

EXHIBIT 3

NAVAJO NATION PRESENTATION

Arizona's Proposition 200 and Identification requirements for Voting

January 17, 2006

I. Introduction

On November 2, 2004, at the general election, a majority of voters of the State of Arizona approved a proposed initiative measure entitled "*The Arizona Taxpayer and Citizenship Protection Act*." According to its proponents, this Act was drafted to address "*economic hardship*" caused by illegal immigration in Arizona. Aside the efforts to limit public benefits to illegal aliens, the proposed initiative sought to make it more difficult to register or vote in Arizona (in spite of the state's history of low voter turnout in its elections).

Subsequent to the passage of this controversial voter identification measure (and upon its final approval in the state), the United States Department of Justice, without much hesitation, *precleared* it. *Preclearance* of laws by the Department of Justice is required by the federal *Voting Rights Act of 1965* for certain jurisdictions having a history of discriminatory practices in voting activities. The State of Arizona is among these jurisdictions. After the measure was cleared by the Department of Justice, the State of Arizona ultimately drafted and submitted supplemental rules on implementing this law. Again, the Department of Justice provided its prompt approval.

II. Problems with Voter Identification

A serious and troubling aspect of this controversial law, and its implementing rules, concerns the requirement of voter identification at the polls on election day. Although the law suggests that its intent is to protect *citizens* of the state, the law has the unfortunate potential of

disenfranchising many voters who are otherwise properly registered. Those susceptible to being disenfranchised include racial and ethnic minorities, Native Americans, the poor, the elderly and people with disabilities. Because of the new requirements on identification, voters, in effect, will now have to pay the costs of registering to vote and voting at the polls (something not previously necessary).

Arizona's new voter identification requirements are extremely confusing and the procedures seem unusually cumbersome. One would assume that on this basis alone the law and its implementing rules would be declared null and void. Due process requires that members of the general public be given adequate notice of laws, rules and regulations of a government. For purposes of meeting notice requirements, laws cannot be vague nor confusing. Because of its various unnecessary requirements, many of which are not clear, Arizona's new law on voter identification will likely be difficult in its application. If the law is not immediately invalidated or at least substantially amended in some fair manner, statistics will eventually indicate that far too many voters are being turned away at the polls.

III. The Procedure; Registering and Voting

First, in order to *register*, the state requires the submission of proper documentation on U.S. citizenship. A.R.S. §16-152(A)(23). In comparing the laws of other states, this documentation requirement is particularly stringent (especially for those who are already citizens). Here, only certain documents are acceptable, such as birth certificates, certificates of Indian Blood or affidavits of birth sworn to by the Bureau of Indian Affairs. See *Voter Registration Form*, revised 3/05.

In the area of *voter identification* at the polls, before a voter is issued a ballot, the state

now requires documented proof of identification. Here the state lists several acceptable forms of identification. First, a voter can present a form of identification bearing his or her photo, with his or her name and address on it. Considered as reliable forms of identification are those issued by state, federal and tribal governments, including unexpired driver's licenses. If a voter does not have the proper photo identification, he or she can still be provided a *regular* ballot. Under a second list, a voter will be allowed to cast a regular ballot so long as he or she presents at least two types of identification documents deemed acceptable. The list prepared here include utility bills, bank statements, property tax statements, vehicle registration statements and insurance cards.

Once proper identification documents are presented, the inquiry is not over. The voter must still "*announce*" his or her name to the poll official. If the voter "*announces*" his or her own name incorrectly, or otherwise not in the same manner as what is printed on the identification document provided, the voter is not issued a *regular* ballot (as he or she has not provided proper identification under the rules). However, if the voter should pass this first test, there is still yet another matter. The voter must make sure that he or she "*announces*" his or her name in the same manner as his or her name appears on the signature roster maintained by the poll official. Again, if the voter makes a mistake, he or she will not be given a *regular* ballot. See "*Procedure for Proof of Identification at the Polls.*"

A further problematic requirement for voters concerns the matter of residential and mailing addresses. Whatever is presented as identification, the information on the *address* provided on the document must be stated in the same manner in the signature roster. If identification is not an issue at this point, it would seem that the process of getting a regular

ballot should be made available. It is also not clear how the “verification” process occurs under the rules for problems with addresses. The rules merely reference a *Procedures Manual*, the applicability of which remains unclear.¹

IV. Provisional Ballots

Beyond these tedious requirements, there are somewhat confusing procedures for issuance of provisional ballots, particularly for Native Americans. These rules appear to state that if a Native American voter cannot meet the identification requirements under either list established, he or she will be given either a “regular” provisional ballot or a “conditional” provisional ballot. What type of provisional ballot he or she receives would depend on whether he or she produces a tribally issued identification document with his or her name on it. A “regular” provisional ballot would be issued for a tribal document deemed acceptable by state election officials. Otherwise, “conditional” provisional ballots are required to be issued.

For provisional ballots, voters must still prove identification. The burden is placed on the voter to provide the required identification at a certain place within a certain number of days, depending on the type of election held. Under the *Help America Vote Act* of 2002 (HAVA), a voter voting by provisional ballot is merely required to submit a “written affirmation” that he or she is eligible to vote. Other than verifying registration status, the voter is not required to go back to the state election office with documents to prove registration. In accordance with

¹ The Secretary of State for the state of Arizona evidently issued a *Procedures Manual* in October 2004 (prior to the election on Proposition 200) and it is unclear whether the new rules on voter identification are intended to supercede any contrary provisions. One would assume that the *Procedures Manual* would have properly been amended for purposes of new changes in the law. Instead, the “*Procedure for Proof of Identification at the Polls*” appears to have been enacted separately.

HAVA, the only requirement for verification of provisional voting should be matching names in registration records with the information or *written affirmation* provided by the voter. Instead, under state rules, for Indians, if there is a tribal identification provided, the provisional ballot must still be verified (although the rules do not make clear what steps the voter must take to ensure his or her vote is counted). If a provisional ballot is not counted, the state rules should indicate or clearly specify that HAVA provisions would be complied with in providing notice to the voter why his or her vote is being invalidated.

V. Voting Rights Act of 1965

Historically, in America, particularly in the states, there has been discrimination against racial and ethnic minorities. To some extent, the federal government has sought to protect these minorities by passing basic civil rights legislation. In the area of voting, Congress in 1965 passed the *Voting Rights Act*. This action was prompted by demonstrations in the South by frustrated Black citizens seeking the basic guarantees of civil rights under the U.S. Constitution. The intent of this historic Act of Congress was to eliminate restrictions on voting imposed by the various states and local governments. Generally, state election laws cannot deprive citizens of their right to vote on account of race or color. The purpose of the act is to bar laws or changes to laws which have the *purpose* or *effect* of depriving citizens of their right to vote on account of race or color. And, if the *effect* of a state law or a regulation adversely impacts minority voting, the law or regulation is considered illegal and the U.S. Justice Department is authorize to bring suit. This is one important aspect of the *Voting Rights Act*. Prior to this law, states used various devices in ensuring that members of minority groups were not allowed to vote, devices which included literacy tests and the requirement of poll taxes. The *Voting Rights Act* made it illegal for states to

use literacy tests and allowed suits to be brought against the use of poll taxes. Ultimately, poll taxes were declared unconstitutional by the United States Supreme Court in 1966.

VI. Conclusion

Is the new law an attempt to suppress the vote of minorities and the poor? Would this be suggested if the law in fact unfavorably impacts these groups disproportionately? If the true intent of the new law is to stop or limit public benefits for illegal aliens, why isn't the state taking the responsibility for ensuring that all citizens be provided identification cards at no cost? After all, the right to vote is fundamental and supposedly *Proposition 200* sought to protect the rights of all citizens within the state. In meeting the strict requirements of the new law, many citizens will now have to pay for and purchase official documents for the sole purpose of registering or voting at the polls. As it is widely known, it is illegal for states to require its citizens to pay money as a condition for voting. Yet, this is the result.

Under the *Voter Rights Act of 1965*, it is enough that a law *results* in some disproportional impact on voting rights of a certain group, such as an ethnic minority or members within what the law considers a "*language minority group*." Section 2 (42 USC §1973).

"*Language minority groups*" include all Indian tribes. Also, it is not necessary that overt practices or flagrant intentional discrimination be shown. The unfair *effect* of a law is all that's required for showing a violation. In any democratic society, citizens have a right to vote on issues and for candidates of their choice.

In the United States, and in all the states, Indians already constitute a minority. Considering this, it is unconscionable and extremely unfair to impose an unnecessary and

problematic law on Native Americans living and residing anywhere in this Country.