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| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
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LOCAL NEWS

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Tuesday, January 25, 2005

Feds OK voter ID rules in Prop. 200

Critics argue the immigration law approved by voters will hinder minorities' participation in elections.

The Associated Press

PHOENIX - Federal voting-rights enforcers yesterday authorized Arizona to implement new voter identification requirements required by an immigration law approved by voters as Proposition 200. State officials yesterday said they did not know whether the law would apply to March 3 elections scheduled in some local jurisdictions in Arizona. There are no March elections in the Tucson area.

The law, passed at the polls in November, generally requires that people provide proof of citizenship, such as a birth certificate, when registering to vote and show specified forms of identification when casting a ballot at a polling place.

Proposition 200 supporters have said the identification requirements are intended to prevent voter fraud. Kathy McKee, chairwoman and director of Protect Arizona NOW, a key proponent of the law, did not immediately return a call for comment yesterday.

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A civil-rights group and Democratic legislators recently urged the Department of Justice to reject the identification requirements. They argued that the changes will hinder minorities' participation in elections and virtually shut down grass-roots voter registration drives.

The Justice Department said it would re-examine the issue if additional information comes to its attention during several weeks remaining in a 60-day review period.

Because of the state's history of violating minorities' voting rights, Arizona needs preclearance of all election laws and regulations under the Voting Rights Act.

The notification was contained in a letter sent by the head of the voting rights section of the Justice Department's Civil Rights Division to Attorney General Terry Goddard's Office.

The Justice Department's endorsement drew criticism from a Tucson lawmaker.

"It puts a chilling effect on the entire election process," said House Minority Leader Phil Lopes, a Democrat. "The thing we've never realized about this is the impact it's going to have on all of us - what it is what we're going to have to do to register and to vote."

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Assistant Secretary of State Kevin Tyne said it wasn't immediately clear whether new identification requirements would begin by then. Tyne said state officials are working with county election officials on procedures, including a new voter registration form, to comply with the law.

Those procedures also must be submitted to the Department of Justice for voting-rights preclearance, Tyne said.

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EXHIBIT 12

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

| | |
|---|---|
| ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL February 4, 2005 | No. I05-001 (R04-038) Re: Identification Requirements For Voter Registration |
|---|---|

To: The Honorable Janice K. Brewer
Arizona Secretary of State

Question Presented

Under A.R.S. § 16-166(F)(1), as amended by Proposition 200, is an Arizona driver or nonoperating identification license issued after October 1, 1996, satisfactory evidence of United States citizenship for the purpose of registering to vote?

Summary Answer

Pursuant to A.R.S. § 16-166(F)(1), the number of a driver or nonoperating identification license issued in Arizona after October 1, 1996, is satisfactory evidence of United States citizenship to register to vote.

Background

A. Voter Registration Requirements in Proposition 200.

Arizona voters approved Proposition 200 in the general election of November 2004. The Proposition calls for (1) verifying the identity and eligibility of applicants for

state and local public benefits, and (2) requiring identification to register to vote and to receive a ballot.¹

Your question concerns the identification requirements of Proposition 200 when registering to vote. Proposition 200 amended A.R.S. § 16-166, a section of the Arizona Revised Statutes entitled “Verification of registration.” Section 16-166 now provides, in relevant part:

F. The county recorder shall reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship. Satisfactory evidence of citizenship shall include any of the following:

1. The number of the applicant’s driver license or nonoperating identification license issued after October 1, 1996 by the department of transportation or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant’s driver license or nonoperating identification license that the person has provided satisfactory proof of United States citizenship.

The other “satisfactory evidence” of citizenship specified in A.R.S. § 16-166(F) includes a copy of a birth certificate, passport copy, naturalization documents, other methods of proof established under the Immigration Reform and Control Act of 1986, and an Indian affairs card number, tribal treaty card number or tribal enrollment number. A.R.S. § 16-166(F)(2)-(5).

In addition to presenting the documentation required by A.R.S. § 16-166(F), a person registering to vote must sign a statement declaring that he or she is a United States citizen and acknowledging that executing a false registration is a class 6 felony. A.R.S. §

¹ Arizona could not implement the provisions relating to voting and voter registration in Proposition 200 until the U.S. Department of Justice precleared them as required under the federal Voting Rights Act. 42 U.S.C. § 1973c. The Department of Justice precleared those provisions on January 24, 2005.

16-152(A)(14), (18). It is a state and federal crime to falsely claim to be a United States citizen when registering to vote. A.R.S. § 16-152 (A)(18); 18 U.S.C. § 1015 (f).

B. Proof Required to Obtain an Arizona Driver License or Nonoperating Identification License.

Since July 1996, Arizona has required that a person establish that he or she is lawfully present in the United States in order to obtain an Arizona driver or identification license. 1996 Ariz. Sess. Laws, Ch. 230, §§ 5-7. (codified at A.R.S. §§ 28-3153(D), -3158(C)). The statutes prohibit the Department of Transportation from issuing or renewing a driver license or nonoperating identification license “for a person who does not submit proof satisfactory to the department that the applicant’s presence in the United States is authorized under federal law.” A.R.S. § 28-3153(D).

In addition, under a Motor Vehicle Division (“MVD”) policy, effective on or about October 8, 2000, noncitizens of the United States that can demonstrate lawful presence in this country are issued a Type F driver license. MVD can determine whether a person was issued a license with a Type F designation by accessing the internal records it maintains, but the designation is not apparent from the license face. You noted in your opinion request that people with a Type F driver license cannot register online through the EZ voter registration program administered by the Secretary of State and the Department of Transportation.

Analysis

Section 16-166(F)(1), A.R.S., establishes when a driver license number or nonoperating identification license number is satisfactory evidence of citizenship for the purpose of registering to vote in Arizona. When interpreting a statute, the primary goal is to effectuate the intent of its framers and, in the case of an initiative, the voters who

adopted it. *State v. Givens*, 206 Ariz. 186, 188, 76 P.3d 457, 459 (App. 2003). The language of a statute is the best indicator of its intent. *Id.*

In its first clause, A.R.S. § 16-166(F)(1) establishes that the number of a driver license or nonoperating identification license issued by the Department of Transportation in Arizona after October 1, 1996, shall be satisfactory evidence of U.S. citizenship for the purpose of registering to vote.² The next clause addresses driver licenses and identification from other jurisdictions. It permits the use of a license number issued by the “equivalent government agency” of another state, if the license confirms that the holder provided proof of U.S. citizenship. Under the statutory language, the requirement that “the agency indicates on the applicant’s driver license or nonoperating identification license that the person has provided satisfactory proof of United States citizenship” modifies the phrase “equivalent government agency of another state.” Thus, the statute requires that a license from another jurisdiction indicate that the person provided satisfactory proof of United States citizenship in order for that license to be acceptable identification to register to vote in Arizona, but an Arizona driver license is acceptable as long as it was issued after October 1, 1996.³

² It is unclear why the authors of Proposition 200 chose October 1, 1996 as a cutoff date. One possibility is that they attempted to tie the voter identification rules of Proposition 200 to Arizona’s authorized presence law which took effect August 1, 1996. The Legislature also renumbered the relevant statutes in 1996, 1996 Ariz. Sess. Laws Ch. 76, and, in 1997, approved a comprehensive rewrite of Title 28. 1997 Ariz. Sess. Laws, Ch. 1. The rewritten version of the relevant statutes took effect October 1, 1997, exactly one year after the date specified in A.R.S. § 16-166(F)(1). *Id.*, §§ 188, 192, 194, 506.

³ The “last antecedent” principle of statutory construction also supports this reading of the statute. *See Tanner Companies v. Ariz. State Land Dep’t*, 142 Ariz. 183, 189, 688 P.2d 1075, 1081 (App. 1984) (a qualifying word or phrase is typically applied to the word or phrase that immediately precedes it).

The Legislative Council's analysis of Proposition 200 supports this construction. The Council's analysis is designed to "assist voters in rationally assessing an initiative proposal by providing a fair, neutral explanation of the proposal's contents and the changes it would make if adopted." *Fairness & Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 590, 886 P.2d 1338, 1346 (1994). The analysis is included in the general election publicity pamphlet that is given to each voter, A.R.S. § 19-123(A)(4) and (C), and may be used to interpret an initiative. *Calik v. Kongable*, 195 Ariz. 496, 500, 990 P.2d 1055, 1059 (1999).

The Legislative Council informed voters that "Proposition 200 would require that evidence of United States citizenship be presented by every person to register to vote." *Arizona Secretary of State, Ballot Propositions and Judicial Performance Review* 43 (Nov. 2, 2004). Regarding the evidence that would satisfy Proposition 200, the Council advised:

Proposition 200 provides that for purposes of registering to vote, satisfactory evidence of United States citizenship includes:

- an Arizona driver or nonoperating identification license issued after October 1, 1996.
- a driver or nonoperating identification license issued by another state if the license indicates that the person has provided proof of United States citizenship.

Id. at 43-44. Voters were entitled to rely on this analysis in weighing the effects of Proposition 200. *Fairness & Accountability in Ins. Reform*, 180 Ariz. at 590, 886 P.2d at 1346.

The difficulty presented by the question you have raised is that a person need not be a United States citizen to obtain an Arizona driver license or identification card, even after October 1, 1996. The Department of Transportation verifies that a person is

lawfully present in the United States. A.R.S. §§ 28-3153(D), -3158(C). Thus, citizens of other nations who are lawfully present in the United States are eligible for Arizona driver licenses and identification cards. Moreover, an Arizona license does not indicate a person's citizenship on its face.

For these reasons, it might be argued that *no* Arizona driver license – regardless of when it was issued – should be acceptable identification to register to vote. This interpretation, however, is contrary to the statutory language that Arizona voters approved in A.R.S. §16-166(F)(1). *Samaritan Health Sys. v. Superior Court*, 194 Ariz. 284, 289, 981 P.2d 584, 589 (App. 1998) (a legislature is presumed to express itself in “as clear a manner as possible.”). Such an interpretation renders meaningless the statutory directive that an Arizona license issued after October 1, 1996 “shall be” acceptable evidence of citizenship to register to vote and ignores the guidance voters received in the Publicity Pamphlet. It also renders superfluous the statutory distinctions between licenses in Arizona issued before or after October 1, 1996 and between licenses issued by the Arizona Department of Transportation and other jurisdictions. This contradicts the principle that courts must “give effect to each word of the statute.” *Bilke v. State*, 206 Ariz. 462, 464, 80 P.3d 269, 271 (2003). Furthermore, the authors of a statute are presumed to know the existing law. *State v. Box*, 205 Ariz. 492, 496, 73 P.3d 623, 627 (App. 2003); *McLaughlin v. State Bd. of Educ.*, 89 Cal. Rptr.2d 295, 305 (App. 1999).

Although relying on Arizona licenses issued after October 1, 1996 as identification does not, by itself, screen all non-citizens from registering to vote, it certainly prevents undocumented immigrants from doing so. In this way, the statutory

language in A.R.S. § 16-166(F)(1) furthers a purpose of Proposition 200, which focused on issues relating to illegal immigration and undocumented immigrants from receiving benefits for which they are not eligible. *See* Proposition 200, § 2 (findings and declarations).⁴ In addition, the requirement that a person registering to vote attest that he or she is a citizen and the associated criminal penalties for violating this requirement provide additional protections against non-citizens registering to vote in Arizona. *See* A.R.S. § 16-152(A)(18); 18 U.S.C. § 1015(f). In sum, Arizona law protects against a non-citizen registering to vote by requiring that a person attest that he or she is a citizen of the United States and provide an Arizona driver license number issued after October 1, 1996 or some other identification specified by A.R.S. § 16-166(F)(1).

Conclusion

Under A.R.S. § 16-166(F)(1), the number of a driver or nonoperating identification license issued in Arizona after October 1, 1996, is satisfactory evidence of United States citizenship for the purpose of registering to vote.

Terry Goddard
Attorney General

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⁴The Proposition's Findings and Declarations stated:

This state finds that illegal immigration is causing economic hardship to this state and that illegal immigration is encouraged by public agencies within this state that provide public benefits without verifying immigration status. This state further finds that illegal immigrants have been given a safe haven in this state with the aid of identification cards that are issued without verifying immigration status, and that this conduct contradicts federal immigration policy, undermines the security of our borders and demeans the value of citizenship. Therefore, the people of this state declare that the public interest of this state requires all public agencies within this state to cooperate with federal immigration authorities to discourage illegal immigration.