

**December 31, 2004**

COURT UPHOLDS ARIZONA LAW DENYING WELFARE FOR ILLEGAL ALIENS

(Friendly House v. Napolitano)

The U.S. District Court for the District of Arizona this week upheld Proposition 200, an initiative adopted in November 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 filed a brief in the case, *Friendly House v. Napolitano*, in support of the new law. The court agreed with WLF 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. The court reasoned 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. The court held 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) in November. MALDEF then filed a motion for a preliminary injunction against enforcement of the law; this week's ruling denied that motion. 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), argued that the motion for a preliminary injunction should be denied.

MALDEF has announced that it plans to appeal the ruling to the U.S. Court of Appeals for the Ninth Circuit in San Francisco. WLF has pledged to continue its efforts to uphold the new 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 those provisions were not at issue in this week's ruling.

MALDEF made three principal arguments against Proposition 200. First, they argued that Proposition 200 is preempted by federal immigration law. Second, they argued 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 argued 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 decision, the district court held that all three arguments are without merit. The court agreed with WLF that federal immigration law would preempt Proposition 200 only if there was some indication that Congress did not want the states to take steps to verify the eligibility of aliens seeking welfare benefits. The court found that the evidence showed precisely the opposite: Congress has encouraged states to verify that aliens applying for welfare benefits are legally entitled to them. Second, the court held 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's brief noted that those existing requirements provide a right of appeal to anyone who contests a decision to deny benefits. Third, the court held 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. The court did not address that argument. 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.