

1 TERRY GODDARD
2 Attorney General
3 Firm Bar No. 14000
4 Mary O'Grady, No. 011434
5 Solicitor General
6 Steven A. LaMar, No. 004140
7 Senior Litigation Counsel
8 Carrie J. Brennan, No. 018250
9 Barbara A. Bailey, No. 018230
10 Assistant Attorneys General
11 1275 West Washington Street
12 Phoenix, Arizona 85007-2926
13 Tel: (602) 542-7826
14 Fax: (602) 542-8308
15 Attorneys for the State of Arizona and
16 the Arizona Secretary of State

11 **IN THE UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 MARIA M. GONZALEZ, et al.,
14
15 Plaintiffs,

15 v.

16 STATE OF ARIZONA, et al.
17
18 Defendants.

No. CV06-01268 PHX ROS
No. CV06-1362 PCT ROS (Cons)
No. CV06-1575 PCT ROS (Cons)

**DECLARATION OF
DR. JEFFREY ZAX IN
SUPPORT OF STATE
DEFENDANTS' MOTION
TO STRIKE PLAINTIFFS'
FACTUAL SUBMISSION ON
SUMMARY JUDGMENT**

(Assigned to the Honorable
Roslyn O. Silver)

1 Jeffrey S. Zax declares:

2 1. I have been retained by Defendants State of Arizona and the Arizona
3 Secretary of State to provide expert analysis and opinions in this case. I make this
4 Declaration in support of State Defendants' motion to strike plaintiffs' factual
5 submission on summary judgment. I would be willing to testify to these facts at trial if
6 called upon to do so.

7 2. My previous qualifications are described in my Declaration in support of
8 State Defendants' motion for summary judgment directed to Gonzalez plaintiffs. [See
9 dkt. 802] My C.V. is attached to that Declaration at **Tab A**.

10 3. As I stated in my earlier Declaration, I have reviewed each of the reports
11 of Drs. Lanier and Espino, which were served in connection with this matter. I also have
12 reviewed the disclosures from Drs. Lanier and Espino in connection with the preparation
13 of their respective reports. In addition, I have reviewed the reports and disclosures of
14 Drs. Engstrom and Chapa, which also were served in connection with this matter.

15 4. As I describe in paragraphs 11 and 12 of my earlier Declaration, the
16 regression analyses which Dr. Lanier presents in his report of 4 January 2008 "The
17 Effect of Proposition 200 on Voter Registration in Arizona", and in his report of 7
18 March 2008, "The Effect of Proposition 200 on Voter Registration in Arizona: Rebuttal
19 Report of Louis R. Lanier, Ph.D." do not provide evidence that is acceptable under
20 conventional scientific standards.

21 5. These regressions fail to correctly or adequately account for the possible
22 differences in registration levels across years. Dr. Lanier ignores the standard technique
23 for this purpose. He also fails to modify that technique appropriately so as to achieve his
24 stated goals, despite my explicit suggestions regarding modifications that may serve this
25 purpose, presented in paragraph 12 of my earlier Declaration.

26 6. Dr. Lanier offers no support in the peer-reviewed literature for the
27 specification of his regression analyses, despite the challenges that I have made to them.
28 His regression specification has no peer-review approval.

7. Dr. Lanier has failed to present any regression analyses which respond to
the criticisms that I have made of his regression specifications. Consequently, the record

1 contains no evidence as to whether his analyses and conclusions would be contradicted
2 by regressions which were specified correctly. Therefore, his regression specifications
3 have not been tested. Their potential rate of error is unknown.

4 8. As I describe in pages 7-11 of my report of 9 May 2008, "Supplemental
5 Expert Report and Appendices on Behalf of State Defendants ...", the purported tests of
6 statistical significance which Dr. Lanier presents in his report of 4 January 2008 "The
7 Effect of Proposition 200 on Voter Registration in Arizona", and in his report of 7
8 March 2008, "The Effect of Proposition 200 on Voter Registration in Arizona: Rebuttal
9 Report of Louis R. Lanier, Ph.D." are not scientifically valid.

10 9. These purported tests of statistical significance do not conform to accepted
11 scientific standards. They combine multiple coefficients from two different regressions,
12 but ignore the variances of these coefficients and their covariances. Dr. Lanier has failed
13 to implement the standard formulas for these tests of statistical significance, despite my
14 explicit suggestions regarding appropriate implementations, presented in pages 18-21 of
15 my report of 15 February 2008, "Expert Report and Appendices on Behalf of Defendant
16 ...".

17 10. Dr. Lanier offers no support in the peer-reviewed literature for the
18 construction of his tests of statistical significance, despite the challenges that I have
19 made to them. These purported tests of statistical significance have no peer-review
20 approval.

21 11. Dr. Lanier has failed to present any formal justification of his tests of
22 statistical significance. He has also failed to present any tests of statistical significance
23 which respond to the criticisms that I have made of his tests, or which respond to my
24 suggestions regarding appropriate tests. Consequently, the record contains no evidence
25 as to whether his analyses and conclusions would be contradicted by tests of statistical
26 significance which were specified correctly. Therefore, his technique for constructing
27 tests of statistical significance has not been tested. Its potential rate of error is unknown.

28 12. Dr. Lanier's data contradict the conclusions that he draws in his reports of
4 January 2008 and 7 March 2008. As demonstrated in paragraphs 5 through 7 of my
earlier Declaration, graphs in these reports demonstrate conclusively that Hispanic

1 registrations were more numerous at all times after the implementation of Proposition
2 200 than at the same points of the election cycle prior to the implementation of
3 Proposition 200.

4 13. Dr. Lanier's data also demonstrates that denials of registration had
5 negligible impact on the composition of the Arizona electorate. He provides these data in
6 his report of 9 May 2008, "The Effect of Proposition 200 on Voter Registration in
7 Arizona: Fourth Supplemental Report of Louis R. Lanier, Ph. D." As demonstrated in
8 pages 13 and 14 of my report of 9 May 2008, Hispanics comprise approximately 13.7%
9 of registered voters in Arizona. Had all of those voters who, according to Dr. Lanier,
10 were denied registration because of the requirements of Proposition 200 been registered
11 instead, Hispanics would comprise approximately 13.8% of registered voters in Arizona.
12 Dr. Lanier has not disputed this demonstration, even though he subsequently filed two
13 additional reports.

14 14. Dr. Espino's regression specifications, presented in his report of 7 March
15 2008 "Rebuttal of Dr. Jeffrey Zax", and his report of 22 May 2008 "Reply to Dr. Jeffrey
16 Zax's Review of Rebuttal", do not constitute acceptable scientific evidence. As
17 described in pages 18 through 20 of my report of 9 May 2008, and acknowledged by Dr.
18 Espino on page 12 of his report of 7 March 2008 and on page 4 of his report of 22 May
19 2008, these specifications do not include intercept terms. This is contrary to standard
20 scientific practice.

21 15. Consequently, these regressions predict that the Hispanic share of
22 registrations should be zero at the beginning of the period prior to the implementation of
23 Proposition 200 and at the beginning of the period subsequent to the implementation of
24 Proposition 200 examined by Dr. Espino. Dr. Espino acknowledges this on page 4 of his
25 report of 22 May 2008. These predictions are clearly false.

26 16. Dr. Espino offers no support in the peer-reviewed literature for the
27 specification of his regression analyses, despite the challenges that I have made to them.
28 His regression specification has no peer-review approval.

17. Dr. Espino has failed to present any regression analyses which respond to
the criticisms that I have made of his regression specifications. Consequently, the record

1 contains no evidence as to whether his analyses and conclusions would be contradicted
2 by regressions which were specified correctly. Therefore, his regression specifications
3 have not been tested. Their potential rate of error is unknown.

4 18. Dr. Espino's data contradict the conclusions that he has drawn in his report
5 of 4 January 2008, "Written Report of Dr. Rodolfo Espino with Respect to the Effects of
6 Proposition 200 on Arizona's Hispanic Population". As described in paragraphs 16
7 through 19 of my earlier Declaration, the proportion of Hispanics among all new
8 registrants in Arizona was greater throughout the period subsequent to the
9 implementation of Proposition 200 than in the comparable part of the election cycle
10 prior to the implementation of Proposition 200. As described in paragraphs 20 through
11 22 of my earlier Declaration, there is no tendency for the proportion of Hispanics among
12 new registrants to decline subsequent to the implementation of Proposition 200 in at
13 least fourteen of Arizona's fifteen counties.

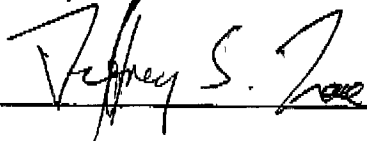
14 19. Dr. Espino's data contradict the conclusions that he has drawn in his report
15 of 7 March 2008. Table 3 of that report purports to demonstrate that the reduction in
16 Hispanic registrations subsequent to the implementation of Proposition 200 was 36.67%,
17 and the reduction in non-Hispanic registrations subsequent to the implementation of
18 Proposition 200 was 35.75%. These calculations, even if correct, demonstrate that there
19 were no substantive differences in the effects of Proposition 200 on the registration rates
20 of Hispanics and non-Hispanics.

21 20. Dr. Espino's data contradict the conclusions that he has drawn in his report
22 of 22 May 2008. Table 4 of that report claims to estimate the reductions in Hispanic and
23 non-Hispanic registrations in each Arizona county subsequent to the implementation of
24 Proposition 200. These calculations, even if correct, demonstrate that, subsequent to the
25 implementation of Proposition 200, Hispanic registrations either declined by less, or
26 increased by more, than non-Hispanic registrations in ten of the fifteen Arizona counties,
27 including Maricopa County.
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I declare under penalty of perjury under the laws of the United States that the foregoing assertions of fact are true and correct.

Executed on June 27, 2008, at Denver, Colorado.



Handwritten signature of Jeffrey S. Zee, written in black ink over a horizontal line.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 27th day of June, 2008, I electronically transmitted
3 the attached document to the Clerk's Office using the ECF System for filing, and
4 transmittal of a Notice of Electronic Filing to the following ECF registrants:
5

6 David J. Bodney
7 Karen J. Hartman-Tellez
8 Steptoe & Johnson LLP
9 201 East Washington St., Ste. 1600
10 Phoenix, Arizona 85004-2382
11 dbodney@steptoe.com
12 khartman@steptoe.com

13 David B. Rosenbaum
14 Thomas L. Hudson
15 Sara S. Greene
16 Osborn Maledon, P.A.
17 2929 N. Central, 21st Floor
18 Phoenix, Arizona 85012-2793
19 drosenbaum@omlaw.com
20 thudson@omlaw.com
21 sgreene@omlaw.com

22 Jon Greenbaum
23 Benjamin Blustein
24 Lawyers' Committee For
25 Civil Rights Under Law
26 1401 New York Avenue, Ste. 400
27 Washington, D.C. 20005
28 jgreenbaum@lawyerscommittee.org

29 Neil Bradley
30 ACLU Southern Regional Office
31 2600 Marquis One Tower
32 245 Peachtree Center Avenue
33 Atlanta, Georgia 30303
34 nbradley@aclu.org

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Elliot M. Minberg
People for the American
Way Foundation
2600 M Street, NW, Ste. 400
Washington, DC 20036
eminberg@pfaw.org

Daniel B. Kohrman
AARP Foundation Litigation
601 E Street, N.W., Ste. A4-240
Washington, DC 20049
dkohrman@aarp.org

Joe P. Sparks
Susan B. Montgomery
Sparks, Tehan & Ryley PC
The Inter Tribal Council of Arizona, Inc.
7503 First Street
Scottsdale, Arizona 85251
joe-sparks@qwest.net

David J. Becker
People for the American Way Foundation
2000 M Street, NW, Suite 400
Washington, D.C. 20036
dbecker@pfaw.org

Daniel R. Ortega, Jr.
Roush McCracken Guerrero
Miller & Ortega
650 N. 3rd Avenue
Phoenix, Arizona 85003
danny@rmgmoinjurylaw.com

Nina Perales
Mexican American Legal Defense and Education Fund
110 Broadway, Ste. 300
San Antonio, Texas 78205
nperales@maldef.org

1 M. Colleen Connor
2 MCAO Division of County Counsel
3 222 N. Central Avenue, Ste. 1100
4 Phoenix, Arizona 85003
5 connorc@mcao.maricopa.gov

6 Dennis I. Wilenchik
7 Kathleen Rapp
8 Wilenchik and Bartness, P.C.
9 2810 N. Third Street
10 Phoenix, Arizona 85004
11 diw@wb-law.com
12 kathleenr@wb-law.com

13 Judith M. Dworkin
14 Marvin S. Cohen
15 Patricia Ferguson-Bohnee
16 SACKS TIERNEY P.A.
17 4250 N. Drinkwater Blvd. 4th
18 Scottsdale, Arizona 85251-3693
19 Judith.Dworkin@sackstierney.com

20 Criss E. Candelaria
21 Bradley Carlyon
22 Apache County Attorneys Office
23 PO Box 637
24 St. Johns, Arizona 86025
25 bcarlyon@apachelaw.net

26 Melvin R. Bowers, Jr.
27 Lance B. Payette
28 Navajo County Attorneys Office
PO Box 668
Holbrook, Arizona 86025
lance.payette@co.navajo.az.us

Brenna L. Clani
Navajo County Department of Justice
PO Box 2010
Window Rock, Arizona 86515
brennalclani@navajo.org

1 Jean E. Wilcox
2 Coconino County Attorney's Office
3 110 East Cherry Ave.
4 Flagstaff, Arizona 86001
5 jwilcox@coconino.az.gov

6 **COPY** sent via U.S. mail this
7 27th day of June, 2008 to:

8 The Honorable Roslyn O. Silver
9 United States District Court
10 Sandra Day O'Connor U.S. Courthouse, Suite 624
11 401 West Washington Street, SPC 59
12 Phoenix, AZ 85003-2158

13 /s Elizabeth Stark

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