

1 for regular check-ups and when she gets a fever because of their fear of being
2 reported to immigration officials. Claudia S. appears by a pseudonym because of
3 her fears of adverse action by the Department of Homeland Security against her
4 family members.

5 24. PLAINTIFF Lydia Hernandez is a resident of Maricopa County. She
6 was born in Mercedes, Texas and is a United States citizen. Plaintiff Hernandez
7 obtained an Arizona driver's license in 1994. She possesses a wallet-sized,
8 abridged copy of her Texas birth certificate, which is not recommended for
9 immigration or international travel purposes, and has been rejected as proof of
10 citizenship by government agencies in the past. She fears that her birth certificate
11 will be rejected and that she will be deemed not to possess a form of identification
12 required to register to vote or to obtain a ballot.

13 DEFENDANTS

14 25. Defendant Janet Napolitano is Governor of State of Arizona. Under
15 the Constitution of the State of Arizona, she is charged with implementing new
16 initiatives by issuing an official proclamation following a successful vote of the
17 qualified electors on the initiative. She is also charged with the constitutional
18 responsibility to take care that the law is faithfully executed. She is sued in her
19 official capacity.

20 26. Defendant Jan Brewer is Secretary of State of Arizona. She is
21 responsible for implementation of the provisions of Proposition 200 relating to
22 voter registration. She is sued in her official capacity.

23 27. Defendant David A. Berns is Director of the Arizona Department of
24 Economic Security. He is responsible for implementation of the provisions of
25 Proposition 200 relating to public benefits. He is sued in his official capacity.

26 CLASS ACTION ALLEGATIONS

27 28. Plaintiffs bring this action on their own behalf and on behalf of all
28 persons similarly situated pursuant to Rule 23(a) and (b) of the Federal Rules of

1 Civil Procedure. The class consists of: (i) all immigrant men and women residing
2 in Arizona who are or would be eligible for public benefits but for the
3 implementation of Proposition 200; (ii) all citizens who are or would be eligible to
4 register to vote and/or obtain a ballot but for the implementation of Proposition
5 200; and (iii) all employees of the state and its political subdivisions who
6 administer state and local public benefits and who are or would be subject to
7 potential criminal liability for failure to comply with Proposition 200's reporting
8 requirements.

9 29. The size of each class is so numerous that joinder of all members is
10 impracticable.

11 30. There are questions of law or fact common to each class in that class
12 members will be: (i) denied state and local public benefits; (ii) denied the ability to
13 register to vote and/or cast a ballot; or (iii) threatened with criminal prosecution
14 for failing to comply with Proposition 200. Common issues of law and fact
15 predominate over any individual questions, and adjudication of the rights of each
16 class is superior to other methods of adjudicating the controversies described.

17 31. The claims of the named Plaintiffs are typical of those of the class
18 they seek to represent.

19 32. The named Plaintiffs will fairly and adequately represent the interest
20 of the class they seek to represent.

21 33. Defendants have acted and refused to act on grounds applicable to all
22 members of each class, thereby making injunctive and declaratory relief
23 appropriate with respect to each class as a whole.

24 **FACTUAL ALLEGATIONS**

25 34. Proposition 200 is an initiative statute that was submitted to the
26 voters of Arizona at the November 2, 2004 general election. Under the Arizona
27 Constitution, Article IV, Section 1, the people of Arizona have the power to enact
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1 initiative statutes. Initiative statutes become law “when approved by a majority of
2 the votes cast thereon and upon proclamation of the Governor.” Ariz. Const. art.
3 IV, § 1. Proposition 200 was approved by a majority of the votes cast on
4 November 2, 2004, but cannot take effect until the Governor issues the required
5 proclamation.

6 35. The official title of Proposition 200 as submitted by its sponsors
7 (Protect Arizona Now) to the Secretary of State is “An Initiative Measure
8 Amending Sections 16-152, 16-166 And 16-579, Arizona Revised Statutes;
9 Amending Title 46, Chapter 1, Article 3, Arizona Revised Statutes, By Adding
10 Section 46-140.01; Relating To The Arizona Taxpayer And Citizen Protection
11 Act.”

12 36. Arizona Revised Statutes (“A.R.S.”) § 46-140.01, added by
13 Proposition 200, requires that all employees of state and local agencies responsible
14 for administering “state and local public benefits that are not federally mandated”
15 verify the identity and immigration status of all applicants for benefits. It also
16 requires all such employees to make a written report to federal immigration
17 authorities if they discover that an applicant for benefits has violated any
18 immigration law. Last, A.R.S. § 46-140.01 makes it a second-degree
19 misdemeanor for an employee to fail to make such a report, or for their supervisor
20 to fail to direct the employee to make such a report.

21 37. A.R.S. § 16-152, revised by Proposition 200, requires that the form
22 used for the registration of electors contain a “statement that the applicant shall
23 submit evidence of United States citizenship with the application and that the
24 registrar shall reject the application if no evidence of citizenship is attached.”

25 38. A.R.S. § 16-166, revised by Proposition 200, requires the County
26 Recorder to prevent voters from registering to vote, or from re-registering after
27 moving to a new county, unless they provide one of the six types of identification
28 documents that Proposition 200 considers to be evidence of U.S. citizenship.

1 Specifically, Proposition 200 requires that voters submit one of the following: 1)
2 an Arizona driver's license issued after October 1, 1996, or a license issued by
3 another state that verifies U.S. citizenship prior to issuing licenses; 2) a U.S. birth
4 certificate; 3) a U.S. passport; 4) U.S. naturalization documents; 5) another
5 immigration document that proves citizenship; 6) a Bureau of Indian Affairs card
6 number.

7 39. A.R.S. § 16-579, revised by Proposition 200, requires that, before
8 receiving a ballot, every qualified elector must "present one form of identification
9 that bears the name, address, and photograph of the elector or two different forms
10 of identification that bear the name and address of the elector."

11 40. Proposition 200 provides that it cannot be repealed or amended, in a
12 way that does not further its purposes, except by another statute approved by the
13 electorate. Proposition 200 may be amended by the legislature only in a way that
14 furthers the proposition's purposes, and then only by a three fourths vote of each
15 house of the legislature.

16 **FIRST CAUSE OF ACTION**

17 **(Violation of the Supremacy Clause)**

18 **By All Plaintiffs**

19 41. Plaintiffs incorporate by reference all foregoing paragraphs as if set
20 forth fully here.

21 42. Under the Constitution, and as a concomitant to national sovereignty,
22 the federal government has exclusive power over immigration and foreign affairs.
23 Consequently, states lack the power to regulate immigration, to enact laws that
24 burden immigration, or to regulate the treatment of aliens within their borders.

25 43. Proposition 200 regulates immigration and the treatment of
26 aliens within Arizona. As such, it exceeds the state's police power and violates
27 the Supremacy Clause.

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1 information is prohibited under federal law; Proposition 200 therefore is
2 preempted.

3 50. Proposition 200 requires, in effect, that state and local employees
4 deny "state and local public benefits" to all applicants unless they have verified
5 the applicant's identity and "immigration status." Federal law regulates
6 verification procedures for denial of government services on the basis of
7 immigration status; Proposition 200 therefore is preempted.

8 51. Proposition 200 regulates all "state and local public benefits
9 that are not federally mandated." Federal law regulates alien eligibility for
10 government services, and provides definitions of federal, state and local benefits;
11 Proposition 200 therefore is preempted.

12 52. Proposition 200's reference to "state and local public benefits that
13 are not federally mandated" is undefined and is vague and ambiguous. Without a
14 definition of which "state and local public benefits" are encompassed, Proposition
15 200 can be interpreted to apply to a wide range of public benefits, including those
16 for which federal law preserves eligibility for all aliens; Proposition 200 is
17 therefore preempted.

18 53. The federal government has established a comprehensive federal
19 statutory scheme for the regulation of voter registration for elections for federal
20 office. National Voter Registration Act, 42 U.S.C. § 1973gg *et seq.* ("NVRA").
21 The NVRA was enacted to establish procedures to increase the number of eligible
22 citizens who register to vote in elections for federal office.

23 54. Through the NVRA, Congress requires states to provide voter
24 registration: (1) by establishing procedures permitting citizens to register to vote
25 in elections for federal office simultaneously with applying for a driver's license;
26 (2) by providing for registration by mail application; and (3) by arranging voter
27 registration in person at certain designated sites, such as motor vehicle
28 departments.

1 55. Proposition 200 requires that the county recorder reject applications
2 for voter registration that do not include satisfactory evidence of citizenship.
3 Under Proposition 200, satisfactory evidence of citizenship includes driver's
4 license or non-operating license issued after 1996 that indicating proof of
5 citizenship was satisfactory; a birth certificate that verifies citizenship; a United
6 States passport; naturalization documents or a naturalization certificate number
7 that is verified by the United States Immigration and Naturalization Service; other
8 documents establishing citizenship under the 1986 Immigration Reform and
9 Control Act; or a tribal identification card.

10 56. Federal law does not permit states to require voters
11 to submit separately to the county recorder additional documentation or
12 information beyond that supplied with the "motor voter" form. Under the NVRA,
13 the motor voter registration form already includes information needed to verify
14 eligibility to vote, including an attestation of U.S. citizenship.

15 57. Proposition 200's requirement that voter registration applications be
16 rejected if "satisfactory evidence of citizenship" is not provided as described
17 above violates federal law and therefore is preempted.

18 58. Accordingly, Plaintiffs are entitled to a declaration that Proposition
19 200 is unconstitutional on its face and to an order temporarily and permanently
20 enjoining its enforcement.

21 **THIRD CAUSE OF ACTION**
22 **(Violation of Equal Protection)**

23 **By All Plaintiffs Except Chavira, Gregoire, and Hernandez**

24 59. Plaintiffs incorporate by reference all foregoing paragraphs as if set
25 forth fully here.

26 60. No state may deny enrollment in public school on the basis of actual
27 or perceived immigration status.

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1 79. Proposition 200 requires all state and local employees “to make a
2 written report to federal immigration authorities for any violation of federal
3 immigration law by an applicant for benefits . . . that is discovered by the
4 employee,” and makes the failure to make such a report a misdemeanor.

5 80. Proposition 200 also makes “the employee’s supervisor” guilty of
6 a misdemeanor if the supervisor knows of the employee’s failure to make the
7 report and fails to direct the employee to make the report.

8 81. Proposition 200’s reference to “state and local public benefits that
9 are not federally mandated” is not only undefined but also vague and ambiguous.
10 In particular, it is vague as to which state and local public benefits it regulates and
11 which state and local public benefits it excepts under federal law. Without a
12 definition of which “state and local public benefits” are encompassed, and which
13 “state and local public benefits . . . are . . . federally mandated,” Proposition 200
14 can be interpreted to apply to a wide range of public benefits. Proposition 200
15 therefore fails to provide fair warning of which benefits and which state and local
16 employees are subject to its requirements.

17 82. Proposition 200 also fails to provide fair warning of what conduct
18 is required and what is prohibited. In addition to other omissions, Proposition 200
19 fails to specify (a) what information “the written report” must contain; (b) which
20 “federal immigration authorities” are to receive the report; (c) what constitutes a
21 “violation of federal immigration law”; (d) when a violation has been
22 “discovered”; and (e) who constitutes a “supervisor” for purposes of reporting
23 discovered violations.

24 83. Accordingly, Plaintiffs are entitled to a declaration that Proposition
25 200 is unconstitutional on its face and to an order temporarily and permanently
26 enjoining its enforcement.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of Civil Rights - 42 U.S.C. § 1983)**

3 **By All Plaintiffs**

4 84. Plaintiffs incorporate by reference all foregoing paragraphs as if set
5 forth fully here.

6 85. In doing the things complained of in this complaint, Defendants act
7 and have acted under color of state law.

8 86. In doing the things complained of in this complaint, Defendants deny
9 and have denied Plaintiffs rights secured by the constitution and laws of the
10 United States.

11 87. Accordingly, Plaintiffs are entitled to a declaration that Proposition
12 200 is unconstitutional on its face and to an order temporarily and permanently
13 enjoining its enforcement. They are further entitled to attorney fees under 42
14 U.S.C. § 1988.

15 **NINTH CAUSE OF ACTION**

16 **(Violation of the Twenty-Fourth Amendment)**

17 **By Plaintiff Hernandez**

18 88. Plaintiffs incorporate by reference all foregoing paragraphs as if set
19 forth fully here.

20 89. Proposition 200 requires that County Recorders deny citizens the
21 opportunity to register to vote unless they are able to produce one of the six types
22 of identification documents listed in Proposition 200.

23 90. Plaintiff Hernandez may not be deemed to possess currently any of
24 the six types of identification documents. In order to acquire one of the required
25 documents and comply with Proposition 200, she must pay a substantial fee.

26 91. By requiring that voters pay a substantial fee in order to acquire
27 specific identification documents, Proposition 200 imposes the substantive
28 equivalent of a poll tax on Arizona voters.

1 B. That the court issue a declaration that Proposition 200 is, in its
2 entirety, unconstitutional and of no force or effect.

3 C. That, after a hearing, this court issue a Temporary Restraining
4 Order and Preliminary Injunction against Defendants enjoining them from
5 implementing and enforcing all sections of Proposition 200 pending trial;

6 D. That this court issue a Judgment permanently and forever enjoining
7 Defendants from implementing and enforcing all sections of Proposition 200.

8 E. That this court award attorney fees and costs incurred in this action
9 under 42 U.S.C. § 1988.

10 F. That this court grant such other and further relief as may be deemed
11 just and proper.

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13 Dated: November 30, 2004 Respectfully submitted,

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16 By:  _____
Daniel R. Ortega, Jr.

17 Attorneys for Plaintiffs.
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