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21 IN THE UNITED STATES DISTRICT COURT

22 FOR THE DISTRICT OF ARIZONA

23 MARIA M. GONZALEZ, et al., )

24 Plaintiffs, )

25 vs. )

26 STATE OF ARIZONA, JAN BREWER, in )  
27 her official capacity as Secretary of State of )  
28 the state of Arizona; et al., )

29 Defendants. )

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THE INTER TRIBAL COUNCIL OF )  
31 ARIZONA, INC., et al. )

32 Plaintiffs, )

33 vs. )

34 JAN BREWER, in her official capacity as )  
35 Secretary of State of Arizona, )

36 Defendants. )

No. 2006-CIV-01268-ROS

JOINER IN GONZALEZ  
PLAINTIFFS' EX PARTE  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW  
CAUSE

1 Pursuant to Fed. R. Civ. P. 18(a) and 65(b), plaintiffs Inter Tribal Council of  
2 Arizona, et. al. (“ITCA Plaintiffs”), hereby join in the ex parte application of  
3 Plaintiffs Gonzalez et. al. for a temporary restraining order and order to show cause.  
4 This joinder is supported by the following memorandum of points and authorities and  
5 its attached declarations.

6  
7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 Preliminary Statement

9 Despite being informed by the United States Election Assistance Commission  
10 (the “EAC”), the body that administers the National Voter Registration Act of 1993,  
11 42 U.S.C. § 1973gg *et seq.* (the “NVRA”), that she is acting in violation of federal  
12 law, defendant Secretary of State Jan Brewer (“defendant” or “Secretary Brewer”) has  
13 instructed Arizona’s county recorders not to accept the Federal Mail Voter  
14 Registration Form (the “Federal Form”) unless the registrant also provides the  
15 “satisfactory evidence of citizenship” described in A.R.S. § 16-166(F). Unless  
16 Secretary Brewer is immediately restrained from violating the NVRA, plaintiffs will  
17 be immediately and irreparably harmed.

18 The NVRA’s purpose is to broaden access to voter registration and “increase  
19 the number of eligible citizens who register to vote.” 42 U.S.C. § 1973gg(b).  
20 Flouting this purpose and the rights of a wide array of United States citizens in  
21 Arizona, Secretary of State Janice K. Brewer (“defendant” or “Secretary Brewer”),  
22 has instructed all fifteen of Arizona’s county recorders to reject the Federal Form that  
23 are not accompanied by “satisfactory evidence of citizenship” as defined by Arizona  
24 law. Defendant has repeated this edict, even in the face of the United States EAC’s  
25 conclusion that she is in violation of the NVRA, and referral of that violation to the  
26 Department of Justice. To vindicate their rights to register voters, plaintiffs join in the  
27 *Gonzalez* plaintiffs’ request for immediate injunctive relief from this Court.

1 Defendant's violation of the NVRA has caused tangible and irreparable harm  
2 to plaintiffs and thousands of Arizona citizens. Indeed, in the short time that  
3 Arizona's onerous evidence of citizenship requirement has been in effect, the state has  
4 rejected thousands of voter registration applications, regardless of whether the  
5 applicant is actually eligible to vote under Arizona law. In addition, defendant's  
6 refusal to accept the Federal Form in the form required by the NVRA -- without  
7 additional documentation of citizenship -- has harmed the very voter registration  
8 activities encouraged by the NVRA and conducted by plaintiffs. By conditioning  
9 acceptance of the Federal Form on receipt of supplemental documentary evidence of  
10 citizenship, defendant has made plaintiffs' voter registration activities prohibitively  
11 expensive and far less effective. To reverse this serious infringement of plaintiffs'  
12 rights under the NVRA, and the fundamental right of all eligible Arizonans to register  
13 and vote, this Court should enter a temporary restraining order ("TRO") barring  
14 defendant from violating the NVRA, and order her to show cause why a preliminary  
15 injunction should not issue.

#### 16 Factual Background

##### 17 A. Proposition 200 Requires Documentary Evidence of Citizenship Not 18 Required by the Federal Form Developed Under the NVRA.

19 In November 2004, a majority of Arizona voters passed the "Arizona Taxpayer  
20 and Citizen Protection Act," which appeared on the ballot as Proposition 200  
21 ("Proposition 200"). Promoted as a measure to relieve Arizona of the financial  
22 burdens caused by undocumented immigration into the state, Proposition 200 added  
23 requirements to Arizona law that a prospective voter registrant provide documentary  
24 proof of citizenship before he or she is added to the voter rolls.<sup>1</sup> [Declaration of Chris  
25

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26  
27 <sup>1</sup> Proposition 200 also amended Arizona law to require that state employees  
28 verify the immigration status of any applicant for public benefits and to require voters  
at polling places to provide documentary proof of identity and address. [See Moeser

1 Moeser (“Moeser Decl.”), Ex. A] Portions of Proposition 200 took effect on  
2 December 8, 2004 and the remainder on January 24, 2005, when its voting-related  
3 provisions were precleared by the Department of Justice.<sup>2</sup>

4 Before Proposition 200 became effective, to demonstrate citizenship under  
5 Arizona law, a registrant was required only to sign a registration form that included  
6 “[a] statement that the registrant is a citizen of the United States” and notifying the  
7 registrant that “executing a false registration is a class 6 felony.” Ariz. Rev. Stat.  
8 Ann. (“A.R.S.”) § 16-152(A)(14), (18)-(19) (2004). Proposition 200 amended, *inter*  
9 *alia*, A.R.S. § 16-166, which governs verification of voter registration applications, to  
10 require Arizona’s county recorders to “reject any application for registration that is  
11 not accompanied by satisfactory evidence of United States citizenship.” A.R.S. § 16-  
12 166(F). Section 16-166 limits “satisfactory evidence of citizenship” to the following:

13  
14 [1] [t]he number of the applicant’s driver license or  
15 nonoperating identification license issued after October 1,  
16 1996 by the department of transportation or the equivalent  
17 governmental agency of another state within the United  
18 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

19 Decl., Ex. A] These additional provisions of Proposition 200 are not at issue in  
20 plaintiffs’ Application for Temporary Restraining Order.

21 <sup>2</sup> Arizona is subject to Section 5 of the Voting Rights Act of 1965. 40 Fed.  
22 Reg. 43746 (Sep. 23, 1975). Accordingly, it must obtain clearance of any change to  
23 its voting or registration procedures from the Federal District Court for the District of  
24 Columbia or the Department of Justice (the “DOJ”). 42 U.S.C. § 1973c. DOJ  
25 preclearance, however, relates only to compliance with Section 5, and has no bearing  
26 on compliance with other federal laws such as the NVRA. *Charles H. Wesley Ed.*  
27 *Found., Inc. v. Cox*, 408 F.3d 1349, 1355 n.6 (11th Cir. 2005) (“[P]reclearance has no  
28 bearing on the legitimacy of a given rule, procedure or action with regard to other  
federal electoral laws.”) (citing *Reno v. Bossier Parish*, 528 U.S. 320, 335 (2000)). In  
any event, Arizona’s December 9, 2004 request for preclearance did *not* notify the  
DOJ that defendant would condition acceptance of the Federal Form on provision of  
supplemental evidence of citizenship.

1 of the county recorder, [3] [a] legible photocopy of  
2 pertinent pages of the applicant's United States passport  
3 identifying the applicant and the applicant's passport  
4 number or presentation to the county recorder of the  
5 applicant's United States passport, [4] [a] presentation to  
6 the county recorder of the applicant's United States  
7 naturalization documents or the number of the certificate  
8 of naturalization . . . , [5] [o]ther documents or methods of  
9 proof that are established pursuant to the Immigration  
10 Reform and Control Act of 1986, [or] [6] [t]he applicant's  
11 bureau of Indian affairs card number, tribal treaty card  
12 number or tribal enrollment number.

13 A.R.S. § 16-166(F). If a registrant does not possess a driver's license or nonoperating  
14 identification license issued after October 1, 1996, a Bureau of Indian Affairs card  
15 number, tribal treaty card number or tribal enrollment number, A.R.S. 16-166(F)  
16 requires him to submit copies of his personal identification documents to the county  
17 recorder.<sup>3</sup>

18 The Federal Form, on the other hand, does *not* require any documentary proof  
19 of citizenship. Rather a registrant using the Federal Form must check a box  
20 responding to the question "Are you a citizen of the United States of America?"  
21 [Moeser Decl., Ex. B] In addition, the registrant must sign the Federal Form under  
22 penalty of perjury and swear or affirm that (1) the registrant is a United States citizen,  
23 and (2) the information provided is true to the best of the registrant's knowledge.  
24 [Id.] The Federal Form also informs the registrant that the penalties for providing  
25 false information include fines, imprisonment or, if not a United States citizen,  
26 removal from or refusal of entry into the United States. [Id.]

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27 <sup>3</sup> Because, once issued, Arizona driver's licenses are valid until the driver's  
28 sixty-fifth birthday, many Arizonans are likely not to possess a driver's license issued  
after October 1, 1996. A.R.S. § 28-3171(A)(1).

1           B. The Election Assistance Commission Concludes that Arizona’s Refusal to  
2           Accept the Federal Form Without “Satisfactory” Documentary Evidence of  
3           Citizenship Violates the NVRA.

4           Congress granted the United States EAC regulatory authority over voter  
5 registration by granting it the power to develop the Federal Form, which states must  
6 “accept and use” under the NVRA. 42 U.S.C. §§ 1973gg-4(a)(1), 1973gg-7(a).  
7 Under the NVRA, the EAC must “develop a mail voter registration application form  
8 for elections for federal office.” 42 U.S.C. § 1973gg-7(a)(2). Pursuant to its statutory  
9 duty, the EAC consulted with defendant’s office concerning the contents of the  
10 Arizona portion of the instructions for the Federal Form. *See* 42 U.S.C. § 1973gg-  
11 7(a)(2). Defendant requested that the EAC “apply proof of citizenship requirements  
12 for Arizona voter registration to the Federal Form registration process.” [Moeser  
13 Decl., Ex. C, at 1]

14           On March 6, 2006, EAC Executive Director Thomas R. Wilkey wrote to  
15 defendant to inform her that “the EAC concludes that the policies you propose would  
16 effectively result in a refusal to accept and use the Federal . . . Form in violation of  
17 [f]ederal law (42 U.S.C. § 1973gg-4(a)).” [Moeser Dec., Ex. C, at 1] The EAC  
18 declined to apply the additional requirements of documentary proof of citizenship to  
19 the Federal Form and notified defendant that to do so would violate the NVRA. [*Id.*]  
20 The EAC further informed defendant that “[t]he Federal Form sets the proof required  
21 to demonstrate voter qualification. No state may condition acceptance of the Federal  
22 Form upon receipt of additional proof.” [*Id.*, at 3] Despite the EAC’s conclusion that  
23 requiring submission of “satisfactory” documentary evidence of United States  
24 citizenship with the Federal Form violates federal law, defendant has instructed  
25 Arizona’s fifteen county recorders to reject Federal Forms that do not include the  
26 documentary evidence of citizenship required by A.R.S. § 16-166(F). [Moeser Decl.,  
27 Ex. D (Mar. 13, 2006 letter from J. Brewer to P. DeGregorio), Ex. E (Mar. 13, 2006  
28 email from J. Kanefield to County Recorders)]

1           C. Plaintiffs’ Voter Registration Activities Are Irreparably Harmed by  
2           Defendant’s Refusal to Accept the Federal Form Without “Satisfactory”  
3           Documentary Proof of Citizenship.

4           Of the 3,763,685 voting-age Arizonans, only 2,624,559 are currently registered to  
5           vote. [Moeser Decl., ¶¶ 7-8] As such, more than one million people in Arizona may  
6           be eligible to register to vote. [*Id.*] Importantly, thousands of Arizonans, who have  
7           not been shown to be ineligible to register to vote, have had their registration  
8           applications rejected for failure to provide “satisfactory evidence of citizenship.” [*Id.*  
9           at ¶¶ 9-12] Though numbers for the entire state or the entire duration of Proposition  
10          200’s effective period are not available, county recorders have reported at different  
11          times since Proposition 200 was implemented that they have rejected between 30%  
12          and 74% of voter registration applications. [*Id.*]

13          Plaintiffs in this action -- the Inter-Tribal Council of Arizona, Inc., the League  
14          of Women Voters of Arizona, Arizona Advocacy Network, the Hopi Tribe, People for  
15          the American Way Foundation, the League of United Latin American Citizens, and  
16          Representative Steve M. Gallardo (collectively, “plaintiffs”) include organizations  
17          that dedicate a portion of their limited resources to registering voters in Arizona. [*See*  
18          Declaration of Bonnie Saunders (“Saunders Decl.,” Ex. 2)] Consistent with the  
19          NVRA’s policy of placing “particular emphasis on making [the Federal Form]  
20          available for organized voter registration programs,” plaintiffs have used or intend to  
21          use the Federal Form to register voters in Arizona. 42 U.S.C. § 1973gg-4(b);  
22          [*Saunders Decl.*, ¶ 5] In some situations, however, plaintiffs have not used the  
23          Federal Form because defendant did not provide them with copies of the Federal  
24          Form, or because they feared it would not be accepted by Secretary Brewer.  
25          [*Saunders Decl.*, ¶ 5]

26          If Arizona persists in conditioning acceptance of the Federal Form on  
27          submission of “satisfactory evidence of citizenship” plaintiffs’ voter registration  
28          efforts will be irreparably harmed. Plaintiffs do not have adequate resources to equip

1 those working to register voters with photocopying machines or scanners to create  
2 copies of registrants' citizenship documents. [*Id.* at ¶ 7] To continue their voter  
3 registration activities, but also supply photocopies of documentary evidence of  
4 citizenship, plaintiffs would need portable copying equipment -- which would be  
5 prohibitively expensive. [*Id.*] Indeed, some of plaintiffs' voter registration activities  
6 involve going door-to-door in residential neighborhoods and setting up tables at fairs,  
7 school parents' nights and other community events -- locations where it is impossible  
8 for them to set up equipment to photocopy citizenship documents. [*Id.* at ¶ 4]  
9 Because plaintiffs' resources are limited, even if they could equip their voter  
10 registration workers with the necessary copying equipment, the extra resources they  
11 would expend to do so would necessarily be diverted from their other activities. [*Id.*  
12 at ¶ 8] In short, if plaintiffs must obtain copies of registrant's citizenship documents,  
13 even when using the Federal Form, they will be able to register fewer voters in  
14 Arizona and across the nation. [*Id.*]

15 The voter registration deadline for the September 12, 2006 primary election for  
16 federal offices is August 14, 2006, and October 9, 2006 for the November 7, 2006  
17 general election. As such, plaintiffs have fewer than three months in which to register  
18 voters in time for the primary, and time is of the essence. Every day that defendant  
19 refuses to accept the Federal Form without supplemental documentary evidence of  
20 citizenship is a day that plaintiffs' voter registration efforts are irreparably harmed.

21 Argument

22 I. BECAUSE PLAINTIFFS EASILY MEET ANY OF THE APPLICABLE  
23 STANDARDS, A TRO SHOULD ISSUE TO REQUIRE DEFENDANT TO  
24 COMPLY WITH THE NVRA.

25 The Ninth Circuit recognizes two sets of criteria for issuance of preliminary  
26 injunctive relief, and plaintiffs are entitled to a TRO under either test for such relief.<sup>4</sup>

27 \_\_\_\_\_  
28 <sup>4</sup> The test for issuing a TRO and a preliminary injunction are essentially the  
same. See *Ahwatukee Foothills Prep, Inc. v. Block Income Fund I, LLP*, 2005 WL

1 *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1120 (9th Cir. 2005). Under the  
2 “traditional” standard, plaintiffs “must show (1) a strong likelihood of success on the  
3 merits, (2) the possibility of irreparable injury to plaintiff if preliminary relief is not  
4 granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the  
5 public interest (in certain cases).” *Id.* (quoting *Johnson v. Cal. State Bd. of*  
6 *Accountancy*, 72 F.3d 1427, 1430 (9th Cir.1995)). But preliminary injunctive relief is  
7 equally appropriate if the plaintiffs “demonstrate[ ] either a combination of probable  
8 success on the merits and the possibility of irreparable injury or that serious questions  
9 are raised and the balance of hardships tips sharply in [their] favor.” *Id.* The Ninth  
10 Circuit’s alternative formulations of the preliminary injunction test “represent two  
11 points on a sliding scale in which the required degree of irreparable harm increases as  
12 the probability of success decreases. They are not separate tests but rather outer  
13 reaches of a single continuum.” *Id.* (quoting *Baby Tam & Co. v. City of Las Vegas*,  
14 154 F.3d 1097, 1100 (9th Cir. 1998)). Because plaintiffs have a strong likelihood of  
15 success on the merits of their claim that defendant is violating the NVRA, and  
16 because the balance of hardships weighs heavily in their favor, a TRO is appropriate.

17 **II. PLAINTIFFS HAVE A STRONG LIKELIHOOD OF SUCCESS ON THE**  
18 **MERITS BECAUSE DEFENDANT’S CONDUCT CLEARLY VIOLATES**  
19 **THE NVRA.**

20 **A. Defendant’s Refusal to Accept the Federal Form Without Supplemental**  
21 **Proof of Citizenship Conflicts with and Violates the NVRA.**

22 The NVRA mandates that states “*shall* accept and use” the Federal Form for  
23 registering voters for federal elections, such as those scheduled for September and  
24 November of this year. 42 U.S.C. § 1973gg-4(a)(1) (emphasis added). The Federal  
25 Form is self-contained and requires no documentary proof of citizenship. [Moeser

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26 3536289 (D. Ariz. Dec. 22, 2005) (citing *First Brands Corp. v. Fred Meyer, Inc.*, 809  
27 F.2d 1378, 1381 (9th Cir. 1987)), a preliminary injunction case for the standard for  
28 issuing a TRO).

1 Decl., Ex. B] The NVRA limits the information the Federal Form may require to  
2 “only such identifying information (including the signature of the applicant) and other  
3 information (including data relating to previous registration by the applicant), as is  
4 necessary to enable the appropriate State election official to assess the eligibility of  
5 the applicant.” 42 U.S.C. § 1973gg-7(b)(1) (emphasis added). By conditioning  
6 acceptance of the Federal Form on production of supplemental information, defendant  
7 is not “accept[ing] and us[ing]” the Federal Form as required by the NVRA. 42  
8 U.S.C. § 1973gg-4(a)(1). Rather, Secretary Brewer’s requiring documentary proof of  
9 citizenship is “a requirement for . . . other formal authentication” expressly prohibited  
10 by the NVRA. 42 U.S.C. § 1973gg-7(b)(3).

11       Importantly, Congress considered *and rejected* a proposed amendment to the  
12 NVRA that would have stated that “nothing in [the NVRA] shall prevent a State from  
13 requiring presentation of documentation relating to citizenship of an applicant for  
14 voter registration.” 139 Cong. Rec. H2078-02, § 13 (1993) (rejecting the proposed  
15 amendment because “[i]t is not necessary or consistent with the purposes of [the  
16 NVRA]. Furthermore, there is concern that it could be interpreted by States to permit  
17 registration requirements that could effectively eliminate, or seriously interfere with,  
18 the mail registration program of the [NVRA].”). Just as Congress warned,  
19 defendant’s application of citizenship documentation requirements to the Federal  
20 Form has “seriously interfere[d]” with mail registration under the NVRA in Arizona.  
21 *Id.* As such, the Secretary’s implementation of Proposition 200 with respect to the  
22 Federal Form plainly violates the NVRA.

23       Defendant has characterized her application of Proposition 200’s proof of  
24 citizenship requirements to the Federal Form as a means of determining the eligibility  
25 of voter registration applicants. [Moeser Decl., Ex. M, at 2] But the EAC has  
26 concluded that attestation to citizenship is sufficient to allow states to assess a  
27 registrant’s eligibility, and has *not* included documentary proof of citizenship in the  
28 “identifying information” required by 42 U.S.C. § 1973gg-7(b)(1). This has long

1 been the policy of the agency charged with developing and administering the Federal  
2 Form. Indeed, before jurisdiction over the NVRA was transferred to the EAC, the  
3 Federal Elections Commission stated that “[t]he issue of U.S. citizenship is addressed  
4 within the oath required by the [NVRA] and signed by the applicant under penalty of  
5 perjury.” 59 Fed. Reg. 32,316 (1994) (discussing exclusion of naturalization  
6 information from the Federal Form).

7 Furthermore, the EAC, which Congress has entrusted with the responsibility to  
8 develop the Federal Form and “provide information to the States with respect to the  
9 responsibilities of the States under [the NVRA],” has already determined that  
10 Secretary Brewer is in violation of the NVRA. 42 U.S.C. § 1973gg-7(a)(1)-(2), (4);  
11 [Moeser Decl., Ex. C] Indeed, the EAC notified defendant that she “may not mandate  
12 additional registration procedures that condition the acceptance of the Federal Form.  
13 The NVRA requires States to both ‘accept’ and ‘use’ the Federal Form. Any Federal .  
14 . . Form that has been properly and completely filled out by a qualified applicant and  
15 timely received by an election official must be accepted in full satisfaction of  
16 registration requirements.” [*Id.* at 3] The EAC has not retreated from its conclusion  
17 that defendant has acted in violation of the NVRA, and has forwarded this matter to  
18 the Department of Justice for consideration of enforcement action. [*Id.*, Ex. L] In  
19 view of the EAC’s regulatory and supervisory role over the states’ compliance with  
20 the NVRA, its determination that defendant is engaged in a continuing violation of the  
21 NVRA is highly persuasive.

22 B. As a Matter of Constitutional Law, the NVRA Preempts Proposition  
23 200’s Proof of Citizenship Requirements.

24 Defendant may not impose Proposition 200’s “satisfactory evidence of  
25 citizenship” requirement on the Federal Form, even within Arizona. Rather, it is  
26 A.R.S. § 16-166(F) that must yield to the conflicting provisions of the NVRA. *See*  
27 *Charles H. Wesley*, 408 F.3d at 1354 (holding that “[b]y requiring the states to accept  
28

1 mail-in forms, the [NVRA] does regulate the method of delivery, and by so doing  
2 *overrides* state law inconsistent with its mandates”) (emphasis added).

3 Congress enacted the NVRA pursuant to its power under U.S. Const. Art. 1, §  
4 4, cl.1 (the “Election Clause”), which expressly permits Congress to “force states to  
5 alter their regulations regarding federal elections.”<sup>5</sup> *Ass’n of Cmty. Orgs. for Reform*  
6 *Now (ACORN) v. Miller*, 129 F.3d 833, 836 (6th Cir. 1997) (upholding the NVRA  
7 against Michigan’s constitutional challenge); *Voting Rights Coalition v. Wilson*, 60  
8 F.3d 1411, 1415 (9th Cir. 1995) (denying California’s constitutional challenge to the  
9 NVRA). Importantly, every federal circuit court to have considered Congress’ power  
10 to enact the NVRA and force states to comply with its provisions has upheld the law.  
11 *E.g., ACORN v. Miller*, 129 F.3d at 837; *ACORN v. Edgar*, 56 F.3d 791, 793-94 (7th  
12 Cir. 1995); *Voting Rights Coalition*, 60 F.3d at 1415; *see also Charles H. Wesley*, 408  
13 F.3d at 1354 (enforcing NVRA requirements that alter state policy); *ACORN v.*  
14 *Fowler*, 178 F.3d 350 (5th Cir. 1999) (same); *Nat’l Coalition for Students with*  
15 *Disabilities Ed. & Legal Def. Fund v. Gilmore*, 190 F.3d 600 (4th Cir. 1998) (same).

16 Here, the NVRA requires defendant to abandon her application of A.R.S. § 16-  
17 166(F) to the Federal Form. Such an alteration of state law is expressly authorized by  
18 the Election Clause. Indeed, as Judge Posner observed, even though the NVRA may  
19 make it more difficult for states to enforce some voter qualifications, that difficulty  
20 does not invalidate the law. *ACORN v. Edgar*, 56 F.3d at 794. Rather, defendant  
21 would need to show that the NVRA was “designed with devilish cunning to make it  
22 impossible for the state to enforce its voter qualifications,” to have any basis on which  
23

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24 <sup>5</sup> It is well-established that Congress’ Election Clause power to regulate the  
25 “Times, Places and Manner of holding” federal elections extends to regulating  
26 procedures for voter registration for primaries and general elections. *ACORN v.*  
27 *Edgar*, 56 F.3d 791, 793-94 (7th Cir. 1995) (citing *United States v. Classic*, 313 U.S.  
28 299 (1941); *Smiley v. Holm*, 285 U.S. 355, 366 (1932); *Ex Parte Siebold*, 100 U.S.  
371 (1879); *United States v. Original Knights of the Ku Klux Klan*, 250 F. Supp. 330,  
351-55 (E.D. La. 1965)).

1 to challenge the NVRA. *Id.* at 795. In view of the fact that the NVRA and the  
2 Federal Form pre-date Proposition 200, defendant can make no such showing.

3 For all the foregoing reasons, plaintiffs have a strong likelihood of success on  
4 the merits of their NVRA claim against Secretary Brewer.

5 III. PLAINTIFFS HAVE SUFFERED AND WILL CONTINUE TO SUFFER  
6 IRREPARABLE HARM ABSENT ARIZONA'S COMPLIANCE WITH THE  
7 NVRA.

8 By denying plaintiffs the opportunity to register voters using the Federal Form  
9 without supplemental documentation of citizenship, defendants have made and will  
10 continue to make plaintiffs' voter registration activities more costly and less effective.  
11 As such, defendant has caused, and threatens to continue causing, irreparable harm to  
12 rights protected by the NVRA. *Charles H. Wesley*, 408 F.3d at 1355 (concluding that  
13 "[t]he associational and franchise-related rights asserted by the Plaintiffs were  
14 threatened with significant irreparable harm" by state's failure to accept Federal  
15 Forms submitted by organization engaged in voter registration).

16 The threatened harm to plaintiffs is concrete. If the defendant persists in her  
17 policy of refusing to accept the Federal Form without supplemental documentary  
18 evidence of citizenship, Plaintiffs, who do not have the capacity to make copies of  
19 citizenship documents, will be unable to register voters who do not possess driver's  
20 licenses issued after October 1, 1996. County recorders have already rejected  
21 thousands of voter registration applications for failure to comply with Proposition  
22 200, and following defendant's March 13, 2006 directive related to the Federal Form,  
23 they will continue to do so, irreparably harming plaintiffs' rights under the NVRA.  
24 [See Moeser Decl., Ex. E]

25 Even if plaintiffs could show no irreparable harm, however, injunctive relief is  
26 appropriate here. Because the NVRA specifically provides for injunctive relief,  
27 irreparable harm is presumed to arise from defendant's violation of the statute. 42  
28 U.S.C. § 1973gg-9(b)(2) (permitting an aggrieved person to "bring a civil action in an

1 appropriate district court for declaratory or injunctive relief with respect to the  
2 violation”); *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th  
3 Cir. 1987) (holding that “[n]o specific or immediate showing of the precise way in  
4 which violation of the law will result in public harm is required” when injunctive  
5 relief is authorized by statute).

6 **IV. THE BALANCE OF HARDSHIPS TIPS SHARPLY IN PLAINTIFFS’ FAVOR**  
7 **AND THE PUBLIC INTEREST WILL BE SERVED BY INCREASING**  
8 **ACCESS TO VOTER REGISTRATION.**

9 The number of voter registrations already rejected based on defendant’s  
10 implementation of Proposition 200 shows that thousands of Arizonans may be denied  
11 their fundamental right to vote. [Moeser Decl. ¶¶ 9-12] This conflicts directly with  
12 the public policy of the NVRA that states “enhance the participation of eligible  
13 citizens as voters” and “promote the exercise of [the fundamental] right [to vote]” by  
14 eliminating “discriminatory and unfair registration laws and procedures [that] can  
15 have a direct and damaging effect on voter participation in elections for Federal office  
16 and disproportionately harm voter participation by various groups, including racial  
17 minorities.” 42 U.S.C. § 1973gg(a), (b). Moreover, the NVRA encourages the  
18 plaintiffs’ voter registration activities. *Charles H. Wesley*, 408 F.3d at 1353 (citing  
19 42 U.S.C. § 1973gg-4(b)). Indeed, “protection of . . . franchise-related rights is  
20 without question in the public interest.” *Id.* at 1355.

21 On the other hand, there is no evidence that defendant will suffer any harm if  
22 she is ordered to comply with the NVRA and accept the Federal Form without  
23 additional evidence of citizenship. The Federal Form, with its requirement that a  
24 registrant swear or affirm under penalty of perjury that the registrant is a United States  
25 Citizen, and its clear description of the penalties for falsification, is sufficient to  
26 prevent against voter fraud. *Edgar*, 56 F.3d at 795-96; *Ariz. Op. Att’y Gen.*, 2005  
27 WL 436194 (2005) (noting that “the requirement that a person registering to vote  
28 attest that he or she is a citizen and the associated criminal penalties for violating this

1 requirement provide additional protections against non-citizens registering to vote in  
2 Arizona”); *see also Charles H. Wesley*, 408 F.3d at 1355-56 (finding the public  
3 interest in protecting against electoral fraud not harmed by enforcement of the  
4 NVRA). Indeed, plaintiffs are unaware of *any* evidence of a significant number of  
5 non-citizens registering to vote in Arizona. In view of the complete absence of  
6 hardship on defendant’s part, the balance of hardships and the public interest strongly  
7 favor plaintiffs.

8 Conclusion

9 For the foregoing reasons, this Court should grant the ex parte application of  
10 Plaintiffs Gonzalez et. al. for temporary restraining order and order to show cause.

11 DATED this 24th day of May, 2006.

12 OSBORN MALEDON, P.A.

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I hereby certify that on May 24, 2006, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

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