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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**
15

16 MARIA M. GONZALEZ, JESUS M.
GONZALEZ, BERNIE ABEYTIA,
17 LUCIANO VALENCIA, DEBBIE LOPEZ,
GEORGIA MORRISON FLORES,
18 NAEEM ABDUL-KAREEM,
SOUTHWEST VOTER REGISTRATION
19 EDUCATION PROJECT, VALLE DEL
SOL, FRIENDLY HOUSE, CHICANOS
20 POR LA CAUSA, INC., ARIZONA
HISPANIC COMMUNITY FORUM,
21 COMMON CAUSE, PROJECT VOTE,
and ASSOCIATION
22 OF COMMUNITY ORGANIZATIONS
FOR REFORM NOW

23 Plaintiffs,

24 VS.

25
26 STATE OF ARIZONA, JAN BREWER,
in her official capacity as Secretary of
27 State of the state of Arizona;
LeNORA JOHNSON, Apache County
28 Recorder, CHRISTINE RHODES, Cochise
County, Recorder, CANDANCE OWENS,
Coconino County Recorder, LINDA

Case No. CV-06-1268-PHX-ROS (Lead)
Case No. CV-06-1362-PHX-ROS
Case No. CV-06-1575-PHX-ROS

FIRST AMENDED COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF
[Civil Rights]

1 HAUGHT ORTEGA, Gila County
Recorder, WENDY JOHN, Graham
2 County Recorder, BERTA MANUZ,
Greenlee County Recorder, SHELLY
3 BAKER, La Paz County Recorder,
HELEN PURCELL, Maricopa
4 County Recorder, JOAN McCall, Mohave
County Recorder, LAURETTE JUSTMAN,
5 Navajo County Recorder, F. ANN
RODRIGUEZ, Pima County Recorder,
6 LAURA DEAN-LYTTLE, Pinal County
Recorder, SUZIE SAINZ, Santa Cruz
7 County Recorder, ANN WAYMAN-
TRUJILLO, Yavapai County Recorder,
8 SUSAN HIGHTOWER MARLER, Yuma
County Recorder, in their official
9 capacities as County Recorders of the State
of Arizona; PENNY L. PEW, Apache
10 County Election Director, THOMAS
SCHELLING, Cochise County Election
11 Director, PATTY HANSEN, Coconino
County Election Director, DIXIE
12 MUNDY, Gila County Election Director,
JUDY DICKERSON, Graham County
13 Election Director, YVONNE PEARSON,
Greenlee County Election Director,
14 DONNA J. HALE, La Paz County Election
Director, KAREN OSBORNE, Maricopa
15 County Election Director, ALLEN
TEMPERT, Mohave County Election
16 Director, KELLY DASTRUP, Navajo
County Election Director, BRAD R.
17 NELSON, Pima County Election Director,
GILBERTO HOYOS, Pinal County
18 Election Director, MELINDA MEEK,
Santa Cruz County Election Director,
19 LYNN A. CONSTABILE, Yavapai
County Election Director, PATTI
20 MADRILL, Yuma County
Election Director, in their official
21 capacities as County Election Directors
of the State of Arizona.

22 Defendants.

23
24 **PRELIMINARY STATEMENT**

25 1. This action challenges the voter registration and identification provisions of
26 Proposition 200, an initiative measure adopted by Arizona voters on November 2,
27 2004, and it seeks declaratory and injunctive relief to halt their implementation and
28 enforcement.

1 2. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief
2 requested in this complaint. Unless enjoined by this Court, Arizona's voter
3 registration and identification requirements will continue to impermissibly burden
4 voting and voter registration across the state.

5 **JURISDICTION AND VENUE**

6 3. Jurisdiction is based upon 28 U.S.C. 1343a(3) & (4) and upon 28 U.S.C. 1331 for
7 causes of action arising from 42 U.S.C. 1971 and 1973, 42 U.S.C. 1973gg-4, and 42
8 U.S.C. 2000d. Jurisdiction for Plaintiffs' claim for declaratory relief is based upon 28
9 U.S.C. 2201 and 2202. Jurisdiction for Plaintiffs' constitutional and federal statutory
10 claims is also based upon 42 U.S.C. 1983. Jurisdiction for Plaintiffs' claim for
11 attorneys fees is based on 42 U.S.C. 1973l(e) and 1988. Venue is proper in this Court
12 under 28 U.S.C. 1391(b).

13 **PARTIES**

14 4. Plaintiff MARIA GONZALEZ is a resident of Yuma County, Arizona. Ms. Gonzalez
15 is a U.S. citizen and qualified voter registration applicant but was denied voter
16 registration by the Yuma County Recorder for failure to provide the documentary
17 proof of U.S. citizenship required by Proposition 200. Plaintiff MARIA GONZALEZ
18 is Latina.

19 5. Plaintiff JESUS M. GONZALEZ is a resident of Yuma County, Arizona. Mr.
20 Gonzalez is a U.S. citizen and qualified voter registration applicant but was denied
21 voter registration by the Yuma County Recorder for failure to provide the
22 documentary proof of U.S. citizenship required by Proposition 200. Plaintiff JESUS
23 M. GONZALEZ is Latino.

24 6. Plaintiff BERNIE ABEYTIA is a resident and registered voter of Maricopa County,
25 Arizona. Mr. ABEYTIA is a Vietnam veteran and the State Commander of the
26 American GI Forum of Arizona, a not-for-profit organization dedicated to assisting
27 veterans. Although Mr. ABEYTIA is a qualified voter, he was denied the opportunity
28 to vote in person at the polls because he lacked the identification required by

1 Proposition 200. Mr. ABEYTIA would have to pay a fee in order to acquire the
2 identification required by Proposition 200. Plaintiff BERNIE ABEYTIA is Latino.

3 7. Plaintiff LUCIANO VALENCIA is a resident of Pima County, Arizona. Mr. Valencia
4 is a U.S. citizen and a qualified voter registration applicant but was denied voter
5 registration by the Pima County Recorder because, after properly completing a federal
6 mail voter registration application, he did not provide the additional documentary
7 proof of U.S. citizenship required by Proposition 200. Plaintiff LUCIANO
8 VALENCIA is Latino.

9 8. Plaintiff DEBBIE LOPEZ is a resident and registered voter of Maricopa County.
10 Plaintiff DEBBIE LOPEZ formerly worked as the Arizona State Director of a national
11 non-profit whose mission was to empower Latino citizens in the political process and
12 whose activities focused on voter registration and turnout. Plaintiff DEBBIE LOPEZ
13 also volunteers to register voters and attempted to register voters in a community-
14 based voter registration drive in Maricopa County as recently as April 10, 2006.
15 Plaintiff DEBBIE LOPEZ is Latina and a member of Plaintiff ARIZONA HISPANIC
16 COMMUNITY FORUM.

17 9. Plaintiff NAEEM ABDUL-KAREEM is a U.S. citizen and a qualified voter
18 registration applicant but was denied voter registration by the Maricopa County
19 Recorder because, after completing an Arizona voter registration application, he did
20 not provide additional proof of U.S. Citizenship as required by Proposition 200.

21 10. Plaintiff GEORGIA MORRISON FLORES is a resident and registered voter of Yuma
22 County, Arizona. Although Ms. MORRISON FLORES is a qualified voter, she was
23 denied the opportunity to vote in person at the polls in November 2006 because she
24 lacked the identification required by Proposition 200. Ms. MORRISON FLORES
25 would have to pay a fee in order to acquire the identification required by Proposition
26 200. Plaintiff GEORGIA MORRISON FLORES is African American.

27 11. Plaintiff SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT
28

1 (SVREP) is a non-profit and non-partisan organization committed to improving the
2 participation of Latino and other minority communities across the United States in the
3 democratic process, through voter registration, voter education and voter participation
4 activities. Since its founding in 1974, SVREP has conducted more than 2,200 voter
5 registration campaigns in 15 states, including Arizona. SVREP conducts its voter
6 registration activities at community-based sites such as school campuses, malls and
7 fairs. Because Proposition 200 has limited the number of persons that SVREP can
8 register to vote and impaired the ability of SVREP to conduct voter registration and
9 turnout efforts, SVREP has been injured by Proposition 200.

10 12. Plaintiff VALLE DEL SOL is a non-profit and non-partisan organization founded in
11 1960. Valle del Sol has grown to be one of Arizona's largest non-profit, community-
12 based organizations helping men, women, children, families, and the elderly each year
13 through social services and leadership development programs. The mission of
14 VALLE DEL SOL is to inspire positive change by investing in human services,
15 strengthening self-sufficiency for families and building the next generation of Latino
16 leaders. In order to fulfill its organizational goals, VALLE DEL SOL has conducted
17 voter registration activities in the past and plans to conduct further voter registration
18 activities in the future. Because Proposition 200 has limited the number of persons
19 that VALLE DEL SOL can register to vote and impaired the ability of VALLE DEL
20 SOL to conduct voter registration efforts, VALLE DEL SOL has been injured by
21 Proposition 200.

22 13. Plaintiff FRIENDLY HOUSE is a social service agency that provides comprehensive
23 family services to over 40,000 families, youth and children a year. Established in
24 1920, FRIENDLY HOUSE was part of a new national settlement house project of the
25 federal government to assist both new immigrants to the United States and the poor.
26 Founded by the Phoenix Americanization Committee, the goal was to teach English
27 and citizenship to foreign-born clients. Today, in addition to offering services focused
28

1 on youth education, employment and training, social services and adult education,
2 FRIENDLY HOUSE provides low cost, on-site immigration services, including
3 citizenship applications, to the immigrant community in greater Maricopa County and
4 also provides free outreach information through workshops and immigration
5 presentations to various community groups within the targeted areas. Among the
6 organizational goals of FRIENDLY HOUSE is to promote and ensure the ability of
7 immigrants to naturalize and to participate as U.S. citizens in civic life. FRIENDLY
8 HOUSE also fulfills its organizational mission by conducting community-based voter
9 registration. Because Proposition 200 has limited the number of persons that
10 FRIENDLY HOUSE can register to vote and impaired the ability of FRIENDLY
11 HOUSE to conduct voter registration efforts, FRIENDLY HOUSE has been injured
12 by Proposition 200.

13 14. Plaintiff CHICANOS POR LA CAUSA, INC. (CPLC) is a statewide community
14 development corporation (CDC), committed to building stronger, healthier
15 communities as a leading advocate, coalition builder and direct service provider.
16 CPLC promotes positive change and self-sufficiency to enhance the quality of life for
17 the benefit of those it serves. In order to fulfill its organizational goals, CPLC
18 conducts voter registration drives. Because Proposition 200 has limited the number
19 of persons that CPLC can register to vote and impaired the ability of CPLC to conduct
20 voter registration efforts, CPLC has been injured by Proposition 200.

21 15. Plaintiff ARIZONA HISPANIC COMMUNITY FORUM (AHCF) is a membership
22 advocacy organization that collaborates with other organizations on civil and human
23 rights issues. The mission of the AHCF is to empower Hispanic communities: to work
24 towards active participation with policy-making bodies at all levels of the public and
25 private sectors; to become involved in local state and national issues impacting the
26 Hispanic community; to educate, promote and preserve Hispanic history, language,
27 cultures, customs, and contributions; to increase opportunities and improve the quality
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1 of life for Hispanics; to defend, preserve and protect rights of Hispanics under the
2 law; and to educate and ensure that the public and private sector provide equal access
3 and fair treatment for Hispanics. In order to fulfill its organizational goals, AHCF
4 conducts voter registration. Because Proposition 200 has limited the number of
5 persons that AHCF can register to vote and impaired the ability of AHCF to conduct
6 voter registration and turnout efforts, AHCF has been injured by Proposition 200.

7 16. Plaintiff PROJECT VOTE is a nonpartisan, nonprofit organization incorporated in
8 Louisiana with an office in Phoenix. In Arizona Project Vote has helped increase
9 voter registration by registering voters in the community and collaborating with other
10 Arizona-based community groups since 1982. Project Vote also provides professional
11 training, management, evaluation, and technical services for voter engagement and
12 voter participation activities in low and moderate-income communities in Arizona.
13 As a result of Proposition 200, Project Vote has been forced to drastically cut-back
14 on its voter registration activities in Arizona and to divert substantial resources from
15 its speech and association activities to comply with the new registration and voting
16 requirements.

17 17. Plaintiff ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM
18 NOW (ACORN) is a nonpartisan, nonprofit organization with offices in Mesa,
19 Glendale, Tucson, and Phoenix. ACORN is the nation's largest community
20 organization of low and moderate income families, working together for social justice
21 and stronger communities. ACORN organizes voter registration drives with the
22 assistance of Project Vote, targeting low and moderate-income families in Arizona.
23 As a result of Proposition 200, ACORN was forced to drastically cut back on its voter
24 registration activities in Arizona.

25 18. Plaintiff COMMON CAUSE is a nonpartisan, nonprofit citizen lobby organization
26 devoted to electoral reform, ethics in government and to the protection and
27 preservation of the rights of all citizens to vote in national, state, and local elections,
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1 including the education of voters about voting rights and procedures. In fulfillment
2 of its organizational mission, COMMON CAUSE conducts voter education, among
3 other activities. The membership of COMMON CAUSE includes voters registered
4 in the State of Arizona.

5 19. Defendant STATE OF ARIZONA is a state of the United States of America.
6 Defendant STATE OF ARIZONA is subject to the requirements of federal law,
7 including the National Voter Registration Act of 1993 and Section 5 of the Voting
8 Rights Act of 1965.

9 20. Defendant JAN BREWER is sued in her official capacity as Arizona Secretary of
10 State. Defendant BREWER is the chief election officer of Defendant STATE OF
11 ARIZONA. In that capacity, she is responsible for implementation of the provisions
12 of Proposition 200 relating to voting.

13 21. Defendant HELEN PURCELL is the Maricopa County Recorder. She is sued in her
14 official capacity. As the County Recorder, Ms. PURCELL's responsibilities include
15 voter registration for the county as well as the conduct of elections in the county.

16 22. Defendant KAREN OSBORNE is the Maricopa County Director of Elections. She is
17 sued in her official capacity. As Director of Elections, Ms. OSBORNE is responsible
18 for administering, preparing, conducting and tallying federal, state and county
19 elections in the county.

20 23. Defendant LeNORA JOHNSON is the Apache County Recorder. She is sued in her
21 official capacity. As the County Recorder, Ms. JOHNSON's responsibilities include
22 voter registration for the county as well as the conduct of elections in the county.

23 24. Defendant PENNY L. PEW is the Apache County Director of Elections. She is sued
24 in her official capacity. As Director of Elections, Ms. PEW is responsible for
25 administering, preparing, conducting and tallying federal, state and county elections
26 in the county.
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1 25. Defendant CHRISTINE RHODES is the Cochise County Recorder. She is sued in
2 her official capacity. As the County Recorder, Ms. RHODES's responsibilities
3 include voter registration for the county as well as the conduct of elections in the
4 county.

5 26. Defendant THOMAS SCHELLING is the Cochise County Director of Elections. He
6 is sued in his official capacity. As Director of Elections, Mr. SCHELLING is
7 responsible for administering, preparing, conducting and tallying federal, state and
8 county elections in the county.

9 27. Defendant CANDACE OWENS is the Coconino County Recorder. She is sued in her
10 official capacity. As the County Recorder, Ms. OWENS's responsibilities include
11 voter registration for the county as well as the conduct of elections in the county.

12 28. Defendant PATTY HANSEN is the Coconino County Director of Elections. She is
13 sued in her official capacity. As Director of Elections, Ms. HANSEN is responsible
14 for administering, preparing, conducting and tallying federal, state and county
15 elections in the county.

16 29. Defendant LINDA HAUGHT ORTEGA is the Gila County Recorder. She is sued in
17 her official capacity. As the County Recorder, Ms. ORTEGA's responsibilities
18 include voter registration for the county as well as the conduct of elections in the
19 county.

20 30. Defendant DIXIE MUNDY is the Gila County Director of Elections. She is sued in
21 her official capacity. As Director of Elections, Ms. MUNDY is responsible for
22 administering, preparing, conducting and tallying federal, state and county elections
23 in the county.

24 31. Defendant WENDY JOHN is the Graham County Recorder. She is sued in her
25 official capacity. As the County Recorder, Ms. JOHN's responsibilities include voter
26 registration for the county as well as the conduct of elections in the county.
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1 32. Defendant JUDY DICKERSON is the Graham County Director of Elections. She is
2 sued in her official capacity. As Director of Elections, Ms. DICKERSON is
3 responsible for administering, preparing, conducting and tallying federal, state and
4 county elections in the county.

5 33. Defendant BERTA MANUZ is the Greenlee County Recorder. She is sued in her
6 official capacity. As the County Recorder, Ms. MANUZ's responsibilities include
7 voter registration for the county as well as the conduct of elections in the county.

8 34. Defendant YVONNE PEARSON is the Greenlee County Director of Elections. She
9 is sued in her official capacity. As Director of Elections, Ms. Pearson is responsible
10 for administering, preparing, conducting and tallying federal, state and county
11 elections in the county.

12 35. Defendant SHELLY BAKER is the La Paz County Recorder. She is sued in her
13 official capacity. As the County Recorder, Ms. BAKER's responsibilities include
14 voter registration for the county as well as the conduct of elections in the county.
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16 36. Defendant DONNA HALE is the La Paz County Director of Elections. She is sued
17 in her official capacity. As Director of Elections, Ms. HALE is responsible for
18 administering, preparing, conducting and tallying federal, state and county elections
19 in the county.

20 37. Defendant JOAN McCALL is the Mohave County Recorder. She is sued in her
21 official capacity. As the County Recorder, Ms. McCALL's responsibilities include
22 voter registration for the county as well as the conduct of elections in the county.

23 38. Defendant ALLEN TEMPERT is the Mohave County Director of Elections. He is
24 sued in his official capacity. As Director of Elections, Mr. TEMPERT is responsible
25 for administering, preparing, conducting and tallying federal, state and county
26 elections in the county.

27 39. Defendant LAURETTE JUSTMAN is the Navajo County Recorder. She is sued in
28

1 her official capacity. As the County Recorder, Ms. JUSTMAN's responsibilities
2 include voter registration for the county as well as the conduct of elections in the
3 county.

4 40. Defendant KELLY DASTRUP is the Navajo County Director of Elections. She is
5 sued in her official capacity. As Director of Elections, Ms. DASTRUP is responsible
6 for administering, preparing, conducting and tallying federal, state and county
7 elections in the county.

8 41. Defendant F. ANN RODRIGUEZ is the Pima County Recorder. She is sued in her
9 official capacity. As the County Recorder, Ms. RODRIGUEZ's responsibilities
10 include voter registration for the county as well as the conduct of elections in the
11 county.

12 42. Defendant BRAD NELSON is the Pima County Director of Elections. He is sued in
13 his official capacity. As Director of Elections, Mr. NELSON is responsible for
14 administering, preparing, conducting and tallying federal, state and county elections
15 in the county.

16 43. Defendant LAURA DEAN-LYTLE is the Pinal County Recorder. She is sued in her
17 official capacity. As the County Recorder, Ms. DEAN-LYTLE's responsibilities
18 include voter registration for the county as well as the conduct of elections in the
19 county.

20 44. Defendant GILBERTO HOYOS is the Pinal County Director of Elections. He is sued
21 in his official capacity. As Director of Elections, Mr. HOYOS is responsible for
22 administering, preparing, conducting and tallying federal, state and county elections
23 in the county.

24 45. Defendant SUZIE SAINZ is the Santa Cruz County Recorder. She is sued in her
25 official capacity. As the County Recorder, Ms. SAINZ's responsibilities include voter
26 registration for the county as well as the conduct of elections in the county.
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1 46. Defendant MELINDA MEEK is the Santa Cruz County Director of Elections. She is
2 sued in her official capacity. As Director of Elections, Ms. MEEK is responsible for
3 administering, preparing, conducting and tallying federal, state and county elections
4 in the county.

5 47. Defendant ANN WAYMAN-TRUJILLO is the Yavapai County Recorder. She is
6 sued in her official capacity. As the County Recorder, Ms. WAYMAN-TRUJILLO's
7 responsibilities include voter registration for the county as well as the conduct of
8 elections in the county.

9 48. Defendant LYNN CONSTABILE is the Yavapai County Director of Elections. She
10 is sued in her official capacity. As Director of Elections, Ms. CONSTABILE is
11 responsible for administering, preparing, conducting and tallying federal, state and
12 county elections in the county.

13 49. Defendant SUSAN HIGHTOWER MARLER is the Yuma County Recorder. She is
14 sued in her official capacity. As the County Recorder, Ms. MARLER's
15 responsibilities include voter registration for the county as well as the conduct of
16 elections in the county.

17 50. Defendant PATTI MADRILL is the Yuma County Director of Elections. She is sued
18 in her official capacity. As Director of Elections, Ms. MADRILL is responsible for
19 administering, preparing, conducting and tallying federal, state and county elections
20 in the county.

21 51. All Defendants are recipients of federal financial assistance to conduct voter
22 registration and elections. At all times, all Defendants herein were acting under color
23 of law.
24

25 **STATEMENT OF FACTS**

26 **Proposition 200 Voting-Related Provisions**

27 52. Proposition 200 is an initiative statute that was submitted to the voters of Arizona at
28

1 the November 2, 2004 general election. Under the Arizona Constitution, Article IV,
2 Section 1, the people of Arizona have the power to enact initiative statutes. Initiative
3 statutes become law “when approved by a majority of the votes cast thereon and upon
4 proclamation of the Governor.” ARIZ. CONST. art. IV, §§ 1. Proposition 200 was
5 approved by a majority of the votes cast on November 2, 2004 and the Governor
6 issued the required proclamation on December 13, 2004.

- 7 53. Proposition 200 amended a number of election statutes in order to impose new
8 restrictions on voter registration and voting.

9 Proof of Citizenship for Voter Registration

- 10 54. Section 3 of Proposition 200 amends Section 16-152 of the Arizona Revised Statutes
11 in order to require that the Arizona voter registration application form include, “A
12 STATEMENT THAT THE APPLICANT SHALL SUBMIT EVIDENCE OF
13 UNITED STATES CITIZENSHIP WITH THE APPLICATION AND THAT THE
14 REGISTRAR SHALL REJECT THE APPLICATION IF NO EVIDENCE OF
15 CITIZENSHIP IS ATTACHED.”

- 16 55. Section 4 of Proposition 200 amends Section 16-166 of the Arizona Revised Statutes
17 in order to add a new subsection F which provides in part that the “COUNTY
18 RECORDER SHALL REJECT ANY APPLICATION FOR REGISTRATION THAT
19 IS NOT ACCOMPANIED BY SATISFACTORY EVIDENCE OF UNITED
20 STATES CITIZENSHIP.”

- 21 56. Proposition 200 further amends Section 16-166 to define the six identification
22 documents that are satisfactory evidence of U.S. citizenship: 1) an Arizona driver’s
23 license issued after October 1, 1996, or a license issued by another state that verifies
24 U.S. citizenship prior to issuing licenses; 2) a U.S. birth certificate; 3) a U.S. passport;
25 4) U.S. naturalization documents; 5) another immigration document that proves
26 citizenship; 6) a Bureau of Indian Affairs card number.
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1 57. Section 16-166 (F) (4) as amended by Proposition 200 requires that any voter
2 registration applicant who relies upon a naturalization certificate to prove his or her
3 U.S. citizenship may not submit a photocopy of the certificate but must present the
4 certificate in person to the County Recorder. The voter registration applicant who is
5 a naturalized citizen and who only provides the number of the naturalization
6 certificate on the voter registration application will not be added to the voter rolls until
7 the County Recorder is able to verify that number with the U.S. Immigration and
8 Naturalization Service.

9 Voter Identification for Casting a Ballot at the Polls

10 58. Section 5 of Proposition 200 amends Section 16-579 of the Arizona Revised Statutes
11 to provide that before receiving a ballot, every qualified elector "SHALL PRESENT
12 ONE FORM OF IDENTIFICATION THAT BEARS THE NAME, ADDRESS AND
13 PHOTOGRAPH OF THE ELECTOR OR TWO DIFFERENT FORMS OF
14 IDENTIFICATION THAT BEAR THE NAME AND ADDRESS OF THE
15 ELECTOR."

16 59. The "Procedure for Proof of Identification at the Polls," issued by Defendant
17 BREWER on September 6, 2005, provides that acceptable forms of voter photo
18 identification include: a valid Arizona driver license; valid Arizona nonoperating
19 identification license; tribal enrollment card or other form of tribal identification; or
20 a valid United States federal, state, or local government issued identification. These
21 forms of identification are not acceptable for voting unless they bear the same address
22 for the voter as that listed in the county voter rolls.

23 60. The "Procedure for Proof of Identification at the Polls" further provides that
24 acceptable forms of voter non-photo identification includes: a utility bill of the elector
25 that is dated within ninety days of the date of the election; bank or credit union
26 statement that is dated within ninety days of the date of the election ; valid Arizona
27 Vehicle Registration; Indian census card; property tax statement of the elector's
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1 residence; tribal enrollment card or other form of tribal identification; vehicle
2 insurance card; Recorder's Certificate; or valid United States federal, state, or local
3 government issued identification, including a voter registration card issued by the
4 county recorder. These forms of identification are not acceptable for voting unless
5 they bear the same address as that listed in the rolls for the voter.

- 6 61. The "Procedure for Proof of Identification at the Polls" provides that any voter at the
7 polling place who does not present satisfactory proof of identification will be
8 provided a provisional ballot. In order for the provisional ballot to be counted, the
9 voter must present satisfactory proof of identification to the County Recorder by 5:00
10 p.m. on the fifth business day after a general election that includes an election for a
11 federal office or 5:00 p.m. on the third business day after any other election.

12 Effect of the Voter Registration and Identification Requirements of Proposition 200

- 13 62. The official Arizona voter registration form, promulgated by Defendant BREWER
14 in March 2005, states that, "A complete voter registration form must also contain
15 proof of citizenship or the form will be rejected." Defendants no longer make
16 available or distribute the federal mail voter registration application prescribed by the
17 U.S. Elections Assistance Commission. Defendants do not provide a postage-paid
18 envelope with the Arizona voter registration application.

- 19 63. On March 6, 2006, the United States Election Assistance Commission (EAC) wrote
20 to Defendant BREWER in response to her request that the EAC "apply Arizona state
21 policy (derived from Proposition 200) to the Federal Mail Voter Registration Form."
22 In its letter the EAC informed Defendant BREWER that, "Arizona may not refuse to
23 register individuals to vote in a Federal election for failing to provide supplemental
24 proof of citizenship, if they have properly completed and timely submitted the Federal
25 Registration Form."

- 26 64. On March 13, 2006, Defendant BREWER responded to the EAC charging that the
27
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1 EAC's opinion was "completely inconsistent, unlawful, and without merit." The
2 letter further stated that, "After consulting with the Arizona Attorney General, I will
3 instruct Arizona's county recorders to continue to administer and enforce the
4 requirement that all voters provide evidence of citizenship when registering to vote
5 as specified in A.R.S. § 16-166(F)."

6 65. On March 13, 2006, State Election Director Joseph Kanefield wrote to the State's
7 county recorders informing them of Defendant BREWER's "position that the proof
8 of citizenship requirement set forth in A.R.S. § 16-166(F) must continue to be
9 enforced for all newly registered voters and voters moving from one county to
10 another."

11 66. On May 3, 2006, Plaintiff LUCIANO VALENCIA appeared in person at the Pima
12 County Recorder's Office and presented the clerk with a completed federal mail voter
13 registration form prescribed by the U.S. Election Assistance Commission. The clerk
14 did not accept the federal mail voter registration form and informed Mr. Valencia that
15 he could not be registered without documentary proof of citizenship because of the
16 requirements of Proposition 200.

17 67. Plaintiff Naeem Abdul-Kareem was also denied voter registration because he did not
18 provide the additional proof of citizenship required by Proposition 200. He applied
19 to vote through an Arizona ACORN and Project Vote voter registration drive
20

21 68. Upon information and belief, all Defendant Arizona county recorders are complying
22 with Defendant BREWER's directive to them that they reject properly-completed
23 federal mail voter registration applications that are not accompanied by the
24 documentary proof of citizenship required by Proposition 200.

25 69. As a result of Proposition 200, naturalized citizens who seek to register to vote and
26 use their naturalization document as proof of U.S. citizenship are forced to present
27 their naturalization document in person at the office of the County Recorder.
28

1 Naturalized citizens may not provide a photocopy of the naturalization document to
2 the County Recorder.

3 70. On August 18, 2005, Plaintiffs MARIA GONZALEZ and JESUS GONZALEZ
4 properly completed voter registration applications and submitted their applications to
5 the Yuma County Recorder. As required, Plaintiffs MARIA GONZALEZ and JESUS
6 GONZALEZ provided the number of their certificate of naturalization on the voter
7 registration form.

8 71. Plaintiffs MARIA GONZALEZ and JESUS GONZALEZ subsequently received from
9 the Yuma County Recorder a notice informing them that they did not provide
10 satisfactory proof of citizenship and enclosing their original registration applications
11 with an indication that they must provide personal immigration information not
12 required by Proposition 200.

13 72. Defendants STATE OF ARIZONA and BREWER did not state, in their submission
14 to the U.S. Department of Justice requesting Section 5 preclearance of Sections 3 and
15 4 of Proposition 200, that they would cease to use and accept the federal mail voter
16 registration form for registering voters for federal elections in Arizona.

17 73. As a result of the new proof of citizenship requirements imposed by Proposition 200,
18 Plaintiffs LOPEZ, SVREP, VALLE DEL SOL, FRIENDLY HOUSE, CPLC, AHCF,
19 PROJECT VOTE AND ACORN are impeded in their ability to conduct community-
20 based voter registration.

21 74. In order to successfully register voters in the community, Plaintiffs LOPEZ, SVREP,
22 VALLE DEL SOL, FRIENDLY HOUSE, CPLC, AHCF, PROJECT VOTE AND
23 ACORN must now carry with them a photocopy machine or computer scanner and
24 printer in order to make copies of citizenship documents for all voter registration
25 applicants who do not have a driver's license or state identification card issued after
26 1996. Plaintiffs LOPEZ, SVREP, VALLE DEL SOL, FRIENDLY HOUSE, CPLC,
27
28

1 AHCF, PROJECT VOTE AND ACORN may no longer use the pre-paid federal mail
2 voter registration applications in their voter registration campaigns. Plaintiffs
3 LOPEZ, SVREP, VALLE DEL SOL, FRIENDLY HOUSE, CPLC,
4 AHCF, PROJECT VOTE AND ACORN's inability to bring photocopy equipment to
5 malls, school campuses and community gatherings has injured them by severely
6 limiting their ability to register voters.

7 75. Latinos, among other ethnic groups, are less likely to possess the forms of
8 identification required under Proposition 200 to register to vote and cast a ballot. As
9 a result, significant numbers of Latinos attempting to register and turn out to vote are
10 denied the right to vote. In addition, because Latinos comprise a large proportion of
11 naturalized citizens in Arizona, the documentary proof of citizenship requirement
12 imposed by Proposition 200 on naturalized citizens has a disparate negative effect on
13 voter registration by Latinos.

14 76. Plaintiffs have provided written notice on three separate occasions to Defendant
15 BREWER informing her that Arizona is not in compliance with the National Voter
16 Registration Act (NVRA). On November 30, 2004, Plaintiff FRIENDLY HOUSE
17 filed a written complaint in the U.S. Federal Court for the District of Arizona naming
18 Defendant BREWER and alleging that Proposition 200's documentary proof of
19 citizenship requirement was pre-empted by the NVRA.

20 77. On March 27, 2006, Plaintiffs sent a letter to Defendant BREWER stating that the
21 implementation of Proposition 200's documentary proof of citizenship requirement
22 had placed Arizona in violation of the NVRA. Plaintiffs sent a second letter to
23 Defendant BREWER on April 17, 2006 reiterating that Arizona was not in
24 compliance with the NVRA.

25 78. On April 20, 2006, Joseph Kanefield, Arizona State Election Director, wrote to the
26 State's County Recorders informing them that the Arizona Secretary of State's office
27 had received notices of intent to file suit and that "it is very likely that the county
28

1 recorders will be named in these suits when they are filed.”

2 79. Early voting for the federal and state primary election in Arizona begins August 10,
3 2006. Defendants BREWER and STATE OF ARIZONA received Plaintiff's April 17,
4 2006 letter on April 18, 2006 and it has been more than twenty days since their receipt
5 of the letter.

6 80. Plaintiff BERNIE ABEYTIA seeks to cast his ballot their ballots at the polls in the
7 next election. Although he is a registered an qualified voter in Maricopa County, Mr.
8 Abeytia does not possess the identification documents required by Proposition 200 for
9 voting at the polls. As a result of Proposition 200's new proof of identification
10 requirements, Mr. Abeytia will be denied the opportunity to vote in person on Election
11 Day unless he pays a fee for identification documents specified by Proposition 200.

12 81. Plaintiff GEORGIA MORRISON FORRESTER sought to cast her ballot during the
13 November 2006 election. Although she is a registered voter in Yuman County, Ms.
14 Morrison Forrester did not possess the identification documents required by
15 Proposition 200 for voting at the polls on election day. As a result of Proposition
16 200's new proof of identification requirements, Ms. Morrison Forrester was denied
17 the opportunity to vote in person on Election Day.

18
19 82. Organizational plaintiffs have also expended scarce and valuable organizational
20 resources informing voters of the new voting identification requirements in an attempt
21 to prevent Proposition 200 from blocking qualified voters from voting. The
22 organizational plaintiffs have been injured by the voter identification provisions of
23 Proposition 200 because their resources are drained by the effort to assist voters in
24 navigating the new identification requirements. Without the voter identification
25 provisions of Proposition 200, the organizational plaintiffs would be able to spend
26 their limited resources reaching more voters with their voter registration and turnout
27 efforts.

1 83. Upon information and belief, Defendant Arizona county recorders are implementing
2 the documentary proof of citizenship and identification requirements set out in
3 Sections 3, 4 and 5 of Proposition 200.

4 **FIRST CAUSE OF ACTION**

5 (Supremacy Clause of the U.S. Constitution)

6
7 84. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

8 85. Defendants' implementation of the documentary proof of citizenship requirements of
9 Sections 3 and 4 of Proposition 200 violates the Supremacy Clause, Article VI,
10 paragraph 2 of the U.S. Constitution.

11 86. Accordingly, Plaintiffs are entitled to a declaration that Sections 3 and 4 of
12 Proposition 200 are unconstitutional and to an order permanently enjoining their
13 enforcement.

14 **SECOND CAUSE OF ACTION**

15 (First Amendment to the U.S. Constitution)

16
17 87. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

18
19 88. By preventing Plaintiffs from using federal mail voter registration application forms,
20 and forcing them to comply with Proposition 200's documentary proof of citizenship
21 in order to register voters, Defendants deprive Plaintiffs of their free speech and
22 associational right to conduct voter registration.

23 89. Accordingly, Plaintiffs are entitled to a declaration that Sections 3 and 4 of
24 Proposition 200 are unconstitutional and to an order permanently enjoining their
25 enforcement.

26 **THIRD CAUSE OF ACTION**

27 (Twenty-Fourth Amendment to the U.S. Constitution)

1 90. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

2 91. By requiring that voters pay a fee in order to acquire specific identification documents
3 to prove either U.S. citizenship or identity, Proposition 200 imposes the substantive
4 equivalent of a poll tax on Arizona voters.

5 92. Accordingly, Plaintiffs are entitled to a declaration that Sections 3, 4 and 5 of
6 Proposition 200 are unconstitutional and to an order permanently enjoining their
7 enforcement.
8

9 **FOURTH CAUSE OF ACTION**

10 (Equal Protection Clause of the Fourteenth Amendment to the U.S. States Constitution)

11 93. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

12 94. By requiring that voters pay a fee in order to acquire specific identification documents
13 to prove either U.S. citizenship or identity, Sections 3, 4 and 5 of Proposition 200
14 impermissibly burden the fundamental right to vote in violation of the Equal
15 Protection Clause of the Fourteenth Amendment to the United States Constitution.
16

17 95. In addition, by placing greater burdens of registration on naturalized voters, Sections
18 3 and 4 of Proposition 200 impermissibly burden the fundamental right to vote in
19 violation of the Equal Protection Clause of the Fourteenth Amendment to the United
20 States Constitution.

21 96. Accordingly, Plaintiffs are entitled to a declaration that Sections 3, 4 and 5 of
22 Proposition 200 are unconstitutional and to an order permanently enjoining their
23 enforcement.
24

25 **FIFTH CAUSE OF ACTION**

26 (Section 2 of the Voting Rights Act, 42 U.S.C. 1973)

27 97. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

28 98. Proposition 200's requirement that the county recorder reject applications for

1 registration that do not include satisfactory evidence of citizenship disparately affects
2 Latino voters, unlawfully dilutes Latino voters' right to vote, and provides them with
3 less opportunity than other members of the electorate to participate in the political
4 process.

5 99. Proposition 200's requirement that voters possess certain forms of identification to
6 cast a ballot disparately affects Latino voters, unlawfully dilutes Latino voters' right
7 to vote, and provides them with less opportunity than other members of the electorate
8 to participate in the political process.

9 100. Accordingly, Plaintiffs are entitled to a declaration that Sections 3, 4 and 5 of
10 Proposition 200 violate their rights under Section 2 of the Voting Rights Act and to
11 an order permanently enjoining their enforcement.

12
13 **SIXTH CAUSE OF ACTION**

14 (42 U.S.C. 1971 (a)(2)(A))

15 101. Plaintiffs incorporate by reference all foregoing paragraphs as if setforth fully here.

16 102. Proposition 200 violates Subsection (a)(2)(a) of Section 1971 of the Civil Rights Act
17 which requires states use the same procedures in determining voter eligibility for all
18 individuals within the same county. Proposition 200 requires registrants who are new
19 to a county to provide proof of citizenship while exempting intra-county registrants
20 from this requirement.

21 103. Proposition 200 also violates Subsection (a)(2)(A) of Section 1971 of the Civil
22 Rights Act because it exempts residents with an Arizona driver or nonoperating
23 licenses issued after October 1, 1996 from providing evidence of citizenahip
24 prior to registering to vote.

25
26 104. Accordingly, Plaintiffs are entitled to a declaration that Defendants' implementation
27 of Sections 3 and 4 of Proposition 200 violates their rights under 42 U.S.C. 1971
28 (a)(2)(A) and to an order permanently enjoining their enforcement.

1 121.01 of the Arizona Revised Statutes, which provides that a person is presumed to
2 be properly registered to vote on completion of a registration form that includes,
3 among other things, an affirmation of U.S. citizenship and without the submission of
4 further documentary proof of citizenship.

5 113. Accordingly, Plaintiffs are entitled to a declaration that Defendants' implementation
6 of Sections 3 and 4 of Proposition 200 violates their rights under A.R.S. Section 16-
7 121.01 and to an order permanently enjoining their enforcement.

8 **TENTH CAUSE OF ACTION**

9 (16-151 (B), Arizona Revised Statutes)

10 114. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

11 115. Defendants' failure to make available the federal mail voter registration applications
12 now prescribed by the U.S. Elections Assistance Commission violates Section 16-151
13 (B) of the Arizona Revised Statutes, which provides that "The secretary of state shall
14 make available for distribution through governmental and private entities the voter
15 registration forms that are prescribed by the federal election commission."

16 116. Accordingly, Plaintiffs are entitled to a declaration that Defendants' implementation
17 of Sections 3 and 4 of Proposition 200 violates their rights under A.R.S. Section 16-
18 151(B) and to an order permanently enjoining their enforcement.

19 **ELEVENTH CAUSE OF ACTION**

20 (Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973 FF)

21 117. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully
22 here.

23 118. Proposition 200 violates the Uniformed and Overseas Citizens Absentee Voting
24 Act, 42 U.S.C. 1973 FF, which requires states to accept and use the federal post
25 card application for voter registration by uniformed services voters and overseas
26 voters.
27
28

1 119. Accordingly, Plaintiffs are entitled to a declaration that Defendants'
2 implementation of Sections 3 and 4 of Proposition 200 violates their rights under
3 the Uniformed and Overseas Citizens Absentee Voting Act and to an order
4 permanently enjoining their enforcement.

5 **REQUEST FOR RELIEF**

6 WHEREFORE, Plaintiffs respectfully request that this Court:

7
8 Issue a declaration that Sections 3, 4 and 5 of Proposition 200 are unconstitutional
9 and illegal and of no force or effect;

10 Enter an order enjoining Defendants, their agents and successors in office, from
11 implementing Sections 3, 4, and 5 or any subpart thereof of Proposition 200;

12 Enter an order enjoining the Defendants, their agents and successors in office, and
13 all persons acting in concert with any of them, from failing to comply with the
14 requirements of Section 6 of the NVRA, 42 U.S.C. 1973ff-5 and UOCAVA;

15 Enter an order requiring Defendants, their agents and successors in office to make
16 available, use and accept the mail voter registration application form prescribed by the
17 Election Assistance Commission as required by Section 6 of the NVRA, 42 U.S.C.
18 1973gg-4;

19 Enter an order requiring Defendants, their agents and successors in office, to use
20 and accept the federal postcard application form prescribed by UOCAVA;

21 Enter an order requiring Defendants to take all steps necessary, including the
22 adoption of the appropriate administrative policies or rules, to make the voter registration
23 form prescribed by the Elections Assistance Commission available and to register those
24 voter registration applicants who complete and submit the mail voter registration
25 application form prescribed by the Elections Assistance Commission;

26 Enter an order requiring Defendants to immediately add to the voter registration
27 rolls those voter registration applicants who previously submitted to any County Recorder
28

1 a completed voter registration application and whose application was rejected for failure
2 to provide documentary proof of citizenship as required by Sections 3 and 4 of
3 Proposition 200.

4 Enter an order requiring Defendants to publicize effectively the remedial plans and
5 programs ordered by the Court to ensure widespread dissemination to State of Arizona
6 residents, among others, especially those who, at the time of the Court's order, may have
7 been denied the opportunity to register to vote in Arizona for failure to provide proof of
8 citizenship as required by Sections 3 and 4 of Proposition 200;

9 Enter an order requiring Defendants to provide the Court within 45 days from the
10 date of the Court's order (1) a plan or program designed to ensure that Defendants, their
11 agents and successors in office, will make available, use and accept the federal mail voter
12 registration application form prescribed by the Election Assistance Commission as
13 required by Section 6 of the NVRA, 42 U.S.C. 1973 gg-4, as well as the federal postcard
14 application form prescribed by UOCAVA;

15 Award Plaintiffs' attorney fees and costs incurred in this action under 42 U.S.C. §§
16 1988;

17 Grant such other and further relief as may be deemed just and proper; and

18 Maintain jurisdiction over this action.

19 Dated: August 17, 2007

20 Respectfully submitted,

21 By: s/Nina Perales

22 Nina Perales
23 Daniel R. Ortega, Jr.
24 Attorneys for Gonzalez Plaintiffs

