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Court halts Maricopa bid to close special DUI 'courts' for minorities

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PHOENIX — A federal appeals court on Wednesday shut down efforts by Maricopa County Attorney Andrew Thomas to end what he says are "race-based" courts for handling some people convicted of driving while intoxicated.

In a unanimous decision, the 9th U.S. Circuit Court of Appeals sidestepped the question of whether the procedures Thomas objects to are proper. Instead, the judges concluded he lacks legal standing to question their legality.

Thomas said Wednesday he is still convinced the courts amount to "racial discrimination in our government" and his office is still studying whether to appeal.

While the case concerns a practice in Maricopa County, the implications of the ruling could be broader. It leaves intact the ability of judges throughout Arizona to set up special programs to help people successfully complete probation.

Technically speaking, what Thomas is challenging is not a "court" in the traditional sense where people are put on trial. Instead, the program, set up in 1998, is described by court officials as a "therapeutic probation program" designed to monitor the activities of those already convicted.

It differs from standard probation because it is conducted in public sessions at the courthouse, with the judge acting as the probation officer and checking to see if the participants have completed various tasks like attending counseling and submitting to tests to ensure they are not drinking.

Those who don't cooperate can be sent back to jail for another 60 days.

In 2002, separate "courts" were set up for Native Americans and Spanish speakers.

Thomas sued, complaining that those in the Spanish-language program, "many of whom I suspect are illegal immigrants," receive more positive reinforcement and fewer or lighter punishments than those in the "regular" court. He also found fault with the Native American program, saying participants there make use of "cultural programs, specially designed for them, such as being sent to sweat lodges and participating in talking circles."

Court officials defend the programs, saying they are designed to take cultural factors into account to help people succeed.

Appellate Judge Clifford Wallace said all that is irrelevant.

He said the only people who can argue in court that a program is unconstitutional are those personally affected by that program. Wallace said Thomas' interest in the case is official.

The only "loss" Thomas suffered, he said, is of his institutional power as county attorney, not a personal loss.

This is the second defeat for Thomas on the issue. U.S. District Court Judge Earl Carroll threw the case out of court in 2007 on the same grounds of lack of standing.

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