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Supreme Court to Hear Arizona ELL Case

The justices accepted appeals of lower-court rulings that Arizona was not adequately funding English-language learner programs under federal law.

By Mark Walsh

The U.S. Supreme Court today agreed to step into a long-running lawsuit in Arizona over funding for services to English-language learners.

The justices accepted appeals from legislative leaders and the state schools superintendent of lower-court rulings that Arizona was not adequately funding ELL programs under federal law. A federal judge has ordered the state legislature to increase funding for such programs or else face fines of as much as $2 million per day.

The Supreme Court ordered an expedited briefing schedule for the appeals, *Horne v. Flores* and *Speaker of the Arizona House of Representatives v. Flores* (Cases No. 08-289 and 08-294), indicating that the justices likely intend to hear arguments by April and decide the case by the end of their term in late June.

“Arizona needs this court’s help to return control over the funding of Arizona’s school programs to where it rightly belongs—out of the hands of a single federal district court judge and back into the hands of Arizona’s democratically accountable officials,” said an appeal written in part by Kenneth W. Starr, a former U.S. solicitor general and independent counsel, on behalf of the legislative leaders.

A separate appeal on behalf of Thomas C. Horne, the state’s superintendent of public instruction, argues that it was the U.S. Court of Appeals for the 9th Circuit, in San Francisco, that went too far last year when it “mandated special statewide funding legislation to benefit ELL” students.

In a twist that shows the complexity of the Arizona case, the state’s attorney general had filed a brief urging the Supreme Court not to review the case, saying Arizona’s unique situation made the case unsuitable for a national precedent on the effects of two federal laws on instruction for English-language learners. Gov. Janet Napolitano, a Democrat who is President-elect Barack Obama’s choice to become secretary of the Department of Homeland Security, battled the legislature and sought more funding for ELL students as the case wore on.

Two Federal Laws

One of those laws is the Equal Educational Opportunities Act of 1974, which requires each state to "take appropriate action to overcome language barriers that impede equal participation by its students in instructional programs."

In a class action brought in 1992 by families in Nogales, Ariz., a federal district judge in Arizona ruled in 2000 that the state violated the "appropriate action" language of the EEOA by failing to provide adequate funding for its ELL instructional methods.

U.S. District Judge Raner C. Collins ruled in 2007 that a law passed by the state legislature that increased ELL funding and made other changes to the state's program did not go far enough. The 9th Circuit court upheld the decision.

In their separate appeals, the state legislative leaders and Mr. Horne argue that the federal No Child Left Behind Act, with its extensive requirements for the states on English-language learners, should trump the Equal Educational Opportunity Act.

"It is both unfair and irrational for the federal government, on one hand, to approve Arizona's ELL programs as effective under NCLB, but, on the other hand, to allow the federal judiciary to rule that Arizona has failed to take 'appropriate action' to assure effective ELL programs under [the] EEOA," says the brief filed on behalf of Mr. Horne.

The Washington Legal Foundation, a conservative legal group in the nation's capital, filed a friend-of-the-court brief urging the justices to take up the case, arguing that the courts' "intrusions" into the state's policies trampled "bedrock principles of separation of power and federalism."

But a brief on behalf of the original plaintiffs, urging the justices not to accept the case, said "the Arizona legislature has spent the past eight years resisting compliance with the district court's lawful order. In prodding the state toward compliance, the district court has repeatedly shown both deference and patience."