT

Article 28 of the Arizona Constitution is unlike any other law ever challenged on First Amendment grounds in this Court. It is a sweeping injunction against speech in any language other than English, harming vital First Amendment interests of the public without any record evidence of a compelling, substantial or even rational justification.

On its face, Article 28 explicitly suppresses a vast body of pure speech. Its sweep affects virtually every transaction between non-English speakers and every branch of state and local government in Arizona. Its injunction against speech is indiscriminate and *ex ante*: it effectively precludes non-English speaking Arizonans, whatever their circumstances and needs, from communicating and interacting with their governments, including state and local legislators and their aides, even if the public employees and officials are willing and able to use non-English languages. It attempts to coerce compliance with a linguistic orthodoxy in a manner which actually undermines, rather than promotes, national unity. The extraordinary nature of this law -- whose proscriptions are so remarkably broad and sweeping as to defy the usual First Amendment categories of content and viewpoint neutrality -- warrants strict judicial scrutiny.

Petitioners contend that Article 28 should not be subject to any meaningful scrutiny, because it merely governs the State's speech in "internal operations" over which the government has virtually complete control. However, limiting this case to government control over us speech, internal or other-wise, ignores the most important participants in this First Amendment equation: the non-English speaking members of the public, joint stakeholders in the communications banned by Article 28, who will no longer be able to communicate and interact with the government on an almost limitless range of subjects. Article 28, therefore, strikes at the core of participatory democracy and undermines a fundamental value of the First Amendment -- the facilitation of self governance essential to a democratically organized society.

These burdens, moreover, are selectively and discriminatorily imposed, purposefully falling on a discrete and historically disadvantaged segment of the public -- comprised almost exclusively of ethnic minorities and immigrants -- who are thereby excluded from virtually all communications with government regardless of their importance to the individual.

This case, therefore, is not controlled by the Court's public employee or government speech cases. *Pickering v. Board of Education*, 391 U.S. 563 (1968), and its progeny have all concerned the protection afforded to speech initiated by a particular employee (such as a presentation to the board of education, a complaint to co-workers about working conditions, or writings or speeches to the public). In contrast, Article 28's ban interferes with interactive communications between citizens and their government, and thus directly infringes the First Amendment rights of the public as well as those of public employees or officials. Moreover, unlike *Pickering*, the State does not assert any employment-related justification for Article 28.

Nor does Article 28 embody the government's interest in communicating a particularized message or viewpoint such as the advisability of abortion ([Rust v. Sullivan](#), 500 U.S. 173 (1991)) or the political nature of particular films (*Meese v. Keene*, 481 U.S. 465 (1987)). Rather, it bars an entire medium of speech irrespective of its substantive content or message.

Furthermore, even assuming the government may under certain circumstances restrict public employees from using non-English languages in the course of their duties, Article 28's indiscriminate reach is fatally overbroad. It bars non-English communications not only by Maria-Kelley Yniguez, but also by elected officials communicating with their constituencies, by judges performing marriage ceremonies, and by public teachers, academics, and librarians in and out of the classroom.

Accordingly, the Court's consideration of the constitutionality of Article 28 cannot be constrained by the mechanical application of public employee speech cases nor by the general proposition that the government has significant control over the content of its own speech. Rather, Article 28 must be examined in light of, and subject to searching scrutiny consistent with, the multiple First Amendment interests directly and substantially affected by its sweeping ban. Under this standard -- indeed, even under a less rigorous standard of review -- the asserted justifications for Article 28 are unpersuasive.

Although Petitioners assert that Article 28 will make the government more efficient, the State of Arizona has stipulated that its administrative efficiency and operational effectiveness is enhanced, not impeded, by its employees' ability to use non-English languages in the course of their duties. Indeed, independent of the State's stipulation, Article 28 undermines the asserted governmental interest in ensuring that its communications are "neither garbled nor distorted," [Rosenberger v. Rector and Visitors of Univ. of Va.](#), 515 U.S. , 115 S.Ct. 2510, 2518 (1995), precisely by requiring the State to communicate in a language incomprehensible to non-English speakers.

The general social goals Petitioners advance also fail to withstand scrutiny. Article 28 is not needed to protect English as the State's primary language: English is already spoken by 96% of Arizonans, and English acquisition remains a high priority among immigrants. Nor is Article 28 narrowly, or even reasonably, tailored to enhance English proficiency: it indiscriminately penalizes all non-English speakers by preventing them from interacting and communicating with government regardless of their circumstances or needs. Most importantly, Article 28 does not foster by "persuasion and example" the goal of national unity. See *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 640-42 (1943). Rather, Article 28 is an unconstitutionally coercive measure which categorically disenfranchises a discrete, disadvantaged and vulnerable segment of the population. Ultimately, its imposition of a rigid linguistic orthodoxy not only suppresses constitutionally protected communication in non-"official" languages, but it is divisive and counterproductive to social cohesion as well.