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**SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

YES ON PROPOSITION 200, an
Arizona political committee,
RANDALL PULLEN, an Arizona
resident and citizen, FEDERATION
FOR AMERICAN IMMIGRATION
REFORM, a tax-exempt corporation of
the District of Columbia, WILLA
KEY, GEORGE R. CHILDRESS,
ROBERT K. PARK, Arizona residents
and citizens,

Plaintiffs,

vs.

HON. JANET NAPOLITANO, HON.
JANICE K. BREWER, and HON.
TERRY GODDARD, in their official
capacities as Arizona public officials,

Defendants.

Case No. CV 2004-092999

**FIRST AMENDED
VERIFIED SPECIAL ACTION
COMPLAINT**

(A.R.S. §§ 12-1831, *et. seq.*,
Uniform Declaratory Judgments Act)

(Assigned to the Honorable
Barbara M. Jarrett)

For their First Amended Complaint, Plaintiffs allege as follows:

Introduction

1. Plaintiffs are Arizona citizens and national and local organizations supporting the enactment of Proposition 200. They seek a declaratory judgment

and preliminary and final injunctive relief in the nature of a writ of mandamus, finding, holding and directing that: (1) Arizona Attorney General Opinion I04-010, issued November 12, 2004, has wrongly interpreted the scope of the key term “state and local public benefits not mandated by federal law,” by restricting its scope to programs administered under A.R.S. Title 46; (2) affirming that the correct scope of the term is governed by the comprehensive federal statutory scheme found in the federal Welfare Reform Act of 1996, 8 U.S.C. §§ 1601-1646; and (3) directing the Defendants to implement such findings and holdings through their administrative and regulatory authority.

2. Plaintiffs bring this case as a special action seeking declaratory and injunctive relief in the nature of a writ of mandamus because the unique Arizona special action procedural device has generally replaced the common law writ of mandamus, at least in name. *See* Rule 1, *Arizona Rules of Procedure for Special Actions* and A.R.S. §12-2909 (penalties for disobedience of writ of mandate). In Arizona, special action in nature of mandamus lies to correct arbitrary or unjust act or abuse of discretion.

3. Plaintiffs bring this action as strong financial and political promoters and supporters of Proposition 200.

4. Plaintiffs’ status as promoters and supporters of Proposition 200 gives Plaintiffs a unique interest in its proper interpretation and fair implementation.

5. In addition, four of the Plaintiffs are Arizona citizens and voters, whose status as such also gives them unique interest and standing to ask this Court for a declaratory judgment and for relief in the form of a writ of mandamus, concerning the subject actions and conduct of the Arizona Attorney General. Otherwise, their votes for this law will be severely diluted and degraded.

6. In short, as set forth herein, Plaintiffs have definite interests, status, legal relationships and rights in this matter.

7. Defendants deny that Plaintiffs have any interests, status, legal relationships or rights in this matter.

8. There are thus two strongly opposed sides in this matter.

9. As a consequence of the above and of the further allegations set forth herein, there is an actual and justiciable controversy that is sufficient to support a declaratory judgment and a prayer for relief in the form of a writ of mandamus.

10. Plaintiffs do not seek an advisory opinion.

11. There is no plain, speedy and adequate remedy by appeal since this case is in the nature of a writ of mandamus, now subsumed by the special action procedural device.

12. The subject Attorney General's Opinion has caused injury and an immediate threat of injury to the rights, status, legal relationships and interests of Plaintiffs, who supported, promoted and backed Proposition 200, and whose

tremendous efforts in that regard are now being actively defeated, diluted, degraded and nullified by an Opinion of the Arizona Attorney General that is incorrect, improper, arbitrary, unjust and an abuse of discretion.

13. The subject Opinion of the Arizona Attorney General poses actual, concrete harm to Plaintiffs' substantial rights, status, legal relationships and interests in this matter.

14. The existence of the Opinion of the Arizona Attorney General has caused harm to Plaintiffs' rights, status, legal relationships and interests in having the law that they worked so hard to enact fully implemented as written and as approved by a majority of the Arizona citizens who voted for its passage. Injunctive and declaratory relief is needed to remedy and correct this situation.

The Parties

15. Plaintiff Yes on Proposition 200 Committee is a ballot initiative political committee organized under Arizona Law and registered with the Arizona Secretary of State, whose purpose is to support the enactment of Proposition 200, the Arizona Taxpayer and Citizen Protection Act of 2004. The Yes on 200 Committee was the largest and most active organization in Arizona working to enact the Arizona Taxpayer and Citizen Protection Act of 2004, and to promote the Act's stated policy goal of deterring illegal immigration into Arizona.

16. Plaintiff Randall Pullen (“Pullen”) is a citizen and legal resident of the United States of America and of the State of Arizona. Pullen is the Chairman of the Yes on Proposition 200 Ballot Committee. Pullen is a registered voter in Maricopa County.

17. Plaintiff Federation for American Immigration Reform (“FAIR”) is a tax-exempt District of Columbia corporation whose charitable goals are the control of illegal immigration and the reduction of legal immigration to levels consistent with the national interest. FAIR is registered as a charity with the Arizona Secretary of State per A.R.S. § 44-6552. FAIR has more than 700 active member-donors in Arizona. During 2004, FAIR and its affiliates and allied organizations have to date made substantial contributions in independent expenditures on behalf of the Protect Arizona Now Ballot Committee in a successful effort to qualify Proposition 200 (the Taxpayers and Citizens Protection Act) for the ballot in the November 2004 general election and subsequently to the Yes on Proposition 200 Ballot Committee promote the enactment of the ballot initiative through voter issue education.

18. Plaintiff Willa Key (“Key”) is a citizen and legal resident of the United States of America and of the State of Arizona. Key is the Coordinator of Volunteers for the Yes on Proposition 200 ballot initiative political committee, and

a member of FAIR. Key is a registered voter in Maricopa County who voted for Proposition 200.

19. Plaintiff George R. Childress (“Childress”) is a citizen and legal resident of the United States of America and of the State of Arizona. Childress is a member of the Yes on Proposition 200 and of FAIR. Childress is a registered voter in Maricopa County, voted for Proposition 200, and served as Treasurer of the Protect Arizona Now ballot initiative political committee from July 2003 until May 2004.

20. Plaintiff Robert D. Park (“Park”) is a citizen and legal resident of the United States of America and of the State of Arizona. Park is a member of the FAIR Board of Advisors. Park is a registered voter in Yavapai County, who voted for Proposition 200.

21. Defendant Janet Napolitano is the Governor of Arizona, a public officer of the State, and is named as Defendant in her official capacity. The Governor is the public officer responsible for the proclamation of initiatives under Art. IV, pt. 1 §1(5) of the Arizona Constitution and for the official canvass. Governor Napolitano is responsible for the implementation of Proposition 200 by all executive agencies of the State of Arizona.

22. Defendant Janice K. Brewer is the Arizona Secretary of State, a public officer of the State, and is named as Defendant in her official capacity. The

Secretary of State is the public officer responsible for canvassing all proposed constitutional amendments and initiated or referred measures, as shown by the certified copies of official canvass received from the several counties, and then certifying the result to the governor. A.R.S. § 16-648(2).

23. Defendant Terry Goddard is the Attorney General of Arizona, a public officer of the State, and is named as Defendant in his official capacity. The Attorney General is the designated legal adviser for the Department of Economic Services under A.R.S. § 46-133 and is responsible for the issuance of the legal opinion giving rise to this action. Attorney General Goddard is responsible for the enforcement of implementation of the provisions of Proposition 200 by agencies of the State of Arizona and political subdivisions therein.

24. This Court has jurisdiction pursuant to the Arizona Constitution, the common law, A.R.S §§ 12-1831, *et seq.* (the Uniform Declaratory Judgments Act) and A.R.S. § 46-140.01(C).

25. Plaintiffs Pullen, Key, Childress and Park are residents of Arizona who, pursuant to authority of A.R.S. § 46-140.01(C), may file suit in the Court against any agent or agency of the State of Arizona to remedy any violation of any provision of A.R.S. § 46-140.01, as needed, and who may also pursue this action.

General Allegations

26. Ballot initiative petition number I-03-2004 was filed with the Secretary of State on July 7, 2003, and was certified to appear on the November 2, 2004 general election ballot as Proposition 200, known as the “Arizona Taxpayer and Citizen Protection Act” (hereafter “Proposition 200”).

27. Prior to the November 2, 2004 election, Arizona Governor Janet Napolitano and Arizona Attorney General Terry Goddard had publicly stated their strong political, legal and personal opposition to Proposition 200, and repeatedly urged Arizona’s citizens to defeat the measure at the polls. For example, on or about October 24, 2004, the Governor’s official activities included her participation in a “Pima Interfaith Council Kickoff Anti Proposition 200 Walk” in Tucson.

28. On or about August 16, 2004, Timothy A. Nelson, General Counsel, Office of the Governor, issued a legal memorandum to Anna Maria Chavez, Director of Intergovernmental Affairs, also of the Office of the Governor, entitled “Impact of PAN on State Agencies.” The memorandum was widely reported in the media as representing the Governor’s views. The memorandum stated, *inter alia*, as follows: ““PAN purports to amend only Titles 16 and 41 [sic] of the Arizona code, relating to ‘electors and elections’ and ‘welfare’ respectively. On the other hand, the plain language of PAN makes clear that it applies to ‘an agency of this state and all of its political subdivisions, including local governments, that

are (sic) responsible for the administration of *state and local public benefits* that are not federally mandated.’ (Emphasis added). The term ‘state and local public benefits’ is not defined anywhere in PAN or elsewhere in state law. However, that term is defined broadly under federal law . . . [reciting in full] 8 U.S.C. 1621. The proponents of PAN appear to intend that it have a broad impact and are likely to argue in any court proceeding to enforce PAN that it has such an impact.”

29. On November 2, 2004, Arizona’s voters approved Ballot Proposition 200 by a margin of 56 percent in favor to 44 percent opposed. Voter exit polling indicated that an estimated 47 percent of Hispanic voters and 65 percent of non-White non-Hispanic voters voted in favor of Proposition 200.

30. On information and belief, the Governor of Arizona has certified the electoral results for Proposition 200.

31. On or about November 12, 2004, Arizona Attorney General Terry Goddard issued Attorney General Opinion No. I04-010 to Anthony D. Rodgers, Director of the Arizona Health Care Cost Containment System (AHCCCS), who presented the question, “What are ‘state and local public benefits’ for the purposes of Proposition 200?”

32. In a November 12, 2004 press statement accompanying release of the Legal Opinion, the Attorney General stated, “I anticipate there will be litigation on this Proposition.” Mr. Goddard further explained, “[T]his analysis is the first step

in a long process. This analysis is intended to provide State employees with preliminary guidance before the new law becomes effective.”

33. In his November 12, 2004 Opinion, the Attorney General concluded that Section 6 of Proposition 200 should be narrowly interpreted to mean that: “State and local public benefits” subject to Proposition 200 are those benefits received through programs in Title 46 that are subject to federal eligibility restrictions in 8 U.S.C. § 1621. Proposition 200 requires agencies to verify the identity of applicants for those state or local public benefits.” *Opinion* at 12.

Allegations on the Merits

34. Opinions of the Attorney General are advisory, but are customarily followed by other state agencies and subdivisions. Courts may and do often regard them as authority.

35. The Attorney General has some discretion whether or not to issue formal Arizona Attorney General Opinions, such as the one at issue here. However, that discretion cannot be abused and still be lawful.

36. On information and belief, in this particular instance, the subject Opinion is in fact being implemented as binding rather than advisory guidance. The Attorney General apparently issued the Opinion intending that its conclusions be binding on agencies and political subdivisions of the State of Arizona that are engaged in the development of regulatory policies and procedures to implement

Proposition 200. To date, on information and belief, Arizona state and local agencies administering state and local public benefits have uniformly followed the subject Opinion in identifying the benefits to which the Proposition 200, § 6 verification of eligibility requirement will or will not apply.

37. However, an Arizona court has the power to issue a writ of mandamus against a government official, such as the Attorney General, when the act sought to be compelled is either a ministerial act which the law specially imposes as a duty resulting from an office or a discretionary act in which the officer has acted arbitrarily and unjustly and in the abuse of discretion.

38. As explained herein, the subject opinion of the Attorney General was incorrect, improper, arbitrary, unjust and an abuse of discretion.

39. The Attorney General explained his conclusions by stating that, although he had considered the language of Proposition 200, court opinions, and federal immigration and welfare laws, the placement of the statute in Title 46 of the Arizona Statutes, rather than some other title, was held to be the determining factor supporting the decision to exclude from the scope of the Proposition 200 §6 eligibility verification requirement all state and local public benefits that are not directly administered by the Arizona Department of Economic Security pursuant to express statutory provisions of Title 46.

40. Congress has imposed a uniform national policy regarding state and local government-funded benefits for aliens that, *inter alia*, specifically prohibits illegal aliens from receiving federal, state or local public benefits. 8 U.S.C. §§ 1601, 1611(a), 1621(a). A state may only provide for eligibility of illegal aliens for “any” state and local public benefits through enactment of a state law after August 22, 1996 “which affirmatively provides for such eligibility.” 8 U.S.C. 1621(d). Arizona has never enacted such a statute.

41. The Attorney General concedes that the federal Welfare Reform Act of 1996, 8 U.S.C. 1625, specifically authorizes states to “require an applicant for State and local public benefits (as defined in section 1621(c) of this title) to provide proof of eligibility.” *Opinion* at 10. The Attorney General also correctly noted that Welfare Reform Act eligibility requirements are “based on immigration status,” and that the federal definition of “State and local public benefits” at 8 U.S.C. 1621(c) is only limited by the federal mandate that federal benefits listed under 8 U.S.C. 1621(b) are expressly exempt from eligibility verification. *Opinion* at 11.

42. However, that Attorney General then wrongly concluded that: “Although the federal definition of ‘state and local public benefits’ includes matters well beyond the scope of Title 46. . . . Arizona’s new statutory requirement in A.R.S. § 46-140.01 is limited to Title 46 welfare programs.”

Opinion at 11. This conclusion was based entirely on the Attorney General’s personal and flawed interpretation of general doctrines of statutory interpretation, and was incorrect, improper, arbitrary, unjust and an abuse of discretion.

43. The Attorney General further asserted, without elaboration, that any broader interpretation would risk “potential challenges based on vagueness or preemption that alternative interpretations might arise.” *Opinion* at 11. However, such a conclusion conflicts with Arizona case law, which presumes that statutes are constitutional and must be construed, if possible, to give them a constitutional meaning. *See State Compensation Fund v. Symington*, 174 Ariz. 188, 193, 848 P.2d 273, 278 (1993). The presumption applies to laws enacted through initiatives as well as by legislative action. *See Ruiz v. Hull*, 191 Ariz. 441, 448, 957 P.2d 984, 991, (1998), *cert. denied sub nom.*, *Arizonans for Official English v. Arizona*, 525 U.S. 1093 (1999). The Attorney General’s conclusion on this matter was incorrect, improper, arbitrary, unjust and an abuse of discretion.

44. By failing to uniformly require eligibility verification using the standards established by Congress for state and local public benefits under the federal Welfare Reform Act, and instead only selectively applying the verification requirements of Proposition 200 to Title 46 of the Arizona statutes, the Attorney General would create a novel state regulation of immigration, in conflict with federal law. *Graham v. Richardson*, 403 U.S. 365, 378 (1971). A novel state

regulation of immigration is inherently suspect on constitutional grounds and subject to strict judicial scrutiny. In contrast, Plaintiffs' interpretation of Proposition 200, § 6 that correctly applies the verification of eligibility requirement at A.R.S. § 46-140.1 to all state and local public benefits as defined by 8 U.S.C. § 1621 would provide a constitutional and statutory safe harbor, because it is by federal law "the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy," as well as "the compelling governmental interest to remove the incentive for illegal immigration provided by the availability of public benefits." 8 U.S.C. §§ 1601(6)-(7); *Sudimor v. McMahon*, 767 F.2d 1456, 1466 (9th Cir. 1985); *Mathews v. Diaz*, 426 U.S. 67, 81-85 (1976); *LULAC v. Wilson*, 997 F. Supp. 1244, 1254-55 (C.D. Cal. 1997); *Doe v. Comm'r of Transitional Assistance*, 773 N.E.2d 404, 409 (Mass. 2002). The Attorney General's contrary conclusion on this matter was incorrect, improper, arbitrary, unjust and an abuse of discretion.

45. The Attorney General claims that placement of Proposition 200, § 6 in Title 46 is significant because "Title 46 is entitled Welfare" and addresses specific welfare programs. *Opinion* at 7-8. However, as a matter of basic Arizona law, "headings to sections . . . are supplied for the purpose of convenient reference and do not constitute part of the law." A.R.S. § 1-212. The Attorney General's

conclusion on this matter was incorrect, improper, arbitrary, unjust and an abuse of discretion.

46. The Attorney General also argues that courts must “rely on the ordinary meaning of the terms and may refer to dictionary definitions.” *Opinion*, at 6. The Attorney General then cites *Black’s Law Dictionary* and *Webster’s Third New International Dictionary* as authority. *Opinion* at 6-7. However, when a statute contains technical phrases “which have acquired a peculiar and appropriate meaning in the law” such technical phrases “shall be construed according to such peculiar and appropriate meaning.” A.R.S. § 1-213. “State and local public benefits” is clearly, in the context of immigration and public benefits law, a technical phrase with a peculiar and appropriate meaning, *i.e.*, the definition at 8 U.S.C. § 1621. Since such a technical definition exists, the Attorney General’s arguments to the contrary for a more restrictive definition, based on uncodified canons of construction, arguments in the publicity pamphlet, the ordinary meaning of the words, and the placement of the relevant phrase within the amended statutory scheme must fail. The Attorney General’s conclusion on this matter was incorrect, improper, arbitrary, unjust and an abuse of discretion.

47. Arizona has already adopted the eligibility requirements mandated by Congress under the federal Welfare Reform Act for applicants for federal and joint state-federal public benefits. 8 U.S.C. §§ 1601, 1611-1615. The parallel definition

of federal public benefit at 8 U.S.C. § 1611(c), as enforced by the State of Arizona, applies to exactly the same scope and type of “public benefits” provided pursuant to federal funding as does the definition state and local public benefits at 8 U.S.C. § 1621(c) provided pursuant to state or local funding. See e.g. A.R.S. §§ 36-2901-2998.

48. Congress has authorized States and their political subdivisions to require “an applicant for state and local public benefits (as defined in [8 USC § 1621(c)] to provide proof of eligibility.” 8 U.S.C. § 1625.

49. The term “state and local public benefits not mandated by federal law” was not defined or applied in Arizona law, regulations, or case law. Neither was the term “state and local public benefits.”

50. Since enactment of the federal welfare reform Act (Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193), the term "state and local public benefits," has acquired the meaning and scope given to it by Congress under 8 U.S.C. § 1621. This definition appears to be the only one recognized or cited by federal courts, state courts, and other state legislatures in the United States since 1996. The phrase is apparently not found in any case law or statute after 1996 with any other meaning.

51. A.R.S. Title 46 did not, until its recent amendment by Proposition 200 adding new § 46-140.01, use or define the terms “state and local public benefits”

or “public benefits” or even “benefits.” Previously, only “assistance” (A.R.S. § 46-101(3)), “cash assistance” (A.R.S. § 46-101(4)) and “services” (A.R.S. § 46-101(18)) were defined. Title 46 also uses the terms “welfare” and “public welfare” extensively, without the benefit of a statutory definition. However, under the federal Welfare Reform Act, “assistance,” “services” and “welfare” are only subcategories of state and local public benefits, as defined in 8 U.S.C. § 1621.

52. The term “public benefits” is however found in A.R.S. Title §13, where it is defined by A.R.S. § 13-3418 – for purposes of permitting a court to strip persons convicted of certain crimes under Title 13 of eligibility for those benefits – to *include*: “any money or services provided by this state for scholarships or tuition waivers granted for state funded universities or community colleges, welfare benefits, public housing, or other subsidies, but does not include benefits available for drug abuse treatment, rehabilitation, or counseling programs.”

53. Thus, in its only statutory use in Arizona prior to passage of Proposition 200, “public benefits,” as applied to legal residents of Arizona, is expressly and broadly defined to mean money, services and other valuable subsidies provided by the state. This definition is far closer in scope to the federal definitions under 8 U.S.C. §§ 1611 and 1621 than to the Arizona Title 46 definitions of “assistance” or “services.” Despite its “placement” in Title 13, this

definition encompasses assistance, services and subsidies found in many different Titles of the Arizona Statutes, including Title 46.

54. Under Title 46, the term “applicant” is defined in A.R.S. § 46-101.2 to mean a person who has applied for assistance or services under Title 46. In contrast, the controlling federal Welfare Reform Act uses the term “applicant” in 8 U.S.C. § 1625, where it means a person who has applied for “state and local public benefits as defined in ... 8 U.S.C. 1621(c),” and is thereby subject to immigration status verification should the state so elect, as Arizona has, to enact a statute requiring verification.

55. The plain language of Proposition 200, §6 expressly states that it applies to every “agency of this State and all of its political subdivisions, including local governments, that are responsible for the administration of state and local public benefits that are not federally mandated.” A.R.S. § 46-140.1.A. There is no limiting language whatsoever in this provision to support the strained interpretation that the new law applies only to agencies responsible for the administration of benefits identified in A.R.S. Title 46.

56. Even prior to the enactment of new A.R.S. § 46-140.1, Title 46 contained numerous provisions that authorized the Arizona Department of Economic Security (DES) to verify or cooperate in the verification of eligibility of persons for subsidized benefits that are not found in the state definitions of

“assistance” or “services,” but are included in the federal definition of “state and local benefits.” For example, DES shall: “administer all forms of public relief and assistance except those ... administered by other agencies,” A.R.S. § 46-134(A)(1); “develop and administer” a uniform budget format for child welfare agencies and special education schools “in conjunction with the department of education and the department of juvenile corrections,” A.R.S. § 46-134(A)(3); “assist other departments, agencies, and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title,” A.R.S. § 46-134(A)(5); “act as agent of the federal government in furtherance of any functions of the state department,” A.R.S. § 46-134(A)(6); “develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems,” A.R.S. § 46-134(A)(9); “make rules and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title,” A.R.S. § 46-134(A)(12); “administer any additional welfare functions required by law,” A.R.S. § 46-134(A)(13); “furnish a federal, state, or local law enforcement officer... with the current address of any recipient...” who is a fugitive or probation or parole violator, A.R.S. § 46-134(A)(17).”

57. The Attorney General incorrectly claims that the Arizona Health Care Cost Containment System (AHCCCS) is a “federal public benefit under 8 U.S.C. § 1611, rather than a ‘state and local public benefit,’” and thus not subject to eligibility verification under A.R.S. § 46-140.1. *Opinion*, at 9. In fact, AHCCCS is a mix of federally-funded, state-funded, and jointly-funded public benefit programs. For example, Arizona’s Title XIX Medicaid program, administered by AHCCCS, is a federally-funded public benefit for which the immigration status of the applicant must, per A.R.S. Title 36 as well as 8 U.S.C. § 1611, be verified as a condition of eligibility. In contrast, the Premium Sharing Program, a state-created extension of the Title XIX program, is a wholly state-funded public benefit. A.R.S. § 36-2923.01. As a matter of law, an interpretation of Proposition 200 to mean that state officials have no duty to verify the immigration status of applicants for the Premium Sharing or other state-funded AHCCS benefits programs under Title 36, but do have a duty to verify the immigration status of applicants for *federally-funded* Title 36 programs and for applicants for state-funded benefits programs under Title 46, such as respite care for the elderly or TANF, would be arbitrary, and would evoke the constitutional concerns associated with a novel state regulation of immigration, as discussed *supra*. The Attorney General’s conclusions on these issues were incorrect, improper, arbitrary, unjust and an abuse of discretion.

58. The Attorney General’s Opinion relied on by Defendants is dependent on lesser legal authorities such as uncodified theories of statutory construction and dictionary definitions to impermissibly create a non-uniform state regulation of immigration. The Attorney General’s Opinion in this matter was incorrect, improper, arbitrary, unjust and an abuse of discretion.

59. In contrast, Plaintiffs have demonstrated that federal immigration law, constitutional case law on federal preemption and equal protection in the area of state legislation touching upon immigration status, Arizona codified principles of statutory construction, and Arizona statutes themselves all support the application of a uniform federal definition of state and local public benefits – excluding all federally mandated exemptions—to all Arizona state and local government agencies and officials that provide such benefits. Plaintiffs’ cited authorities are, as a matter of law, controlling over those presented by the Defendants.

60. The term of “state and local public benefits not mandated by federal law” in A.R.S. § 46-140.1 must thus be declared to apply to all benefits described in 8 U.S.C. § 1621, regardless of whether those benefits are administered or regulated at the state or local government level by the Department of Economic Security, or by some other agency of the state of Arizona or a political subdivision therein.

61. A declaration by this honorable Court is particularly appropriate in view of the present litigation in federal court that would adversely impact the ability of the Plaintiffs, as real parties in interest, to obtain judicial review of these questions of intense public concern within the Arizona judicial system

Request for Relief

WHEREFORE, Plaintiffs respectfully pray for:

1. A declaratory judgment that the term “state and local public benefits not mandated by federal law” in A.R.S. § 46-140.1 applies to all benefits described in 8 U.S.C. § 1621, regardless of which particular state or local government agency administers or regulates the provision of such benefits.

2. A declaratory judgment that the Attorney General’s Opinion is mistaken and, if implemented, would constitute a violation of A.R.S. §46-140.1.

3. A preliminary and then permanent injunction in the nature of a special action writ of mandamus directing that the Arizona Attorney General withdraw the subject Attorney General’s Opinion.

4. A preliminary and then permanent injunction in the nature of a special action writ of mandamus requiring that the Arizona Attorney General formally and immediately advise the Governor – and all of the various officials of the State of Arizona and its political subdivisions that the Arizona Attorney General is authorized to advise – that they are mandated to conduct eligibility verification for

appropriate benefits and to promptly issue regulations and administrative directives in accordance with such advice, in consultation with the Attorney General, and further directing that such injunction in the nature of a writ of mandamus is enforceable to the full extent of this Court's jurisdiction and authority.

5. An order awarding Plaintiffs' attorney's fees incurred in this action under A.R.S. § 12-348 and pursuant to the private attorney general doctrine. *See, e.g., Arnold v. Arizona Department of Health Services*, 160 Ariz. 593, 608-09, 775 P.2d 521, 536-37 (1989).

DATED this 17th day of December, 2004.

SKOUSEN, SKOUSEN, GULBRANDSEN & PATIENCE, P.C.

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Verification

Rule 11(b), *Arizona Rules of Civil Procedure*, provides that: “When in a civil action a pleading is required to be verified by the affidavit of the party, or when in a civil action an affidavit is required or permitted to be filed, the pleading may be verified, or the affidavit made, by the party or by a person acquainted with the facts, for and on behalf of such party.”

The undersigned legal counsel verifies that he is acquainted with the facts of this case, and is making this verification for and on behalf of the Plaintiffs herein.

SWORN TO and SUBSCRIBED under penalty of perjury on this 17th day of December, in the Year of Our Lord 2004 by:

David L. Abney
Attorney for Plaintiffs

The below-signing notary public certifies that the signer of this Verification, David L. Abney, whose identity is proven by satisfactory evidence, has made in the notary’s presence a voluntary signature and has taken an oath or affirmation vouching for the truthfulness of the Verification and of the Complaint that it verifies.

Florence Cornejo
Notary Public

Place for Notary Stamp/Seal