



April 25, 2007

COURT UPHOLDS ARIZONA LAW DESIGNED TO PREVENT ALIEN VOTING *(Gonzalez v. State of Arizona)*

The U.S. Court of Appeals for the Ninth Circuit in San Francisco this week rejected a challenge to Proposition 200, an initiative adopted in November 2004 by Arizona voters. The initiative was designed to prevent aliens from voting.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *Gonzalez v. State of Arizona*, urging that Prop 200 be upheld. The appeals court agreed with WLF that Arizona voters were within their rights in adopting measures designed to prevent election fraud -- including a requirement that those seeking to register to vote must provide documentary proof of citizenship. The court also agreed that these measures violated neither the U.S. Constitution nor the National Voting Rights Act of 1993 (NVRA), which requires all States to permit mail-in voter registration.

The appeals court affirmed a federal district court's decision to deny the plaintiffs a preliminary injunction pending trial. The appeals court held that the plaintiffs had established neither a likelihood of success at trial nor that they were likely to suffer irreparable harm if an injunction pending trial were denied. The case now returns to the district court for a full trial.

WLF is representing Protect Arizona NOW (PAN), the group that spearheaded adoption of Proposition 200; U.S. Representative Trent Franks (Ariz.); and the Allied Educational Foundation. WLF also represented PAN when the case was in the district court and in prior litigation challenging other portions of Proposition 200 that seek to prevent illegal aliens from collecting welfare benefits. WLF prevailed in the prior litigation, and the welfare-related provisions were not at issue in the latest round of lawsuits.

Three separate lawsuits were filed in Phoenix during 2006, challenging Proposition 200's election fraud provisions. Those cases were consolidated, and the Plaintiffs filed motions asking the federal district court judge to issue a preliminary injunction against the election fraud provisions. In September 2006, the plaintiffs filed

appeals from the district court's denial of their motions. WLF filed its most recent brief in opposition to that appeal.

"Evidence suggests that thousands of aliens are improperly registered to vote in Arizona and elsewhere in this country," said WLF Chief Counsel Richard Samp after the appeals court's ruling. "Americans will soon lose faith in the integrity of the election process if States are not permitted to take effective steps to ensure that aliens are not voting," Samp said.

The plaintiffs assert that Proposition 200 imposes onerous documentation requirements that will discourage citizens from attempting to register to vote. In its brief in the appeals court, WLF disputed that assertion, noting that one of the many documents accepted by Arizona election officials as proof of citizenship is a driver's license and that 98% of all Arizona citizens possess at least one of the documents accepted as proof of citizenship. WLF argued that in light of the relatively minor documentation burden imposed by Proposition 200 on prospective voters and Arizona's significant interest in preventing election fraud, Proposition 200 does not infringe on anyone's constitutional right to vote. WLF also argued that while the NVRA (a 1993 federal law often referred to as the "motor-voter" law) mandates that States permit voter registration by mail, nothing in the NVRA prohibits States from requiring anyone registering by mail to attach to his registration form copies of documents (*e.g.*, a birth certificate or a driver's license) evidencing citizenship.

This case had an interesting procedural history while on appeal. In October, the plaintiffs asked the Ninth Circuit to grant an emergency injunction while its appeal was being heard. Without waiting for all defendants to respond to the request, a two-judge Ninth Circuit panel granted the motion. Arizona then sought emergency relief from the U.S. Supreme Court, arguing that the last-minute injunction would create havoc in the upcoming general election. The Supreme Court sided with Arizona, unanimously ruling that the Ninth Circuit had acted improperly in granting an injunction pending appeal.

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 combating illegal immigration and ensuring that aliens who engage in criminal activities are excluded from American society.

* * *

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.