

Protect Arizona Now Initiative September 2004

I. Introduction

Arizona's Proposition 200, the so-called Protect Arizona Now (PAN) initiative, is set to be on the Arizona ballot in November. PAN purports to stop "voter fraud" and "deny welfare benefits to illegals" – nonexistent problems in Arizona. It does this by requiring voters to prove U.S. citizenship with specified documents and by imposing new immigration checks and reporting requirements on state and local government employees. Though such measures sound benign, they would be disruptive and expensive in practice. PAN is ill-conceived, poorly-written, and clearly intended to send a message and further an agenda without regard to the actual negative impact of its provisions.

The impetus for PAN does not come from within Arizona. Rather, this initiative is supported by the Federation for American Immigration Reform (FAIR) and other national anti-immigrant organizations who poured over \$500,000 into the signature collection process. Their strategy appears to be to choose a state that is known to be polarized around immigrant issues, qualify a ballot initiative with provisions that poll well, and parley their expected electoral victory into political gains in other states and at the national level. If they are successful, they hope to gather momentum for their anti-immigrant agenda which includes increasing use of state and local police to enforce immigration laws, preventing use of consular identity cards by banks and others, reducing legal immigration, and blunting efforts to legalize the immigrant workforce and establish a more workable system for future immigration.

This white paper summarizes the key components of Proposition 200 and outlines the negative consequences of its passage at the state and national levels.

II. Brief Summary of PAN

The major provisions of Proposition 200 are as follows:

A. Election law provisions

- Requires state voter registration forms to include a statement that applicants must submit evidence of U.S. citizenship with their application, and that the application will be denied if this is not done.
- Requires new voter registration applications to be rejected unless accompanied by "satisfactory evidence of United States citizenship." This requirement would apply to all new applications except for changes of address within a county. Movement from one county to another would trigger the requirement.

"Satisfactory evidence" is defined to include only the following:

- An Arizona ID or driver's license issued after October 1, 1996

- A driver's license issued by another state if the state agency indicates on the license that the person has provided proof of citizenship (no state currently does so)
 - A copy of a birth certificate
 - A copy of a U.S. passport
 - Naturalization documents or the naturalization certificate number (after the number has been verified by the INS)
 - Other documents established pursuant to the 1986 Immigration Reform and Control Act (IRCA) (Note that IRCA provides for documentation of employment authorization, not citizenship.)
 - Bureau of Indian Affairs (BIA) card number, tribal treaty card number, or tribal enrollment number
- Requires voters at the polling place to present one form of ID bearing their name, address, and photograph, or two different forms of ID bearing their name and address.

B. Benefits provisions

- Requires state or local government entities that administer “state and local public benefits that are not federally mandated.” The term “state and local public benefits” is not defined, and there is no way of knowing which benefits would be interpreted to be “federally mandated.” These entities must:
 - Verify the identity and eligibility of each applicant.
 - Provide any employee of the state or political subdivision with information to verify the immigration status of any applicant and help the employee to obtain this information from federal immigration authorities.
 - “Refuse to accept any identification card issued by the state or any political subdivision of this state, including a driver's license, to establish identity or determine eligibility for those benefits unless the issuing authority has verified the immigration status of the applicant.”
 - Require any state employee to make a written report to federal immigration authorities if she discovers “any violation of federal immigration laws by any applicant for benefits” – failure to do so is a Class 2 misdemeanor (punishable by up to four months in jail and a fine of up to \$750), and the employee's supervisor would also be guilty of a Class 2 misdemeanor if she “knew of the failure to report” yet failed to require that it be filed.

This section also provides a private right of action for any Arizona resident to sue any Arizona agency or local government in any Arizona court of record. “Courts shall give

preference to actions brought under this section over other civil actions or proceeding pending in the court.”

III. Consequences of the PAN Initiative

Intent on furthering their anti-immigrant agenda, the PAN authors may not have understood the broad negative implications of their initiative for all Arizonans. These outcomes are so troubling that they could well bring down the initiative if its implications are well enough known to voters by Election Day. The following are some of the most egregious consequences that would likely flow from the passage of Proposition 200.

A. PAN would cost the state of Arizona millions of dollars to implement and would have other costs for Arizona residents.

- According to the governor’s office, the measure would cost the state well over \$50 million in implementation alone, in addition to litigation costs and possibly as much as \$100 million in foregone federal aid. There would be additional burdens on all state residents including increased bureaucracy, higher taxes, and the need to carry and constantly show several pieces of identification. With all state employees verifying immigration status, government would become at once unacceptably intrusive and so overburdened that it would find it difficult to fulfill many of its other responsibilities. While all Arizona residents will foot the bill, Arizona residents with olive skin, accents, and Hispanic surnames are likely to be singled out and asked for additional documentation – all the more significant in a state that is 25% Latino.

B. PAN would harm Arizona’s reputation and depress economic growth.

- In addition to what it would do to day-to-day life in Arizona, passage of Prop. 200 could have a deeply damaging effect on the state’s national reputation. Residents remember all too well what happened in the late ‘80s and early ‘90s when Arizona declined to approve the federal Martin Luther King holiday; not only were eyebrows raised, but an estimated half a billion dollars was lost when the 1993 Super Bowl and other convention and tourism business went elsewhere. Passage of Proposition 200 could have a similar impact on tourism and conventions, and could damage Arizona’s competitiveness in attracting new residents, retirees, national chains, entrepreneurs, and workers – particularly Hispanic workers. The hospitality and homebuilding businesses would be the first and hardest hit, but others could soon follow, with disastrous consequences for employers and employees alike.

C. PAN would disenfranchise thousands of U.S.-born Americans, especially elderly Arizonans.

- While Proponents of Prop. 200 focus all of their attention on immigrants, those most harmed by the new voting requirements would not be immigrants, but elderly U.S.-born citizens and minorities. Proposition 200 would prevent thousands of Arizonans from exercising their right to vote because they lack the specified documents needed to register and will not be able to obtain them plus verification from the federal government before

the registration deadline. As a practical matter, most Arizonans would not be able to register to vote unless they have one of three documents: a driver's license, birth certificate, or passport. Many thousands of Arizonans, particularly elderly Arizonans, do not have any of these documents. A large percentage of these are likely to forego their right to vote because of the cost, inconvenience, or even unavailability of any of these documents. In addition to the elderly, women and minorities are less likely to have a driver's license and will be disproportionately affected by the law. Finally, the initiative would require some documentation to be verified by the Department of Homeland Security, which would most likely be unable to do so in a short time period meaning that many citizens may be disenfranchised due to bureaucratic obstacles.

D. PAN would create inconsistent rules from one precinct to the next and even from one voter to the next in the same precinct.

- Prop. 200 simply requires voters to “present one form of identification that bears the name, address, and photograph of the elector or two different forms of identification that bear the name and address of the elector,” but fails to define what kind of photo ID or other ID would be acceptable at the polls. This will result in inconsistencies from precinct to precinct, within one precinct, or even from voter to voter. In addition to voter confusion, the potential for discrimination and abuse is obvious.

E. PAN would create a public health danger for all Arizonans.

- If PAN were to be enacted, countless immigrants would be denied critical health care and nutrition. Even the threat of PAN has caused a great deal of fear in immigrant communities. If immigrants fear going to the doctor, it could result in further illness or even death and an increased the risk of spreading illness and disease to all Arizonans.

F. PAN would create severe penalties for civil servants who fail to send written reports to DHS

- Proposition 200 would make all government employees responsible for checking and verifying complicated immigration documents, and force them to report suspicious documents to the federal government. If they fail to file a written report each time they suspect a possible immigration violation, they would be subject to a fine of up to \$750 and/or jail for up to four months. Proposition 200 fails to define which agencies providing which “benefits” would be required to report immigration law violations, and fails to describe how a public employee or a court would determine whether a violation has been “discovered” triggering the duty to report and criminal liability. Supervisors also could be sent to jail if they interfere with this new duty. Government services could be slowed to a standstill while state and local employees fill out reports on suspected immigrants, and the reports would simply pile up in Washington because the Department of Homeland Security does not have the resources needed to take action on such reports.

E. PAN would require libraries, hospitals, schools, and others to verify immigration status.

- The reporting provision would apply to all employees of the state and political subdivisions of agencies that are responsible for the administration of state and local benefits that are not federally mandated. We do not know which benefits would ultimately be included within the meaning of “state and local public benefits,” but neither libraries, nor schools, nor public hospitals are federally mandated within the normal meaning of these terms. Therefore, Proposition 200 would make librarians, doctors, and teachers into immigration agents by requiring all state and local government employees to report suspected immigration violations to federal authorities or face criminal penalties.

IV. Conclusion

Whether viewed from the perspective of substantive impact on Arizona or of what it would do to efforts to enact a more sane immigration policy, the PAN initiative is a disaster in the making.