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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

16	Maria M. Gonzalez, et al.,)	No. CV-06-1268-PHX-ROS(Lead)
17)	No. CV-06-1362-PCT-JAT(Cons.)
18	Plaintiffs,)	No. CV-06-1575-PHX-EHC(Cons.)
19)	
20	vs.)	GONZALEZ PLAINTIFFS'
21)	CONSOLIDATED RESPONSE TO
22	State of Arizona, et al,)	DEFENDANTS' POST TRIAL
23)	MEMORANDA
24	Defendants.)	
25)	(Assigned to the
26)	Honorable Roslyn O. Silver)

23 NOW COME Gonzalez Plaintiffs and file this Consolidated Response to
24 Defendants' Post-Trial Memoranda.

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I. Introduction

In their Closing Arguments, State and County Defendants assert that Plaintiffs cannot prevail on their 14th Amendment undue burden claim but spend little time addressing the remaining claims in the case. For the reasons set out below, Plaintiffs have carried their burden of proof for all of their constitutional and statutory claims.

II. Defendants Have not Rebutted Plaintiffs’ Showing that Prop 200 has a Negative Impact on Voter Registration, and a Disparate Negative Impact on Latino Voter Registration

Defendants have done nothing to rebut Plaintiffs’ showing that Prop 200 has resulted in the rejection of over 38,000 voter registration forms and affected over 31,000 individuals attempting to register to vote. Furthermore, Defendants’ own records show a precipitous decline in successful mail voter registrations in the period following Prop 200. In the five years preceding Prop 200, the number of successful voter registrations sent by mail in Maricopa County rose steadily through variations in the election cycle. *See* Tr. Ex. 966 (showing: 73,801 successful mail forms in 1999; 183,480 in 2000, 45,979 in 2001, 140,183 in 2002, 89,063 in 2003, and 186,973 in 2004). By contrast, in 2005, Maricopa County processed only 30,240 successful mail registration forms and in 2006 the number had risen to only 98,845 (30% lower than the number of mail registrations in 2002). Maricopa County’s records document that while Arizona’s population was rising, the number of successful voter registrations sent in the mail plummeted.

In Maricopa County, where a majority of the state’s voters reside, over 22,000 people were rejected for voter registration because of Prop 200. Latinos in Maricopa

1 County suffered disproportionately in their ability to join the voter rolls after being
2 rejected for voter registration; they comprised 10% of those who were able to
3 subsequently successfully register and 20% of those who remained unregistered after
4 being rejected. *See* Tables 1 and 2, Ex. 884.

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6 Similarly, in Pima County, over 5,000 people were rejected for voter registration
7 because of Prop 200. Latinos suffered disproportionately in their ability to join the
8 voter rolls after being rejected for voter registration; they comprised 13% of those who
9 were able to subsequently successfully register and 22% of those who remained
10 unregistered after being rejected. *Id.* In Pinal County, over 2,000 people had their
11 registrations rejected because of Prop 200. Again, Latinos suffered disproportionately
12 in their ability to join the voter rolls after being rejected for voter registration; they
13 comprised 12% of those who were able to subsequently successfully register and 20%
14 of those who remained unregistered after being rejected. *Id.* In all of these counties,
15 Latinos were also over-represented among those being rejected under Prop 200 when
16 compared to their presence in the total registrant pool. *See* Table 5 Ex. 884. Statewide,
17 Latinos were more likely to be rejected under Prop 200 and less likely to successfully
18 register following a rejection when compared to non-Latinos. Defendants provided no
19 evidence to dispute any of these facts.
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22 State Defendants falsely claim that Dr. Espino testified that “Hispanics fared
23 better in registrations than Non-Hispanics after the implementation of Prop 200.” State
24 Closing Argument at 8. To the contrary, Dr. Espino testified that *fewer* Latinos
25 registered following Prop 200 when compared to the period before Prop 200 in 12 of
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1 Arizona's 15 counties.¹ See Def. Imp Ex. 2 Table 4; Espino 7/15/08 Tr. 429:21-430:7,
2 432:2-433:7. Dr. Espino further testified that the percentage drop in voter registrations
3 for Latinos was greater than that of non-Latinos in the following counties: Apache, Gila,
4 Graham, Greenlee, Pima, Santa Cruz, and Yuma. Def. Imp Ex. 2 Table 4; Espino
5 7/15/08 Tr. 432:2-433:7.²
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7 Defendants do not dispute the findings of Dr. Lanier that Latinos are over-
8 represented among voter registration rejects pursuant to Prop 200 and over-represented
9 among those who remain unregistered following rejection of their voter registration
10 applications. State Closing Argument at 8. Defendants instead claim that, in light of
11 the total number of registered voters, the thousands of excluded registrants are
12 unimportant. [07/17/08 Tr. 800:24-801:17].³ Such an argument mis-states the legal
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15 ¹ Dr. Espino offered this testimony according to his corrected March 11, 2008
report which was served on Defendants March 12, 2008.

16 ² Defendants resort to characterizing the distinction between the number of
17 registrations over time and the angle of a regression slope that fits these registrations as
"smoke and mirrors." County Defendants' Closing Argument at 11. Defendants'
18 admitted inability to understand statistical analysis provides no basis for the Court to
19 adopt their argument. Dr. Espino's regressions are a statistical method for fitting a
single line through a grouping of data in a particular time period. The fact that the
20 cluster of data points representing the highest numbers of registrations before Prop 200
falls in November 2004, at the end of the measured time period, means that the
21 regression line has a "flatter" slope than the regression line in the period following Prop
200, which is responding to the proximity of the 2006 mid-term election cycle to the
22 implementation of Prop 200. The angles of the regression lines do not measure whether
more Latinos registered before or after Prop 200. As Dr. Espino found, proportionately
23 fewer Latinos registered following Prop 200 than before Prop 200. Def. Imp Ex. 2
24 Table 3.

25 ³ Defendants' further claim that Dr. Lanier's findings of disparate impact are not
26 statistically significant misses the mark. Here, the numbers of Latino and non-Latino
voter registrations are known. Because there are no estimated values in the analysis

1 standard applicable in this case. It cannot be disputed that the rejection of tens of
2 thousands of individuals registering to vote, over 5,000 of whom are Latino, is a
3 cognizable injury. Furthermore, the Court's disparate impact inquiry under Section 2 of
4 the Voting Rights Act examines the experience of Latinos in the context of those
5 affected by Prop 200, not all the registered voters. Thus, Defendants' attempt to "bury"
6 the thousands of Latinos rejected for voter registration in the number of voters who
7 were never affected by Prop 200 must fail.⁴

9 Defendants also claim that Prop 200 can have no negative effect if voter
10 registration statewide rose after January 25, 2005. Again, Defendants' argument mis-
11 states the relevant legal question. The negative effect of Prop 200 can, and did, occur in
12 the context of an increase in Arizona's total population and an increase in the total
13 number of registered voters in Arizona. Defendants' legal test would require Plaintiffs
14 to prove that Prop 200 blocked all new voter registrations in Arizona. On the contrary,
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17 there is no need for a test of statistical significance to measure the accuracy of the
18 estimated values. Furthermore, Defendants conducted no test of statistical significance
19 themselves and thus are unable to make any claims regarding the significance of Dr.
20 Lanier's results. *See* 07/18/08 Tr. 920:19-922:6; Tr. 929:25-930:7; 07/17/08 Tr.
21 908:17-911:17; Tr. 899:9-900:18.

22 ⁴ Furthermore, because Plaintiffs' disparate impact analysis focuses only on
23 those who applied and were rejected under Prop 200, the analysis is unaffected by
24 changes in overall population. Defendants continue to assert however, without
25 evidentiary support, that Latino population growth has slowed and this explains the
26 disparate impact on Latino voter registrants. Besides being irrelevant to the question
whether Latinos who apply to register to vote are negatively affected by Prop 200, Dr.
Chapa's data establishes that the rate of Latino citizen population growth is increasing
in Arizona. *See* Table 9e Ex. 862 (showing Latino citizen population growing at an
average annual rate of 4.2% per year before Prop 200 and 4.6% in the year following
Prop 200).

1 the relevant legal inquiry is whether the thousands of rejected voter registration
2 applicants have suffered an injury to their constitutional or statutory rights.

3 Sidestepping the evidence that thousands of people have been rejected for voter
4 registration because of Prop 200, Defendants assert that Plaintiffs must show that large
5 numbers of people have no access to documents proving their citizenship. *See* State
6 Defendants' Closing Argument at 2. Such an argument again mis-states the applicable
7 legal standard in the case.
8

9 With respect to the claim of undue burden under the 14th Amendment, Plaintiffs
10 have established that all forms of proof of citizenship for voter registration in Arizona
11 cost a fee to obtain and that there are individuals, such as Shirley Preiss, who cannot
12 obtain or afford documentary proof of citizenship. Ex. 1142, 1139, 1141, 1142 and
13 1146 (portions to which Defendants do not object); Tr. 82:9-89:11.
14

15 Plaintiffs have further demonstrated that naturalized citizens are subjected to an
16 undue burden by Prop 200's imposition of different and greater obligations in voter
17 registration. *See* Gonzalez Plaintiffs' Proposed Findings of Fact, Dkt. 1030, at 26-69.
18 In essence, Prop 200 singles out one group of voter registrants, naturalized citizens who
19 rely on their naturalization certificate to prove citizenship, for the burden of having to
20 register twice or appear in person at the Recorder's Office to register to vote. Such an
21 irrational requirement, which imposes costs of time and money on those subjected to the
22 provision, establishes an undue burden under the 14th Amendment. Defendants have
23 offered no justification for singling out naturalized citizens for greater burdens in voter
24 registration.
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1 The State simply ignores the double-registration requirement imposed by Prop
2 200 on naturalized citizens, such as Mr. and Mrs. Gonzalez, who rely on their
3 naturalization certificate to register to vote. State Closing Argument at 4. It is absurd to
4 maintain, as Defendants do, that the term “number of the certificate of naturalization” in
5 Prop 200 is ambiguous.⁵ Dkt. 1031 at 9. Both immigration law and federal officials are
6 clear that this term is specific and has nothing to do with the “alien registration
7 number.” *See* 8 U.S.C. 1101 *et seq.* and Dkt. 1030 at 60-62. It is similarly absurd to
8 argue that Mr. Gonzalez simply “was asked for the wrong number from his
9 naturalization certificate,” when Prop 200 requests the number of the certificate of
10 naturalization and that number cannot be verified with federal authorities as required by
11 the statute. *Id.* Defendants’ further suggestion that Mr. Gonzalez should have
12 purchased his passport in order to register to vote, at a cost of \$112.00, only serves to
13 underscore the undue burden imposed by Prop 200. State Closing Argument at 4 and
14 7/10/08 Tr. 227:45.

17 Defendants do not rebut any of the testimony offered by Debbie Lopez or the
18 organizational plaintiffs whose voter registration efforts have been thwarted by Prop
19 200.⁶ Defendants’ own records support this testimony and show that following Prop
20 200, the number of successful voter registrations gathered in voter registration drives
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22 ⁵ Defendants’ confusion continues in statements such as “part of the process of
23 becoming a U.S. citizen involves being assigned an “A number.” Dkt. 1031 at 10. On
24 the contrary, an immigrant with an A number received it when he or she first sought
admission to the United States.

25 ⁶ In light of the Court’s limitation of trial to less than 7 days, Gonzalez Plaintiffs
26 were unable to present testimony from all plaintiffs affected by Prop 200.

1 declined dramatically in Maricopa County. Much like voter registrations sent by mail,
2 voter registrations gathered in community drives rose slowly in Maricopa County in the
3 five years preceding Prop 200. *See* Tr. Ex. 966 (showing 29,916 successful registration
4 from community drives in 1999, 66,776 in 2000, 12,893 in 2001, 47,145 in 2002,
5 25,749 in 2003, and 150,360 in 2004). However, in 2005, Maricopa County processed
6 only 9,304 registrations gathered in community drives and in 2006 this number rose to
7 only 19,339 – a mere 41% of similar registrations in 2002). *See* Tr. Ex. 966.

9 Instead, Defendants argue circularly that the voters registered by plaintiffs in the
10 past must not have been eligible since plaintiffs can register fewer voters in the wake of
11 Prop 200. State Closing Argument at 5. With this statement, Defendants also ignore the
12 voter registration forms produced by the Counties in this case, and executed under oath,
13 which show that the overwhelmingly majority of rejected voter registrants are native
14 born citizens of the United States. *See* Ex. 896.

16 The organizational plaintiffs testified that Prop 200 has drained their resources
17 and thwarted their ability to achieve their mission. This injury is sufficient to confer
18 standing on the organizations themselves. *See Havens Realty Corp. v. Coleman*, 455
19 U.S. 363 (1982); *Smith v. Pacific Properties and Development Corp.*, 358 F.3d 1097,
20 1105-6 (9th Cir. 2004) (advocacy organization had standing when challenged practice
21 caused organization to divert resources and frustrated organization's mission);
22 *Association of Community Organizations for Reform Now v. Fowler*, 178 F.3d 350 (5th
23 Cir. 1999) (voter registration organization had standing to challenge state's failure to
24 implement NVRA).
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1 In addition, through her voter registration efforts Ms. Lopez exercises expressive
2 and associational rights protected under the First Amendment to the U.S. Constitution.
3 *See Monterey County Democratic Cent. Committee v. United States Postal Service*, 812
4 F.2d 1194, 1196 (9th Cir. 1987). “These rights belong to – and may be invoked by –
5 not just the voters seeking to register, but by third parties who encourage participation
6 in the political process through increasing voter registration rolls.” *Project Vote v.*
7 *Blackwell*, 455 F. Supp. 2d 694, 701 (D. Ohio 2006) (citing *Williams v. Rhodes*, 393
8 U.S. 23, 30 (1968)); *see also League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314
9 (D. Fla. 2006); *Ass’n of Cmty. Orgs. for Reform Now v. Cox*, 2006 U.S. Dist. LEXIS
10 87080 (N.D. Ga. Sept. 28, 2006).

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12 III. The State and Counties’ Implementation of Prop 200’s Voter Identification
13 Provision has Resulted in Thousands of Ballots Going Uncounted and
14 Forced Eligible Voters who Already Have ID to Purchase new ID in Order to
15 Vote

16 On its face, Prop 200 imposes an undue burden because it requires every voter
17 who lacks ID to spend money to obtain one. All of the forms of ID set out in the
18 Secretary of State’s Elections Procedures Manual require an expenditure of money in
19 order to obtain. Even non-photo documents such as bank statements and vehicle
20 registrations require the voter to spend money registering a car or opening a bank
21 account. Unlike the statute at issue in *Crawford*, Prop 200’s voter ID provision has: no
22 exception for nursing home residents; no exception for indigent voters; and is in force in
23 a state that does not provide free identification cards. *Crawford v. Marion County*
24 *Election Board*, 128 S.Ct. 1610, 1613-1614 (2008).

1 Defendants' argument that the undue burden claim turns on individual voters
2 who have no ID and can't obtain it overlooks Plaintiffs' as-applied challenge to Prop
3 200. The burden relevant to the *Crawford* Court, in the facial challenge before it, was
4 whether individuals were eligible to vote but lacked ID. *Id* at 1620. The inquiry is not
5 so narrow in this as-applied challenge.
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7 Plaintiffs have provided ample evidence that election officials, overwhelmed by
8 the complexity of Prop 200's ID rules and the categories of ballots (regular provisional,
9 provisional insufficient ID, conditional provisional) they must administer, have denied
10 the right to vote to persons with valid ID.

11 For example, Georgia Morrison Flores possessed a valid driver's license when
12 she went to her poll to vote in the 2006 General Election. However, because her
13 married surname on the voter rolls did not match her previous surname on her license,
14 she was neither allowed to vote nor given any type of ballot.
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16 Brenda Rogers and her husband are pastors of an all-Native American church
17 and live on the Gila River Reservation. Although they both possess valid driver's
18 licenses, they were denied provisional ballots by poll workers in both the 2008
19 Presidential Preference Election and the May 2008 jurisdictional election because the
20 addresses on their licenses did not match their address on the voter rolls. Mrs. Rogers
21 testified that she is convinced now that she and her husband must purchase new IDs
22 with different addresses in order to be allowed to vote.
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1 Similarly, Donna Fulton testified that she and her husband were denied
2 provisional ballots by poll workers in the 2008 Presidential Preference Election despite
3 the fact that they had valid drivers licenses showing their previous address.

4 All of these voters whose experiences are in the record should have been given a
5 regular or provisional ballot and had that ballot counted in the elections in which they
6 turned out to vote. Instead, because of Prop 200, they were given either no ballot at all,
7 or a *conditional* provisional ballot that was never counted.⁷ None of these voters who
8 were given conditional provisional ballots were informed by poll workers that they had
9 to return with additional ID. None of these voters knew before going to the polls on that
10 Election Day that they were going to have a problem voting and thus they did not have
11 the opportunity to vote early or by mail. Most importantly, their lost opportunity is
12 permanent. They can never have their ballots counted in the elections in which they
13 tried to vote.

14 As recently as the 2008 Presidential Preference Election, Maricopa County
15 reported that 897 voters cast conditional provisional ballots and 739 of those ballots
16 went uncounted. Latinos comprised 17% of voters with uncounted conditional
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22 ⁷ Under Arizona law, an individual with a driver's license or state identification
23 card who changes addresses need only update the address with the MVD. *See*
24 <http://www.azdot.gov/mvd/faqs/scripts/faqs.asp?section=dl#10>. No one is required to
25 purchase a replacement license with the new address. The Secretary of State's
26 Procedures Manual instructs county election officials to give regular provisional ballots
to voters whose ID licenses don't match the address on the voter rolls. Such voters
should not be given conditional provisional ballots and required to return later with ID.

1 provisional ballots although they comprised only 12% of voters on the rolls in Maricopa
2 County. Tr. Ex. 954.⁸

3 In the 2006 General Election, Secretary of State staff responded to complaints
4 about the implementation of Prop 200's voter ID provisions in Cochise, Coconino,
5 Maricopa, Mohave, Navajo, Pima, Yavapai and Yuma counties. [Ex. 409]. Entries by
6 the Secretary of State staff on the complaints log demonstrate the implementation
7 problems with Prop 200 and include "contact Maricopa County to ensure that the ID at
8 the polls laws are understood at the polling location," "poll workers did not explain
9 different options or what the function of the conditional provisional ballot as well as the
10 pollworker not taking the voter registration card and sample ballot as proof of
11 identification," and "I told him I would follow up with Maricopa County so they could
12 work with their poll workers in the precinct if need be." [Ex. 409].

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15 In particular, the Secretary of State staff responded to pollworkers who were not
16 properly implementing the provisions that required a *regular provisional* ballot, not a
17 *conditional provisional* ballot, be given to voters with valid ID where the address on the
18 ID did not match the address on the voter rolls. Entries by Secretary of State's staff on
19 the log include: "Told her that we would contact Maricopa County to let them know
20 that the pollworkers did not handle the situation with the new residence properly,"
21 "instructed the voter to go to the new polling place and request a provisional ballot. He
22 should not be turned away at the polls," and "[in an email to the voter] Your driver
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24 ⁸ Latinos are not the only voters disproportionately affected by the ID provisions.
25 In 2006, Maricopa County reported that in 2006, 82 % of voters over 65 who lacked
26 sufficient ID did not return with proper ID. Pending Tr. Ex. 638.

1 license has an address on it, however the address did not match what is on the
2 registration rolls.” Tr. Ex. 409.

3 Voters with a valid driver’s license should never be given a conditional
4 provisional ballot. In the situation in which the address on the valid ID does not match
5 the address for the voter on the precinct rolls, the voter must be provided a regular
6 provisional ballot that does not require the voter to return with ID. These ballots are
7 verified by election workers at the Recorder’s Office. However, many of the uncounted
8 conditional provisional ballots that are evidence in the case demonstrate that voters with
9 valid IDs were improperly given conditional provisional ballots and those ballots were
10 never counted. *See* Ex. 897.⁹ All of the voters associated with these ballots showed
11 valid ID but were improperly given conditional provisional ballots and those ballots
12 were never counted. Thus, Defendants’ allegation that anyone with a valid driver’s
13 license can vote at the polls is incorrect. In truth, many voters who have kept their
14 address current with MVD but who chose not to purchase a new driver’s license are
15 prevented from voting by the implementation of Prop 200.
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20 ⁹ Ex. 897 shows poll worker notations on uncounted conditional provisional
21 ballots such as: Cochise County ballot 2213 (“address on roster is correct but not on
22 ID”); La Paz County ballot 411 (“valid ID has mailing address only . . . roster has
23 correct residence address”) Maricopa County ballots 8-11080402 (“invalid address PO
24 Box”), 8-11018310 (“voter ID correct address, driver’s license different address”), 8-
25 11018308 (“drivers license address different from voter ID”); Pinal County ballots 3860
26 (“address on driver’s license doesn’t match”), 5984 (“DL has Phoenix address”), 3882
 (“address on sample ballot is correct, license address does not match sample ballot”);
 Coconino County ballots for Ray Johnson (“ID has a diff address”) and Della Bennett
 (“ID has different address”).

1 The individual testimony and documentary evidence establishes that Prop 200 is
2 applied to deny voters the franchise even in cases where they possess valid ID. Prop
3 200 cannot constitutionally be applied to prevent voters with valid driver's licenses
4 from casting their ballots because such an application leaves the voter no choice but to
5 purchase a new ID card solely for the purpose of voting. Whether or not these affected
6 voters purchase new driver's licenses in order to vote after they change addresses is
7 irrelevant to their qualification to vote, yet poll workers are applying Prop 200 to deny
8 these individuals the right to vote.¹⁰ *See Harper v. Virginia Board of Elections*, 383
9 U.S. 663 (1966).
10

11 Defendants' argument that Plaintiffs must produce even more individuals who
12 were prevented from voting is disingenuous. The three individuals whose testimony
13 was admitted at the trial are members of a larger group of disenfranchised voters who
14 stepped forward to testify in this case. Because Defendants refused to turn over
15 information about affected voters (forcing this Court to issue two orders compelling
16 disclosure) and ultimately produced the information well after the close of discovery,
17 neither Plaintiffs nor Defendants knew of the identity of affected individuals until
18 shortly before trial. These individuals include 8 additional voters who submitted
19 affidavits describing their experiences in support of Gonzalez Plaintiffs' response to
20 Defendants' motion for summary judgment. *See* exhibits filed non-electronically
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24 ¹⁰ It is important to note that Prop 200 itself only requires identification with an
25 address, not that the address on the identification match the voter's address on the
26 precinct rolls. The 'address match' requirement was added by the Secretary of State.
See Dkt. 1030 at 14.

1 pursuant to Dkt. 816 (containing declarations of Ann Fletchall, Caleb LaPorte, Karen
2 Lewsader, Dierdre Belle-Oudry, Dorothy Terrazas, Kris Sorge, Sara Dethloff and
3 Sylvina Cotto).

4 Although not contesting Dr. Lanier’s finding that “a disproportionately higher
5 number of Hispanics cast conditional provisional ballots that were uncounted in the
6 2006 General Election,” Defendants claim that this impact might not be “caused by
7 Prop 200.” However, a conditional provisional ballot goes uncounted for one reason
8 only – the voter did not provide ID. Thus every uncounted conditional provisional
9 ballot is “caused by Prop 200.” Latino voters’ lower rates of providing ID (on Election
10 Day or afterwards) is directly related to their disproportionately lower rates of having
11 their conditional provisional ballots counted.
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14 IV. The Fatal Flaws in Prop 200 Render the Statute Void

15 Because Prop 200’s documentary proof of citizenship requirement is comprised
16 of several related provisions, the citizenship proof requirement cannot stand if the Court
17 finds one portion invalid. Arizona’s voters enacted a proof of citizenship requirement
18 that contained no fewer than six methods of proving citizenship. As demonstrated in
19 Gonzalez Plaintiffs’ Post-Trial Memorandum and Proposed Findings of Fact, four of the
20 six methods of proving citizenship for voter registration are partially or completely
21 incapable of execution. *See* Dkt. 1029 at 6-7 and 1030 at 44-46, 67-69 (describing how
22 sections F (1), (4), (5) and (6) of Prop 200 request information that doesn’t exist or
23 cannot be verified as required by the statute). In addition, Section F (4) imposes
24 different and unfair burdens on citizens who rely on their naturalization certificates to
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1 register to vote. Finally, with respect to section F (1), Prop 200 did not notify voters
2 that driver's licenses issued after October 1, 1996 do not prove U.S. citizenship. *See* Tr.
3 Ex. 138 and Dkt. 1030 at 67-68.

4 To the extent that the alternatives to proving citizenship with a driver's license
5 do not exist, it changes the legislative choices made in enacting the statute. The Court
6 has no means by which to determine how voters would have voted on Prop 200 if it had
7 provided fewer methods of proving citizenship. For this reason, the proper remedy is to
8 invalidate the proof of citizenship requirement if any portion of it cannot stand or is
9 incapable of execution. *See Ruiz v. Hull*, 191 Ariz. 441, 459, 957 P.2d 984, 1002 (1998)
10 (internal citations omitted) (invalidating laws specifying English as Arizona's official
11 language where many of the specific directives in the statutes were unconstitutional and
12 explaining "In Arizona, an entire statute... need not be declared unconstitutional if
13 constitutional portions can be separated. However, the valid portion of the statute will
14 be severed only if it can be determined from the language that the voters would have
15 enacted the valid portion absent the invalid portion."); *see also Qwest Corporation v.*
16 *City of Berkeley*, 433 F3d 1253, 1259 (9th Cir. 2006) (invalidating a statute that
17 impermissibly conflicted with federal law and explaining "[a]s we have disemboweled
18 the portions of the ordinance that accomplish this express purpose, there is no
19 evidence—even with the severability clause—that suggests the City would have passed
20 the Ordinance.").

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24 When construing state statutes, federal courts may only draw clear lines based on
25 either the text or legislative intent. *Reno v. American Civil Liberties Union*, 521 U.S.
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1 844 (1997). Courts are constrained from rewriting the statute or making selective edits
2 that might interfere with the legislative intent. *See Dimmitt v. City of Clearwater*, 985
3 F.2d 1565, 1572 (11th Cir. 1993) (refusing to strike unconstitutional exemptions from a
4 flag permit statute because the task of crafting a constitutional permit that accomplished
5 the City’s objectives must be left to the City). Thus, the Court is constrained from
6 replacing language in Prop 200 in an effort to repair its infirmities. *See Citizens for*
7 *Responsible Government State Political Action Committee v. Davidson*, 236 F.3d 1174,
8 1197 (10th Cir. 2000) (refusing to usurp legislature’s judgment by choosing an
9 alternative to a 24-hour notice requirement that unreasonably burdened First
10 Amendment rights).

11
12 Where, as here, the statute establishes an integrated system by which to prove
13 citizenship for voter registration, and the system is flawed in its specifics, the remedy is
14 not to invalidate only parts of the statute. Portions of a statute are not to be severed
15 “where the valid and invalid parts of a statute are inextricably entwined and ...
16 connected and interdependent in subject matter, meaning and purpose.” *Hudson v.*
17 *Kelly*, 76 Ariz. 255, 274, 263 P.2d 362, 375 (1953) (invalidating reorganization of state
18 financial system where one aspect of system was unconstitutional); *see also Hull v.*
19 *Albrecht*, 192 Ariz. 34, 39, 960 P.2d 634, 639 (1998) (refusing to sever unconstitutional
20 funding provisions from education bill because they were integral to the overall purpose
21 of the bill).

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24 The invalid portions of Prop 200’s proof of citizenship requirement are not
25 independent provisions that can be easily severed without doing violence to the statute
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1 as a whole. Rather, many of them are alternatives that moderate the effect of the general
2 requirement to provide documentary proof of citizenship. That they are invalid or non-
3 existent does not make severing them the correct remedy. *See Dimmitt*, 985 F.2d at
4 1572 (invalidating flag permit statute in addition to unconstitutional statute listing
5 exceptions because to do otherwise would only further burden plaintiffs' constitutional
6 rights). These provisions are integral to the statutory scheme, and it should not be
7 assumed that the voters would have approved Proposition 200 without them.

9 V. Defendants' Expressed Interest in Deterring Voter Fraud Cannot Justify a
10 Statute that Violates the Voting Rights Act and the Constitution

11 Defendants' asserted interest in preventing voter fraud cannot overcome the
12 constitutional and statutory flaws of Prop 200, particularly in light of the dearth of
13 evidence that anyone has committed intentional fraud in registration or voting. In the
14 VRAZ system, Defendants already have a mechanism by which to identify and remove
15 from the voter rolls ineligible voters. Prop 200 does not assist in this effort.
16 Defendants' attempt to "backdoor" inadmissible exhibits and related testimony by citing
17 it in their closing arguments cannot support the weak showing in the record with respect
18 to voter fraud.

20 VI. Conclusion

21 For the reasons set out above, Gonzalez Plaintiffs respectfully request that the Court
22 invalidate Prop 200's documentary proof of citizenship and voter ID provisions and
23 grant judgment in favor of Plaintiffs.
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DATED this 30 day of July, 2008.

Respectfully submitted,

By: s/Nina Perales
Nina Perales

Counsel for Plaintiffs
Gonzalez, et al.

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2008, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

COPY of the foregoing mailed with Notice of Electronic Filing this 30th day of July, 2008 to:

The Honorable Roslyn O. Silver
United States District Court
Sandra Day O’Connor U.S. Courthouse, Suite 624
401 West Washington Street, SPC 59
Phoenix, AZ 85003-2158

 s/Nina Perales
Nina Perales