

1 67. Defendants STATE OF ARIZONA and BREWER did not state, in their submission to
2 the U.S. Department of Justice requesting Section 5 preclearance of Sections 3 and
3 4 of Proposition 200, that they would cease to use and accept the federal mail voter
4 registration form for registering voters for federal elections in Arizona.

5 68. As a result of the new proof of citizenship requirements imposed by Proposition 200,
6 Plaintiffs LOPEZ, SVREP, VALLE DEL SOL, FRIENDLY HOUSE, CPLC and AHCF are
7 impeded in their ability to conduct community-based voter registration.

8 69. In order to successfully register voters in the community, Plaintiffs LOPEZ, SVREP,
9 VALLE DEL SOL, FRIENDLY HOUSE, CPLC and AHCF must now carry with them a
10 photocopy machine or computer scanner and printer in order to make copies of
11 citizenship documents for all voter registration applicants who do not have a driver's
12 license or state identification card issued after 1996. Plaintiffs LOPEZ, SVREP,
13 VALLE DEL SOL, FRIENDLY HOUSE, CPLC and AHCF may no longer use the pre-paid
14 federal mail voter registration applications in their voter registration campaigns.
15 Plaintiffs LOPEZ, SVREP, VALLE DEL SOL, FRIENDLY HOUSE, CPLC and AHCF's
16 inability to bring photocopy equipment to malls, school campuses and community
17 gatherings has injured them by severely limiting their ability to register voters.

18 70. Latinos, among other ethnic groups, are less likely to possess the forms of
19 identification required under Proposition 200 to register to vote and cast a ballot. As
20 a result, significant numbers of Latinos attempting to register and turn out to vote are
21 denied the right to vote. In addition, because Latinos comprise a large proportion of
22 naturalized citizens in Arizona, the documentary proof of citizenship requirement
23 imposed by Proposition 200 on naturalized citizens has a disparate negative effect on
24 voter registration by Latinos.

25 71. Plaintiffs have provided written notice on three separate occasions to Defendant
26 BREWER informing her that Arizona is not in compliance with the National Voter
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1 Registration Act (NVRA). On November 30, 2004, Plaintiff FRIENDLY HOUSE filed
2 a written complaint in the U.S. Federal Court for the District of Arizona naming
3 Defendant BREWER and alleging that Proposition 200's documentary proof of
4 citizenship requirement was pre-empted by the NVRA.

5 72. On March 27, 2006, Plaintiffs sent a letter to Defendant BREWER stating that the
6 implementation of Proposition 200's documentary proof of citizenship requirement
7 had placed Arizona in violation of the NVRA. Plaintiffs sent a second letter to
8 Defendant BREWER on April 17, 2006 reiterating that Arizona was not in compliance
9 with the NVRA.

10 73. On April 20, 2006, Joseph Kanefield, Arizona State Election Director, wrote to the
11 State's County Recorders informing them that the Arizona Secretary of State's office
12 had received notices of intent to file suit and that "it is very likely that the county
13 recorders will be named in these suits when they are filed."

14 74. Early voting for the federal and state primary election in Arizona begins August 10,
15 2006. Defendants BREWER and STATE OF ARIZONA received Plaintiff's April 17,
16 2006 letter on April 18, 2006 and it has been more than twenty days since their receipt
17 of the letter.

18 75. Plaintiff BERNIE ABEYTIA seeks to cast his ballot at the polls in the next election.
19 Although he is a registered and qualified voter in Maricopa County, Mr. Abeytia does
20 not possess the identification documents required by Proposition 200 for voting at the
21 polls. As a result of Proposition 200's new proof of identification requirements, Mr.
22 Abeytia will be denied the opportunity to vote in person on Election Day unless he
23 pays a fee for identification documents specified by Proposition 200.

24 76. Organizational plaintiffs have also expended scarce and valuable organizational
25 resources informing voters of the new voting identification requirements in an attempt
26 to prevent Proposition 200 from blocking qualified voters from voting. The
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1 organizational plaintiffs have been injured by the voter identification provisions of
2 Proposition 200 because their resources are drained by the effort to assist voters in
3 navigating the new identification requirements. Without the voter identification
4 provisions of Proposition 200, the organizational plaintiffs would be able to spend
5 their limited resources reaching more voters with their voter registration and turnout
6 efforts.

7 77. Upon information and belief, Defendant Arizona county recorders are implementing
8 the documentary proof of citizenship and identification requirements set out in
9 Sections 3, 4 and 5 of Proposition 200.

10 **FIRST CAUSE OF ACTION**

11 (Supremacy Clause of the U.S. Constitution)

12 78. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

13 79. Defendants' implementation of the documentary proof of citizenship requirements of
14 Sections 3 and 4 of Proposition 200 violates the Supremacy Clause, Article VI,
15 paragraph 2 of the U.S. Constitution.

16 80. Accordingly, Plaintiffs are entitled to a declaration that Sections 3 and 4 of
17 Proposition 200 are unconstitutional and to an order temporarily and permanently
18 enjoining their enforcement.

19 **SECOND CAUSE OF ACTION**

20 (First Amendment to the U.S. Constitution)

21 81. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

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23 82. By preventing Plaintiffs from using federal mail voter registration application forms,
24 and forcing them to comply with Proposition 200's documentary proof of citizenship
25 in order to register voters, Defendants deprive Plaintiffs of their free speech and
26 associational right to conduct voter registration.

1 83. Accordingly, Plaintiffs are entitled to a declaration that Sections 3 and 4 of
2 Proposition 200 are unconstitutional and to an order enjoining their enforcement.

3 **THIRD CAUSE OF ACTION**

4 (Twenty-Fourth Amendment to the U.S. Constitution)

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

6 85. By requiring that voters pay a fee in order to acquire specific identification documents
7 to prove either U.S. citizenship or identity, Proposition 200 imposes the substantive
8 equivalent of a poll tax on Arizona voters.

9 86. Accordingly, Plaintiffs are entitled to a declaration that Sections 3, 4 and 5 of
10 Proposition 200 are unconstitutional and to an order temporarily and permanently
11 enjoining their enforcement.

12 **FOURTH CAUSE OF ACTION**

13 (Equal Protection Clause of the Fourteenth Amendment to the U.S. States Constitution)

14 87. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

15 88. By requiring that voters pay a fee in order to acquire specific identification documents
16 to prove either U.S. citizenship or identity, Sections 3, 4 and 5 of Proposition 200
17 impermissibly burden the fundamental right to vote in violation of the Equal
18 Protection Clause of the Fourteenth Amendment to the United States Constitution.

19 89. In addition, by placing greater burdens of registration on naturalized voters, Sections
20 3 and 4 of Proposition 200 impermissibly burden the fundamental right to vote in
21 violation of the Equal Protection Clause of the Fourteenth Amendment to the United
22 States Constitution.

23 90. Accordingly, Plaintiffs are entitled to a declaration that Sections 3, 4 and 5 of
24 Proposition 200 are unconstitutional and to an order temporarily and permanently
25 enjoining their enforcement.
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1 **FIFTH CAUSE OF ACTION**

2 (Section 2 of the Voting Rights Act, 42 U.S.C. 1973)

3 91. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

4 92. Proposition 200's requirement that the county recorder reject applications for
5 registration that do not include satisfactory evidence of citizenship disparately affects
6 Latino voters, unlawfully dilutes Latino voters' right to vote, and provides them with
7 less opportunity than other members of the electorate to participate in the political
8 process.

9 93. Proposition 200's requirement that voters possess certain forms of identification to
10 cast a ballot disparately affects Latino voters, unlawfully dilutes Latino voters' right
11 to vote, and provides them with less opportunity than other members of the electorate
12 to participate in the political process.

13 94. Accordingly, Plaintiffs are entitled to a declaration that Sections 3, 4 and 5 of
14 Proposition 200 violate their rights under Section 2 of the Voting Rights Act and to
15 an order temporarily and permanently enjoining their enforcement.

16 **SIXTH CAUSE OF ACTION**

17 (Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c)

18 95. Plaintiffs incorporate by reference all foregoing paragraphs as if setforth fully here.

19 96. Defendants have failed to secure federal preclearance of their practice of rejecting
20 mail voter registration forms prescribed by the U.S. Election Assistance Commission.
21 As a result, this change in voting practices is legally unenforceable. Unless enjoined,
22 Defendants will continue to violate the rights of Plaintiffs under Section 5 of the
23 Voting Rights Act by failing to use and accept the federal mail voter registration form.

24 97. Accordingly, Plaintiffs are entitled to a declaration that Defendants' implementation
25 of Sections 3 and 4 of Proposition 200 violates their rights under Section 5 of the
26 Voting Rights Act and to an order temporarily and permanently enjoining their
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1 enforcement.

2 **SEVENTH CAUSE OF ACTION**

3 (Title VI of the Civil Rights Act of 1965)

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

5 99. Defendants have violated Title VI of the Civil Rights Act of 1965, 42 U.S.C. 2000d,
6 *et seq.* by excluding Plaintiffs from participation in, denying Plaintiffs the benefits of,
7 and subjecting Plaintiffs to discrimination under Arizona election-related programs
8 or activities receiving federal financial assistance on the basis of their national origin.

9 100. Accordingly, Plaintiffs are entitled to a declaration that Defendants' implementation
10 of Sections 3 and 4 of Proposition 200 violates their rights under Title VI of the Civil
11 Rights Act of 1964 and to an order temporarily and permanently enjoining their
12 enforcement.

13 **EIGHTH CAUSE OF ACTION**

14 (National Voter Registration Act of 1993)

15 101. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

16 102. Defendants' implementation of Sections 3 and 4 of Proposition 200 violates Section
17 6 of the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. 1973gg-4, which
18 requires the State of Arizona to accept and use the mail voter registration application
19 form prescribed by the U.S. Election Assistance Commission pursuant to 42 U.S.C.
20 1973gg-7(a)(2) for the registration of voters in elections for Federal office.

21 103. Accordingly, Plaintiffs are entitled to a declaration that Defendants' implementation
22 of Sections 3 and 4 of Proposition 200 violates their rights under the NVRA and to an
23 order temporarily and permanently enjoining their enforcement.

24 **NINTH CAUSE OF ACTION**

25 (16-121.01, Arizona Revised Statutes)

26 104. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

1 105. The enforcement of Sections 3 and 4 of Proposition 200 by Defendants violates 16-
2 121.01 of the Arizona Revised Statutes, which provides that a person is presumed to
3 be properly registered to vote on completion of a registration form that includes,
4 among other things, an affirmation of U.S. citizenship and without the submission of
5 further documentary proof of citizenship.

6 106. Accordingly, Plaintiffs are entitled to a declaration that Defendants' implementation
7 of Sections 3 and 4 of Proposition 200 violates their rights under A.R.S. Section 16-
8 121.01 and to an order temporarily and permanently enjoining their enforcement.

9 **TENTH CAUSE OF ACTION**

10 (16-151 (B), Arizona Revised Statutes)

11 107. Plaintiffs incorporate by reference all foregoing paragraphs as if set forth fully here.

12 108. Defendants' failure to make available the federal mail voter registration applications
13 now prescribed by the U.S. Elections Assistance Commission violates Section 16-151
14 (B) of the Arizona Revised Statutes, which provides that "The secretary of state shall
15 make available for distribution through governmental and private entities the voter
16 registration forms that are prescribed by the federal election commission."

17 109. Accordingly, Plaintiffs are entitled to a declaration that Defendants' implementation
18 of Sections 3 and 4 of Proposition 200 violates their rights under A.R.S. Section 16-
19 151(B) and to an order temporarily and permanently enjoining their enforcement.

20 **REQUEST FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully request that this Court:

22 Issue a declaration that Sections 3, 4 and 5 of Proposition 200 are unconstitutional and illegal
23 and of no force or effect;

24 Issue a Temporary Restraining Order and Preliminary Injunction against Defendants enjoining
25 them from implementing and enforcing sections 3 and 4 of Proposition 200 pending trial that;

26 1. Declares that the Defendants have failed to implement the requirements of Section 6
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1 of the NVRA, 42 U.S.C. 1973gg-4 and have violated Section 5 of the Voting Rights
2 Act of 1965;

3 2. Enjoins the Defendants, their agents and successors in office, and all persons acting
4 in concert with any of them, from failing to comply with the requirements of Section
5 6 of the NVRA, 42 U.S.C. 1973gg-4; and

6 3. Orders the Defendants, their agents and successors in office, and all persons acting in
7 concert with any of them to:

8 a. Use and accept the mail voter registration application form prescribed by the
9 Election Assistance Commission as required by Section 6 of the NVRA, 42
10 U.S.C. 1973gg-4;

11 b. Take all steps necessary, including the adoption of appropriate administrative
12 policies or rules, to register those voter registration applicants who complete
13 and submit the mail voter registration application form prescribed by the
14 Election Assistance Commission.

15 c. Immediately add to the voter registration rolls those voter registration
16 applicants who previously submitted to any County Recorder a completed mail
17 voter registration application form prescribed by the Election Assistance
18 Commission and whose application was rejected for failure to provide
19 additional proof of citizenship.

20 d. Publicize effectively the remedial plans and programs addressing these NVRA
21 violations to ensure widespread dissemination to State of Arizona residents,
22 among others, especially those who, at the time of the Court's order, may have
23 been denied the opportunity to register to vote in Arizona for failure to provide
24 proof of citizenship greater than that required by the federal mail voter
25 registration application form prescribed by the Election Assistance
26 Commission;

- 1 e. Provide the Court within 45 days from the date of the Court's order (1) a plan
2 or program designed to ensure that Defendants will use and accept the federal
3 mail voter registration application form prescribed by the Election Assistance
4 Commission as required by Section 6 of the NVRA, 42 U.S.C. 1973gg-4, and
5 (2) a plan for the effective publicizing of the State's remedial plan or program;
6 f. Seek the preclearance of the State's remedial and publicity plans as required by
7 Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

8 Plaintiffs further request that the Court:

9 Issue a Preliminary Injunction against Defendants enjoining them from implementing
10 and enforcing sections 3, 4 and 5 of Proposition 200 pending trial that;

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12 1. Declares that the Defendants have violated the Fourteenth and Twenty-Fourth
13 Amendments to the U.S. Constitution by impermissibly burdening the fundamental
14 right to vote; and that
15 2. Enjoins the Defendants, their agents and successors in office, and all persons acting
16 in concert with any of them, from requiring individuals to purchase identification
17 documents as a condition of registering to vote or voting;

18 Plaintiffs further request that the Court:

19 Award Plaintiffs' attorney fees and costs incurred in this action under 42 U.S.C. §§
20 1988;

21 Grant such other and further relief as may be deemed just and proper; and

22 Maintain jurisdiction over this action.
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24 Dated: May 9, 2006

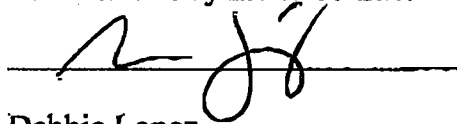
Respectfully submitted,

25 By: _____ /s/

26 Nina Perales
27 Daniel R. Ortega, Jr.
Attorneys for Plaintiffs

VERIFICATION

I, Debbie Lopez, a citizen of the United States and resident of the State of Arizona, am a plaintiff in this action. I have read the foregoing Verified Complaint and declare under penalty of perjury under the laws of the United States of America that the foregoing facts are correct and true to the best of my knowledge and belief and that those factual matters that are stated upon information and belief are believed by me to be true.


Debbie Lopez

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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 Complaint for Declaratory and Injunctive Relief on counsel of record by sending said copy via U.S. certified mail, return receipt requested to:

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Coconino County Recorder
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11 Susan Hightower Marler
12 Yuma County Recorder
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13 Elections Director
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14 Yuma AZ 85364

/s/

Nina Perales

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