

IN THE SUPREME COURT OF THE UNITED STATES

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No. \_\_\_\_\_

STATE OF ARIZONA and ARIZONA SECRETARY OF STATE,  
*Applicants*

v.

MARIA M. GONZALEZ, ET AL.  
*Respondents*

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Application to the Honorable Anthony M. Kennedy, Associate Justice of the  
Supreme Court of the United States and Circuit Justice for the Ninth Circuit

Application for Stay of Injunction Pending Appeal in the United States  
Court of Appeals for the Ninth Circuit  
Ninth Circuit Cause Nos. 06-16702 and 06-16706

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## Introduction

Just weeks before Arizona's general election and on the day that early voting began, a panel of two judges from the Ninth Circuit Court of Appeals granted an emergency stay against an Arizona election law (commonly referred to as "Proposition 200") approved by the voters of Arizona in 2004. The law simply requires that voters use any number of commonly-held documents—including documents issued for free—to show that they are who they claim to be when casting a ballot at the polls, and requires satisfactory evidence of U.S. citizenship from people who wish to register to vote in our nation's elections.

The two-judge panel swept aside a September 11, 2006 ruling from the district court in Arizona denying the plaintiffs their motions for preliminary injunction after discovery, voluminous briefing, and a two-day hearing. The panel also enjoined Arizona's laws before the district court issued its findings of fact and conclusions of law, which thoroughly demonstrate that the district court properly denied the preliminary injunction.<sup>1</sup> The district court's denial of the preliminary injunction is now on appeal. The Ninth Circuit panel's decision to enjoin Arizona's law pending resolution of the appeal should be stayed or vacated because the

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<sup>1</sup> The district court issued its findings of fact and conclusions of law on October 11, 2006.

legal issues are of national importance and the injunction issued on the eve of voting runs far afield of the appropriate legal standards. A prompt resolution of this stay application is important because it will determine whether Arizona can implement its law requiring identification at the polls at the November 7 general election.

### **Procedural and Factual Background**

#### *A. Proposition 200 and Its Effect on Arizona Elections.*

Proposition 200 requires that (1) people registering to vote provide evidence that they are citizens of the United States, and (2) voters present identification to show that they are who they claim to be when voting at the polls. (A copy of Proposition 200 is included as App. 7.) Arizona is subject to Section 5 of the Voting Rights Act and, therefore, the new laws and related state and local procedures necessary to implement these laws have been submitted to and precleared by the United States Department of Justice. After the Department of Justice precleared the initiative on January 24, 2005, the State and counties began implementing its requirements.

*1. Proposition 200's Requirement for Satisfactory Evidence of U.S. Citizenship.* United States citizenship is a fundamental qualification for voting in elections. See A.R.S. § 16-101(A) ("Every resident of the state is qualified to register to vote if he . . . [i]s a citizen of the United States.").

Proposition 200 amended A.R.S. § 16-166 to require that an application for voter registration be accompanied by satisfactory evidence of U.S. citizenship.

Under Proposition 200, satisfactory evidence of U.S. citizenship includes: (1) the number of an Arizona driver's or nonoperating identification license issued after October 1, 1996; (2) the number of a driver's or nonoperating identification license issued in another state, if it indicates that the applicant provided satisfactory proof of U.S. citizenship; (3) a copy of a birth certificate; (4) U.S. naturalization documents or the number of an applicant's certificate of naturalization; (5) a Bureau of Indian Affairs card number, Tribal Treaty card number or enrollment number; and (6) a copy of the pertinent pages of an applicant's U.S. passport. *See* A.R.S. § 16-166(F).

In most of these instances, the document itself need not be provided with the voter registration form—the number is sufficient. In addition, voters who are already registered in Arizona are grandfathered in and need take no steps at all. *See* A.R.S. § 16-166(G). Only voters who move from one county to another within the State or who register for the first time in Arizona must present satisfactory evidence of U.S. citizenship. *See id.*

2. *Proposition 200's Requirement for Voter Identification at the Polls.* Proposition 200 also requires voters to present identification before receiving a ballot at the polls. A.R.S. § 16-579(A). Voters can use a variety of commonly held documents to satisfy this requirement. A voter may provide either one form of identification that contains the name, address, and photograph of the elector or two different forms of identification that need only bear the elector's name and address. *Id.* Photo identification is not required.

To implement these provisions, the Secretary of State promulgated a Procedure for Proof of Identification at the Polls (the "Procedure"). (App. 6.) Under the Procedure, the acceptable forms of identification that bear the photograph, name and address of the elector include: a valid Arizona driver's license; a valid nonoperating identification license; a tribal enrollment card or other form of tribal identification; and a valid U.S. federal, state, or local government identification. *Id.*

For those voters who do not possess a photo ID, the Procedure leaves room for many alternative forms of identification that need only contain the elector's name and address. These include: a utility bill that is dated within ninety days of the election; a bank or credit union statement dated within ninety days of the election; a valid Arizona vehicle registration; an Indian

census card; a property tax statement of the elector's residence; a vehicle insurance card; a recorder's certificate; and a valid U.S. federal, state or local government issued identification, including a voter registration card.

*(Id.)*

The Procedure makes clear that the acceptable forms of identification are not limited to the sources listed above. Indeed, to assist voters in complying with the requirements of Proposition 200, county election officials have been sending various forms of election mail that are individually addressed to registered voters. (App. 5 at 3.) The mail is then accepted as a form of identification from voters who wish to cast a ballot at the polls.

3. *The Fail-Safe Measure of Provisional Ballots.* Arizona law does not deprive any voter of the right to cast a ballot. Voters who present valid proof of identification but whose name or address is not consistent with the voter registration rolls are allowed to cast a regular provisional ballot. (App. 6.) The regular provisional ballot is verified by comparing the signatures on the provisional ballot with the voter's signature on file with the counties. Proposition 200 does not require any further action from the voter.

In Arizona, a voter who lacks one or both forms of the required identification also is not turned away. Under a fail-safe measure built into

the Secretary of State's Procedure, that voter may cast what is referred to as a conditional provisional ballot. (*Id.*) The voter who casts a conditional provisional ballot has five business days after a general election that includes an election for federal office, or three business days after any other election, to provide identification at any number of designated sites throughout the counties. (*Id.*) And, of course, the voter may always cast an early ballot.

4. *Early Voting in Arizona.* Under Arizona law, any registered voter may opt to cast an early ballot beginning thirty-three days before a primary or general election. See A.R.S. § 16-541(A). Those ballots are verified by comparing the signature on the outside of the ballot envelope with the voter's signature on file with the county recorders. (App. 5 at 3-4.) Identification is not required for voters casting early ballots. (*Id.* at 3.)

5. *The 2006 Election Cycle.* Early voting for the primary election began August 10, 2006, voter registration closed for that election August 14, and the primary was September 12. Early voting for the general election began October 5, the deadline for registering to vote in the general election was October 9, and the general election is November 7, 2006. (App. 5 at 4.) Leading up to the September 12 primary and the November 7 general elections, State and county officials have engaged in major public information campaigns to make sure Arizonans who do not vote early ballots

know to bring identification to the polls. (App. 5 at 17; Dkt. 159, Ex. 6.)

They have also trained thousands of pollworkers and other election officials across the State regarding the requirements of Proposition 200. (App. 5 at 17.)

*B. Procedural History*

Plaintiffs filed their lawsuit challenging Proposition 200 in May of 2006, within four months of the primary election and some fifteen months after the State began implementing Proposition 200's voting-related requirements. Plaintiffs Gonzalez and others filed a lawsuit in federal district court against the Arizona Secretary of State and all of Arizona's counties seeking a temporary restraining order, preliminary injunction, and permanent injunction. (Case 06-1268, Dkt.1, 3, 7.) Later the Inter Tribal Council of Arizona, Inc. and others ("ITCA Plaintiffs") and the Navajo Nation and an individual plaintiff (the "Navajo Nation Plaintiffs") filed lawsuits seeking similar relief. The district court consolidated these lawsuits with the Gonzalez complaint. (Cases 06-1362, 06-1575.) Plaintiffs' Complaints alleged, among other theories, that requiring identification from voters at the polls and evidence of citizenship when people register to vote constituted a poll tax, violated equal protection, and created an undue burden

on the right to vote.<sup>2</sup> The Defendants included the State of Arizona, the Arizona Secretary of State, and county election officials.

After full briefing and a hearing, the district court denied Plaintiffs' request for a Temporary Restraining Order on June 19, 2006. (App. 4.) Following discovery, voluminous briefing, and a two-day evidentiary hearing on August 30 and 31, 2006, the court denied Plaintiffs' request for a preliminary injunction in an order dated September 11, 2006. (App. 1.) The district court concluded that "[p]laintiffs have not shown a strong likelihood of success on the merits, the balance of hardships favors Defendants, and the public interest would not be advanced by granting the injunction." (*Id.*) The district court indicated in its order that it would issue "detailed findings of fact and conclusions of law" and requested supplemental briefing on specific issues. (*Id.*)

Before the district court issued its findings and conclusions, the Gonzalez Plaintiffs and the ITCA Plaintiffs appealed from the court's order denying the preliminary injunction. On September 29, the ITCA Plaintiffs filed an emergency motion asking the Ninth Circuit to enjoin the State and counties from implementing Proposition 200 pending resolution of their

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<sup>2</sup> The Navajo Nation Plaintiffs also alleged that the identification requirement violated the federal Civil Rights Act and Voting Rights Act. They posited no challenge at all to the registration requirements of Proposition 200.

interlocutory appeal of the district court's decision denying the preliminary injunction. The State responded Tuesday, October 3 opposing the injunction pending appeal. A panel of two judges of the Ninth Circuit granted Plaintiffs' emergency motion on Thursday, October 5. (App. 2.) The court's order prohibits the implementation of the identification at the polls requirement at the November general election. It also enjoins the State from continuing to require evidence of citizenship from people registering to vote while Plaintiffs' appeal is pending. (*Id.*)

On October 6, the State and county Defendants requested that the panel reconsider its decision. The panel denied this motion on October 9, 2006. (App. 3.) On October 11, 2006, the district court issued an order detailing the findings and conclusions that support the decision to deny the preliminary injunction. (App. 5.) The district court analyzed the factual record and the applicable law and rejected each of Plaintiffs' claims. (*Id.*)

Having been denied relief at the Ninth Circuit, Arizona now seeks a stay from this Court.

## Argument

### **This Court Should Stay the Ninth Circuit's Injunction Against Implementation of Proposition 200 Pending Plaintiffs' Appeal of the District Court's Denial of Preliminary Injunctive Relief.**

Arizona seeks an emergency stay of the Ninth Circuit's order enjoining it from implementing Proposition 200's requirements in the November general election and pending Plaintiffs' appeal of the district court's denial of preliminary injunctive relief. A Circuit Justice has jurisdiction to grant this relief if he is "of the opinion that the court of appeals is demonstrably wrong in its application of accepted standards in deciding to issue the stay," the case is one that the Court would likely review upon final disposition in the court of appeals, and the rights of the parties "may be seriously and irreparably injured by the stay." *Coleman v. PACCAR, Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J.). The Court should grant Arizona the stay relief requested here because the court of appeals wrongly ignored the deferential standard for reviewing the district court's denial of the preliminary injunction, this Court would likely review a Ninth Circuit decision enjoining Proposition 200, and Arizona's right to implement its election requirements in the November general election will be irreparably harmed by the Ninth Circuit order.

**A. The Ninth Circuit's Injunction Against Implementing Proposition 200 Pending Plaintiffs' Appeal of the District Court's Denial of Preliminary Injunctive Relief Is Demonstrably Wrong.**

A stay or injunction pending appeal is appropriate only if Plaintiffs establish (1) a probability of success on the merits of their appeal and the possibility of irreparable injury, or (2) that serious legal questions are raised and the balance of hardships “tips sharply in [their] favor.” *Lopez v. Heckler*, 713 F.2d 1432, 1435-36 (9<sup>th</sup> Cir. 1983). On the merits of their appeal, Plaintiffs will prevail only if they establish that the district court abused its discretion by denying the preliminary injunction or if it “based its decision upon erroneous legal premises.” *Id.* at 1436 (quoting *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1200 (9<sup>th</sup> Cir. 1980)).

Appellate review of the decision to deny the preliminary injunction is supposed to be “limited and deferential.” *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9<sup>th</sup> Cir. 2003). “Unless the district court’s decision relies on erroneous legal premises, it will not be reversed simply because the appellate court would have arrived at a different result if it had applied the law to the facts of the case.” *Sports Form, Inc. v. United Press Int'l, Inc.*, 686 F.2d 750, 752 (9<sup>th</sup> Cir. 1982).

In the election context, Plaintiffs' burden is particularly high. *Sw. Voter Registration Educ. Project*, 344 F.3d at 919 ("Interference with impending elections is extraordinary, [ ] and interference with an election after voting has begun is unprecedented."). As this Court has recognized, even constitutional claims can give way to the needs of the elections:

In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws . . . . With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.

*Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

In addition, "striking . . . the balance between discouraging voter fraud and other abuses and encouraging turnout is quintessentially a legislative judgment with which . . . judges should not interfere unless strongly convinced that the legislative judgment is grossly awry." *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7<sup>th</sup> Cir. 2004).

By imposing an injunction pending appeal, the Ninth Circuit panel disregarded these principles. The district court applied the correct legal standards in evaluating Plaintiffs' claims and concluded that Plaintiffs had not established a likelihood of success. (App. 5 at 7-16.) For example, in evaluating the claim that Proposition 200 infringed on the fundamental right

to vote, the district court correctly applied the standard set out in *Burdick v. Takushi*, 504 U.S. 428 (1992). (*Id.* at 12-13.) Under *Burdick*, a State’s “important regulatory interests are generally sufficient to justify” restrictions that are “reasonable and nondiscriminatory.” *Burdick*, 504 U.S. at 434. Only “severe restrictions” are subject to strict scrutiny. *Id.* The district court noted that this analysis required “an intense factual inquiry” concerning the severity of the restrictions on the right to vote. (*Id.* at 13.) The court determined that Plaintiffs had not demonstrated that Proposition 200 was a severe burden on the right to vote and that Arizona’s “interest in ensuring the integrity of elections [was] sufficient to justify Proposition 200.” (*Id.* at 14.)

The factual record at the district court established that voters have overwhelmingly complied with the requirements of Proposition 200 in the elections in which it has been implemented. When the district court denied the preliminary injunction in this case, the identification at the polls requirement had been implemented in local elections in November 2005 and March and May of 2006. In Maricopa County, where more than half of Arizona’s voters reside, voters cast a total of 110,802 ballots in local elections in March. (Dkt. 150, Ex. 15.) Of those ballots, 177—or .16%—were conditional provisional ballots from voters who did not supply the

required identification. (*Id.*) Of the 39,496 ballots cast in person, 115—or .29%—were conditional provisional ballots that were not counted. (*Id.*) In the May elections in that county, conditional provisional ballots accounted for 130—or just .12%—of the 106,422 ballots cast. (*Id.*) Of the 35,752 regular ballots cast by voters in person, 72—or .20%—were not counted.<sup>3</sup> (*Id.*)

The Ninth Circuit panel, however, stopped Arizona’s implementation of Proposition 200 within weeks of the general election. Its decision to enjoin Arizona from continuing to implement presumptively valid state laws pending appeal of the district court’s order denying a preliminary injunction is contrary to the deferential standard of review that applies to these appeals, undermines the orderly administration of Arizona’s general election, and impairs the right of Arizona to implement laws enacted to enhance the integrity of its elections.

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<sup>3</sup> Although it was not part of the record for the preliminary injunction, Plaintiffs relied on the experience at the September 12 primary election to support their request that the Ninth Circuit enjoin Arizona’s law. But, the results of the primary election, which occurred one day after the district court denied Plaintiffs’ request for a preliminary injunction, also show that most voters complied with the new requirements or cast early ballots. In Maricopa County, only 520 of the 293,892 votes cast were conditional provisional ballots, and 368 of these voters failed to supply the identification required for their votes to count. That figure accounts for only .13% of all ballots cast in the election. (Dkt. 209.)

**B. This Court Would Likely Review a Decision Invalidating Proposition 200.**

Arizona is not alone in requiring identification from voters at the polls. Twenty-four states require some or all voters to present identification when at the polls. *See Common Cause/Georgia League of Women Voters v. Billups*, 439 F. Supp.2d 1294, 1305 (N.D. Ga. 2006).<sup>4</sup> Under the Help America Vote Act (“HAVA”), Congress also has mandated that certain first-time voters who register by mail for federal elections provide identification with their application or when voting in person.<sup>5</sup> In light of recent legislation in Arizona and elsewhere, voter identification at the polls is an emerging issue of national importance.

States have a compelling interest in curbing fraud and protecting the integrity of elections. *See Burson v. Freeman*, 504 U.S. 191, 199 (1992) (a state “indisputably has a compelling interest in preserving the integrity of its election process”). Proposition 200 protects the integrity of Arizona’s elections and prevents voter fraud by requiring evidence of U.S. citizenship

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<sup>4</sup> Lawsuits similar to this one have been brought to challenge the identification requirements that States have adopted. *See, e.g., Billups*, 439 F.Supp. 2d at 1294; *Indiana Democratic Party v. Rokita*, No. 1:05-CV-0634-SEB-VSS, 2006 WL 1005037 (S.D. Ind. April 14, 2006).

<sup>5</sup> Under section 303(b) of HAVA, in-person voters meet HAVA’s requirements by presenting a current and valid photo ID, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document showing the name and address of the voter.

from all people registering to vote and identification from people who vote at the polls.

Although the parties disputed the magnitude of voter fraud in Arizona, the record left no question that it exists.<sup>6</sup> Moreover, even if fraud never occurred in Arizona, which is not the case, this Court has determined that states like Arizona may act with foresight to promote fair and honest elections. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 196-97 (1986). Indeed, more than a million voters in Arizona were sufficiently concerned with the issue of voter fraud that they approved Proposition 200.

Arizona's identification at the polls law allows voters to present identification ranging from a free voter registration card to mail to photo identification. Also, any voter who cannot or does not wish to comply with the identification requirement can opt to cast an early ballot. A.R.S. § 16-541. Early voters are not required to present identification when they cast their votes.<sup>7</sup> (App. 5 at 3-4.) Under this Court's precedent, this broad

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<sup>6</sup> County interrogatories and news reports included examples of voter fraud in Arizona. (Dkt. 150, Exs. 8, 15, 16, 57.) Nationally, the Commission on Federal Election Reform (the "Baker-Carter Commission") also examined voter fraud issues and recommended that States require identification at the polls. (Dkt. 159, Ex. 3.) The Baker-Carter Commission also recommended that states "use their best efforts to obtain proof of citizenship before registering voters." (*Id.*)

<sup>7</sup> Although Plaintiffs dismissed the early voting option by arguing that some voters prefer to vote at the polls, the Constitution does not require States to

procedure does not unduly burden the right to vote, establish a poll tax or discriminate based on wealth as Plaintiffs' alleged—it is a legitimate effort to protect the integrity of Arizona's elections. Arizona's law, which permits a wide range of documents to satisfy the identification requirement and also provides voters with the option of early voting, is likely one of the more flexible laws concerning identification at the polls, and a decision invalidating it would merit this Court's review.

Similarly, this Court should review a decision concluding that the Constitution prevents a state from requiring evidence of citizenship from people registering to vote. There is no question that U.S. citizenship is a prerequisite to voting. *See Sugarman v. Dougall*, 413 U.S. 634, 649 (1973)

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accommodate every voter's preference. *See Griffin*, 385 F.3d at 1130. Plaintiffs have also criticized Arizona for incorporating different procedures for ballots cast at the polls and early voting. This criticism falls of its own weight. In-person voting and early balloting are different processes which inherently involve different standards. *See Billups*, 439 F.Supp. 2d at 1356-57. Indeed, comparing signatures is less practical at the polling place, while requiring early voters to include identification in the ballot envelope risks ballot secrecy as the envelope must be unsealed to confirm the voter's identity.

Before Proposition 200, the signature verification process for early voting made that process more secure than verifying ballots cast in person. By requiring ID at the polls, Proposition 200 brings security for polling place voting into parity with voting by mail. These distinctions between early voting and voting at the polls are precisely the type of policy choices that state policy-makers are responsible for making and are entitled to deference.

(noting that implicit in voting rights decisions is the notion that citizenship is a permissible criterion for limiting rights to vote and hold public office). Before Proposition 200, however, Arizona, like other states, simply relied on an honor system that each applicant was qualified to vote. In the eyes of Arizona's voters, that system lacked adequate barriers to registration by non-citizens.

Requiring evidence of citizenship does not impose a serious burden on voters. Even Plaintiffs estimated that the large majority of citizens (98%) *do* possess satisfactory evidence of U.S. citizenship. (App. 5 at 9.) For these people, Proposition 200 is no burden at all. Although some people do not have the necessary information and would need to take some measures to satisfy Proposition 200, this does not undermine the validity of this State law. (App. 5 at 10, 14.)

Laws regulating elections will inevitably create some burden on voter participation. *See Burdick*, 504 U.S. at 433 (election laws “inevitably affect[]—at least to some degree—the individual’s right to vote”); *Griffin*, 385 F.3d at 1130 (“Any such restriction is going to exclude, either de jure or de facto, some people from voting”). Requiring, for example, that a voter register at all can have the effect of preventing some people from voting. Under Plaintiffs’ theories, no state could require would-be voters to

verify that they are citizens, and no case from this Court suggests that the Constitution imposes such a limitation on state authority.

Because the issues in this case are of national importance and because a decision invalidating Proposition 200 would be contrary to this Court's precedent, this Court should accept review of a lower court decision enjoining the Proposition, and it should also grant the stay requested in this Application.

**C. Arizona Will Be Irreparably Harmed If the Court Does Not Stay the Ninth Circuit Order.**

This Court should stay the Ninth Circuit order so that Arizona can continue to implement Proposition 200 while Plaintiffs appeal the district court's denial of a preliminary injunction.

An injunction generally preserves the status quo pending the resolution of an action on the merits. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *Chalk v. United States Dist. Court Cent. Dist. of Calif.*, 840 F.2d 701, 704 (9<sup>th</sup> Cir. 1988). The injunction pending appeal that the Ninth Circuit panel granted in this case does just the opposite. It stops Arizona from requiring identification at the polls, even though voters have been required to present identification at local elections as well as the statewide primary in September. It also stops Arizona from requiring evidence of citizenship, even though Arizona has been implementing this

requirement since January 2005. Rather than preserve the status quo, the Ninth Circuit's order changes election and voter registration procedures in Arizona.

The Ninth Circuit's order risks harm to voters and election administrators by enjoining the rules for identification at the polls in the middle of this year's election cycle. Arizona is simply too far into the 2006 election cycle to change the rules that apply to this year's elections. *See Sw. Voter Registration Educ. Project*, 344 F.3d at 919 ("Interference with impending elections is extraordinary, [ ] and interference with an election after voting has begun is unprecedented."). Early voting for the general election started October 5; voter registration closed October 9; programs to educate voters about the identification-at-the-polls requirements have been underway for some time; and pollworkers throughout the State are being trained. (App. 5 at 4, 17.) As the district court recognized, an injunction this late in the election cycle risks causing confusion to voters and election administrators and does not serve the public interest. (*Id.* at 17.)

In addition, an injunction precludes Arizona from effectuating its legitimate and compelling interests in implementing a state law that is intended to combat fraud and enhance voter confidence in Arizona's elections. "Any time a State is enjoined by a court from effectuating statutes

enacted by representatives of its people, it suffers a form of irreparable injury.” *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977). The same principle applies to a citizens’ initiative such as Proposition 200. The presumption of constitutionality of a statute weighs in the State’s favor, not just in evaluating the possibility of success on the merits but also as an equity that favors the State when balancing the harms. *Walters v. Nat’l Ass’n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984).

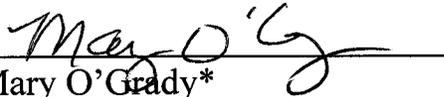
Because Arizona’s rights will be irreparably harmed by the Ninth Circuit’s order enjoining Proposition 200, this Court should stay the order.

### **Conclusion**

Applicants request that this Court stay the Ninth Circuit order so Arizona may implement its law requiring identification at the polls at the November election and resume requiring evidence of citizenship from people registering to vote.

Respectfully submitted,

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October 13, 2006

Original and two copies mailed via overnight delivery  
this 13th day of October, 2006, to:

Supreme Court of the United States  
1 First Street, N.E.  
Washington, DC 20543

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the Application for Stay of Injunction Pending Appeal to be served on October 13, 2006, by mailing it, first class United States Mail, postage pre-paid, and e-mailing it to the attorneys of record for the parties, as follows:

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