Enhanced Requirements for Registering and Voting in Arizona

González v. Arizona (2:06-cv-1268), Inter Tribal Council of Arizona v. Brewer (3:06-cv-1362), and Navajo Nation v. Brewer (3:06-cv-1575) (Roslyn O. Silver, D. Ariz.)

On May 9, 2006, four months in advance of Arizona's primary election, five citizens and five organizations filed a federal challenge in the District of Arizona's Phoenix courthouse to Arizona's 2004 revision of its voter registration and identification law resulting from the passage of proposition 200.[1] Proposition 200's revision received preclearance from the Justice Department pursuant to section 5 of the Voting Rights Act on May 6, 2005.[2]

The plaintiffs objected to the procedural specifics of proof of citizenship for registration and proof of identity and residence for voting.[3] With their complaint, the plaintiffs filed an application for a temporary restraining order[4] and a motion for a preliminary injunction.[5]

The court originally assigned the case to Judge Neil V. Wake, but he recused himself, so the case was randomly reassigned to Judge Roslyn O. Silver.[6] At a hearing in court on May 12, Judge Silver declined to issue a temporary restraining order and set another hearing for May 17.[7] On May 16, the plaintiffs filed a second temporary restraining order motion.[8] On May 17, Judge Silver set argument on the second motion for June 9.[9] On June 19, Judge Silver denied immediate injunctive relief, holding that Arizona's new proof of citizenship requirements did not violate the National Voter Registration Act (NVRA): "there is no indication in the language of the NVRA itself that states are prohibited from requiring addi-

---

1. Complaint, González v. Arizona, No. 2:06-cv-1268 (D. Ariz. May 9, 2006), D.E. 1; Purcell v. Gonzalez, 549 U.S. 1, 3 (2006); González v. Arizona, 435 F. Supp. 2d 997, 999 (D. Ariz. 2006); *see Lawsuit Questions Legality of ID Rules*, Ariz. Republic, May 10, 2006, at B1.

2. *Purcell*, 549 U.S. at 3; *see* Pub. L. No. 89-110, § 5 (1965), 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (2011) (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination).

3. Complaint, *supra* note 1.

4. Temporary Restraining Order Application, *González*, No. 2:06-cv-1268 (D. Ariz. May 9, 2006), D.E. 3.

5. Preliminary Injunction Motion, *id.* (May 9, 2006), D.E. 7.

6. Reassignment Order, *id.* (May 11, 2006), D.E. 10.

For this report, Tim Reagan interviewed Judge Silver and her law clerk Mike Newman by telephone on September 11, 2012.

7. Minutes, *González*, No. 2:06-cv-1268 (D. Ariz. May 12, 2006), D.E. 16.

8. Temporary Restraining Order Motion, *id.* (May 16, 2006), D.E. 13.

9. Minutes, *id.* (May 17, 2006), D.E. 26; *see* Minutes, *id.* (June 9, 2006), D.E. 64; *see also Voter Sign-Up Rules Assailed*, Ariz. Republic, June 10, 2006, at B9.

tional information, such as proof of citizenship, when processing voter registration forms."[10]

On May 24, six organizations and a member of Arizona's house of representatives filed a similar complaint in the Prescott courthouse.[11] Granting the plaintiffs' motion,[12] Judge Silver consolidated this action with the first one on May 31.[13] On June 20, the Navajo Nation and one of its members filed a third similar complaint in Prescott.[14] On August 4, Judge Silver consolidated this case with the other two[15] on Arizona's motion.[16]

On September 11, Judge Silver declined to interfere with the next day's primary election and denied the plaintiffs a preliminary injunction.[17] She issued findings of fact and conclusions of law on October 12.[18] On interlocutory appeal, however, a motions panel of the court of appeals enjoined application of proposition 200 on October 5.[19] The Supreme Court vacated the injunction on October 20.[20] In its per curiam opinion, the Supreme Court scolded the district court for not providing the court of appeals with findings of fact and conclusions of law more promptly: "These findings were important because resolution of legal questions in the Court of Appeals required evaluation of underlying factual issues."[21]

Following a tradition in the Ninth Circuit, where district judges are encouraged to bring misunderstandings to the attention of appellate judges, Judge Silver wrote the Chief Justice in an effort to explain the difficulties of striking a balance between quick action and a complete record.[22]

Although rulings by the Supreme Court and Judge Silver resulted in proposition 200's applying to the 2006 election, when Judge Silver offered to present

---

10. González v. Arizona, 435 F. Supp. 2d 997, 1001 (D. Ariz. 2006); *see* Pub. L. No. 103-31, 107 Stat. 77 (1993), 42 U.S.C. §§ 1973gg to 1973gg-10 (2010); *see also Request to Halt ID Rules Rejected*, Ariz. Republic, June 20, 2006, at B1.

11. Complaint, Inter Tribal Council of Arizona v. Brewer, No. 3:06-cv-1362 (D. Ariz. May 24, 2006), D.E. 1; *see Another Group Challenging Prop. 200 Voting Provisions*, Ariz. Republic, May 25, 2006, at B3.

12. Consolidation Motion, *Inter Tribal Council of Arizona*, No. 3:06-cv-1362 (D. Ariz. May 30, 2006), D.E. 4.

13. Consolidation Order, *González*, No. 2:06-cv-1268 (D. Ariz. June 1, 2006), D.E. 28; González, 435 F. Supp. 2d. at 999 n.3.

14. Complaint, Navajo Nation v. Brewer, No. 3:06-cv-1575 (D. Ariz. June 20, 2006), D.E. 1.

15. Consolidation Order, *González*, No. 2:06-cv-1268 (D. Ariz. Aug. 4, 2006), D.E. 142, *available at* 2006 WL 2246365.

16. Consolidation Motion, *id.* (June 30, 2006), D.E. 92.

17. Findings of Fact and Conclusions of Law, *González*, No. 2:06-cv-1268 (D. Ariz. Oct. 12, 2006), D.E. 219, *available at* 2006 WL 3627297; Order, *id.* (Sept. 11, 2006), D.E. 183.

18. Findings of Fact and Conclusions of Law, *supra* note 17.

19. Docket Sheet, Nos. 06-16702 and 06-16706 (9th Cir. Oct. 5, 2006); Order, *id.* (Oct. 9, 2006), *filed as* Order, *González*, No. 2:06-cv-1268 (D. Ariz. Oct. 16, 2006), D.E. 221 (denying reconsideration).

20. Purcell v. Gonzalez, 549 U.S. 1 (2006).

21. *Id.* at 3.

22. Interview with Hon. Roslyn O. Silver and her law clerk Mike Newman, Sept. 11, 2012.

identification at her polling place she was told that the poll workers would not be enforcing proposition 200 at that location.[23]

On April 17, 2012, the court of appeals determined en banc that the proof of citizenship procedure for registration is superseded by the NVRA, but the identification requirement for voting is not.[24]

23. *Id.*

24. González v. Arizona, 677 F.3d 383 (9th Cir. 2012), *cert. pending*, Docket Sheet, No. 12-71 (U.S. July 18, 2012); *see Court Strikes Down Part of Voter-ID Law*, Ariz. Republic, Apr. 18, 2012, at B1.