



April 18, 2012

COURT STRIKES DOWN A PORTION OF LAW DESIGNED TO PREVENT ALIEN VOTING

(Gonzalez v. State of Arizona)

The U.S. Court of Appeals for the Ninth Circuit in San Francisco, sitting *en banc*, yesterday struck down a portion of Prop 200, an initiative adopted in November 2004 by Arizona voters for the purpose of preventing aliens from voting. An 11-judge panel of the Court upheld a provision requiring voters to show an ID on election day (such as a drivers' license) but by a 9-2 vote struck down a provision requiring those seeking to register to vote to present documentary proof of citizenship.

The decision in *Gonzalez v. State of Arizona* was a partial setback for the Washington Legal Foundation (WLF), which filed a brief urging that Prop 200 be upheld. WLF argued that Arizona voters were well within their rights in adopting measures designed to prevent election fraud. WLF argued 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.

WLF represented Protect Arizona NOW (PAN), the group that spearheaded adoption of Proposition 200; and the Allied Educational Foundation. WLF also represented PAN when the case previously reached the Ninth Circuit in 2007, and in prior litigation challenging other portions of Proposition 200 that are designed 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.

The Ninth Circuit concluded that when Congress adopted the NVRA (also known as the "Motor Voter Act"), it intended to make mail-in voter registration as easy as possible. The NVRA provides that those applying to register by mail must affirm under oath that they are citizens of the United States. The court held that Congress intended thereby to prevent States from imposing additional proof-of-citizenship requirements on those seeking to vote in federal elections. The *en banc* decision upheld a 2010 decision by a three-judge panel of the appeals court, whose members included retired Supreme Court Justice Sandra Day O'Connor, sitting by designation on the appeals court.

Lawsuits challenging Proposition 200's election fraud provisions were filed in Phoenix in 2006. The Plaintiffs' efforts to obtain a preliminary injunction against enforcement were denied by the federal district court, a denial that was unanimously

affirmed by the Ninth Circuit in 2007. Following an August 2008 trial, the district judge issued a final judgment upholding the election fraud provisions in all respects. The plaintiffs appealed from the final judgment. In reversing with respect to the voter registration requirement, the Ninth Circuit refused to follow the 2007 appeals court decision, concluding that the earlier decision was clearly erroneous.

“Evidence suggests that thousands of aliens are improperly registered to vote in Arizona and elsewhere in this country,” said WLF Chief Counsel Richard Samp in response yesterday’s decision. “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 asserted that Prop 200 imposed onerous documentation requirements that discourage citizens from attempting to register to vote and, once registered, from attempting to vote. In its brief in the appeals court, WLF disputed those assertions, noting that one of the many documents accepted by Arizona election officials as proof of citizenship is a drivers’ 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 Prop 200 on prospective voters and Arizona’s significant interest in preventing election fraud, Prop 200 does not infringe on anyone’s right to vote. Although the appeals court disagreed with WLF’s interpretation of the NVRA, it agreed with WLF that Prop 200 does not violate any constitutional rights.

Notably, the NVRA only addresses registration for *federal* elections. Accordingly, Arizona officials are free to continue to enforce Prop 200’s proof-of-citizenship requirement with respect to registering to vote in *state and local* elections. In order to do so, Arizona would need to maintain two sets of voter rolls – one for those eligible to vote in all elections and one for those only eligible to vote in federal elections.

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.

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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.