



Secretary of State
KEN BENNETT

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2006 Ballot Propositions & Judicial Performance Review

2006 Ballot Propositions

Arizona Secretary of State

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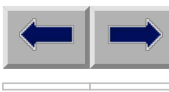
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cited in Lopez-Valenzuela v. Arpaio
 No. 11-16487 archived on October 31, 2014

PROPOSITION 100

OFFICIAL TITLE

HOUSE CONCURRENT RESOLUTION 2028

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II, SECTION 22, CONSTITUTION OF ARIZONA; RELATING TO BAILABLE OFFENSES.

TEXT OF PROPOSED AMENDMENT

Be it resolved by the House of Representatives of the State of Arizona, the Senate concurring:

1. Article II, section 22, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

22. Bailable offenses

Section 22. A. All persons charged with crime shall be bailable by sufficient sureties, except for:

1. FOR capital offenses, sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age when the proof is evident or the presumption great.
2. FOR felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge.
3. FOR felony offenses if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community and if the proof is evident or the presumption great as to the present charge.



4. FOR SERIOUS FELONY OFFENSES AS PRESCRIBED BY THE LEGISLATURE IF THE PERSON CHARGED HAS ENTERED OR REMAINED IN THE UNITED STATES ILLEGALLY AND IF THE PROOF IS EVIDENT OR THE PRESUMPTION GREAT AS TO THE PRESENT CHARGE.

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.
2. Protecting against the intimidation of witnesses.
3. Protecting the safety of the victim, any other person or the community.

2. The Secretary of State shall submit this proposition to the voters at the next general election as provided by article XXI, Constitution of Arizona.

ANALYSIS BY LEGISLATIVE COUNCIL

The Arizona Constitution provides that all persons who are charged with a crime are eligible for bail, subject to certain exceptions. Bail is not allowed for any person who is charged with a crime if the court finds proof that the person committed the crime is evident or the presumption that the person committed the crime is great and the charged crime is one of the following:

1. A capital offense (an offense punishable by death), sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age.
2. A felony offense committed when the person charged is already admitted to bail on a separate felony charge.
3. A felony offense if the person charged poses a substantial danger to any other person or the community and no condition of release will reasonably assure the safety of the other person or community.

Proposition 100 would amend the Arizona Constitution to additionally prohibit bail for any person who is charged with a serious felony offense (as determined by the Legislature) if the person charged entered or remained in the United States illegally and the court finds proof that the person committed the crime is evident or the presumption that the person committed the crime is great.

In 2006, the Legislature enacted legislation to specify that class 1, 2, 3 and 4 felony offenses would constitute the "serious felony" offenses for which a person who has entered or remained in the United States illegally shall be denied bail. That legislation does not become effective unless Proposition 100 is enacted.

ARGUMENTS "FOR" PROPOSITION 100

Ballot argument FOR Proposition 100 (Bailable offenses)

Illegal aliens that commit a crime are an extremely difficult challenge for law enforcement and growing threat to our citizens. Large, well-organized gangs of illegal aliens have flooded many neighborhoods with violence to the point where Arizona now has the highest crime rate in the nation. With few real ties to the community and often completely undocumented by state agencies, many illegal aliens can easily escape prosecution for law breaking simply because they are so difficult to locate. HCR 2028 would deny bail to illegal aliens when there is convincing evidence that they've committed a serious felony, keeping dangerous thugs in jail rather than releasing them onto the streets. Allowing an illegal immigrant to post bail simply gives them time to slip across the border and evade punishment for their crimes. By voting yes for this initiative, we keep more violent criminals in jail, make our homes and communities safer, and send a powerful message to illegal aliens that their crimes will not go unpunished.

The Honorable Russell Pearce, Arizona House of Representatives,
Mesa

Paid for by "Russell Pearce 2004"

Illegal immigrants accused of committing serious felonies in Arizona should not be allowed to make bail and flee the country before standing trial for their crimes. That's why I helped draft and strongly support this proposition, which would

amend our state constitution to prohibit bail for such offenders.

Far too many illegal immigrants accused of serious crimes have jumped bail and slipped across the border in order to avoid justice in an Arizona courtroom. When and if they do come back to the United States, too often it's not to appear in court, but to commit more crimes.

One example is Oscar Martinez-Garcia. Indicted in 1998 on drug and weapons charges, he posted bail and was released to federal authorities, who then deported him before he could be tried. He returned to Phoenix illegally and was driving a vehicle when Phoenix Police Officer Marc Atkinson pulled him over. One of the passengers in the vehicle shot and killed Officer Atkinson. Martinez-Garcia was convicted of first-degree murder for his participation in this cold-blooded killing, but that won't bring back this fallen officer.

Other examples of illegal immigrants who made bail and avoided prosecution for serious crimes include accused child predators, armed robbers, drug dealers and other accused criminals. The victims of these crimes deserve justice.

Thanks to an amendment approved overwhelmingly by voters in 2002, the Arizona Constitution now denies bail to defendants accused of rape and child molestation. This proposition similarly would deny bail to illegal immigrants who pose a clear danger to society and who too often use our border as an escape route. Our state constitution was not intended to "bail out" illegal immigration. I urge you to vote yes to end this abuse of our criminal justice system.

Andrew Thomas, Maricopa County Attorney,
Phoenix

The Arizona Farm Bureau supports proposition 100.

Bail is a judgment that the party is neither a danger to society nor a risk of flight from prosecution. We ask you: When is an undocumented person, who is accused of a serious crime, not a flight risk?

If a person has no legal right to be in this country and commits a serious crime for which they must answer, we do not think bail is a prudent choice.

Comprehensive immigration reform would reduce the criminal element coming into this country. Securing the border coupled with a temporary worker program and identifying the millions of those illegally in this country, would do much to stem the tide of criminal activity.

Kevin Rogers, President, Arizona Farm Bureau, Mesa Jim W. Klinker, Chief Administrative Officer, Arizona Farm Bureau, Mesa

Paid for by "Arizona Farm Bureau"

I fully support the actions of the State Legislature that placed this measure on the ballot. The citizens of Arizona must be assured that all persons who commit violent criminal acts against society face our system of justice.

It is a matter of undeniable fact that a large number of these wanted fugitives from justice are illegal aliens who have fled to their native country as a means of avoiding prosecution and conviction for their crimes. In many of these cases the prosecuting attorneys have asked the court to retain custody of these fugitives because of the flight risk only to have judges ignore that risk and set bail.

This must not be allowed to continue. I commit to you that, as your Governor, I will apply all legal measures to protect and defend Arizonans from the illegal invasion. This Ballot Measure addresses one area that needs to be resolved in this fight to secure our borders and reduce the level of crime in our neighborhoods.

It is embarrassing to have our state lead the nation in crime. Unfortunately, the current governor has vetoed ten separate bills sent to her desk by the legislature that were written to protect you from illegal immigration.

We can do better and I ask you to vote YES on this Ballot Proposition so the citizens of Arizona can have confidence that our criminal justice system works as intended. **Paid for by Goldwater for Governor Committee.**

Don Goldwater, Goldwater for Governor,
Laveen

ARGUMENTS "AGAINST" PROPOSITION 100

Proposition 100 would deny the constitutional right to post bail to people accused of most felony offenses based on nothing more than their inability to prove current immigration status, and not the actual danger they pose to the community. It is wrong.

VOTE NO on Prop 100 because:

1. This proposition will cost taxpayers an extra \$2,100 per month for each person who is held and denied bail.
2. Our jails are already overcrowded and cost taxpayers millions every year. Arizona cannot afford to hold low-risk persons simply due to their national origin.
3. Bail is a cherished constitutional right. People accused of crimes have not necessarily committed the crimes they are accused of and have the right to post bail.
4. This proposition puts people who overstay a tourist visa or cross the border in the same category as serial murderers.
5. People who pose an actual danger to society are already held without bail under the current law.
6. Prop 100 will do nothing to increase public safety.

More reasons to VOTE NO on Prop 100:

Under current law, judges set bail to assure appearance at court proceedings and protect public safety. The more serious the crime, the higher the bail that is set. Certain offenses, such as capital murder, are not eligible for bail because they are considered very serious. In contrast, Prop 100 penalizes individuals who are not a danger and who have families and close community ties.

Prop 100 would also create a sub-class of people within the justice system based solely on race or national origin, and unnecessarily penalize people who pose little or no risk to the community.

This proposition would do nothing more than institutionalize bias and discrimination in the justice system, at taxpayer expense.

VOTE NO on Prop 100.

Jim Fullin, Tucson Matt Green, Tucson Margot Veranes, Tucson

Paid for by "Margot I. Veranes"

BALLOT FORMAT

PROPOSITION 100

**PROPOSED AMENDMENT TO THE
CONSTITUTION**

BY THE LEGISLATURE

OFFICIAL TITLE

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II, SECTION 22, CONSTITUTION OF ARIZONA; RELATING TO BAILABLE OFFENSES.

DESCRIPTIVE TITLE

ADDS TO THE LIST OF NON-BAILABLE OFFENSES SERIOUS FELONY OFFENSES PRESCRIBED BY THE LEGISLATURE IF THE PERSON CHARGED HAS ENTERED OR REMAINED IN THE UNITED STATES ILLEGALLY AND IF THE PROOF IS EVIDENT OR THE PRESUMPTION GREAT AS TO THE PRESENT CHARGE.

PROPOSITION 100

A "yes" vote shall have the effect of denying bail to persons charged with serious felonies as defined by law if the person has entered or remained in the United States illegally.

YES

A "no" vote shall have the effect of continuing to allow bail to persons charged with serious felony offenses who enter or remain in the United States illegally, unless the person is charged with an offense for which bail is not permitted under current law.

NO



The Ballot Format displayed in HTML reflects only the text of the Ballot Proposition and does not reflect how it will appear on the General Election Ballot. Spelling, grammar, and punctuation were reproduced as submitted in the "for" and "against" arguments.

JANICE K. BREWER
Arizona Secretary of State

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*cited in Lopez-Valenzuela v. Arpaio
No. 11-16487 archived on October 31, 2014*