

CA No. 08-17094, 08-17115
**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MARIA M. GONZALEZ, *et al.*,
Plaintiffs/Appellants,
v.
STATE OF ARIZONA, *et al.*,
Defendants/Appellees,

**On Appeal from the United States District Court
for the District of Arizona
Nos. 06-cv-01268-PHX-ROS; 06-cv-01362-PHX-ROS
(Honorable Roslyn O. Silver)**

**MOTION OF PROTECT ARIZONA NOW,
WASHINGTON LEGAL FOUNDATION,
AND ALLIED EDUCATIONAL FOUNDATION
FOR LEAVE TO FILE PAPER COPIES OF *AMICUS CURIAE* BRIEF**

Amici curiae Protect Arizona Now (PAN), the Washington Legal Foundation (WLF), and the Allied Educational Foundation (AEF) hereby move for leave to file 25 copies of their *amicus curiae* brief in paper format, so that those copies can be distributed to members of the *en banc* panel. In support of their motion, *amici* state as follows:

1. This case is a challenge to the voting-related provisions of Prop 200, a public initiative adopted overwhelmingly by Arizona voters in 2004. Among other things, Prop 200 created Arizona statutes that: (1) require individuals registering to

vote to provide documentary evidence to support citizenship claims; and (2) require that voters provide proof of identity before casting ballots. Appellants raised a number of constitutional challenges to those provisions and in 2008 appealed from a district court decision upholding the statutes. PAN is the organization that sponsored Prop 200; it has actively participated in all of the lawsuits that have challenged various portions of the public initiative.

2. On April 2, 2009, PAN, WLF, and AEF filed an *amicus curiae* brief in support of Appellees, urging affirmance of the district court judgment. Much of the brief focused on the National Voting Rights Act of 1993 (NVRA), 42 U.S.C. § 1973gg *et seq.* and urged the Court to rule that the NVRA does not preempt Prop 200's documentary-evidence provision. Numerous other individuals and organizations filed *amicus* briefs, on both sides of the case.

3. In 2010, a three-judge panel reversed in part, upholding the proof-of-identity provision but striking down the documentary-evidence requirement for those registering to vote.

4. On April 27, 2011, the Court granted Appellee Arizona's petition for rehearing *en banc* and vacated the panel's decision.

5. The Court's subsequent orders made clear that it wished to decide the case as expeditiously as possible. It set the case for oral arguments before an 11-

judge panel for June 21, 2011 and indicated that the parties were not to file a new round of briefing. Instead, they were merely directed to submit 25 additional paper copies of the briefs they previously filed in 2009, for distribution to the 11 members of the *en banc* court. The Court's order was silent regarding the filing of additional paper copies by *amici curiae*.

6. Counsel for *amici* PAN, WLF, and AEF then contacted the office of the Clerk, to ascertain whether *amici* would be permitted either to re-file an updated version of their 2009 brief, or else to submit paper copies of their brief. Personnel in the Clerk's office responded that neither option was permissible. Rather, previously filed *amicus curiae* briefs would be available electronically to the 11 judges, and it would be up to those judges to determine whether they wished to download those briefs onto their computers. Counsel understood from this communication that the Court sought to minimize additional filings in order to expedite the imminent oral arguments.

7. Within the past week the Court has granted two motions for leave to file new *amicus curiae* briefs in support of Appellants, one filed by the Asian American Legal Defense and Educational Fund and one filed by the United States. In the latter instance, the Court granted the motion despite the United States's candid admission that it had missed the June 1, 2011 filing deadline and despite

Local Rule 29-2(e)(2)'s admonition that extensions of time within which to file *amicus curiae* briefs at the rehearing *en banc* stage are “disfavored.”

8. In each instance, the order granting leave to file was followed by an order directing the *amicus curiae* to file 25 paper copies of its brief – presumably so that paper copies can be sent directly to each of the 11 members of the *en banc* panel.

9. The result is to provide undue prominence to the two late-filed *amicus curiae* briefs filed in support of Appellants, above that of the many *amicus curiae* briefs that have been on file with the Court for nearly 2 ½ years. Members of the *en banc* panel are to receive paper copies of the two late-filed *amicus curiae* briefs but not of the many other *amicus curiae* briefs.

10. In order to level the playing field, it would be appropriate for the Court to issue an order directing the Clerk to accept (and to distribute to members of the *en banc* panel) paper copies of all previously filed *amicus curiae* briefs.

WHEREFORE, PAN, WLF, and AEF respectfully request that the Court grant their motion. They request that the Court issue an order directing the Clerk to accept 25 paper copies of their brief as well as of any *amicus curiae* brief filed with the Court in this matter in 2009.

Respectfully submitted,

/s/ Richard A. Samp

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June 6, 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of June, 2011, I electronically filed the foregoing motion of *amici curiae* Protect Arizona NOW, et al., with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed a copy of the foregoing document by first-class U.S. Mail, postage prepaid, to the following participants on the 6th day of June, 2011, to:

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