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COURT DISMISSES CHALLENGE TO ARIZONA LAW DENYING WELFARE FOR ILLEGAL ALIENS

(Friendly House v. Napolitano)

The U.S. Court of Appeals for the Ninth Circuit in San Francisco this week dismissed a challenge to Proposition 200, an initiative adopted in November 2004 by Arizona voters and designed to deter illegal aliens from collecting welfare benefits. The decision was a victory for the Washington Legal Foundation (WLF), which has been defending the law on behalf of Protect Arizona Now (PAN), the group that sponsored Proposition 200 and arranged to have it placed on the ballot.

A federal district court in Tucson last December issued a ruling upholding Proposition 200, denying a motion for a preliminary injunction filed by a group of plaintiffs led by MALDEF (the Mexican American Legal Defense and Educational Fund). MALDEF appealed that ruling to the Ninth Circuit. The appeals court did not even reach the merits of MALDEF's appeal; rather, it ruled this week that the plaintiffs lacked "standing" to challenge Proposition 200, because they had not demonstrated that they faced a "genuine threat" of being injured by the law. Based on the absence of standing, the appeals court ordered that the plaintiff's entire lawsuit be dismissed.

The victory was particularly gratifying to WLF because much of its brief filed with the appeals court had focused on the plaintiffs' lack of standing. The State of Arizona also filed a brief defending Proposition 200, but its attorneys did not contest the plaintiffs' standing.

The suit challenging Proposition 200 was filed immediately after voters overwhelmingly approved the initiative in November 2004. The district judge initially granted an order temporarily blocking enforcement of the law, but he lifted that order in December at the time he denied MALDEF's preliminary injunction motion. MALDEF has announced that it may seek further review of this week's decision dismissing its suit, or it may file an altogether new lawsuit. WLF has pledged to continue its efforts to uphold the Arizona law.

"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 reviewing the court decision. "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 to date those provisions have not been extensively litigated.

One issue that has not yet been addressed by the courts is the scope of Proposition 200. Arizona's Attorney General has ruled that Proposition 200 applies only to four very small Arizona programs; he ruled that it does not apply to any welfare program that receives federal funding. WLF attorneys have argued that Proposition 200 was intended to apply to a far greater number of programs. Now that MALDEF's lawsuit has been dismissed, WLF attorneys are looking forward to the opportunity to sit down with the Attorney General to explain to him why Proposition 200 should be interpreted more broadly.

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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.