

**Nos. 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.

THE INTER TRIBAL COUNCIL OF  
ARIZONA, INC., et al.,

Plaintiffs-Appellants,  
v.

KEN BENNETT, in his official capacity  
as SECRETARY OF STATE OF  
ARIZONA.

Defendant-Appellee.

On appeal from the United States  
District Court for the District of  
Arizona

No. CV06-01268-PHX-ROS  
CV06-01362-PHX-ROS

**MOTION TO STAY MANDATE**

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Under Federal Rule of Appellate Procedure 41(d)(2)(A), the Appellees move the Court to stay its mandate for a period of ninety days to allow them to file a petition for writ of certiorari to the United States Supreme Court. The Court having issued its decision on April 17, 2012, the deadline for a petition for certiorari is July 16, 2012. The Appellees' planned petition would present substantial questions to the Supreme Court, and would not be frivolous or made only for the purpose of delay. *See* 9th Cir. R. 41-1, Committee Note.

In its Opinion, the majority of the Court held “that the registration provision [Arizona Revised Statutes § 16-166(F)], when applied to the Federal Form, is preempted by the [National Voter Registration Act (NVRA)].” Slip Op. at 4148. The issue presented in this case—whether Arizona law conflicts with and is preempted by NVRA—are matters of nationwide concern as not only Arizona but each State must determine whether the NVRA precludes it from addressing voter registration fraud. That the majority's interpretation is both an important and unsettled question of law is demonstrated by both the Court's own opinions in this case and the opinions of other federal appellate courts addressed in the briefs and the Court's opinions. *See, e.g.*, Slip Op. at 4192 (Kozinski, Chief Judge, concurring) (“The statutory language we must apply is readily susceptible to

the interpretation of the majority, but also that of the dissent.”); *see also Crawford v. Marion County Election Board*, 553 U.S. 181, 192-93 (2008) (NVRA “established procedures that would both increase the number of registered voters and protect the integrity of the election process”); *U.S. Student Ass’n Found. v. Land*, 546 F.3d 373, 385 (6th Cir. 2008) (States are “free to set eligibility standards and evaluate whether each applicant meets those standards”); *Bell v. Marinko*, 367 F.3d 588, 593 (6th Cir. 2004) (holding that NVRA does not protect an applicant who never qualified for registration); *McKay v. Thompson*, 226 F.3d 752, 755-56 (6th Cir. 2000) (no violation of NVRA where person refused to provide social security number required by state and was therefore not registered).

Furthermore, the Court acknowledged the importance of protecting the integrity of elections in the majority opinion. Slip Op. at 4147 (“We recognize Arizona’s concern about fraudulent voter registration.”); *see also Purcell v. Gonzalez*, 549 U.S. 1, 7 (2006) (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). Eventually, the Supreme Court will have to resolve the question of what tests and standards should apply in deciding similar cases. The Court’s own differing opinions

in this matter demonstrate substantial questions related to statutory construction in a context where the palpable federalism concerns are amplified by the serious risk to the integrity of elections. Thus, Appellees' petition for a writ of certiorari presents a substantial question and would not be frivolous.

There is also good cause for staying the mandate. If it is not stayed, it is likely that voters and election administrators, including the State's Chief Election Officer, will face unnecessary confusion and complication. For example, the majority's holding if not stayed would result in an injunction requiring officials in Arizona to "accept and use" the Federal Form in the manner articulated in that opinion, even though those registrations may later be held to have been processed in unnecessary violation of Arizona law. Furthermore, as a practical matter, there is a risk of voter fraud as the majority determines that the favors the goal of increasing voter registration over the goal of ensuring that registrants meet eligibility requirements. *See Crawford*, 553 U.S. at 192-93. Increasing the number of ineligible voters on the voter rolls threatens to dilute the vote of the very eligible voters that the NVRA was, in part, designed to facilitate. *Id.* Finally, in the face of a pending election, conflicting actions among the district court and the U.S. Supreme Court risk unnecessarily confusing voters. *See Purcell*, 539 U.S. at

4-5 (noting that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion”).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of April, 2012, I electronically filed the foregoing document with the Clerk of the Court for the United State 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 foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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