

**FOR IMMEDIATE RELEASE****February 23, 2005**

## **COURT URGED TO UPHOLD ARIZONA LAW DENYING WELFARE FOR ILLEGAL ALIENS**

*(Friendly House v. Napolitano)*

The Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit in San Francisco to uphold Proposition 200, an initiative adopted in November by Arizona voters and designed to deter illegal aliens from collecting welfare benefits. WLF is representing the group that sponsored Proposition 200; that group intervened in the case as a defendant, to ensure that a vigorous defense is mounted. The group intervened because the Arizona Attorney General (along with virtually every other senior Arizona official) opposed Proposition 200, so there is some reason to suspect that he may mount a less-than-vigorous defense of the new law.

In a brief filed in *Friendly House v. Napolitano*, WLF argued that Arizona voters are well within their rights in adopting additional measures to ensure that public welfare benefits are not being paid to illegal aliens. WLF argued that because federal law prohibits states from providing welfare benefits to illegal aliens, there can be no objection to taking steps to ensure that the prohibition is enforced. WLF argued that Proposition 200 is neither preempted by federal immigration law nor a violation of the due process rights of state employees or welfare applicants.

The suit challenging Proposition 200 was filed by the Mexican American Legal Defense and Educational Fund (MALDEF) and the American Civil Liberties Union (ACLU) last November. MALDEF's and the ACLU's motion for a preliminary injunction against enforcement of the law was denied in December by a federal district judge in Tucson. MALDEF and the ACLU appealed from that decision. WLF's brief, filed on behalf of Protect Arizona NOW ("PAN," the group that sponsored Proposition 200 and arranged to have it placed on the ballot), argues that the district court's decision should be affirmed.

"Thousands of aliens who are in this country illegally are collecting welfare benefits in Arizona, even though federal law prohibits such payments," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Proposition 200 is an effective means of putting teeth into that prohibition, and thus ensuring that Arizona taxpayers are not forced to provide support to those who are here in violation of American law. Illegal immigration may become a less attractive option if aliens become aware that they cannot collect welfare after coming here illegally," Samp said.

Proposition 200 contains two provisions designed to decrease the likelihood that public welfare benefits will be awarded to illegal aliens. First, it requires state and local governments and their employees to verify both the identity of welfare applicants and their eligibility for benefits before approving a benefits application. Second, it requires employees, if they discover that a welfare applicant has violated federal immigration law, to report that fact to federal immigration authorities. Employees who are aware of such violations but fail to make a report are guilty of a misdemeanor. Proposition 200 also includes provisions regarding voter registration, but those provisions are not at issue in this appeal.

MALDEF and the ACLU make three principal arguments against Proposition 200. First, they argue that Proposition 200 is preempted by federal immigration law. Second, they argue that Proposition 200 violates the due process rights of welfare applicants because it does not provide for appeal hearings for those who lose their benefits as a result of the new law. Third, they argue that Proposition 200 violates the due process rights of state and local government employees because it does not provide them with fair warning regarding precisely what the reporting requirements are, and precisely when they can be subject to criminal prosecution for failure to make required reports.

In its brief, WLF argued that all three arguments are without merit. WLF argued that federal immigration law would preempt Proposition 200 only if there were some indication that Congress did not want the states to take steps to verify the eligibility of aliens seeking welfare benefits. WLF argued that the evidence shows precisely the opposite: Congress has encouraged states to verify that aliens applying for welfare benefits are legally entitled to them. Second, WLF argued that Proposition 200 does not deny due process to welfare applicants because it does not establish any new eligibility requirements; rather, it merely mandates that state and local government employees verify compliance with *existing* requirements. WLF noted that those existing requirements provide a right of appeal to anyone who contests a decision to deny benefits. Third, WLF argued that Proposition 200 provides state and local government employees with more than enough notice regarding the types of reports they are required to make. WLF also argued that the suit should be dismissed because none of the 18 plaintiffs possesses the requisite "standing" for bringing suit.

WLF is a public-interest law and policy center with supporters in all 50 states, including many in Arizona. It devotes a significant portion of its resources to combatting illegal immigration and ensuring that aliens who engage in criminal activities are excluded from American society.

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For further information, contact WLF Chief Counsel Richard A. Samp (202) 588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).