

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

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

13 MARIA M. GONZALEZ, et al.,
14 Plaintiffs,
15 v.
16 STATE OF ARIZONA, et al.
17 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
FOR 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 Defendants' motion for summary judgment.

5 2. I am a Professor of Economics and the Associate Chair of the Department
6 of Economics at the University of Colorado at Boulder. I received my Ph.D. degree in
7 Economics from Harvard University in 1984, and received my B.A. degree in
8 Economics from Harvard University in 1976. I teach undergraduate courses in
9 inequality and discrimination, statistics and econometrics. I teach doctoral seminars in
10 labor economics and local public finance. My published articles in peer-reviewed
11 professional journals include many that address issues of discrimination and of minority
12 representation. I am an associate editor of the China Economic Review and have served
13 as a referee for over 50 journals in many different fields in the social sciences, as well as
14 for the National Science Foundation. My C.V. is attached to this Declaration at **Tab A**.

15 3. I have reviewed the reports of Drs. Lanier and Espino, which were served
16 in connection with this matter. I also have reviewed the disclosures from Drs. Lanier
17 and Espino in connection with the preparation of their respective reports. In addition, I
18 have reviewed the reports and disclosures of Drs. Engstrom and Chapa, which also were
19 served in connection with this matter.

20 4. Dr. Lanier asserts in his initial report that both Latino and non-Latino voter
21 registrations were reduced by Prop 200's proof of citizenship requirement and that
22 Latino registrations were disproportionately reduced by Prop 200.

23 5. Dr. Lanier prepared two charts, which he says show a reduction in voter
24 registrations caused by Prop 200. (Dr. Lanier's charts 1 and 2, which are included in his
25 initial report, are attached under **Tab B**.) The solid line on chart 1 purports to show the
26 number of Latino registrations in the period from January 2000 through January 2005
27 (the month in which Prop 200 became effective) and the period January 2005 through
28 July 2007. The solid line on chart 2 purports to show the same information, except with
regard to non-Latino voters, for those same time periods. Both charts 1 and 2 include
registration data for two Presidential elections. Specifically, they include approximately

1 11 months before the 2000 Presidential election and 16 months before the 2004
2 Presidential election.

3 6. Dr. Lanier's charts demonstrate that registration behavior exhibits peaks
4 during the periods preceding Presidential elections, which are well in excess of any
5 registration levels during other periods. Those pre-Presidential election periods are not
6 comparable to the period following the implementation of Prop 200, which does not
7 include a Presidential election. Instead, the comparable period prior to the
8 implementation of Proposition 200 begins in January 2001, again approximately two
9 months after the preceding Presidential election in November 2000. It ends two years
10 and seven months later, in July 2003.

11 7. I previously prepared and disclosed a Chart 1, which modifies chart 1 of
12 Dr. Lanier's initial report in this matter. That modified chart is labeled "Chart 1: Chart
13 1 from Dr. Lanier's report, modified," and is attached hereto at **Tab C**. Chart 1
14 compares Hispanic Arizona voter registrations during only the period prior to the
15 implementation of Proposition 200 that is comparable to the period subsequent to the
16 implementation of Proposition 200. It reproduces Dr. Lanier's chart 1, but deletes the
17 two Presidential election cycles of January through November 2000 and August 2003
18 through November 2004. It is obvious that the number of Hispanic registrations
19 throughout the period subsequent to the implementation of Proposition 200 exceeded the
20 number of Hispanic registrations at the equivalent points in the period prior to the
21 implementation of Proposition 200.

22 8. Similarly, I previously prepared and disclosed a Chart 2, which modifies
23 chart 1 of Dr. Lanier's initial report in this matter. That modified chart is labeled "Chart
24 2: Chart 1 from Dr. Lanier's report, modified," and is attached hereto at **Tab C**. Chart 2
25 makes the same comparison for non-Hispanic Arizona voter registrations. It reproduces
26 Dr. Lanier's chart 2, but again deletes the two Presidential election cycles of January
27 through November 2000 and August 2003 through November 2004. As with chart 1, the
28 number of non-Hispanic registrations throughout the period subsequent to the
implementation of Proposition 200 exceeded the number of non-Hispanic registrations at
the equivalent points in the period prior to the implementation of Proposition 200.

1 9. Chart 1 demonstrates conclusively that Hispanic registrations in the period
2 subsequent to the implementation of Proposition 200 were greater than they were in the
3 equivalent period prior to its implementation. Chart 2 presents the same demonstration
4 for non-Hispanic registrations. Consequently, Dr. Lanier's data contradict his claim that
5 the implementation of Proposition 200 in January 2005 is correlated with a fall in both
6 Hispanic and non-Hispanic voter registrations.

7 10. Charts 1 and 2 of Dr. Lanier's report each contain a dashed line in the
8 period subsequent to the implementation of Proposition 200. These lines represent his
9 predictions of registrations. In each of Dr. Lanier's charts, the line representing his
10 predictions lies almost entirely above the line representing actual registrations. In other
11 words, he predicts that post-Proposition 200 registrations will be greater than actual
12 post-Proposition 200 registrations. Because nothing in the experience of that early
13 period is consistent with the exaggerated registration increases embodied in Dr. Lanier's
14 predictions, Dr. Lanier's predictions likely rely improperly on the higher level of pre-
15 Prop 200 registrations that occurred during the two Presidential election cycles for that
16 period, even though these cycles have no comparable periods post-Proposition 200.

17 11. In addition, Dr. Lanier's predicted levels of registration in the post-
18 Proposition 200 period are based on misspecified regression analyses, as demonstrated
19 by the specification that Dr. Lanier disclosed in Appendix B to his report. In other
20 words, to arrive at his predictions Dr. Lanier conducted a statistical analysis that does
21 not appropriately account for the possibility of variations in levels of registrations.

22 12. Specifically, Dr. Lanier performed regression analysis to predict the
23 number of registrations that would have occurred in the absence of Prop 200, but did not
24 include all the necessary variables to do his analysis. Dr. Lanier omitted from his
25 analysis variables that would account for the possibility for distinct variations in
26 registration trends caused by Presidential election years, non-Presidential election years,
27 or year-to-year variation. Because Dr. Lanier omitted such variables from his analysis,
28 there is no statistically reliable basis for his predicted numbers of registrations.

 13. Dr. Lanier's data also demonstrate that the increases in registrations by
Hispanics and non-Hispanics are of very similar magnitude. For example, new Hispanic

1 registrations in the period subsequent to the implementation of Proposition 200 peaked
2 in approximately September 2006, at approximately 8,000. The parallel peak in the
3 comparable period prior to the implementation of Proposition 200 occurred in
4 approximately September 2002, at approximately 5,000 Hispanic registrations. The later
5 peak recorded approximately 60% more registrations than did the earlier peak.

6 14. September 2006 also saw the post-Proposition 200 peak in non-Hispanic
7 registrations, at approximately 48,000. In the equivalent pre-Proposition 200 peak of
8 September 2002, non-Hispanic registrations were approximately 30,000. As with
9 Hispanic registrations, the peak number of monthly non-Hispanic registrations
10 subsequent to the implementation of Proposition 200 was approximately 60% greater
11 than the number of non-Hispanic registrations in the equivalent pre-Proposition 200
12 month.

13 15. I also reviewed the reports served by Dr. Espino in this matter. Based on
14 my education, training and experience, I have observed and documented several
15 fundamental flaws in Dr. Espino's methodology and analyses, which seriously
16 undermine his conclusions.

17 16. In his first report, Dr. Espino included a chart (figure 1) that purports to
18 show the percentage of Latino registrations for each month before and after the
19 implementation of Prop 200. (Dr. Espino's figure 1, which is included in his initial
20 report, is attached under **Tab D**.) The period examined by Dr. Espino encompasses 941
21 days prior to, and 941 days subsequent to the implementation of Proposition 200. Thus,
22 Dr. Espino's chart includes registration data for the 2004 Presidential election period,
23 which immediately preceded the implementation of Prop 200. Accordingly, Dr.
24 Espino's pre- and post- Proposition 200 periods encompass opposite ends of the
25 Presidential election cycle. As discussed above with regard to Dr. Lanier's report,
26 registration behavior varies systematically through this cycle.

27 17. Therefore, Dr. Espino's comparisons of registration behavior in his pre-
28 and post- Proposition 200 periods confound any differences in this behavior which might
have been induced by Proposition 200 with the palpable differences in this behavior
associated with different points in the Presidential electoral cycle.

1 18. I previously prepared and disclosed a Chart, which modifies the chart
2 prepared by Dr. Espino to reflect the appropriate periods for comparison. That modified
3 chart is labeled “Chart 3: Figure 1 from Dr. Espino’s report, modified,” and is attached
4 hereto at **Tab E**.

5 19. As my modified chart demonstrates, it is evident the average proportion of
6 Hispanics among registrants was markedly higher in the post-Proposition 200 period
7 than in the comparable period prior to the implementation of this Proposition. This
8 proportion never fell below 13% in the later period, was typically between 14% and
9 15%, and peaked toward the end of the period above 18%. In contrast, the proportion of
10 Hispanics among registrants in the comparable pre-Proposition 200 period was almost
11 always below 14%.

12 20. Even apart from Dr. Espino’s failure to adjust for the 2004 Presidential
13 election year, Dr. Espino’s data show no meaningful change in the share of Hispanics
14 among new registrations following the implementation of Prop 200.

15 21. Dr. Espino’s report also includes a separate chart (figure 3) that purports to
16 set out in graphical form the same information, but for each of Arizona’s fifteen counties
17 instead of for the State as a whole. (Dr. Espino’s figure 3, which is included in his initial
18 report, is attached under **Tab F**.) Based on my education, training and experience, I
19 have prepared a Chart which overlays straight lines on each graph in Dr. Espino’s Figure
20 3. The chart I prepared is labeled “Chart 4: Figure 3 from Dr. Espino’s report,
21 modified,” and is attached hereto at **Tab G**. This informal attempt to anticipate the
22 results of Dr. Espino’s regressions as reflected in his Figure 3 ignores the problem of
23 comparing non-comparable parts of the Presidential election cycle pre- and post-
24 Proposition 200, in an attempt to simulate the results that Dr. Espino might have
25 obtained, had he offered statistical evidence rather than casual impressions.

26 22. As can be observed from my Chart 4, in fourteen of the fifteen counties the
27 percentage of Latinos among all registrants either is the same or higher following the
28 implementation of Prop 200. Only in one county (Greenlee) is there any indication that
the percentage of Latinos among all registrants was lower following the implementation
of Prop 200. Again, those results ignore the effect of the Presidential election cycle,

1 which was not properly accounted for in Dr. Espino's regressions.

2 23. In Dr. Espino's second report, concludes (at pp. 13-14) that "the percent of
3 Hispanic individuals registered to vote each week in Arizona declined 6.29 percent
4 following the implementation of Proposition 200, while the corresponding decline for
5 non-Hispanic surnamed individuals declined just 5.36 percent." Thus, Dr. Espino
6 concludes that there was a 0.93% difference in percentage declines in Latino versus non-
7 Latino registrations after Prop 200.

8 24. Dr. Espino's calculated difference of 0.93% lacks any scientific meaning,
9 however, because he did not test for statistical significance of his calculated numbers.
10 Without performing statistical significance tests on his numbers, there is no basis for his
11 conclusion that there was a difference between Latinos and non-Latinos in percentage
12 reductions in weekly voter registrations.

13 25. Moreover, not only does Dr. Espino's 0.93% calculated differential lack
14 statistical significance, his estimate does not account for Latino citizen population trends
15 after Prop 200 was implemented. Dr. Jorge Chapa disclosed data showing population
16 trends for Latino citizen voting age populations ("CVAP") in Arizona. [See Expert
17 Report of Dr. Jorge Chapa (Jan. 4, 2008), Table 9e] Those data demonstrate that Latino
18 CVAP experienced a higher growth rate than non-Latino CVAP before the
19 implementation of Prop 200, but experienced a smaller growth rate than non-Latino
20 CVAP following the implementation of Proposition 200. Thus, a larger decrease in
21 percentage of weekly Latino registrants as compared to a decrease in percentage of
22 weekly non-Latino registrants would not be unexpected, based on the population trends
23 for each such group.

24 I declare under penalty of perjury that the foregoing assertions of fact are true and
25 correct.

26 Executed on June 4, 2008, at Denver, Colorado.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 6th 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

1 Elliot M. Mincberg
2 People for the American
3 Way Foundation
4 2600 M Street, NW, Ste. 400
5 Washington, DC 20036
6 eminberg@pfaw.org

7 Daniel B. Kohrman
8 AARP Foundation Litigation
9 601 E Street, N.W., Ste. A4-240
10 Washington, DC 20049
11 dkohrman@aarp.org

12 Joe P. Sparks
13 Susan B. Montgomery
14 Sparks, Tehan & Ryley PC
15 The Inter Tribal Council of Arizona, Inc.
16 7503 First Street
17 Scottsdale, Arizona 85251
18 joe-sparks@qwest.net

19 David J. Becker
20 People for the American Way Foundation
21 2000 M Street, NW, Suite 400
22 Washington, D.C. 20036
23 dbecker@pfaw.org

24 Daniel R. Ortega, Jr.
25 Roush McCracken Guerrero
26 Miller & Ortega
27 650 N. 3rd Avenue
28 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
connorc@mcao.maricopa.gov

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

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

16 Criss E. Candelaria
17 Bradley Carlyon
18 Apache County Attorneys Office
19 PO Box 637
20 St. Johns, Arizona 86025
bcarlyon@apachelaw.net

21 Melvin R. Bowers, Jr.
22 Lance B. Payette
23 Navajo County Attorneys Office
24 PO Box 668
25 Holbrook, Arizona 86025
lance.payette@co.navajo.az.us

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

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

COPY sent via U.S. mail this
6th day of March, 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/ Elizabeth Stark

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