

Approved: _____
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on March 11, 1997 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee: None

Others attending: See attached list

Senator Oleen advised that the first part of the meeting would be devoted to working several bills previously heard by the committee.

Senator Oleen stated that **HB 2108**, pertaining to the Persian Gulf War Syndrome, contained the amendments proposed by the Department of Health and Environment and would be worked by the committee instead of **SB 297** because **HB 2108** had already passed the House and contained the KDHE amendments.

The chair indicated she had visited with the Executive Director of the Kansas Commission on Veteran Affairs about the composition of the advisory board and appointment of its members. Even though it is a non-partisan issue, she suggested the committee might want to consider having the two legislators from both houses represent differing parties.

Senator Biggs stated he saw the bill as totally non-partisan and did not see a need to specify differing parties. He said he preferred to move the bill without further amendments rather than send it to a conference committee.

Senator Oleen advised she had visited with Representative Dan Thimesch, chief sponsor of the House measure, who indicated the bill had initially specified that the appointments of the veterans representatives were at the pleasure of the governor following selection procedures by the American Legion, Disabled American Veterans and the Veterans of Foreign Wars. She said the reason for her suggestions for gubernatorial appointment was to involve both legislative and executive branches and give the Advisory Board more visibility. She explained that the Disabled American Veterans, the American Legion and the VFW each would nominate three individuals, with the governor selecting one from each group.

Senator Harrington questioned whether there was a provision in the bill for reimbursement of expenses of legislators who would serve on the advisory board and whether reimbursement would come from the \$100,000 allocated in the bill. Legislative staff confirmed that the activities of the board would be funded from that source.

Senator Becker moved that the bill be amended to allow for nine members, seven of whom would be appointed by the governor. Senator Schraad seconded the motion.

Senator Becker withdrew his motion and offered a motion calling for the three veteran members to be appointed by the governor. Senator Jones asked that the motion include the provision that two legislators be appointed from different parties. Senator Gooch seconded the motion and the motion carried.

Senator Harrington moved that **HB 2108** be favorably reported to the full Senate as amended. Senator Bleeker seconded the motion and the motion carried.

In regard to **SB 367**, which pertains to mortgage registration fees and the Heritage Trust Fund, Senator

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E-Statehouse, at 11:10 a.m. on March 11, 1997.

In regard to **SB 367**, which pertains to mortgage registration fees and the Heritage Trust Fund, Senator Oleen recalled testimony offered by both proponents and opponents and suggested committee action be taken to formally request the Legislative Coordinating Council to assign the bill for interim study to the Joint Committee on Arts and Culture Resources. She said she had discussed this possibility with members of that committee who indicated they would be willing to give attention to the issue.

Senator Bleeker moved that **SB 367** be recommended for interim study by the Joint Committee of Arts and Culture Resources. Senator Harrington seconded the motion. The motion carried.

Discussion was held on **SB 357** which pertains to certain containers for alcoholic beverages. Senator Oleen stated that, in talking to representatives of both sides and listening to information presented at the hearing on the measure, she found the bill had been introduced with the intention of curtailing underage drinking.

Senator Vidricksen suggested the real issue that should be addressed is the problem of underage drinking---and the courts have jurisdiction there---not penalizing the merchants who sell the product.

Senator Jones recalled that earlier he had spoken against the bill because of the information individuals would be required to provide when purchasing kegs and, at that time, had questioned why gallons would not be labeled as well. He said, however, that would result in the legislature micro-managing businesses.

Senator Gooch moved that **SB 357** be reported adversely to the full Senate. Senator Schraad seconded the motion, and the motion carried.

Senator Oleen advised that **SB 297**, relating to the Persian Gulf War syndrome, would be held in committee until **HB 2108** is processed. Once **HB 2108** becomes law, the committee will take action on **SB 297**.

Senator Oleen distributed copies of a balloon version of **SCR 1606**, a resolution for a constitutional amendment concerning carrying of concealed weapons, (Attachment #1). She said that some found the wording of the initial version confusing; thus the revision was more straightforward and would be more easily understood by the voters. She indicated that, although she did not intend to take action on **SB 21** today, if **SCR 1606** is brought out of committee, debated and passed to be put to the vote of the people, she planned to work both the House bill and Senator Hardenburger's bill and bring them to the floor as implementing legislation so that voters knew the parameters of those who would be allowed to carry concealed weapons, should the constitutional amendment pass favorably by the electorate.

Senator Becker agreed that the revised version of **SCR 1606** was more clear than the original resolution and the explanation statement clarified its intent if it should be brought to a statewide vote, in that a yes vote would mean the voters wanted an expansion of concealed carry weapons, and a no vote would mean the voters did not want an expansion of concealed carry provisions.

Senator Biggs mentioned his only concern with the resolution was the reference to a special election and suggested that language referring to a special election be deleted. He reasoned that the general election would have the greatest turnout and a special election would result in additional expense to taxpayers.

Senator Oleen advised that it was not the intent to hold a special election; that the wording was general language taken from most constitutional amendments. Staff added that a special election would only be called if the legislature voted for one.

Senator Harrington asked for clarification on the chair's intent to work **SB 21**. Senator Oleen advised that it was her intention for the committee to work the bill along with the House version which had passed earlier today, taking into consideration conferees' testimony once the constitutional amendment passed.

Senator Gooch moved that the amendment be accepted as presented. Senator Biggs offered a friendly amendment that reference to a special election be struck. Senator Jones seconded the amended motion, and the motion carried.

Senator Jones moved that **SCR 1606** be favorably reported as amended to the full Senate. Senator Biggs seconded the motion. The motion carried.

Ms. Galligan briefed the committee on current Kansas abortion laws (Attachment #2). Senator Oleen reminded members of the committee of the importance of being familiar with current law prior to hearings scheduled on abortion issues tomorrow. Ms. Galligan explained the history of current abortion laws, saying all provisions were initially enacted in 1992 and have remained substantially the same since then with relatively

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MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E-Statehouse, at 11:10 a.m. on March 11, 1997.

few technical amendments.

Ms. Galligan also reviewed **SB 230**, regarding requirements for informed consent for abortions; **SB 233**, which defines viability as it relates to abortions, and **SB 234** regarding partial-birth abortions, which are scheduled to be heard before the committee March 12 and 13.

In explaining **SB 230**, Ms. Galligan told the committee it would enact a new statute regarding informed consent, repealing current law on informed consent and replacing it with the contents of the bill. She said it would also add a second definition of abortion and define other terms which are not currently defined.

Senator Gooch inquired if the term "unborn" is used in current law, to which Ms. Galligan replied it was not. He then asked if the bill provided for funeral and burial of an unborn child. The chair advised that staff would research that issue and report back to the committee.

The meeting was extended an additional ten minutes to allow for review of **SB 233** and **SB 234**. The chair advised that **HB 2269**, pertaining to a woman's right to know, would be reviewed March 12, prior to opening hearings on the bills.

Ms. Galligan explained that **SB 233** would amend the section of the statute that contains the definitions and would amend, in particular, the definition of viable.

She said **SB 234** would amend the statute that speaks to late term abortions and the definition for partial-birth abortion contained in the bill parallels the definition in the bill passed by Congress in 1997.

Senator Oleen referenced two handouts pertaining to English as the official language bills. The first, dated February 7, 1995, was prepared by the Kansas Legislative Research Department and discusses the costs associated with Non-English language publications and services (Attachment #3). The second handout was a syllabus of the Supreme Court case, *Arizonans for Official English et al v. Arizona et al* (Attachment #4).

The meeting adjourned at 12:20. The next meeting is scheduled for March 12, 1997.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 3-11-97

NAME	REPRESENTING
T. J. Lakin	Sen. Hawley
Jamie R. Bell	Sen. Biggs/Gidycz
Wanda J. PPK	PPK
Cleta Renyer	Right to Life of Mo.
Grant Denny	Sen. Goodwin's office
Jana Bryder	KS NOW
Tina Delabosa	KACHA
Jesse M. Alvarez	KACHA
Nick DUKAN	KS, wine/spirits wholesalers ASSN.
Neal Whitaker	Ks. Beer Wholesalers Assn.
Susan Ruffey	Ks State Historical Society
John Wood	Kansas City Star
John Huang	The Lippo Group
Jeanne Gaudin	KFL
John Peterson	Artensen Busch
Richard	KRLDA

Senate Concurrent Resolution No. 1606

By Committee on Federal and State Affairs

1-31

9 A PROPOSITION to amend article 15 of the constitution of the state of
10 Kansas by adding a new section, relating to certain weapons.

11
12 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
13 *members elected (or appointed) and qualified to the Senate and two-*
14 *thirds of the members elected (or appointed) and qualified to the House*
15 *of Representatives concurring therein:*

16 Section 1. The following proposition to amend the constitution of the
17 state of Kansas shall be submitted to the qualified electors of the state
18 for their approval or rejection. Article 15 of the constitution of the state
19 of Kansas is amended by adding a new section thereto to read as follows:

20 "§ 16. (a) Concealed Firearms. No person shall carry a con-
21 cealed firearm, except that such prohibition shall not apply to:

22 (1) Law enforcement officers;
23 (2) wardens, superintendents, directors, security personnel and keep-
24 ers of prisons, penitentiaries, jails and other institutions for the detention
25 of persons accused or convicted of crime, while acting within the scope
26 of their authority;

27 (3) members of the armed services or reserve forces of the United
28 States or the Kansas national guard while in the performance of their
29 official duties,

30 (4) the manufacture of, transportation to, or sale of firearms to a
31 person described in paragraph (1), (2) or (3);

32 (5) watchmen, while actually engaged in the performance of the du-
33 ties of their employment;

34 (6) licensed hunters or fishermen, while engaged in hunting or fish-
35 ing;

36 (7) private detectives licensed by the state to carry the firearm in-
37 volved, while actually engaged in the duties of their employment;

38 (8) detectives or special agents regularly employed by railroad com-
39 panies or other corporations to perform full-time security or investigative
40 service, while actually engaged in the duties of their employment;

41 (9) the state fire marshal, the state fire marshal's deputies or any
42 member of a fire department authorized to carry a firearm while engaged
43 in an investigation in which such fire marshal, deputy or member is au-

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1 ~~thorized to carry a firearm, or~~

2 ~~(10) special deputy sheriffs.~~

3 ~~(b) The legislature shall provide by law for the regulation of, inspec-~~
4 ~~tion of fees on and training requirements necessary for persons who may~~
5 ~~carry concealed firearms."~~

6 ~~Sec. 2. The following statement shall be printed on the ballot with~~
7 ~~the amendment as a whole:~~

8 ~~"Explanatory statement. This amendment would prohibit the car-~~
9 ~~rying of concealed firearms except by persons specifically desig-~~
10 ~~nated in the constitutional provision.~~

11 ~~"A vote for this proposition would prohibit the carrying of con-~~
12 ~~cealed firearms.~~

13 ~~"A vote against this proposition favors retaining the current status~~
14 ~~of the law under which there is no constitutional provision relating~~
15 ~~to the regulation of concealed firearms."~~

16 ~~Sec. 3. This resolution, if approved by two-thirds of the members~~
17 ~~elected (or appointed) and qualified to the House of Representatives and~~
18 ~~two-thirds of the members elected (or appointed) and qualified to the~~
19 ~~Senate, shall be entered on the journals, together with the yeas and nays.~~
20 ~~The secretary of state shall cause this resolution to be published as pro-~~
21 ~~vided by law and shall cause the proposed amendment to be submitted~~
22 ~~to the electors of the state at the general election in the year 1998 unless~~
23 ~~a special election is called at a sooner date by concurrent resolution of~~
24 ~~the legislature, in which case it shall be submitted to the electors of the~~
25 ~~state at the special election.~~

\$16(a) Concealed Firearms. The legislature shall regulate and provide by law for the carrying of concealed firearms.

may

Sec. 2 The following statement shall be printed on the ballot with the amendment as a whole:

"Explanatory statement. This amendment would direct the legislature to enact a law regulating the carrying of concealed firearms.

"A yes vote for this proposition would favor directing the legislature to enact a law regulating the carrying of concealed firearms.

"A no vote against this proposition favors retaining the current status of the law under which there is no constitutional provision relating to the regulation of concealed firearms."

Revised March 10, 1997
January 26, 1995

CURRENT LAW GOVERNING ABORTION

Abortion Restrictions Imposed

K.S.A. 65-6701 *et seq.*, places restrictions on abortions after the point of viability as that term is defined in the law; requires counseling of minors prior to and counseling after abortions; requires notification of parents or guardians of unemancipated minors, with some exceptions, and creates a judicial bypass procedure; and requires the informed consent of the woman upon whom an abortion is to be performed. The same enactment defined criminal trespass to include interfering with access to health care facilities; repealed the existing crime of criminal abortion; and made other changes to the criminal trespass statute (K.S.A. 21-3721).

1. Post Viability or Late-Term Abortions. Abortions after the point of viability as defined by the law must be performed by a physician. Viability is defined as "that stage of gestation when, in the best medical judgment of the attending physician, the fetus is capable of sustained survival outside the uterus without the application of extraordinary medical means." (K.S.A. 65-6701(f))

Abortion is prohibited when the fetus is viable unless two physicians (a documented referral from a physician, who is not financially associated with the physician performing the abortion is required) determine: (a) the abortion is necessary to preserve the life of the pregnant woman; or (b) the fetus is affected by a severe or life threatening deformity or abnormality. Violation is a class A person misdemeanor, *i.e.*, subject to a maximum fine of \$2,500 or a maximum term in jail of one year, or both. (K.S.A. 65-6703)

2. Parental Notification; Exceptions—Judicial Bypass. Under most circumstances, before a person performs an abortion on an unemancipated minor (under 18), that person or that person's agent must give actual notice to one of the minor's parents or legal guardian. (K.S.A. 65-6705(a))

Parental notice is not required if: (a) the minor declares that her pregnancy was the result of incest (note: the minor must be informed of the physician's duty to report sexual abuse to the Department of Social and Rehabilitation Services); (b) the attending physician believes an emergency exists that threatens the health, safety, or well-being of the minor; or (c) a parent or guardian has signed a written notarized waiver of notice which is placed in the minor's medical record. (K.S.A. 65-6705(j))

A judicial bypass procedure is available for a minor who objects to notification of a parent. The minor, or an adult of her choice, may petition the district court of any county for a waiver of the notice requirement. A minor may participate in the court proceeding on her own

behalf or through an adult of her choice. Counsel must be appointed by the court to represent the minor free of cost. The notice requirement must be waived within 48 hours of application if the court finds by a preponderance of the evidence that the minor is mature and sufficiently well-informed to decide to have an abortion or that parental notice is not in the minor's best interest. (K.S.A. 65-6705(a), (b), and (d))

Any person who intentionally performs an abortion without complying with the notice requirement is guilty of a class A person misdemeanor. (K.S.A. 65-6705(k))

Anyone who willfully discloses the identity of a minor who petitions the court using the by-pass procedure or permits or encourages another to do so is guilty of a class B person misdemeanor, *i.e.*, subject to a maximum fine of \$1,000 or a maximum jail term of six months, or both. (K.S.A. 65-6705(l))

3. Minors—Counseling Prior to and After an Abortion—Emergency Exception. Before an abortion may be performed on a minor, except in emergencies, a counselor is required to provide specified information and counseling to the minor. A parent, guardian, or any person 21 years of age or older who is not associated with the abortion provider and who has a personal interest in the minor's well being, must accompany her and be involved in her decision making process prior to an abortion. Information and counseling must include: (a) options including abortion, adoption, and other alternatives to abortion; (b) an explanation that the woman may change a decision to have an abortion at any time before the abortion is performed; (c) information on agencies available to provide assistance and from which birth control information is available; (d) discussion of the possibility of involving parents or other adult family members in the decision; and (e) the minor's rights in regard to parental notification. Both the minor and counselor are required to sign a statement related to the requirements and receipt of counseling. After an abortion, a counselor must provide counseling to assist a minor in adjusting to any post-abortion problems that the minor may have. (K.S.A. 65-6704)

Pre-abortion counseling is not required in an emergency, which is defined as a situation in which the attending physician believes the health, safety, or well-being of the woman is threatened.

"Counselor" is defined to include a person who is: (a) licensed to practice medicine and surgery; (b) licensed to practice psychology; (c) licensed to practice professional or practical nursing; (d) registered to practice professional counseling; (e) licensed as a social worker; (f) the holder of a master's or doctor's degree from an accredited graduate school of social work; (g) registered to practice marriage and family therapy; (h) a registered physician's assistant; or (i) a currently ordained member of the clergy or religious authority of any religious denomination or society. "Counselor" does not include the physician who performs or induces the abortion or a physician or other person who assists in performing or inducing the abortion. (K.S.A. 65-6701(b))

4. Informed Consent—Emergency Situations. A woman upon whom an abortion is to be performed must give her informed consent prior to the procedure unless an emergency exists. (K.S.A. 65-6706(a))

The informed consent provision requires the physician who is to perform or induce the abortion or another health care provider to inform the woman, in writing, not less than eight hours before the abortion of: (a) the nature of the procedure, and the risks and the alternatives

to the procedure that a reasonable patient would consider material to the decision of whether or not to undergo an abortion; (b) the gestational age of the fetus; (c) the medical risks, if any, associated with terminating or carrying the pregnancy to term; and (d) the community resources, if any, available to support the woman's decision to carry the pregnancy to term. (K.S.A. 65-6706(b))

If a medical emergency compels an abortion to avert the woman's death or avert substantial and irreversible impairment of the woman's major bodily functions, the attending physician, if possible, shall inform the woman of this fact prior to the abortion. (K.S.A. 65-6706(c))

5. Criminal Trespass Expanded. The crime of criminal trespass is defined to include unauthorized entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from a health care facility in defiance of an order not to enter or to leave the land or structure personally communicated by the owner of the facility or other authorized person. (K.S.A. 21-3721(a)(2))

"Health care facility" in this statute means any licensed medical care facility, certificated health maintenance organization, licensed mental health center or mental health clinic, licensed psychiatric hospital, or other facility or office where services of a health care provider are provided directly to patients. (K.S.A. 21-3721(b))

"Health care provider" in this statute means any person: (a) licensed to practice a branch of the healing arts; (b) licensed to practice psychology; (c) licensed to practice professional or practical nursing; (d) licensed to practice dentistry; (e) licensed to practice optometry; (f) licensed to practice pharmacy; (g) registered to practice podiatry; (h) licensed as a social worker; or (i) registered to practice physical therapy.

Criminal trespass is a class B nonperson misdemeanor, *i.e.*, subject to a maximum fine of \$1,000 or a maximum jail term of six months, or both.

6. Local Government Regulation of Abortion Prohibited. Political subdivisions are prohibited from regulating or restricting abortions. (K.S.A. 65-6702(b))

7. Abortion Defined, Birth Control Methods Lawful, Other. "Abortion" is defined to mean the use of any means to intentionally terminate a pregnancy except for the purpose of causing a live birth. Abortion does not include: (a) the use of any drug or device that inhibits or prevents ovulation, fertilization, or the implantation of an embryo; or (b) disposition of the product of *in vitro* fertilization prior to implantation. The use of birth control drugs or devices which prevent ovulation, fertilization, or implantation of an embryo and the disposition of the product of *in vitro* fertilization are lawful and may not be prohibited by the state or any political subdivision. (K.S.A. 65-6702(a))

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

**300 S.W. 10th Avenue
Room 545-N -- Statehouse**

Phone 296-3181

February 7, 1995

RE: Non-English Language Publications and Services

In response to your request for information regarding the state cost of providing services and publications to non-English speaking people, I surveyed several major state agencies that might provide such services or publications. Time did not allow for a survey of all state agencies and facilities. Those agencies contacted included: the Secretary of State, Department of Education, Department of Health and Environment, Department of Social and Rehabilitation Services, Department of Human Resources, Department of Revenue, Board of Indigents' Defense Services, and the Department of Commerce. In addition, the Kansas Advisory Committee on Hispanic Affairs (KACHA) has provided translation services to a variety of state and local agencies at no additional cost to those agencies. A list provided by KACHA is attached.

The table included in this memorandum summarizes the responses to the question about cost of services. I have attached those agencies' responses to questions about non-English services provided and whether those services are provided because they are required by state or federal law or grant conditions. Please note that while American Sign Language is recognized in Kansas law as a language, I did not ask agencies to include expenditures for sign interpreters. From my conversations with you, I assumed that you were not interested in those expenditures. If that assumption was in error, I will be glad to compile additional data regarding American Sign Language. Amounts reported on the survey and statements regarding whether or not provision of these services is discretionary have not been independently verified by this office.

The cost information that those agencies were asked to provide was for additional cost, *i.e.*, over and above what would have been incurred if the publication or service was provided in English. So, agencies were provided with the following example: If you publish an informational brochure in both English and Vietnamese, we are interested in the cost of translation and any publication costs associated with the number of brochures over the number you would have produced if you only published in English. If you would have published 10,000 brochures in an English-only scenario, but published 12,000 in the English/Vietnamese situation, provide for us the cost of translation and production of 2,000 brochures. Likewise, if you would have published 10,000 in an English-only scenario, and simply split that number 9,000 English/1,000 Vietnamese, to reach the targeted population, you would only report the cost of translation (unless additional printing costs can be identified *e.g.*, special typesetting, *etc.*). In regard to services, if you have staff who are fluent in languages other than English, and therefore can provide routine services in those languages without hiring special interpreters, *etc.*, there would be no additional cost. However, if you have to hire translators, you would identify those expenditures associated with those

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translators as "additional." If your agency provides in other languages services that you do not routinely provide in English, the entire cost of that service would be "additional."

Agencies were asked to identify those additional costs as estimated for the current fiscal year (FY 1995) by funding source.

As you can see from the table, total expenditure for these purposes by these agencies is minimal, approximately \$47,000 during the current fiscal year, and most expenditures are of federal funds. Approximately \$23,000 of the total is from the State General Fund.

Not included in this total are expenditures made by grantees of the state who receive federal refugee grant funds. The Department of Social and Rehabilitation Services (SRS) noted in its response to the survey that while there is no federal requirement that services paid for from those funds be provided in languages other than English, the Department has made an effort to encourage grantees to provide services in "a culturally and linguistically appropriate manner." The Department reports that since direct services are provided by grantees rather than by the Department, funds expended by the state to administer those grants are not used to publish or provide services in languages other than English.

From narrative descriptions submitted by these agencies, it would appear that at least some of those expenditures reported are for non-English services that are "discretionary" to the extent that they are not required by state or federal law. However, slightly over \$19,000 of the State General Fund expenditure is for translation services provided through the State Board for Indigents' Defense Services and at the state hospitals. In both instances, there may be legal requirements to provide non-English services when failure to do so could deny those persons' constitutional rights.

In addition to the survey of agencies, I reviewed Kansas statutes to determine whether any state laws include requirements that publications or services be provided in any language other than English, or prohibit participation in certain activities if English language proficiency cannot be demonstrated. Those statutes are summarized below. There are many other statutes that require the use of English for specific purposes.

Please note that in some cases under the statutes summarized below, the responsibility to provide services in languages other than English does not fall to state agencies. For example, providing understandable information to parents of exceptional children is a responsibility of local schools. A survey of those costs would by necessity be more extensive and time consuming. If you are interested in pursuing those data, we can begin that process.

American Sign Language

K.S.A. 72-1119 et seq. American Sign Language is defined in statute as a language. The State Board of Education is authorized to provide for the teaching of American Sign Language in accredited schools. American Sign Language may be used to satisfy the foreign language requirement of the institution.

Education

K.S.A. 72-972. Written notices of proposals to take actions regarding placement in special education must be "written in the principal language of the lawful custodian of the child."

K.S.A. 72-963. Children from homes in which English is not the principal language cannot be assigned to special education services for exceptional children until the child has been given a test reasonably related to the child's cultural environment. That test must be in the principal language used in the home of the child. **Note:** Both of these requirements are for schools, not for the State Board of Education, so any additional costs that might be associated with these statutes do not appear on the attached table.

K.S.A. 39-7,105. Within limits of appropriations, and to the extent permitted under federal law, the training and education portion of KanWork includes English language instruction of non-English speaking participants.

K.S.A. 72-9406. Students who are not able to effectively participate in the minimum competency assessment program because of the inability to read, understand and speak English may be exempted from participation. **Note:** This statute does not require that the competency assessment be conducted in any language other than English.

K.S.A. 72-9501. The State Board of Education is required to adopt criteria and procedures for assessment and identification of limited English proficient pupils and establish standards and criteria for services to be provided to develop the English language skills of those pupils. "Limited English proficient pupils are defined as those pupils whose national origin is not the United States and who because of their inability to speak, read, write and/or understand the English language are excluded from effective participation in the educational programs offered by a school district."

Workers Compensation

K.S.A. 44-5,101. Educational and informational materials provided under the Workers Compensation Act must be available in both English and Spanish.

K.S.A. 44-5,102. The Director of Workers Compensation in the Department of Human Resources is required to make certain information regarding benefits and process under the Workers Compensation Act available in both English and Spanish for self-insured employers.

Administrative and Judicial Proceedings

K.S.A. 75-4351. Interpreters must be appointed for persons whose primary language is not English any time the person is :

- called as a witness before a grand jury;
- involved in a legal proceeding that could result in confinement or penal sanction against the person;
- involved as plaintiff, defendant, or witness in any civil proceeding;
- the principal party in any proceeding before a board, commission, agency, or licensing authority of the state or one of its political subdivisions; or

- prior to any attempt to question or take a statement from a person who is arrested for an alleged violation of a criminal law or any city ordinance.

K.S.A. 75-4355. Recognizes judges' inherent authority to appoint an interpreter in any case.

K.S.A. 42-158. While this statute does not require that services or publications be provided in a language other than English, it provides that persons who are unable to understand English well enough to complete the jury questionnaire must be excused from jury duty.

Pharmacists Licensure

K.S.A. 65-1631. Applicants for pharmacists' license must provide proof of reasonable ability to communicate with the general public in English. The Pharmacy Board may require applicants to pass the test of English as a foreign language as a condition of licensure.

Elections

K.S.A. 25-2706. County election officers are required to post printed instructions to voters in every voting place at every election and in other places designated by the Secretary of State. Those instructions must be printed in English and in a language or languages other than English.

K.S.A. 25-2909. Persons who have difficulty reading English may ask for assistance with voting. (It appears that this provision applies to persons who speak, but do not read English, as well as to those who neither read nor speak English.)

Door-to-Door Sales

K.S.A. 50-640. The sales person in a door-to-door transaction must provide the consumer with a receipt or copy of any contract at the time of execution that is in the same language as the oral sales presentation. A notice of cancellation in the same language as the contract must be attached to any contract for door-to-door sales.

I hope this information is useful to you. If you have any questions, please feel free to call.

Mary K. Galligan
Principal Analyst

MKG/jar

Enclosures

0012810.01(2/7/95(10:51AM))

**STATE AGENCY EXPENDITURES
FOR FOREIGN LANGUAGE SERVICES
FY 1995**

Agency/Program	State General Fund	Other Funds	Source	Total
Department of Education				
Procedural Safeguards		\$ 1,000	Federal	\$ 1,000
Developmental Growth for Children		7,500	Federal	7,500
Subtotal -- Dept. of Education		<u>\$ 8,500</u>		<u>\$ 8,500</u>
Health and Environment				
Pamphlets and brochures		\$ 3,000	Federal	\$ 3,000
SRS				
Income Maintenance application form	\$ 338	\$ 312	Federal	\$ 650
Workforce Development -- administrative hearings and KanWork/JOBS services	1,713	1,687	Federal	3,400
Rehabilitation Services	722	2,667	Federal	3,389
Mental Health and Rehabilitation Services -- state hospitals	8,800			8,800
Subtotal -- SRS	<u>\$ 11,573</u>	<u>\$ 4,666</u>		<u>\$ 16,239</u>
Dept. of Human Resources				
Workers Comp. forms	\$ 500			\$ 500
El Corrido newsletter	200			200
Job Training forms		500	Federal	500
Unemployment brochures		1,000	Federal	1,000
Job Service brochures		1,000	Federal	1,000
Subtotal -- Dept. of Human Resources	<u>\$ 700</u>	<u>\$ 2,500</u>		<u>\$ 3,200</u>
Dept. of Revenue				
Spanish driver license exam book		\$ 1,045	Div. of Vehicles Operating Fund	\$ 1,045
Spanish language classes for employees	415	544	Div. of Vehicles Operating Fund	959
Subtotal -- Dept. of Revenue	<u>\$ 415</u>	<u>\$ 1,589</u>		<u>\$ 2,004</u>
State Board of Indigents'				
 Defense Services				
Translators in felony cases	\$ 10,483			\$ 10,483
Department of Commerce	0	3,745	EDIF	3,745
Department of Transportation	0	0		0
Department of Corrections	0	0		0
Secretary of State	0	0		0
Total for these agencies	<u>\$ 23,171</u>	<u>\$ 24,000</u>		<u>\$ 47,171</u>

SYLLABUS
SUPREME COURT OF THE UNITED STATES

ARIZONANS FOR OFFICIAL ENGLISH ET AL. v. ARIZONA ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95-974. Argued December 4, 1996—Decided March 3, 1997

Maria-Kelly F. Yniguez, an Arizona state employee at the time, sued the State and its Governor, Attorney General, and Director of the Department of Administration under 42 U. S. C. §1983, alleging that State Constitution Article XXVIII—key provisions of which declare English “the official language of the State,” require the State to “act in English and in no other language,” and authorize state residents and businesses “to bring [state-court] suit[s] to enforce th[e] Article”—violated, *inter alia*, the Free Speech Clause of the First Amendment. Yniguez used both English and Spanish in her work and feared that Article XXVIII, if read broadly, would require her to face discharge or other discipline if she did not refrain from speaking Spanish while serving the State. She requested injunctive and declaratory relief, counsel fees, and “all other relief that the Court deems just and proper.” During the early phases of the suit, the State Attorney General released an Opinion expressing his view that Article XXVIII is constitutional in that, although it requires the expression of “official acts” in English, it allows government employees to use other languages to facilitate the delivery of governmental services. The Federal District Court heard testimony and, among its rulings, determined that only the Governor, in her official capacity, was a proper defendant. The court, at the same time, dismissed the State because of its Eleventh Amendment immunity, the State Attorney General because he had no authority to enforce Article XXVIII against state employees, and the Director because there was no showing that she had undertaken or threatened any action adverse to Yniguez; rejected the Attorney General's interpretation of the Article on the ground that it conflicted with the measure's plain language; declared the Article fatally overbroad after reading it to impose a sweeping ban on the use of any language other than English by all of Arizona officialdom; and declined to allow the Arizona courts the initial opportunity to determine the scope of Article XXVIII. Following the Governor's announcement that she would not appeal, the District Court denied the State Attorney General's request to certify the pivotal state-law question—the Article's correct construction—to the Arizona Supreme Court. The District Court also denied the State Attorney General's motion to intervene on behalf of the State, under 28 U. S. C. §2403(b), to contest on appeal the court's holding that the Article is unconstitutional. In addition, the court denied the motion of newcomers Arizonans for Official English Committee (AOE) and its Chairman Park, sponsors of the ballot initiative that became Article XXVIII, to intervene to support the Article's constitutionality. The day after AOE, Park, and the State Attorney General filed their notices of appeal, Yniguez resigned from state employment to accept a job in the private sector. The Ninth Circuit then concluded that AOE and Park met standing requirements under Article III of the Federal Constitution and could proceed as party appellants, and that the Attorney General, having successfully obtained dismissal below, could not reenter as a party, but could present an argument, pursuant to §2403(b), regarding the constitutionality of Article XXVIII. Thereafter, the State Attorney General informed the Ninth Circuit of Yniguez's resignation and suggested that, for lack of a viable plaintiff, the case was moot. The court disagreed, holding that a plea for nominal damages could be read into the complaint's “all other relief” clause to save the case. The en banc Ninth Circuit ultimately affirmed the District Court's ruling that Article XXVIII was unconstitutional, and announced that Yniguez was entitled to nominal damages from the State. Finding the Article's “plain language” dispositive, and noting that the State Attorney General had never conceded that the Article would be unconstitutional if construed as Yniguez asserted it should be, the Court of Appeals also rejected the Attorney General's limiting construction of the Article and declined to certify the matter to the State Supreme Court. Finally, the Ninth Circuit acknowledged a state-court challenge to Article XXVIII's constitutionality, *Ruiz v. State*, but found that litigation no cause to stay the federal proceedings.

Held: Because the case was moot and should not have been retained for adjudication on the merits, the Court vacates the Ninth Circuit's judgment and remands the case with directions that the action be dismissed by the District Court. This Court expresses no view on the correct interpretation of Article XXVIII or on the measure's constitutionality. Pp. 18–35.

(a) Grave doubts exist as to the standing of petitioners AOE and Park to pursue appellate review under Article III's case-or-controversy requirement. Standing to defend on appeal in the place of an original defendant demands that the litigant possess “a direct stake in the outcome.” *Diamond v. Charles*, 476 U. S. 54, 62. Petitioners' primary argument—that, as initiative proponents, they have a quasi-legislative interest in defending the measure they successfully sponsored—is dubious because they are not elected state legislators, authorized by state law to represent the State's interests, see *Karcher*

Sen. Federal & State Affairs Comm
Date: 3-11-97
Attachment: # 4

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v. *May*, 484 U. S. 72, 82. Furthermore, this Court has never identified initiative proponents as Article-III-qualified defenders. Cf. *Don't Bankrupt Washington Committee v. Continental Ill. Nat. Bank & Trust Co. of Chicago*, 460 U. S. 1077. Their assertion of representational or associational standing is also problematic, absent the concrete injury that would confer standing upon AOE members in their own right, see, e.g., *Food and Commercial Workers v. Brown Group, Inc.*, 517 U. S. ___, ___, and absent anything in Article XXVIII's state-court citizen-suit provision that could support standing for Arizona residents in general, or AOE in particular, to defend the Article's constitutionality in federal court. Nevertheless, this Court need not definitively resolve the standing of AOE and Park to proceed as they did, but assumes such standing *arguendo* in order to analyze the question of mootness occasioned by originating plaintiff Yniguez's departure from state employment. See, e.g., *Burke v. Barnes*, 479 U. S. 361, 363, 364, n. Pp. 18–21.

(b) Because Yniguez no longer satisfies the case-or-controversy requirement, this case is moot. To qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed. E.g., *Preiser v. Newkirk*, 422 U. S. 395, 401. Although Yniguez had a viable claim at the outset of this litigation, her resignation from public sector employment to pursue work in the private sector, where her speech was not governed by Article XXVIII, mooted the case stated in her complaint. Cf. *Boyle v. Landry*, 401 U. S. 77, 78, 80–81. Contrary to the Ninth Circuit's ruling, her implied plea for nominal damages, which the Ninth Circuit approved as against the State of Arizona, could not revive the case, as §1983 actions do not lie against a State, *Will v. Michigan Dept. of State Police*, 491 U. S. 58, 71; Arizona was permitted to participate in the appeal only as an intervenor, through its Attorney General, not as a party subject to an obligation to pay damages; and the State's cooperation with Yniguez in waiving Eleventh Amendment immunity did not recreate a live case or controversy fit for federal court adjudication, cf., e.g., *United States v. Johnson*, 319 U. S. 302, 304. Pp. 21–26.

(c) When a civil case becomes moot pending appellate adjudication, the established practice in the federal system is to reverse or vacate the judgment below and remand with a direction to dismiss. *United States v. Munsingwear, Inc.*, 340 U. S. 36, 39. This Court is not disarmed from that course by the State Attorney General's failure to petition for certiorari. The Court has an obligation to inquire not only into its own authority to decide the questions presented, but to consider also the authority of the lower courts to proceed, even though the parties are prepared to concede it. E.g., *Bender v. Williamsport Area School Dist.*, 475 U. S. 534, 541. Because the Ninth Circuit refused to stop the adjudication when it learned of the mooting event—Yniguez's departure from public employment—its unwarranted en banc judgment must be set aside. Nor is the District Court's judgment saved by its entry before the occurrence of the mooting event or by the Governor's refusal to appeal from it. AOE and Park had an arguable basis for seeking appellate review; moreover, the State Attorney General's renewed certification plea and his motion to intervene in this litigation demonstrate that he was pursuing his §2403(b) right to defend Article XXVIII's constitutionality when the mooting event occurred. His disclosure of that event to the Ninth Circuit warranted a mootness disposition, which would have stopped his §2403(b) endeavor and justified vacation of the District Court's judgment. The extraordinary course of this litigation and the federalism concern next considered lead to the conclusion that vacatur down the line is the equitable solution. Pp. 26–30.

(d) Taking into account the novelty of the question of Article XXVIII's meaning, its potential importance to the conduct of Arizona's business, the State Attorney General's views on the subject, and the at-least-partial agreement with those views by the Article's sponsors, more respectful consideration should have been given to the Attorney General's requests to seek, through certification, an authoritative construction of the Article from the State Supreme Court. When anticipatory relief is sought in federal court against a state statute, respect for the place of the States in our federal system calls for close consideration of the question whether conflict is avoidable. Federal courts are not well-equipped to rule on a state statute's constitutionality without a controlling interpretation of the statute's meaning and effect by the state courts. See, e.g., *Poe v. Ullman*, 367 U. S. 497, 526 (Harlan, J., dissenting). Certification saves time, energy, and resources and helps build a cooperative judicial federalism. See e.g., *Lehman Brothers v. Schein*, 416 U. S. 386, 391. Contrary to the Ninth Circuit's suggestion, this Court's decisions do not require as a condition precedent to certification a concession by the Attorney General that Article XXVIII would be unconstitutional if construed as Yniguez contended it should be. Moreover, that court improperly blended abstention with certification when it found that “unique circumstances,” rather than simply a novel or unsettled state-law question, are necessary before federal courts may employ certification. The Arizona Supreme Court has before it, in *Ruiz v. State*, the question: What does Article XXVIII mean? Once that court has spoken, adjudication of any remaining federal constitutional question may be “greatly simplifie[d].” See *Bellotti v. Baird*, 428 U. S. 132, 151. Pp. 30–35.

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69 F. 3d 920, vacated and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.