

SUPREME COURT OF ALASKA

Alaskans for a Common Language, Inc. v. Kritz; Alaskans for a  
Common Language, Inc. v. Alakayak

170 P.3d 183 (Alaska 2007) · No. No. S-10590 · Decided November 2, 2007

SUMMARY

The Supreme Court of Alaska reviewed a challenge to Alaska's Official English Initiative, which required English use in government functions and actions. The court held that part of the statute violated constitutionally protected speech rights but that the unconstitutional portion could be severed, leaving the remainder effective if narrowly construed. The court affirmed in part and reversed in part the superior court's judgment.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                      |
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| COURT                 | Supreme Court of Alaska                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Carpeneti, Justice; Bryner, Chief Justice; Matthews, Justice; Eastaugh, Justice; Fabe, Justice                                                                                                                                                                                       |
| JURISDICTION          | Alaska                                                                                                                                                                                                                                                                               |
| DECIDED               | November 2, 2007                                                                                                                                                                                                                                                                     |
| DOCKET                | No. S-10590                                                                                                                                                                                                                                                                          |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | The appellant challenged a superior court judgment declaring Alaska's Official English Initiative unconstitutional. The Supreme Court of Alaska reviewed the superior court's grant of summary judgment de novo.                                                                     |
| STANDARD OF REVIEW    | Constitutional questions and statutory interpretation are reviewed under the court's independent judgment. Summary judgment is reviewed de novo and is affirmed when there are no genuine disputes of material fact and the moving party is entitled to judgment as a matter of law. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Alaska                                                                                                                                                                                                                        |
| PARTIES               | Alaskans for a Common Language, Inc. v. Moses Kritz and other Kritz appellees, Henry Alakayak and other Alakayak appellees, State of Alaska                                                                                                                                          |

## TOPICS

free speech   first amendment   statutory interpretation   severability   strict scrutiny

## PRACTICE AREAS

constitutional law   civil rights   statutory interpretation   state constitutional law

## QUESTIONS PRESENTED

1. Whether the first sentence of AS 44.12.320 requires English to be used by all government officers and employees in all government functions and actions, rather than only in formal or official acts.
2. Whether the Official English Initiative burdens constitutionally protected speech, petition, and recipient-speech rights under the Alaska and federal Constitutions.
3. Whether the initiative's restrictions satisfy strict scrutiny.
4. Whether the first sentence of AS 44.12.320 is severable from the remainder of the initiative.
5. Whether the second sentence of AS 44.12.320 can be construed narrowly and upheld constitutionally.

## HOLDINGS

1. The first sentence of AS 44.12.320 plainly mandates the use of English by government officers and employees in the performance of their jobs, including communications with English and non-English speakers, except in the specific circumstances listed in AS 44.12.340.
2. The first sentence of AS 44.12.320 burdens constitutionally protected speech and petition rights of non-English-speaking citizens, elected officials, and public employees, as well as recipient speech rights.
3. The Official English Initiative's restriction on language use is subject to strict scrutiny because it is a content-based restriction and operates as a broad speech ban and prior restraint.
4. Although promoting, preserving, and strengthening English, encouraging English proficiency, and increasing governmental efficiency are compelling interests, the initiative's categorical restriction on non-English government communication is not narrowly tailored and therefore violates the federal and Alaska Constitutions.
5. The unconstitutional first sentence of AS 44.12.320 is severable from the remainder of the initiative under the test stated in *Lynden Transport, Inc. v. State*.
6. The second sentence of AS 44.12.320 may be construed to require English in official public documents and records while permitting non-English versions or informal, individually tailored communications so long as English is also used where required.

## KEY QUOTATIONS

*“The first sentence of AS 44.12.320 plainly mandates the use of English by government officers and employees in the performance of their jobs, whether communicating with English or non-English speakers, except in specific circumstances.” (196)*

*“Speech in any language is still speech, and the decision to speak in another language is a decision involving speech alone.” (206)*

*“Because the OEI attempts to coerce its lawful objectives by methods that conflict with the core protections of the United States and Alaska Constitutions, the law cannot withstand constitutional scrutiny.” (209)*

*“Because a portion of the Official English Initiative — the first sentence of AS 44.12.320 — violates the federal and Alaska constitutional rights to free speech and to petition the government, we hold that the Official English Initiative is unconstitutional as enacted.” (215)*

## FACTUAL BACKGROUND

In 1998, Alaskans for a Common Language, Inc. sponsored a ballot initiative requiring English to be used in all government functions and actions, subject to enumerated exceptions. Voters approved the initiative, which became the Official English Initiative and was codified at AS 44.12.300-.390. The plaintiffs included bilingual and non-English-speaking Alaska residents, public officials, employees, and constituents who alleged that the law would impede government communications, public services, and participation in civic life.

## PROCEDURAL HISTORY

After the Official English Initiative was approved by voters and codified at AS 44.12.300-.390, plaintiffs filed actions seeking to block its implementation. The superior court granted a preliminary injunction, later permitted Alaskans for a Common Language, Inc. to intervene, and ultimately granted plaintiffs summary judgment, declaring the initiative void under the Alaska Constitution. The Supreme Court affirmed in part and reversed in part, severing the first sentence of AS 44.12.320, upholding the second sentence under a narrowing construction, and leaving challenges to other provisions for as-applied proceedings.

## DISPOSITION

other

## CASES CITED

- Ruiz v. Hull
- In re Initiative Petition No. 366
- Bond v. Floyd
- Thoma v. Hickel
- Wickwire v. State
- Pickering v. Board of Education of Township High School District 205, Will County, Illinois
- Connick v. Myers
- Yniguez v. Arizonans for Official English
- Meyer v. State of Nebraska
- Lynden Transport, Inc. v. State
- McAlpine v. University of Alaska

- Alaska Action Center v. Municipality of Anchorage
- Sonneman v. Hickel
- State v. Alaska Civil Liberties Union
- Gottschalk v. State

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