

PROTECT VOTER REGISTRATION & THE NVRA

BACKGROUND: *Arizona v. ITCA*

- What is *Arizona v. ITCA, Inc.*?
 - *Arizona v. ITCA, Inc.* is a case about an Arizona voter registration law that conflicts with the federal National Voter Registration Act of 1993 (NVRA or the “motor voter” bill). Although the NVRA allows individuals to register to vote using a simple, uniform post-card application, Arizona’s voter registration law rejects this federal form unless it also complies with additional state documentation requirements. The Supreme Court will hear oral argument in this case on March 18.
- What is the NVRA?
 - Congress passed the NVRA to make voter registration more accessible to all voters, and particularly for those who had suffered from discriminatory and unfair voter registration practices.
- What is Proposition 200?
 - Arizona’s Proposition 200 is a state ballot initiative approved in November 2004 that requires election officials to “reject” every voter registration application lacking certain documentation that Arizona claims establishes U.S. citizenship. The required documentation under Proposition 200 includes Arizona driver’s licenses issued after 1996, U.S. birth certificates, and passports. An attestation of U.S. citizenship under penalty of perjury, as required by the NVRA, is not enough to satisfy Proposition 200. Election officials are required to “reject” any voter registration application that does not provide the additional evidence of U.S. citizenship set out in Proposition 200.
- What is the NVRA’s Federal Form and why is it important for registering traditionally disenfranchised communities?
 - The NVRA requires a national, uniform Federal Mail-In Voter Registration Form (Federal Form) that is issued by the federal Election Assistance Commission (EAC). The NVRA says that states must “accept and use” the Federal Form as it is issued by the EAC. Congress intended for the Federal Form to eliminate the need to follow cumbersome, confusing, and unnecessary state registration procedures, and to make voter registration drives easier. The Federal Form requires applicants to prove that they are U.S. citizens by attesting to that fact under penalty of perjury.
 - Having the Federal Form available ensures that there will always be a means to register to vote even if a state or county provides inadequate voter registration forms or

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- insufficient in-person registration opportunities for heavily minority, poor, or other traditionally disenfranchised communities.
- Because the Federal Form contains specific safeguards against fraudulent or mistaken registration by non-citizens, there is no evidence that a Federal Form was ever used to register to vote fraudulently. Arizona's proof of citizenship requirement defeats the basic purpose of the Federal Form.
 - Today, the federal registration options are safe, used throughout the nation, and widely accepted by the American public.
 - How did this case reach the Supreme Court and who is involved?
 - Arizona requires its election officials to reject properly completed Federal Forms when the forms do not also satisfy state documentation requirements.
 - A three-judge panel of the U.S. Court of Appeals for the Ninth Circuit, including former Supreme Court Justice Sandra Day O'Connor, found that Proposition 200 conflicted with the NVRA, and that the NVRA takes precedence over the state law.
 - The Ninth Circuit sitting *en banc* reaffirmed by a vote of 8 to 2 that Arizona officials must accept properly completed Federal Forms even if they do not comply with Proposition 200.
 - This appeal involves consolidated lawsuits filed by two sets of plaintiffs in 2006.
 - The ITCA plaintiffs include the Inter Tribal Council of Arizona, Inc., the Arizona Advocacy Network, the League of United Latin American Citizens Arizona (LULAC), the League of Women Voters of Arizona, the Hopi Tribe, and state Sen. Steve Gallardo.
 - The Gonzalez plaintiffs include Jesus M. Gonzalez, Bernie Abeytia, Debbie Lopez, Georgia Morrison Flores, Southwest Voter Registration Education Project, Valle Del Sol, Friendly House, Chicanos Por La Causa, Arizona Hispanic Community Forum, Common Cause, and Project Vote.
 - The plaintiffs reflect the broad range of Arizona citizens and organizations whose voter registration activity has been improperly curtailed by Proposition 200. In particular, the additional proof of citizenship requirements in Proposition 200 hamper voter registration drives by requiring some applicants to submit copies of personal documents. Following

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implementation of Proposition 200, voter registration through community drives in Arizona's most populous county plummeted 44 percent and has remained low through two presidential election cycles.

- What was the effect of Proposition 200?
 - Between the time of the implementation of Proposition 200 in 2005 and the trial in 2008, more than 30,000 voter registrants were rejected in Arizona because they did not include the additional documentation required by Proposition 200.
 - The rejected applicants represent the Arizona electorate and come from all ages, political affiliations and races. Eighty percent of the rejected registrants were non-Latino and more than 90 percent were born in the United States.
 - Proposition 200's proof of citizenship requirement has a specific, negative effect on members of the U.S. military and their families, who have the right under federal law to register using the Federal Form.
- How is *Arizona* different from *Shelby County v. Holder*?
 - *Shelby County v. Holder* is a constitutional challenge brought by an Alabama county seeking to have the 2006 reauthorization of Section 5 of the Voting Rights Act invalidated. Section 5 of the Voting Rights Act is a totally separate statute from the NVRA and requires federal review to screen for racially discriminatory changes to voting procedures in all or part of sixteen states. Section 5 is a temporary provision that Congress has reauthorized four times after it was first adopted in 1965. Section 5 enforces the 14th and 15th Amendments to the U.S. Constitution.
 - The NVRA is a permanent law that requires most states (a handful of states are excepted) to follow certain voter registration and election-day procedures. Congress passed the NVRA under its very broad powers to regulate the "time, place and manner" of conducting federal elections set out in the "Elections Clause" (Article I, Section 4 of the U.S. Constitution).
- Is this case primarily a statutory challenge?
 - Yes. This case primarily concerns whether a state statute (Proposition 200) conflicts with a federal law (the NVRA). The Ninth Circuit decided that there was a conflict between the federal and state statutes, which means that Proposition 200 must yield where federal law controls.

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- Was Congress clear in its intent when passing the NVRA and mandating use of the federal form?
 - Yes. Congress specifically rejected a proposed amendment to the NVRA that would have allowed states to graft proof of citizenship requirements onto the Federal Form. The legislative history makes it clear that Congress intended for the applicant's affirmation of U.S. citizenship under penalty of perjury to be sufficient for purposes of the Federal Form.
- Is this case about access to the ballot?
 - Yes, generally, since the case is about Congress ensuring that all eligible citizens are able to have access to the ballot for federal elections.
 - However, the Supreme Court will not be deciding whether Proposition 200 was voter suppression. The issue before the Supreme Court turns on the interpretation of the language of the federal and state statutes.