

EXHIBIT A

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

15 MARIA M. GONZALEZ, JESUS M.
16 GONZALEZ, BERNIE ABEYTIA,
17 LUCIANO VALENCIA, DEBBIE LOPEZ,
18 SOUTHWEST VOTER REGISTRATION
19 EDUCATION PROJECT, VALLE DEL
20 SOL, FRIENDLY HOUSE, CHICANOS
21 POR LA CAUSA, INC. and ARIZONA
22 HISPANIC COMMUNITY FORUM,

23 Plaintiffs,

24 VS.

25 STATE OF ARIZONA, JAN BREWER,
26 in her official capacity as Secretary of
27 State of the state of Arizona;
28 LeNORA JOHNSON, Apache County
Recorder, CHRISTINE RHODES, Cochise
County, Recorder, CANDANCE OWENS,
Coconino County Recorder, LINDA
HAUGHT ORTEGA, Gila County
Recorder, WENDY JOHN, Graham
County Recorder, BERTA MANUZ,
Greenlee County Recorder, SHELLY
BAKER, La Paz County Recorder,
HELEN PURCELL, Maricopa
County Recorder, JOAN McCall, Mohave
County Recorder, LAURETTE JUSTMAN,
Navajo County Recorder, F. ANN
RODRIGUEZ, Pima County Recorder,
LAURA DEAN-LYTTLE, Pinal County
Recorder, SUZIE SAINZ, Santa Cruz
County Recorder, ANN WAYMAN-
TRUJILLO, Yavapai County Recorder,
SUSAN HIGHTOWER MARLER, Yuma
County Recorder, in their official
capacities as County Recorders of the State

Case No.

DECLARATION OF DIEGO M.
BERNAL IN SUPPORT OF
PLAINTIFFS' EX PARTE
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE: PRELIMINARY
INJUNCTION

1 of Arizona; PENNY L. PEW, Apache
2 County Election Director, THOMAS
3 SCHELLING, Cochise County Election
4 Director, PATTY HANSEN, Coconino
5 County Election Director, DIXIE
6 MUNDY, Gila County Election Director,
7 JUDY DICKERSON, Graham County
8 Election Director, YVONNE PEARSON,
9 Greenlee County Election Director,
10 DONNA J. HALE, La Paz County Election
11 Director, KAREN OSBORNE, Maricopa
12 County Election Director, ALLEN
13 TEMPERT, Mohave County Election
14 Director, KELLY DASTRUP, Navajo
15 County Election Director, BRAD R.
16 NELSON, Pima County Election Director,
17 GILBERTO HOYOS, Pinal County
18 Election Director, MELINDA MEEK,
19 Santa Cruz County Election Director,
20 LYNN A. CONSTABILE, Yavapai
21 County Election Director, PATTI
22 MADRILL, Yuma County
23 Election Director, in their official
24 capacities as County Election Directors
25 of the State of Arizona.

26 Defendants.

27 I, Diego Bernal, declare that the following is true and correct to the best of my
28 knowledge:

1. I am employed by the Mexican American Legal Defense and Educational Fund, the attorneys representing Plaintiffs in this case. I make this declaration in support of Plaintiffs' Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction.
2. Proposition 200 consists of seven sections: a short title (section 1); findings and declaration (section 2); a section regarding severability of the initiative (section 7); and four substantive sections, three of which relate to voting (sections 3, 4, and 5) and one of which requires verifying the immigration status of applicants for public benefits and reporting of any violation of federal immigration law by any applicant (section 6). Attached as Exhibit 1 is a true and correct copy of the sections of the Arizona Revised

1 Statutes amended by Sections 3, 4 and 5 of Proposition 200.

2 3. Section 3 of Proposition 200 amends A.R.S. § 16-152 to require that the Arizona form
3 used for the registration of electors contain a "statement that the applicant shall submit
4 evidence of United States citizenship with the application and that the registrar shall
5 reject the application if no evidence of citizenship is attached." *Id.*

6 4. Section 4 amends A.R.S. § 16 166 to require the County Recorder to prevent voters
7 from registering to vote, or from re-registering after moving to a new county, unless
8 they provide one of the six types of identification documents that Proposition 200
9 considers to be satisfactory evidence of U.S. citizenship. These are: 1) an Arizona
10 driver's license or non-operating identification license issued after October 1, 1996,
11 or a license issued by another state that verifies U.S. citizenship prior to issuing
12 licenses; 2) a U.S. birth certificate; 3) a U.S. passport; 4) U.S. naturalization
13 documents; 5) "other documents or methods of proof that are established pursuant to
14 the Immigration Reform And Control Act of 1986 [(IRCA)]"; 6) a Bureau of Indian
15 Affairs card number, tribal treaty card number, or tribal enrollment number. A.R.S. §
16 16-166. *Id.*

17 5. On or about March, 2005, Defendant Brewer released the new Arizona official voter
18 registration form. Attached as Exhibit 2 is a true and correct copy of the official
19 Arizona voter registration form, which may also be found at
20 <http://www.azsos.gov/election/Forms/voterregistrationform.pdf>.

21 6. The Arizona Secretary of State and the Arizona voter registration application inform
22 all applicants of the following: "If this is your first time registering to vote in Arizona
23 or you have moved to another county in Arizona, your voter registration form must
24 also include proof of citizenship or the form will be rejected." Attached as Exhibit
25 3 is a true and correct copy of the Secretary of State's guidance, "How to Register,"
26 which is also available at the Arizona Secretary of State Internet website at

1 Defendant Brewer informing her that “the policies [she] proposed would effectively
2 result in a refusal to accept and use the Federal Registration Form in violation of
3 Federal law (42 U.S.C. §1973gg-4(a)).” Attached as Exhibit 6 is a true and correct
4 copy of the U.S. Election Assistance Commission’s letter to Defendant Brewer.

5 12. On March 13, 2006, Defendant Brewer responded by letter to the Election Assistance
6 Commission, charging that the Commission’s letter “provides questionable legal
7 support for its conclusion. After consulting with the Arizona Attorney General, I will
8 instruct Arizona’s county recorders to continue to administer and enforce the
9 requirement that all voters provide evidence of registering to vote...” Attached as
10 Exhibit 7 is a true and correct copy of the correspondence from Defendant Brewer to
11 the U.S. Elections Assistance Commission.

12 13. Pursuant to 42 U.S.C. § 1973 gg-9(b), Plaintiffs have provided written notice on three
13 separate occasions informing Defendant Brewer that Arizona is not in compliance with
14 the NVRA. On November 30, 2004, Plaintiff Friendly House filed a written complaint
15 in the U.S. Court for the District of Arizona naming Defendant Brewer and stating that
16 “Arizona’s new voter registration law...will disenfranchise thousands of voters across
17 the state. Its cumbersome and costly identification requirements will deny voters who
18 cannot afford the new identification documents the right to vote and will depress
19 already low voter turnout.” On March 27, 2006 Plaintiffs sent a letter to Defendant
20 Brewer stating that her “refusal to accept, and [her] instruction to Arizona county
21 recorders not to accept the Federal Mail Voter Registration Form... without
22 accompanying , documentary proof of citizenship, constitutes a violation of the
23 NVRA.” Plaintiffs sent a second letter to Defendant Brewer on April 17, 2006,
24 reiterating that Arizona was not in compliance with the NVRA. Attached as Exhibit 8
25 are true and correct copies of the correspondence and complaint informing Defendant
26 Brewer that Arizona is not in compliance with the NVRA.

1 14. A native born U.S. citizen who is not a member of a federally recognized Indian tribe
2 will not possess naturalization or immigration documents or a tribal identification
3 card, so he or she must have a driver's license, a birth certificate, or U.S. passport to
4 register to vote under Proposition 200. All these forms of identification require
5 payment of a fee: an Arizona driver's license costs between \$10.00 and \$25.00,
6 depending on the driver's age; certified copies of Arizona birth certificates for births
7 occurring 1990 to present are \$10.00 each, all others are \$15.00 each.; and an adult
8 U.S. passport costs \$97.00. Attached as Exhibit 9 are true and correct copies of public
9 information stating the costs of Arizona driver's licenses, Arizona birth certificates,
10 and United States passports.

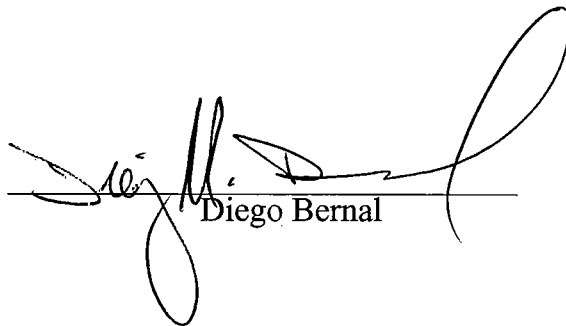
11 15. On December 9, 2004, Arizona Secretary of State Jan Brewer submitted Sections 3,
12 4 and 5 of Proposition 200 to the U.S. Department of Justice for expedited
13 preclearance pursuant to Section 5 of the Voting Rights Act of 1965. Nowhere in the
14 preclearance submission did Secretary of State Brewer inform the Department of
15 Justice that, in addition to changing the requirements for Arizona voter registration
16 applications, Arizona would also cease to use or accept the federal mail voter
17 application form prescribed by the U.S. Election Assistance Commission or that
18 Arizona would cease to allow individuals to register to vote for federal elections
19 pursuant to the National Voter Registration Act. Attached hereto as Exhibit 10 is a
20 true and correct copy of the preclearance submission and exhibits A and B to the
21 submission.

22 16. On January 24, 2005, the U.S. Department of Justice informed Arizona that it would
23 not object to the preclearance submission of Sections 3 and 4 of Proposition 200
24 pursuant to Section 5 of the Voting Rights Act of 1965. Attached hereto as Exhibit 11
25 is a true and correct copy of *Feds OK Voter ID Rules in Prop. 200*, ASSOCIATED
26 PRESS, January 25, 2005, also available at

1 http://www.tucsoncitizen.com/news/local/012505a4_proposition 200 (reporting
2 preclearance of Prop. 200 voting provisions).

3 17. On February 4, 2005, the Arizona Attorney General released an Opinion stating that
4 “the requirement that a person registering to vote attest that he or she is a citizen and
5 the associated criminal penalties for violating this requirement provide additional
6 protections against non-citizens registering to vote in Arizona.” Attached hereto as
7 Exhibit 12 is a true and correct copy of the Arizona Attorney General Opinion Letter
8 dated February 4, 2005.

9 I declare under penalty of perjury under the laws of the United States that the foregoing
10 is true and correct and that this declaration was executed in the City of San Antonio, Texas on
11 May 9, 2006.



Diego Bernal

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EXHIBIT 1

16-152. Registration form

A. The form used for the registration of electors shall contain:

1. The date the registrant signed the form.
2. The registrant's given name, middle name, if any, and surname.
3. The complete address of the registrant's actual place of residence, including street name and number, apartment or space number, city or town and zip code, or such description of the location of the residence that it can be readily ascertained or identified.
4. The registrant's complete mailing address, if different from the residence address, including post office address, city or town, zip code or other designation used by the registrant for receiving mail.
5. The registrant's party preference.
6. The registrant's telephone number, unless unlisted.
7. The registrant's state or country of birth.
8. The registrant's date of birth.
9. The registrant's occupation.
10. The registrant's Indian census number (optional to registrant).
11. The registrant's father's name or mother's maiden name.
12. One of the following identifiers for each registrant:
 - (a) The Arizona driver license number of the registrant or nonoperating identification license number of the registrant that is issued pursuant to section 28-3165.
 - (b) If the registrant does not have an Arizona driver license or nonoperating identification license, the last four digits of the registrant's social security number.
 - (c) If the registrant does not have an Arizona driver license or nonoperating identification license or a social security number and the registrant attests to that, a unique identifying number consisting of the registrant's unique identification number to be assigned by the secretary of state in the statewide electronic voter registration database.
13. A statement as to whether or not the registrant is currently registered in another state, county or precinct, and if so, the name, address, county and state of previous registration.
14. The question to the registrant "Are you a citizen of the United States of America?", appropriate boxes for the registrant to check "yes" or "no" and a statement instructing the registrant not to complete the form if the registrant checked "no".
15. The question to the registrant "Will you be eighteen years of age on or before election day?", appropriate boxes for the registrant to check "yes" or "no" and a statement instructing the registrant not

to complete the form if the registrant checked "no".

16. A statement that the registrant has not been convicted of treason or a felony, or if so, that the registrant's civil rights have been restored.

17. A statement that the registrant is a resident of this state and of the county in which the registrant is registering.

18. A statement that executing a false registration is a class 6 felony.

19. The signature of the registrant.

20. If the registrant is unable to sign the form, a statement that the affidavit was completed according to the registrant's direction.

21. A statement that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

22. A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

23. A statement that the applicant shall submit evidence of United States citizenship with the application and that the registrar shall reject the application if no evidence of citizenship is attached.

B. A duplicate voter receipt shall be provided with the form that provides space for the name, street address and city of residence of the applicant, party preference and the date of signing. The voter receipt is evidence of valid registration for the purpose of casting a provisional ballot as prescribed in section 16-584, subsection B.

C. The state voter registration form shall be printed in a form prescribed by the secretary of state.

D. The county recorder may establish procedures to verify whether a registrant has successfully petitioned the court for an injunction against harassment pursuant to section 12-1809 or an order of protection pursuant to section 13-3602 and, if verified, to protect the registrant's residence address, telephone number or voting precinct number, if appropriate, from public disclosure.

E. Subsection A of this section does not apply to registrations received from the department of transportation pursuant to section 16-112.

16-579. Procedure for obtaining ballot by elector

(Caution: 1998 Prop. 105 applies. Amended by 2004 Prop. 200, sec 5.)

A. Every qualified elector, before receiving his ballot, shall announce his name and place of residence in a clear, audible tone of voice to the election official in charge of the signature roster or present his name and residence in writing and shall 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. If the name is found upon the precinct register by the election officer having charge thereof, or the qualified elector presents a certificate from the county recorder showing that he is entitled by law to vote in the precinct, the election official in charge of the signature roster shall repeat the name and the qualified elector shall be allowed within the voting area.

B. Any qualified elector who is listed as having applied for an early ballot but who states that he has not voted and will not vote an early ballot for this election or surrenders the early ballot to the precinct inspector on election day shall be allowed to vote pursuant to the procedure set forth in section 16-584.

C. Each qualified elector's name shall be numbered consecutively by the clerks, with the number upon the stub of the ballot delivered to him, and in the order of applications for ballots. The election judge having charge of the ballots shall also write his initials upon the stub and the number of the qualified elector as it appears upon the precinct register. The judge shall give the qualified elector only one ballot, and his name shall be immediately checked on the precinct register.

D. Each qualified elector shall sign his name in the signature roster prior to receiving his ballot, but an inspector or judge may sign the roster for an elector who is unable to sign because of physical disability, and in that event the name of the elector shall be written with red ink, and no attestation or other proof shall be necessary. The provisions of this subsection relating to signing the signature roster shall not apply to electors casting a ballot using early voting procedures.

E. A person offering to vote at a special district election for which no special district register has been supplied shall sign an affidavit stating his address and that he resides within the district boundaries or proposed district boundaries and swearing that he is a qualified elector and has not already voted at the election being held.

16-166. Verification of registration

(Caution: 1998 Prop. 105 applies.)

- A. Except for the mailing of sample ballots, a county recorder who mails an item to any elector shall send the mailing by nonforwardable first class mail marked with the statement required by the postmaster to receive an address correction notification. If the item is returned undelivered, the county recorder shall send a follow-up notice to that elector within three weeks of receipt of the returned notice. The county recorder shall send the follow-up notice to the address that appears on the general county register or to the forwarding address provided by the United States postal service. The follow-up notice shall include a registration form and the information prescribed by section 16-131, subsection C and shall state that if the elector does not complete and return a new registration form with current information to the county recorder within thirty-five days, the name of the elector will be removed from the general register and transferred to the inactive voter list.
- B. If the elector provides the county recorder with a new registration form, the county recorder shall change the general register to reflect the changes indicated on the new registration. If the elector indicates a new residence address outside that county, the county recorder shall forward the voter registration form to the county recorder of the county in which the elector's address is located. If the elector provides a new residence address that is located outside this state, the county recorder shall cancel the elector's registration.
- C. The county recorder shall maintain on the inactive voter list the names of electors who have been removed from the general register pursuant to subsection A or E of this section for a period of four years or through the date of the second general election for federal office following the date of the notice from the county recorder that is sent pursuant to subsection E of this section.
- D. On notice that a government agency has changed the name of any street, route number, post office box number or other address designation, the county recorder shall revise the registration records and shall send a new verification of registration notice to the electors whose records were changed.
- E. The county recorder on or before May 1 of each year preceding a state primary and general election or more frequently as the recorder deems necessary may use the change of address information supplied by the postal service through its licensees to identify registrants whose addresses may have changed. If it appears from information provided by the postal service that a registrant has moved to a different residence address in the same county, the county recorder shall change the registration records to reflect the new address and shall send the registrant a notice of the change by forwardable mail and a postage prepaid preaddressed return form by which the registrant may verify or correct the registration information. If the registrant fails to return the form postmarked not later than twenty-nine days before the next election, the elector shall be removed from the general register and transferred to the inactive voter list. If the notice sent by the recorder is not returned, the registrant may be required to provide affirmation or confirmation of the registrant's address in order to vote. If the registrant does not vote in an election during the period after the date of the notice from the recorder through the date of the second general election for federal office following the date of that notice, the registrant's name shall be removed from the list of inactive voters. If the registrant has changed residence to a new county, the county recorder shall provide information on how the registrant can continue to be eligible to vote.
- F. The county recorder shall reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship. Satisfactory evidence of citizenship shall include any of the

following:

1. The number of the applicant's driver license or nonoperating identification license issued after October 1, 1996 by the department of transportation or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant's driver license or nonoperating identification license that the person has provided satisfactory proof of United States citizenship.
 2. A legible photocopy of the applicant's birth certificate that verifies citizenship to the satisfaction of the county recorder.
 3. A legible photocopy of pertinent pages of the applicant's United States passport identifying the applicant and the applicant's passport number or presentation to the county recorder of the applicant's United States passport.
 4. A presentation to the county recorder of the applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States immigration and naturalization service by the county recorder.
 5. Other documents or methods of proof that are established pursuant to the immigration reform and control act of 1986.
 6. The applicant's bureau of Indian affairs card number, tribal treaty card number or tribal enrollment number.
- G. Notwithstanding subsection F of this section, any person who is registered in this state on the effective date of this amendment to this section is deemed to have provided satisfactory evidence of citizenship and shall not be required to resubmit evidence of citizenship unless the person is changing voter registration from one county to another.
- H. For the purposes of this section, proof of voter registration from another state or county is not satisfactory evidence of citizenship.
- I. A person who modifies voter registration records with a new residence ballot shall not be required to submit evidence of citizenship. After citizenship has been demonstrated to the county recorder, the person is not required to resubmit satisfactory evidence of citizenship in that county.
- J. After a person has submitted satisfactory evidence of citizenship, the county recorder shall indicate this information in the person's permanent voter file. After two years the county recorder may destroy all documents that were submitted as evidence of citizenship.