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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-LYTLE, 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 Records of the State

Case No.

PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION
UNDER THE 14TH AND 24TH
AMENDMENTS TO THE
U.S. CONSTITUTION AND
MEMORANDUM IN SUPPORT

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. INTRODUCTION

28 In addition to moving for a Temporary Restraining Order to prevent Defendants from further violating the National Voter Registration Act, the Supremacy Clause of the U.S. Constitution and Section 5 of the Voting Rights Act, Plaintiffs also request that this Court grant them a Preliminary Injunction to prevent Defendants from further violating the 14th and 24th Amendments to the U.S. Constitution by imposing a modern-day poll tax on Arizona voters.

In support of their Motion for a Preliminary Injunction under the 14th and 24th Amendments, Plaintiffs incorporate the facts, argument and authorities set out in their Memorandum in Support of Plaintiffs' Request for a Temporary Restraining Order. In addition, Plaintiffs present the following in support of their Motion for Preliminary Injunction.

1 II. BACKGROUND

- 2 1. The State of Arizona implemented Proposition 200's proof of citizenship requirement
3 in January 2005 and the number of rejected voter registration applications has revealed
4 Proposition 200's substantial, negative effect on registration. In Maricopa County, for
5 example, from January 2005 until March 2006, approximately 12,000 voter
6 registration applications were rejected simply for failure to provide documentary
7 proof of citizenship.¹
- 8 2. Those qualified voter registration applicants who lack the required proof of citizenship
9 must purchase a citizenship document for a fee. Proposition 200's requirements for
10 proof of identity at the time of voting also require those voters who lack one of the
11 specified forms of identification to pay a fee to acquire one.
- 12 3. Unless enjoined, county officials are bound by Proposition 200's voter registration
13 and identification provisions to continue to reject voter applicants and voters who
14 cannot provide the required documents. Plaintiffs seek relief in advance of the August
15 14, 2006 voter registration deadline for the September 2006 primary election.
16 Accordingly, Plaintiffs request that this Court grant a preliminary injunction
17 invalidating the voter registration and identification provisions of Proposition 200.

18 III. FACTS

- 19 4. Proposition 200 Threatens to Disenfranchise a Substantial Number of Eligible Voters
20 Who Lack Required Identification.
- 21 5. Proposition 200 threatens to prevent many tens of thousands of eligible citizens from
22 registering to vote, because the forms of identification it requires are not universally
23 held. The National Commission on Federal Election Reform, a bipartisan group
24

25 ¹See Decl. attached to Plaintiffs' Memorandum of Points and Authorities in Support
26 of Plaintiffs' Application for Temporary Restraining Order as Exhibit A (Exhibit 4,
27 Correspondence from Colleen Connor, Deputy County Attorney for Maricopa County).

1 formed after the ordeal of the 2000 presidential election, estimated that about 5 to 7%
2 of adults lack a driver's license or other photo identification.²

3 6. Driver's licenses are not universally held. In 2000, while there were 3,763,685
4 Arizona residents age 18 and over,³ there were only 3,373,959 licensed drivers age 18
5 and over.⁴ Accordingly, approximately 390,000 residents⁵ – more than 10% of the
6 Arizona voting-age population – lack a driver's license.

7 7. Approximately 60 million U.S. citizens currently have passports,⁶ that represents only
8 approximately 31% of all U.S. citizens.⁷ Accordingly, passports are not likely to
9 broaden significantly the number of voters holding identification required under
10 Proposition 200.

11 8. Many voting-age citizens in Arizona who lack a state driver's license, identification

12
13 ²The National Commission on Federal Election Reform, To Assure Pride and
14 Confidence in the Electoral Process, Aug. 2001, at 32, available at
15 http://www.tcf.org/Publications/ElectionReform/99_full_report.pdf.

16 ³Dep't of Commerce, U.S. Census Bureau, Table DP-4. Profile of Selected
17 Demographic Characteristics: 2000.

18 ⁴Federal Highway Administration (FHA), Licensed Total Drivers, by Age 2000,
19 available at <http://www.fhwa.dot.gov/ohim/hs00/pdf/dl22.pdf>; FHA, Licensed Total Young
20 Drivers, by Age 2000.

21 ⁵A nearly equally large number of Arizona residents do not have an Arizona driver's
22 license issued after October 1, 1996. According to published reports, "90 percent of
23 licenses and identification cards were issued after Oct. 1, 1996." Howard Fischer,
24 Recorder, O'odham leader fault ID to vote, Arizona Daily Star, Feb. 5, 2005. If this figure
25 is accurate, 10% of those currently in possession of Arizona driver's licenses or
26 identification cards – approximately 340,000 additional voting-age persons – do not have a
27 driver's license as required by Proposition 200 to register to vote.

28 ⁶U.S. State Dep't, Special Briefing: Western Hemisphere Travel Initiative, April 5,
2005, at p. 4 of 10, available at <http://www.state.gov/r/pa/prs/ps/2005/44286.htm>

⁷U.S. Bureau of the Census, Current Population Reports, Voting and Registration in
the Election of November 2002, Issued July 2004, at 2 Fig. 1.

1 card, or passport, as required under Proposition 200, will therefore need to present a
2 birth certificate in order to register to vote. Some, however, will never have obtained
3 a copy of their birth certificate. Still others will have a different name on their birth
4 certificate, and will be unable to use it in order to register to vote. Most married
5 women today, for example, take their husband's surname; only a relatively small
6 percentage retain their maiden names as their only surname. Accordingly, even if they
7 have birth certificates available to them, most married women will be unable to use
8 them to prove their citizenship because their names will have changed.

9 IV. ARGUMENT: PLAINTIFFS SATISFY THE
10 STANDARD FOR INJUNCTIVE RELIEF

- 11 9. This Circuit has described two sets of criteria to obtain a preliminary injunction.
12 “Under the ‘traditional’ criteria, a plaintiff must show ‘(1) a strong likelihood of
13 success on the merits, (2) the possibility of irreparable injury to plaintiff if
14 preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and
15 (4) advancement of the public interest’” *Earth Island Institute v. U.S. Forest*
16 *Service*, 351 F.3d 1291, 1297 (9th Cir. 2003) (citation omitted).
- 17 10. Alternatively, a plaintiff must demonstrate “‘either a combination of probable success
18 on the merits and the possibility of irreparable injury or that serious questions are
19 raised and the balance of hardships tips sharply in his favor.’” *Save Our Sonoran, Inc.*
20 *v. Flowers*, 381 F.3d 905, 912 (9th Cir. 2004) (citation omitted). As this Circuit has
21 repeatedly stated, “‘These two formulations represent two points on a sliding scale in
22 which the required degree of irreparable harm increases as the probability of success
23 decreases. They are not separate tests but rather outer reaches of a single continuum.’”
24 *Id.* (citation omitted). Ultimately, the court’s task is to “‘balance the equities in the
25 exercise of its discretion.’” *International Jensen, Inc. v. Metrosound U.S.A., Inc.*, 4
26 F.3d 819, 822 (9th Cir. 1993).
- 27 11. Plaintiffs easily satisfy the sliding scale standard established for issuance of
28

1 preliminary injunctions and Plaintiffs have a substantial probability of success on the
2 merits.

3 12. The Equal Protection and Due Process Clauses of the Fourteenth Amendment forbid
4 use of citizens' wealth or financial status to deny them the right to vote. The Supreme
5 Court has struck down numerous qualifications that conditioned voting or other
6 political participation on wealth, whether in the form of property ownership or the
7 payment of fees. *See, e.g., Hill v. Stone*, 421 U.S. 289 (1975) (taxable property
8 requirement for voters in city bond elections); *Lubin v. Panish*, 415 U.S. 709 (1974)
9 (candidate filing fee); *Cipriano v. City of Houma*, 395 U.S. 701 (1969) (property
10 ownership requirement); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663
11 (1966) (payment of poll tax); *Harman v. Forssenius*, 380 U.S. 528 (1965) (paying
12 poll tax or filing certificate of residence). Accordingly, a state cannot constitutionally
13 impose wealth qualifications that burden qualified persons in the exercise of their
14 fundamental right to vote.

15 13. Here, Arizona has impermissibly burdened the right to vote by making it depend on an
16 individual's wealth or financial resources. Under Proposition 200, a person
17 registering to vote, or re-registering after moving to a new county, must have one of
18 the six identification documents that the initiative deems satisfactory evidence of U.S.
19 citizenship. Proposition 200 provides no exceptions or waivers from its requirements,
20 and mandates rejection of any application that does not meet them. A native-born U.S.
21 citizen who is not a member of a federally-recognized Indian tribe must have a driver's
22 license, a birth certificate, or U.S. passport to register to vote. A native-born U.S.
23 citizen, otherwise qualified to vote, therefore will be denied the right to vote if he or
24 she has not paid or cannot pay the fee to obtain one of these required forms of
25 identification. Accordingly, Proposition 200 is unconstitutional because it
26 impermissibly conditions the right to vote on an individual's wealth.

- 1 14. The right to vote holds an almost sacred place in our nation because voting rights are
2 central to a free and democratic society. *See, e.g., Reynolds v. Sims*, 377 U.S. 533,
3 555 (1964) (the right to vote “is of the essence of a democratic society, and any
4 restrictions on that right strike at the heart of representative government”). “No right
5 is more precious in a free country than that of having a voice in the election of those
6 who make the laws under which, as good citizens, we must live. Other rights, even the
7 most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376
8 U.S. 1, 17 (1964). In other words, the right to vote is a “‘fundamental political right,
9 because [it is] preservative of all rights.’” *Harper*, 383 U.S. at 667 (quoting *Yick Wo*
10 *v. Hopkins*, 118 U.S. 356, 370 (1886)).
- 11 15. “‘Constitutional rights would be of little value if they could be . . . indirectly denied.’”
12 *Harman*, 380 U.S. at 540 (citation omitted). As a result, “[t]he Constitution ‘nullifies
13 sophisticated as well as simple-minded modes’ of infringing on constitutional
14 protections.” *U.S. Term Limits v. Bryant*, 514 U.S. 779, 829 (1995) (citation
15 omitted). This is particularly true when it comes to voting. “[S]ince the right to
16 exercise the franchise in a free and unimpaired manner is preservative of other basic
17 civil and political rights, any alleged infringement of the right of citizens to vote must
18 be carefully and meticulously scrutinized.” *Harper*, 383 U.S. at 667 (quoting
19 *Reynolds*, 377 U.S. at 561-62); *id.* at 670 (where fundamental rights and liberties are
20 at issue, “classifications which might invade or restrain them must be closely
21 scrutinized and carefully confined”).
- 22 16. Because they implicate a fundamental right, restrictions on the electoral process must
23 survive “exacting scrutiny.” *Buckley v. Valeo*, 424 U.S. 1, 94 (1976). Even “[i]n the
24 absence of a suspect classification, the Supreme Court has applied strict scrutiny to
25 . . . regulations that unreasonably deprive some residents in a geographically defined
26 governmental unit from voting in a unit wide election.” *Green v. City of Tucson*, 340

1 F.3d 891, 899 (9th Cir. 2003) (citing, among other cases, *Harper*, 383 U.S. at 663).

2 17. Proposition 200's registration requirements impermissibly condition the right to vote
3 on wealth. In *Harper*, the Supreme Court struck down a Virginia statute that
4 conditioned the right to vote in state elections on the payment of a poll tax. According
5 to the Court, "once the franchise is granted to the electorate, lines may not be drawn
6 which are inconsistent with the Equal Protection Clause of the Fourteenth
7 Amendment." 383 U.S. at 665. The Equal Protection Clause commands, the Court
8 concluded, that "a citizen, a qualified voter, is no more nor no less so" because he or
9 she has \$1.50 in his pocket or nothing at all, pays the fee or fails to pay it. The
10 principle that denies the State the right to dilute a citizen's vote on account of his
11 economic status or other such factors by analogy bars a system which excludes those
12 unable to pay a fee to vote or who fail to pay. *Id.* at 667-68. Accordingly, the Court
13 held, "wealth or fee paying has, in our view, no relation to voting qualifications; the
14 right to vote is too precious, too fundamental to be so burdened or conditioned." *Id.*
15 at 670.

16 18. Proposition 200, like the statute at issue in *Harper*, impermissibly makes wealth a
17 qualification for voting. A citizen is no more nor no less qualified to vote because she
18 has \$10, \$15, \$25, or \$85 in her pocket, pays the fee to obtain a driver's license, birth
19 certificate, or passport, or fails to pay the fee. See *Harper*, 383 U.S. at 668. The
20 principle that bars a state from denying the right to vote to those unable to pay a poll
21 tax or who fail to pay it bars a state from denying the right to vote to those unable to
22 pay the fee or who fail to pay the fee for a state-mandated form of identification. See
23 *id.* The right to vote is too precious, too fundamental to be conditioned or burdened
24 in this way. See *id.* at 670.

25 19. This Court should reject any claim that the fee obligation relates, not to voting, but to
26 obtaining a driver's license, birth certificate, or passport. Such a claim elevates form
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1 over substance, ignoring the Supreme Court’s injunction “to carefully and meticulously
2 scrutinize[]” any alleged infringement of the right to vote. See *Harper*, 383 U.S. at
3 667. Proposition 200 plainly has a direct and substantial effect on the right to vote,
4 manipulating out of existence the right to vote of individuals who have not paid or
5 cannot pay a fee. See *Harman*, 380 U.S. at 540 (““Constitutional rights would be of
6 little value if they could be . . . indirectly denied,’ or ‘manipulated out of existence.’”)
7 (citation omitted). The right to vote has impermissibly been conditioned on the basis
8 of wealth – “a capricious or irrelevant factor,” see *Harper*, 383 U.S. at 668 – whether
9 the franchise is denied because a person cannot pay a poll tax or the fee for a driver’s
10 license or other state-mandated form of identification. Similarly, Proposition 200’s
11 requirements that voters show an identification document or documents required
12 voters to purchase a document for a fee or to possess property, such as a bank account,
13 or to assume financial responsibility or a utility bill.

14 20. *Harper* makes plain that Proposition 200’s registration and identification
15 requirements must be struck down because, like the poll tax, they directly and
16 substantially condition the right to vote on wealth. The Court rejected the argument
17 that “a State may exact fees from citizens for many different kinds of licenses; that if
18 it can demand from all an equal fee for a driver’s license, it can demand from all an
19 equal poll tax for voting.” *Harper*, 383 U.S. at 668. The Court held that requiring the
20 payment of a fee or tax runs afoul of the Equal Protection Clause when it touches on
21 the fundamental right to vote, but it said “nothing to impair [the] validity [of taxes] so
22 long as [they are] not made a condition to the exercise of the franchise.” *Id.* at 668-89.
23 In fact, the Court noted that Maine then had a poll tax that served as a condition of
24 obtaining a vehicle or driver’s license but not as a condition of voting. *Id.* at 668 n.5.
25 Accordingly, while Arizona may be permitted to require a fee as a condition of
26 obtaining a driver’s license or birth certificate, it may not require payment of that same
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1 fee as a condition of registering to vote.

- 2 21. Proposition 200's registration requirements are not needed to achieve a compelling
3 state interest. In *Harman*, the Court struck down a poll-tax substitute that did not even
4 require a financial payment. Virginia required that a federal voter either pay a poll tax
5 as required for state elections or file a certificate of state residence. As the Court
6 stated, “‘Constitutional rights would be of little value if they could be . . . indirectly
7 denied,’ or ‘manipulated out of existence.’” *Harman*, 380 U.S. at 540 (citations
8 omitted). The Court explained that:

9 the Twenty-fourth Amendment does not merely insure that the franchise shall not be
10 “denied” by reason of failure to pay the poll tax; it expressly guarantees that the right
11 to vote shall not be “denied or abridged” for that reason. Thus, like the Fifteenth
12 Amendment, the Twenty-fourth “nullifies sophisticated as well as simple-minded
13 modes” of impairing the right guaranteed.
14 *Id.* at 540-41 (citations omitted). Accordingly, the Court held that “[f]or federal
15 elections, the poll tax is abolished absolutely as a prerequisite to voting, and no
16 equivalent or milder substitute may be imposed.” *Id.* at 542 (emphasis added).

- 17 22. The Court rejected the state’s contention that the statutory scheme should be upheld
18 because the certificate was a “necessary substitute method of proving residence,
19 serving the same function as the poll tax.” *Id.* at 542. The Court held that
20 “constitutional deprivations may not be justified by some remote administrative
21 benefit to the State.” *Id.* In addition, the Court held that the state failed to show that
22 the certificate was “necessary to the proper administration of its election laws.” *Id.*
23 at 543. As the Court concluded,

24 The availability of numerous devices to enforce valid residence requirements – such
25 as registration, use of the criminal sanction, purging of registration lists, challenges
26 and oaths, public scrutiny by candidates and other interested parties – demonstrates
27 quite clearly the lack of necessity for imposing a requirement whereby persons
28 desiring to vote in federal elections must either pay a poll tax or file a certificate of
residence six months prior to the election. *Id.*

- 29 23. Like the certificate requirement in *Harman*, Proposition 200's identification
30 requirement must be struck down. The state cannot show that the identification
31

1 requirement is in any way necessary to establish or verify voter eligibility. *See*
2 *Harman*, 380 U.S. at 543.

3 24. Moreover, the State cannot demonstrate a connection between Proposition 200's
4 identification requirement and preventing non-citizens from registering to vote. As
5 the Arizona Attorney General admits, "a person need not be a United States citizen to
6 obtain an Arizona driver license or identification card, even after October 1, 1996."⁸
7 That is to say, while applicants for a driver's license may well have their lawful
8 presence in this country verified, they do not have their citizenship verified, so a
9 driver's license cannot establish that any given applicant is a citizen as opposed to a
10 lawful permanent resident. Accordingly, by permitting a driver's license to constitute
11 satisfactory proof of identity for voting, Proposition 200 undermines its own
12 purported goal in preventing non-citizens from voting.

13 25. Plaintiffs will suffer irreparable harm if relief is not granted. The threatened
14 deprivation of a fundamental right by itself constitutes a threat of irreparable injury.
15 *See, e.g., Goldie's Bookstore, Inc. v. Superior Court of Cal.*, 739 F.2d 466, 472 (9th
16 Cir. 1984) ("alleged constitutional infringement will often alone constitute irreparable
17 harm"); 11A WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE §
18 2948.1 (Civil 2d ed. 1995) ("When an alleged deprivation of a constitutional right is
19 involved, most courts hold that no further showing of irreparable injury is necessary.").
20 Here, Proposition 200 deprives individuals of the fundamental right to vote, and thus
21 causes irreparable injury. *See Reynolds*, 377 U.S. at 585 (illegal impediments to the
22 right to vote, as guaranteed by the U.S. Constitution or statute, by their nature
23 constitute irreparable injury).

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25 ⁸*See* Bernal Decl. attached to Plaintiffs' Memorandum of Points and Authorities in
26 Support of Plaintiffs' Application for Temporary Restraining Order as Ex. A. (Ex. 12, Ariz.
27 Attorney General, Opinion re: Identification Requirements for Voter Registration, Feb. 4,
2005, at 5).

1 26. Proposition 200 will substantially burden thousands of potential voters who do not
2 possess any of the required forms of identification.⁹ In 1994, the Department of
3 Justice (DOJ) rejected Louisiana’s plan to require first-time voters who had registered
4 by mail to present at the polls photo identification or other picture identification card.
5 As the DOJ concluded, “black persons are four to five times less likely than white
6 persons in the state to possess a driver’s license or other picture identification card
7 Consequently, the imposition of the driver’s license/picture identification
8 requirement is likely to have a disproportionately adverse impact on black voters in the
9 state, and will less their political participation opportunities.” Letter from Deval
10 Patrick, Asst. Attorney General, Civil Rights Division, to Sheri Marcus Norris, Asst.
11 Attorney General, Nov. 21, 1994. It is reasonable to conclude that thousands of
12 voting-age Arizona residents, at the least, lack photo identification as required by
13 Proposition 200. Accordingly, a large number of eligible voters will be denied the
14 right to vote unless they can and do purchase a required form of identification.

15 27. As noted above, more than 10% of the Arizona voting-age population – approximately
16 390,000 residents – lack a driver’s license. More important, initiative proponents
17 ignore the fact that, for many in this state and country, owning a VCR and renting
18 videos are luxuries they simply cannot afford. Nearly 441,000 voting-age residents
19 live in poverty. More than 163,000 households earn less than \$10,000 per year, or
20 \$192 per week. More than 140,000 occupied housing units have no vehicles available
21 and more than 70,000 of them have no telephone service. For eligible voters living in
22 poverty, the cost of a driver's license, birth certificate, or passport poses a substantial
23 burden.

24
25 ⁹See Bernal Decl. attached to Plaintiffs’ Memorandum of Points and Authorities in
26 Support of Plaintiffs’ Application for Temporary Restraining Order as Exhibit A (Ex. 9,
27 Public Information Stating the Cost of Arizona Driver’s License, Arizona Birth Certificates
and U.S. Passport).

1 28. The public interest plainly will be furthered by enjoining Proposition 200's
2 registration and identification requirements, which will deny some citizens the
3 opportunity to participate equally in the electoral process. *See Bay County*
4 *Democratic Party v. Land*, 347 F.Supp.2d 404, 438 (E.D. Mich. 2004) (“The public
5 interest is served when citizens can look with confidence at an election process that
6 insures that all votes cast by qualified voters are counted. . . . The public interest is
7 served when a federally granted right is enforced uniformly and voters are not
8 disenfranchised.”) (citations omitted); *U.S. v. Berks County, Pa.*, 250 F.Supp.2d 525,
9 541 (E.D. Pa. 2003) (“The Court finds that the public interest will be served by the
10 issuance of a preliminary injunction. ‘[U]ndoubtedly, the right of suffrage is a
11 fundamental matter in a free and democratic society.’ Ordering Defendants to conduct
12 elections in compliance with the Voting Rights Act so that all citizens may participate
13 equally in the electoral process serves the public interest by reinforcing the core
14 principles of our democracy.”) (citations omitted); *Murphree v. Winter*, 589 F.Supp.
15 374, 382 (S.D. Miss. 1984) (“Clearly, the granting of this preliminary injunction will
16 not disserve the public interest. The fundamental right to vote is one of the
17 cornerstones of our democratic society. The threatened deprivation of this
18 fundamental right can never be tolerated.”); see also *Sammartano v. First Judicial*
19 *District Court, in and for the County of Carson City*, 303 F.3d 959, 974 (9th Cir.
20 2002) (noting “it is always in the public interest to prevent the violation of a party's
21 constitutional rights”).

22 29. The balance of hardships tips strongly in plaintiffs’ favor. On the other side of the
23 balance of equities, Defendants can offer no significant reason to continue to
24 implement registration and identification requirements that inevitably will deprive a
25 portion of the electorate of the fundamental right to vote. Defendants’ purported
26 interest in preventing voter fraud cannot justify Proposition 200's unfair and inflexible
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1 registration requirements.

2 30. Last, and most important, Defendants cannot make wealth or payment of a fee a
3 measure of a voter's qualifications because, in the words of the Supreme Court, this
4 is a "capricious or irrelevant factor." *See Harper*, 383 U.S. at 668. Accordingly, the
5 balance of hardships tilts sharply in favor of enjoining Proposition 200's registration
6 requirements.

7 VI. CONCLUSION

8 For the reasons set out above, Plaintiffs respectfully request that the Court find that
9 Defendants' implementation Proposition 200 violates the 14th and 24th Amendments to the
10 U.S. Constitution.

11 Accordingly, for all these reasons, Proposition 200's registration and voter
12 identification requirements should be preliminarily enjoined.

13 Date: May 9, 2006

Respectfully submitted,

14
15
16 BY: /s/
Nina Perales

17 Counsel for Plaintiffs

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19 Attorney for Plaintiffs
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CERTIFICATE OF SERVICE

I here by certify that on this 9th day of May, 2006, I served a true and correct copy of Plaintiffs' Motion for Preliminary Injunction Under the 14th and 24th Amendments to the U.S. Constitution and Memorandum in Support on counsel of record by sending said copy via U.S. certified mail, return receipt requested to:

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11 Susan Hightower Marler
12 Yuma County Recorder
Patty Madrill
13 Elections Director
410 S. Maiden Lane, Suite B
14 Yuma AZ 85364

/s/

Nina Perales

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