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December 9, 2004

VOTING RIGHTS ACT SUBMISSION

VIA FEDERAL EXPRESS/OVERNIGHT DELIVERY TO:

Mr. Joseph Rich
Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
U.S. Department of Justice
1800 G Street, N.W.
Washington, D.C. 20006

Re: Submission under Section 5 of the Voting Rights Act
Proposition 200, Initiative Measure, Sections 3, 4, and 5.

Dear Mr. Rich:

Expedited consideration of this submission is requested under 28 C.F.R. § 51.34. At the general election on November 2, 2004, a majority of Arizona voters approved Proposition 200. The submitted law, Proposition 200, Sections 3, 4, and 5, amends Title 16 of the Arizona statutes to require applicants registering to vote to provide evidence of United States citizenship with the application and voters to present identification at the polling place to obtain a ballot. Sections 1, 2, 6 and 7 do not contain procedures affecting voting, and therefore are not submitted for preclearance.

Expedited consideration is required because local jurisdictions will be holding elections on March 8, 2005 and will need time to preclear their local procedures affecting the conduct of their elections before early voting begins on February 3, 2005.

This submission is made under Section 5 of the Voting Rights Act of 1965, as amended. For your convenience, the following information is set forth as prescribed by 28 C.F.R. § 51.27:

A. COPY OF ENACTMENT:

A copy of Proposition 200 is attached as **Exhibit A**.

B. COPY OF EXISTING STATUTE:

A copy of the existing Title 16 statutes amended by Proposition 200 is attached as **Exhibit B**.

C. EXPLANATION OF CHANGES:

The essential changes were summarized by the Arizona Legislative Council pursuant to A.R.S. § 19-124 and published in the publicity pamphlet printed by the Arizona Secretary of State pursuant to A.R.S. § 19-123. The entire portion of the publicity pamphlet pertaining to Proposition 200 is attached as **Exhibit A**.

The impartial analysis by the Arizona Legislative Council relating to changes to Title 16 in Proposition 200 is as follows:

ANALYSIS BY LEGISLATIVE COUNCIL

Proposition 200 would require that evidence of United States citizenship be presented by every person to register to vote, that proof of identification be presented by every voter at the polling place prior to voting, that state and local governments verify the identity of all applicants for certain public benefits and that government employees report United States immigration law violations by applicants for public benefits.

Proposition 200 provides that for purposes of registering to vote, satisfactory evidence of United States citizenship includes:

- an Arizona driver or nonoperating identification license issued after October 1, 1996.
- a driver or nonoperating identification license issued by another state if the license indicates that the person has provided proof of United States citizenship.
- a copy of the applicant's birth certificate.
- a United States passport, or a copy of the pertinent pages of the passport.
- United States naturalization documents or a verified certificate of naturalization number.
- a Bureau of Indian Affairs card number, tribal treaty card number or tribal enrollment number.
- other documents or methods of proof that may be established by the federal government for the purpose of verifying employment eligibility.

The county recorder shall indicate this information in the person's permanent voter file for at least two years. A voter registration card from another county or state does not constitute satisfactory evidence of United States citizenship. A person who is registered to vote on the date that Proposition 200 becomes effective is not required to submit evidence of citizenship unless the person

moves to a different county. Once a person has submitted sufficient evidence of citizenship, the person is not required to resubmit the evidence when making changes to voter registration information in the county where the evidence has been submitted.

Proposition 200 requires that prior to receiving a ballot at a polling place, a voter must present either one form of identification that contains the name, address and photograph of the person or two different forms of identification that contain the name and address of the person.

D. PERSON MAKING THE SUBMISSION:

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Mary O'Grady, Solicitor General
Jessica Funkhouser, Special Counsel
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E. SUBMITTING AUTHORITY:

The State of Arizona.

F. COUNTY AND STATE OF SUBMITTING AUTHORITY:

Not applicable since the submission is from the State.

G. PARTY RESPONSIBLE FOR CHANGE:

These changes are the result of a ballot proposition approved by the majority of Arizona voters in the 2004 General Election.

H. AUTHORITY FOR MAKING CHANGE:

The people of Arizona are vested with the power to adopt initiative measures amending the Arizona Statutes independently of the legislature pursuant to Ariz. Const. art. IV, pt. 1, § 1(1), (2).

I. DATE OF ADOPTION:

Pursuant to a Court order (discussed in section I below), Governor Napolitano is permitted to declare Sections 3, 4 and 5 of Proposition 200 to be law. A copy of the Order is attached as **Exhibit C**. The measure will take effect when the Governor's Proclamation authorized by Judge Bury is attested to by the Secretary of State. (A copy of the letter from the Governor's General Counsel regarding the Proclamation is attached as **Exhibit D**.)

J. EFFECTIVE DATE:

Sections 3, 4 and 5 of Proposition 200 become effective upon proclamation of the Governor, pursuant to Judge Bury's Order.

K. ENFORCEMENT OF CHANGE:

As far as the State is aware, the changes contained in Sections 3, 4, and 5 of Proposition 200 have not yet been enforced or administered.

L. SCOPE OF CHANGE:

The changes contained in Proposition 200 affect the entire jurisdiction.

M. REASONS FOR THE CHANGE:

The reasons for the change are described in Proposition 200 and the arguments in support of the measure included in the publicity pamphlet distributed to voters, which is attached as **Exhibit A**.

N. ANTICIPATED EFFECT ON MEMBERS OF RACIAL OR LANGUAGE MINORITY GROUPS:

According to the Chair of the Protect Arizona Now Committee, which circulated the initiative petitions and supported the passage of Proposition 200, the changes contained in Proposition 200 were made without discriminatory intent and will have no discriminatory effect on members of racial or language minority groups. Information provided by the Chair to include with this submission is attached as **Exhibit E**.

To assist the Civil Rights Division in assessing whether Proposition 200 was made with discriminatory intent or whether the measure has a discriminatory effect on members of racial or language minority groups, and because this was a controversial measure, this submission includes the following supplemental information suggested by 28 C.F.R. § 51.28(f):

1. The breakdown of votes cast in each county in favor of or against Proposition 200, **Exhibit F**;
2. Information from exit polls regarding the vote on Proposition 200, **Exhibit G**;
3. The list of Town Hall meetings held by the Arizona Secretary of State to discuss the pros and cons of all of the ballot measures prior to the election, **Exhibit H**; and
4. Articles, press releases and other public information published about the proposition before and after the election, **Exhibit I**.

O. PAST OR PENDING LITIGATION:

1. Two unsuccessful challenges attempting to remove Proposition 200 from the ballot were brought before the election:

Service Employees International Union, AFL-CIO et al. v. Janice K. Brewer, et al., Maricopa County Superior Court Cause No. CV2004-015592 (challenge to the accuracy and completeness of the initiative description on petition sheets). See Minute Entry dated August 30, 2004 attached as **Exhibit J**.

No On 200, Arizonans For Real Immigration Reform, an Unincorporated Association, Gretchen Hankins, Julie Pace, v. Jan Brewer, et al., Maricopa County Superior Court Cause No. CV2004-020468 (action filed after early voting commenced alleging inaccurate versions of the text of the measure had been attached to a majority of the petitions was filed too late). See Minute Entry dated October 28, 2004 attached as **Exhibit K**.

2. A suit seeking a declaration relating to the definition of "state and local public benefits" contained in Section 6 of the Proposition, which is not submitted for preclearance, was filed on November 18, 2004:

Yes on Proposition 200 et al. v. Hon. Janet Napolitano, et al., Maricopa County Superior Court Cause No. CV2004-092999.

3. A suit challenging both the public benefits and voting-related provisions of Proposition 200 was filed in the Federal District Court for the District of Arizona on November 30, 2004. The suit alleges that voting-related provisions of Proposition 200 are inconsistent with the NVRA, violate the Twenty-Fourth Amendment, deny Equal Protection, and violate Section 2 of the Voting Rights Act:

Friendly House, et al., v. Janet Napolitano, et al., Federal District Court Cause No. CV 04-649 TUC DCB. The Complaint is included in **Exhibit L**.

The Court entered a temporary restraining order on November 30, 2004, temporarily enjoining the state from implementing Proposition 200. A hearing on the preliminary injunction is scheduled for December 22, 2004. See **Exhibit L**. After the Defendants filed a Motion to Modify/Clarify Temporary Restraining Order, Judge Bury issued an Order on December 7, 2004 regarding the proclamation of Sections 3, 4 and 5 of Proposition 200 into law. See **Exhibit C**.

4. The Arizona Secretary of State has also requested an Attorney General Opinion relating to acceptable forms of identification for voting. See **Exhibit M**.

P. PRECLEARANCE OF PRIOR PRACTICE:

Prior Preclearance of A.R.S. § 16-152

Chapter 209, § 3, Laws 1979	11/09/1979
Chapter 214, § 3, Laws 1984	02/28/1986
Chapter 321, § 1, Laws 1990	12/21/1990
Chapter 310, § 13, Laws 1991	05/01/1992

Chapter 4, 3 rd Spec. Sess., § 1, Laws 1991	07/14/1992
Chapter 378, § 10, Laws 1994	04/04/1995
Chapter 95, § 1, Laws 1995	08/28/1995
Chapter 260, § 5, Laws 2003	08/21/2003

Prior Preclearance of A.R.S. § 16-166

Chapter 378, § 16, Laws 1994	04/04/1995
Chapter 249, § 11, Laws 2000	09/26/2000
Chapter 169, § 1, Laws 2001	08/31/2001

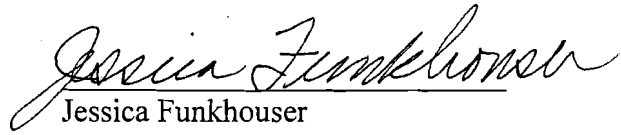
Prior Preclearance of A.R.S. § 16-579

Chapter 209, § 3, Laws 1979	11/09/1979
Chapter 320, § 25, Laws 1986	09/12/1986
Chapter 98, § 53, Laws 1993	09/13/1993
Chapter 32, § 9, Laws 1999	08/24/1999
Chapter 260, § 18, Laws 2003	08/21/2003

If you have any questions regarding this submission or if you require any additional information, please contact me as soon as possible.

Very truly yours,

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Attachments
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