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15  
16 IN THE UNITED STATES DISTRICT COURT  
17  
18 FOR THE DISTRICT OF ARIZONA

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

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1 NOW COME Gonzalez Plaintiffs and file these Post-Trial Findings of Fact.

2 **I. Prop 200, Enacted in November 2004, Imposes new Documentation**  
3 **Requirements for Voter Registration and Voting**

- 4
- 5 1. On November 2, 2004, Arizona voters adopted by ballot initiative Proposition 200  
6 (“Prop 200”) amending, among other statutes, Arizona Revised Statutes §§ 16-  
7 152, 16-166 and 16-579. [stipulated fact].
- 8 2. Under the Arizona Constitution, Article IV, Section 1, the people of Arizona have  
9 the power to enact initiative statutes. Initiative statutes become law “when  
10 approved by a majority of the votes cast thereon and upon proclamation of the  
11 governor.” [ARIZ. CONST. art. IV, § 1].
- 12 3. The voting provisions of Prop 200 require that individuals produce documentary  
13 proof of citizenship in order to register to vote and photo identification or two  
14 other forms of acceptable non-photo identification to cast a regular ballot. [Tr.  
15 Ex. 1, 2, 3, 5, 6].
- 16 4. Prop 200 went into effect on January 25, 2005. [Kanefield 7/25/06 Dep. 16:11-  
17 13].

18

19

20 **a. The Prop 200 Statute Focuses on Immigrants and Immigration**  
21 **Enforcement**

- 22 5. The Findings and Declaration in support of Prop 200 focus on undocumented  
23 immigration, stating: “This state finds that illegal immigration is causing  
24 economic hardship to this state and that illegal immigration is encouraged by  
25 public agencies within this state that provide public benefits without verifying  
26

1 immigration status. This state further finds that illegal immigrants have been  
2 given a safe haven in this state with the aid of identification cards that are  
3 issued without verifying immigration status, and that this conduct contradicts  
4 federal immigration policy, undermines the security of our borders and  
5 demeans the value of citizenship. . . ” [Tr. Ex. 1].  
6

7  
8 **b. Prop 200’s Documentary Proof of Citizenship Provisions**

- 9
- 10 6. Pursuant to Prop 200, all new voter registrants must provide documentary proof of  
11 citizenship as of January 24, 2005. [Tr. Ex. 1, 151, pending].  
12
  - 13 7. Prior to the implementation of Proposition 200 county officials considered a voter  
14 registration applicant’s sworn statement of U.S. citizenship adequate to ensure  
15 the individual was qualified to register. [Osborne 7/31/06 Dep. 104:22-105:6].  
16
  - 17 8. “Satisfactory proof of citizenship” is defined as: the number of a driver’s license  
18 or state identification card issued after October 1, 1996; a legible photocopy of  
19 a birth certificate that verifies U.S. citizenship; a legible photocopy of the  
20 pertinent pages of a U.S. passport; presentation of a naturalization certificate;  
21 the number of the certificate of naturalization, but only if the number is  
22 verified with the Immigration and Naturalization Service; “other documents or  
23 methods of proof that are established pursuant to the Immigration Reform and  
24 Control Act of 1986;” or the applicant’s Bureau of Indian Affairs Card  
25  
26

1           Number, Tribal Treaty Card Number or Tribal Enrollment Number. [Tr. Ex.  
2           1].

3  
4           9. Currently registered voters are not required by Prop 200 to submit proof of  
5           citizenship unless they move and register to vote in a different county. [Tr. Ex.  
6           1].

7           10. The Arizona Election Procedures Manual requires if the registrant is registered in  
8           Arizona and now is registering in a new county, the registrant is required to  
9           provide proof of citizenship. [Tr. Ex. 4 at 45].

10           11. The Arizona Election Procedures Manual provides that if a voter registration  
11           request is missing citizenship proof, the voter registration record shall be  
12           placed in a “rejected” status and the registrant shall be allowed no less than  
13           thirty-five and no more than ninety days as set by the County Recorder to  
14           respond to the request for information before deleting the record. For  
15           citizenship proof cases, the registrant shall be provided a blank voter  
16           registration form and the registration date entered on the completed form shall  
17           be the official date of registration. [Tr. Ex. 4 at 54].

18  
19           12. In contrast to the handling of applications that lack documentary proof of  
20           citizenship, the Arizona Election Procedures Manual provides that if a voter  
21           registration request is missing key information other than proof of citizenship,  
22           the voter registration record shall be placed in a “pending” status and the  
23           registrant shall be allowed no less than thirty-five and no more than ninety  
24           days as set by the County Recorder to respond to the request for information  
25           

26

1 before deleting the record. The person may be deemed to have been registered  
2 on the date the registration was first received. [Tr. Ex 4 at 53-54].

3 13. As instructed, the counties reject voter registration forms that do not include  
4 proper proof of citizenship under Prop 200. [Tr. Ex. 10; Wayman-Trujillo  
5 1/9/08 Dep. 50:24-51:7; Altaha 1/14/08 Dep. 12:20-13:19; Marin 1/18/08 Dep.  
6 62:14-22; Osborne 1/1/4/08 Dep. 35:8-11, 38:1-6, 44:14-18 ].

7  
8 14. The counties also reject registrants who properly complete and submit the federal  
9 voter registration form or the federal voter postcard to register and who do not  
10 provide documentary proof of citizenship. [Rodriguez 1/22/08 Dep. 97:22-  
11 98:5, 103:4-9; Tr. Ex. 896; Dean-Lytle 1/16/08 Dep. 72:8-73:1; Marin 1/18/08  
12 Dep. 62:14-22; Osborne 1/14/08 Dep. 38:1-6]. Under the rules promulgated by  
13 the Secretary of State that County Recorders must reject federal mail voter  
14 registration applications that may be complete on their face but are not  
15 accompanied by the required proof of citizenship. [Kanefield 07/16/08 Tr.  
16 701:12-20 ]. Some counties do not make available the federal voter  
17 registration form [Rodriguez 8/2/06 Dep. 83:14-84:6; Hansen 8/1/06 Dep.  
18 35:17-36:9].

19  
20 15. The Counties require re-registration for a person whose voter registration form  
21 was rejected for failure to include proper proof of citizenship under Proposition  
22 200. [Wayman-Trujillo 1/9/08 Dep. 50:20-51:14); Altaha 1/14/08 Dep. 14:7-  
23 25; 16:18-23 *see, e.g.*, Tr. Exs. 210, 214-15, 218-19, 221, 223, 225-26, 240-41,  
24  
25  
26

1 243, 245-53, 257; *see also* Tr. Exs. 211-213, 216-17, 220, 222, 224, 227-239,  
2 242, 244, 254-56 (pending)].

3 16. When a voter registration form is rejected for failing to include proper proof of  
4 citizenship under Proposition 200, counties mail a letter to the applicant  
5 explaining why the application was rejected and instructing the applicant to  
6 submit a new registration form with proper proof of citizenship. [Wayman-  
7 Trujillo 1/9/08 Dep. 50:24-25, 51:1-14; Altaha 1/14/08 Dep. 12:20-25;  
8 Rodriguez 8/2/06 Dep. 23:16-22; Rodriguez 1/22/08 Dep. 77:24-78:17;  
9 Justman 8/1/06 Dep. 15:1-16:5].

10 17. If an individual provides citizenship information after it was initially left off a  
11 voter registration application, the date of registration is the date the information  
12 is provided, not the date the person submitted the original voter registration  
13 form. [Osborne 1/1/4/08 Dep. 34:20-35:4; Wayman-Trujillo 1/9/08 Dep.  
14 52:20-53:5]

15 18. Yavapai County does not send any follow-up letters to people whose voter  
16 registration applications were rejected for failure include proper proof of  
17 citizenship under Proposition 200 and who do not reregister. [Wayman-  
18 Trujillo 1/9/08 Dep. 68:18-24].

19 19. From January 24, 2005 to July 13, 2006 the Maricopa County Recorder received  
20 118,209 voter registration forms through the mail or over the counter, and  
21 15,090 were rejected for failure to provide proof of citizenship. [Osborne  
22 7/31/06 Dep. 21:12-19].

1 20. Maricopa County keeps these rejected registration forms and does not enter  
2 information from the forms into the VRAZ system. [Altaha 1/14/08 Dep.  
3 13:20-14:6].

4 21. Other counties hold new voter registration records in suspense until citizenship is  
5 either proven by using the Motor Vehicles Department check, or by having a  
6 user in the County indicate to the system that citizenship was proven by the  
7 other qualifying means (birth certificate, passport, etc.). [See, e.g., Tr. Ex.  
8 1495].

9 22. The Arizona Election Procedures Manual provides that if a registration is  
10 conducted in person at the County Recorder's office, the County Recorder  
11 personnel shall indicate on the voter registration form (1) that the person  
12 provided proof of citizenship, (2) the type of citizenship proof provided, and  
13 (3) the name and initials of the employee who made the verification. [Tr. Ex. 4  
14 at 48].

15 23. The Arizona Election Procedures Manual provides that satisfactory evidence of  
16 citizenship includes a copy of a birth certificate with supporting legal  
17 documentation if the name on the birth certificate is not the same as the  
18 registrant's current name. [Tr. Ex. 4 at 43, 48].

19 24. The Arizona Election Procedures Manual requires that the Counties shall also  
20 accept a United States birth certificate as proof of citizenship where the name  
21 on the birth certificate is different from the voter registration if the following  
22 five fields match on both the voter registration form and the birth certificate:  
23  
24  
25  
26

1 First Name, Middle Name, Place of Birth, Date of Birth, and Parents' Name.  
2 [Tr. Ex. 4 at 43].

3 25. The Arizona Election Procedures Manual requires that in the event a United States  
4 citizen is born abroad in a non-military installation, the applicant should have  
5 registered with the Department of State and obtained a "Certificate of Birth  
6 Abroad," which counts as a birth certificate. [Tr. Ex. 4 at 43].

7  
8 26. County officials will only accept driver's licenses from Arizona as proof of  
9 citizenship. Potential voter registrants cannot use another state's license for  
10 this purpose. [Osborne 7/31/06 Dep. 25:5-11, 65: 6-22].

11 27. The counties do not accept out-of-state driver's licenses to prove an individual's  
12 U.S. citizenship. [Rodriguez 8/2/06 Dep. 38:24-39:1; Dean-Lytle 1/16/08 Dep.  
13 Ex. 1 (listing requirements for registration), 40:1-15; Hansen 8/1/06 Dep.  
14 18:21-19:21; Osborne 7/31/06 Dep. 24:15-25:11; Marin 1/18/08 Dep. 39:10-16;  
15 Stallworth 1/18/08 Dep. Exs. 2 & 3; Tr. Exs. 1, 210 at 8].

16  
17 28. There are no out-of-state driver's licenses that indicate on their face that the driver  
18 is a United States citizen. [Osborne 7/31/06 Dep. 24:15-22].

19 29. Thousands in Arizona lack a driver's license dated after October 1, 1996 that can  
20 satisfy the documentary proof of citizenship requirement of Prop 200. [Tr. Ex.  
21 598].

22  
23 30. Counties know that not everyone who wants to register to vote has a driver's  
24 license dated after 1996. [Osborne 1/14/08 Dep. 32:17-20].

25  
26

- 1 31. In August 2006, the Arizona Department of Motor Vehicles reported that in  
2 Arizona 355,582 people had valid driver licenses issued before October 1996  
3 and 220,458 people had valid state identification cards issued before October  
4 1996. [Tr. Ex. 575].
- 5
- 6 32. The counties are unaware of any federally issued identification that contains a  
7 person's name, address and photograph. [Hansen 8/1/06 Dep. 41:1-4].
- 8 33. The Secretary of State became aware that through communications with the MVD  
9 that about one out of ten persons registered in Arizona did not possess a driver's  
10 license. [Kanefield 07/16/08 Tr.706:5-8].
- 11 34. The Secretary of State's office did not ascertain whether or not a person who lacks  
12 a driver's license has state issued ID cards as an alternative. [Kanefield  
13 07/16/08 Tr.706:10-14].
- 14
- 15 35. The Secretary of State did not make any investigation to the extent to which the  
16 proof of citizenship outlined in Proposition 200 is held by individuals in  
17 Arizona. [Kanefield 07/16/08 Tr.706:15-19].
- 18 36. William A. Richards, Senior Litigation Counsel of the Office of the Attorney  
19 General, wrote that the total number of Arizona registered voters in the  
20 database maintained by the Arizona SOS as of July 25, 2006 is 2,972,214. By  
21 comparison, there are only 2,597,619 registered voters for which the database  
22 reflects an identification number from an Arizona driver's license or non-  
23 operating Arizona identification card. [Tr. Ex. 678, pending].  
24  
25  
26

1 37. Older voters who do not drive and no longer have bills in their own names have  
2 been unable to satisfy Proposition 200 identification requirements. [Pl. Tr. Ex.  
3 923 (Hansen 65:4-16)] Several Counties were concerned that older voters,  
4 particularly those in nursing homes, lacked the necessary identification and  
5 would be prevented from voting. [Tr. Exs. 321, 322, pending, 333, pending,  
6 335, pending, 338, pending & 339, pending].  
7

8 38. Pockets of the Tucson Latino community require bus service because large  
9 numbers of people do not have cars. [Rodriguez 8/2/06 Dep. 108:2-10]  
10 (referring to study by Pima County Association of Governments)].  
11

12 39. Furthermore, only persons who own real property will have access to a property  
13 tax statement in their name. [stipulated fact]

14 40. In addition, persons who own a car will have a vehicle insurance card or vehicle  
15 registration form in their name. [stipulated fact]

16 41. There are other U.S. citizens who cannot satisfy the Proposition 200 proof of  
17 citizenship requirements. Such individuals include Native Americans and  
18 others born in jurisdictions that cannot provide them with a birth certificate  
19 (including the mother of Pima County Recorder Ann Rodriguez) [Rodriguez  
20 8/2/06 Dep. 88:23-91:3], and people who were adopted whose original birth  
21 certificate is sealed [Rodriguez 8/2/06 Dep. 121:1-20], and Native Americans  
22 such as Navajos with a cultural belief that photographs are taboo. [Johnson  
23 8/1/06 Dep.31:22-32:17].  
24  
25  
26

- 1 42. Some Native American tribal members, such as members of the Tohono O’odham  
2 Nation living on the reservation, do not have regular street addresses, making it  
3 difficult for them to provide identification that includes their address.  
4 [Rodriguez 8/2/06 Dep. 70:2-15, 71:1-15].  
5
- 6 43. A number of Native Americans have difficulty meeting Proposition 200  
7 identification requirements because they either have no electricity or live in  
8 large households where the utility bills come in someone else’s name, and they  
9 lack photo identification because of the cultural belief that photographs of  
10 people are taboo. [Johnson 8/1/06 Dep. 32:3-33:2; Hansen 8/1/06 Dep. 59:6-  
11 61:7; Tr. Exs. 317, 338, and 339 (all pending)].  
12
- 13 44. Native Americans living on tribal lands are not assessed property taxes and thus  
14 do not have property tax statements they can use as identification. [Hansen  
15 8/1/06 Dep. 46:1-6; Tr. Ex. 317, pending].
- 16 45. The Hopi and Havasupai tribes do not issue tribal identification that contains a  
17 name, address, and photograph. [Hansen 8/1/06 Dep. 39:21-25, 40:8-12].
- 18 46. Older Navajos are likely to have been born at home, and thus lack birth certificates  
19 and in many cases do not know the actual date of their birth. [Hansen 8/1/06  
20 Dep. 23:1-18; Tr. Ex. 330].  
21
- 22 47. Some Native American tribes, such as the Tohono O’odham, do not issue birth  
23 certificates. [Rodriguez 8/2/06 Dep. 41:19-24]. Many members of the Tohono  
24 O’odham Nation do not have driver’s licenses or birth certificates. [Rodriguez  
25  
26

1 8/2/06 Dep. 69:12-14; Hansen 8/1/06 Dep. 23:1-18 (Specifically Navajo  
2 Nation); Justman 8/1/06 Dep. 28:7-29:8 (Specifically Navajo Nation).

3 48. Mr. Kanefield and the Secretary of State's Office failed to perform any  
4 investigation to determine whether these additional forms of I.D. exist, or the  
5 extent to which Native Americans in Arizona possess them. [Kanefield  
6 07/17/08 Tr. p. 743:8-13].

7  
8 49. Maricopa County is not aware of any tribal identification cards that include the  
9 individual's address. [Osborne 7/31/06 Dep.49:8-13].

10 50. The only place to get a Recorder's Certificate is from the county recorder's office.  
11 [Osborne 7/31/06 Dep. 56:16-23].

12 51. There are some individuals who are derivative naturalized citizens, but do not  
13 possess a certificate of citizenship. Under certain circumstances, a child of a  
14 U.S. citizen parent becomes a U.S. citizen by operation of law without  
15 soliciting citizenship. 8 USC § 1431. These individuals have neither a birth  
16 certificate nor a naturalization certificate. They have no proof of U.S.  
17 citizenship unless they make an affirmative application for a certificate of  
18 citizenship from the federal government.

19  
20 52. Arizona and other states in the United States charge fees for obtaining a birth  
21 certificate. [Tr. Exs. 672, 673, 675 (all pending)].

22  
23 53. The total charge as of August 2006 for obtaining a passport is \$97.00. [Tr. Ex.  
24 674, pending]. The price has risen since that time and Plaintiff Jesus Gonzalez  
25 paid \$112.00. [J. Gonzalez 7/10/08 Tr. 227:45].

26

- 1 54. The Secretary of state made did not make any investigation as to how much it  
2 costs to apply for a passport. [Kanefield 07/16/08 Tr.705:23-25].
- 3 55. The fees for an Arizona driver's license vary depending upon the age of the  
4 applicant. [Tr. Ex. 676, pending].
- 5 56. There is a \$4.00 charge for obtaining a replacement or duplicate driver license or  
6 identification card in Arizona. [Tr. Exs. 676, pending, 677, pending].
- 7 57. The Arizona Notary Public Reference Manual lists a \$2.00 fee for notarized  
8 documents. [Tr. Ex. 671, pending].
- 9 58. Furthermore, the Immigration and Naturalization Service explains that it can take  
10 a year and a half to receive a duplicate copy of a Naturalization Certificate, in  
11 which time there can be as many as eight elections in Arizona. [Osborne  
12 7/31/06 Dep. 47:6-48:3].
- 13 59. Maricopa County explained in their preclearance submission to the Department of  
14 Justice that they anticipated Proposition 200 to affect Native Americans,  
15 Latinos, and elderly voters because they may lack the necessary documents to  
16 comply with the statute's voter identification requirements. [Osborne 7/31/06  
17 Dep. 77:14-78:22].
- 18 60. The Maricopa County Elections Director, Karen Osborne, admitted that since Prop  
19 200's provisions and requirements went into effect, United States citizens  
20 eligible to register to vote and living in Maricopa County have been unable to  
21 register because they lack the necessary documents. [Osborne 7/31/06 Dep.  
22 43:12-44:9].
- 23  
24  
25  
26

1 61. Karen Osborne, Maricopa County Elections Director, related a story of a woman  
2 caught in between the law’s requirements who was unable to register to vote at  
3 the Maricopa County Recorder’s Office. She had just moved and did not have  
4 her birth certificate, a passport, or an Arizona driver’s license [*Id.*].

5 **c. Prop 200’s Provisions Related to Voter ID**

6  
7 62. Section 5 of Proposition 200 amends Section 16-579 of the Arizona Revised  
8 Statutes to provide that before receiving a ballot, every qualified elector “shall  
9 present one form of identification that bears the name, address and photograph  
10 of the elector or two different forms of identification that bear the name and  
11 address of the elector.” [Tr. Ex. 1].

12  
13 63. The “Procedure for Proof of Identification at the Polls,” issued by Secretary of  
14 State Brewer on September 6, 2005, provides that acceptable forms of voter  
15 photo identification include: a valid Arizona driver license; valid Arizona  
16 nonoperating identification license; tribal enrollment card or other form of  
17 tribal identification; valid United States federal, state, or local government  
18 issued identification. These forms of identification are not acceptable for  
19 voting unless they bear the same address as that listed in the rolls for the voter.  
20 [Dastrup 8/1/06 Dep. 25:16-25:22; Hoyos 1/16/08 Dep. 22:5-25:5; Kanefield  
21 7/25/06 Dep. 108:6-109:11; Osborne 7/31/06 Dep. 30:8-20, 49:20-50:19;  
22 Stallworth 1/18/08 Dep. 20:5-17].

23  
24 64. The “Procedure for Proof of Identification at the Polls” further provides that  
25 acceptable forms of voter non-photo identification includes: a utility bill of the  
26

1 elector that is dated within ninety days of the date of the election; bank or  
2 credit union statement that is dated within ninety days of the date of the  
3 election; valid Arizona Vehicle Registration; Indian census card; property tax  
4 statement of the elector's residence; tribal enrollment card or other form of  
5 tribal identification; vehicle insurance card; Recorder's Certificate; or valid  
6 United States federal, state, or local government issued identification,  
7 including a voter registration card issued by the county recorder. These forms  
8 of identification are not acceptable for voting unless they bear the same address  
9 as that listed in the rolls for the voter. [Dastrup 8/11/06 Dep. 9:23-10:14,  
10 17:10-24, 26:3-6, 27:15-28:2; Hoyos 1/16/08 Dep. 29:16-30:14; Osborne  
11 7/31/06 Dep. 52:10-53:23, 54:21-58:14; Tr. Ex. 638 pending].

12  
13  
14 65. The Counties' implementation of voter ID provisions under Prop 200 is  
15 substantially the same as the State's implementation. For example, in order to  
16 vote using a regular ballot with only photo identification, the voter must  
17 present an identification issued by Arizona's Motor Vehicle Department that  
18 contains the same address listed in the voter rolls. [Osborne 7/31/06 Dep.  
19 50:5-12].

20  
21 66. The Secretary of State instructed the Counties that when poll workers are  
22 presented with ID from a prospective voter, the address on the ID should match  
23 the address on the voter rolls. [Kanefield 7/16/08 Tr. 707: 3-6].

24 67. The Secretary of State instructed the Counties that when a voter presents a valid  
25 ID which lists an address that does not match the voter's address on the voting  
26

1 rolls, that voter should not be given a conditional provisional ballot, but instead  
2 that they should be given a regular provisional ballot. [Kanefield 07/16/08 Tr.  
3 707:13-708:18; Tr. Ex. 500 at 28; Tr. Ex. 502 at 21 & 29; Tr. Ex. 518].

4  
5 68. The Secretary of State instructed promulgated instructions for when a voter  
6 presents a valid photo ID that bears a slightly different name to the name that is  
7 listed in the voter rolls. The Secretary of State's Election Procedures Manual  
8 instructs poll workers to make a determination as to whether it is the same  
9 person, and provides guidance on how to make this determination. This  
10 situation arises frequently when a woman has married and changed her  
11 surname. [Kanefield 07/16/08 Tr. 708:19-709:10].

12  
13 69. The text of Proposition 200, however, does not require in its text that the address  
14 on the voter's identification match the address on the voter rolls. [Kanefield  
15 07/16/08 Tr.706:20-24].

16  
17 70. The text of Proposition 200 does not require government-issued photo  
18 identification. That requirement was added later by the Secretary of State.  
19 [Kanefield 7/25/06 Dep. 108:6-109:11].

20  
21 71. Although not prohibited by the text of Prop 200, out-of-state driver's licenses are  
22 not accepted by counties as valid identification at the polls. [Hoyos 1/16/08  
23 Dep. 22:21-23].

24  
25 72. In the situation where the address on the voter's identification does not match their  
26 address on the voter rolls, State procedures instruct the poll workers to  
ascertain whether the name is different because of a recent marriage or name

1 change, and if so, to make a note of that and to provide that person a regular  
2 provisional ballot. [Kanefield 7/25/06 Dep. 125:13-21].

3 73. The most recent Secretary of State Elections Procedure Manual is dated October  
4 30th of 2007. It was approved both the Arizona Governor and the Arizona  
5 Attorney General. [Kanefield 1/11/08 Dep. 5: 20-24].

6  
7 74. Joe Kanefield, the Arizona State Elections Director, stated that the Secretary of  
8 State began developing its procedures for proof of ID, in a document entitled  
9 “the Procedure For Proof of Identification at the Polls,” in December of 2004  
10 in anticipation of Proposition 200 being precleared by the Department of  
11 Justice. Mr. Kanefield also stated that the process for creating his office’s ID  
12 procedures took several months. [Kanefield 7/25/06 Dep. 18:9-12; Kanefield  
13 7/25/06 Dep. 17:6- 10].

14  
15 75. Mr. Kanefield stated that the Procedure For Proof of Identification at the Polls  
16 constitutes the primary implementing mechanism for Proposition 200, and that  
17 no other procedures exist. [Kanefield 7/25/06 Dep. 17:15-21].

18 76. The Secretary of State approved the final version of the Procedure For Proof of  
19 Identification at the Polls. [Kanefield 7/25/06 Dep. 22:17-20].

20  
21 77. The Procedure For Proof of Identification at the Polls creates guidance from the  
22 Secretary of State to election officials as to what forms of identification might  
23 suffice under Proposition 200. These procedures set forth forms of  
24 identification that were in existence at the time it was promulgated and that  
25  
26

1           were deemed acceptable for satisfying the intent of Prop 200. [Kanefield  
2           7/25/06 Dep. 19:13-20:3].

3  
4       78. The State's procedures for proof of identification allow the county election  
5           directors discretion to deem what forms of identification are acceptable under  
6           Prop 200.

7  
8       79. According to Mr. Kanefield, counties were given this discretion because the state  
9           recognized that the acceptable forms of identification might change as time  
10          went on. [Kanefield 7/25/06 Dep. 19:13-20:3; Kanefield 7/25/06 Dep. 20:10-  
11          11].

12  
13       80. The Secretary of State did not consider the costs associated with at least some of  
14          the forms of identification when it promulgated its procedures for proof of  
15          identification. [Kanefield 7/25/06 Dep. 60:19-21].

16  
17       81. Mr. Kanefield stated the Secretary of State was aware that one out of ten  
18          registered voters in Arizona did not possess a driver's license. [Kanefield  
19          7/25/06 Dep. 91:11-13].

20  
21       82. The Secretary of State did not ascertain whether most persons who lack driver's  
22          licenses have a state-issued identification card. [Kanefield 7/25/06 Dep. 114:4-  
23          9].

24  
25       83. Nothing in the Procedure For Proof of Identification at the Polls requires the  
26          Counties to provide forms of non-photo identification to voters. [Kanefield  
27          7/25/06 Dep. 119:18-24].

1 84. Although the Secretary of State concluded that the regular provisional ballot  
2 process sufficiently protected against voter fraud because it provided for  
3 signature verification, it did not provide guidance for signature verification as  
4 an alternative to returning with voter ID. [Kanefield 7/25/06 Dep. 126:10-16].  
5

6 85. Under the Secretary of State's procedures for proof of identification at the polls, if  
7 the voter provides no identification, he is issued a conditional provisional  
8 ballot. Further Mr. Kanefield stated that a conditional provisional ballot is the  
9 same as a provisional ballot, except that when a conditional provisional ballot  
10 is sent back to the County Recorder's office, it is not processed in accordance  
11 with the procedures for processing a provisional ballot. Rather, a conditional  
12 provisional ballot is held until the voter comes in and provides sufficient  
13 identification, at which time it then goes through the normal procedures for  
14 processing a provisional ballot. [Kanefield 7/25/06 Dep. 61:23-62:11].  
15

16 86. One change the Secretary of State made to Elections Procedure Manual concerned  
17 the combining of the provisional ballot processing procedure with the  
18 identification at the polls procedure. According to Joseph Kanefield, these  
19 procedures were combined because if an elector is unable to present sufficient  
20 identification at the polls, he or she must vote using a provisional ballot.  
21 [Kanefield 1/11/08 Dep. 6: 12-19].  
22

23 87. According to the Secretary of State, counties must include the voter's residential  
24 address as well as the voter's post office box address in the polling place  
25  
26

1 signature rosters if that information has been provided to the County Recorder.  
2 [Kanefield 1/11/08 Dep. 43: 11-17].

3 88. The Arizona Election Procedures Manual provides that if the elector presents only  
4 one form of identification that bears the name and address of the elector  
5 without a photograph of the elector, the elector shall be issued a conditional  
6 provisional ballot. [Tr. Ex. 4 at 129].  
7

8 89. The Arizona Election Procedures Manual provides that if the elector has moved  
9 within the precinct and, therefore, his or her name is on the register but the  
10 address on the identification[s] are not the same as the address on signature  
11 roster, the elector shall be issued a provisional ballot. [Tr. Ex. 4 at 130].  
12

13 90. The Arizona Election Procedures Manual provides that if a person's name is on  
14 the inactive voter list, the person shall orally affirm that the voter resides at the  
15 address listed on the inactive voter list. The voter's signature shall be entered  
16 on the inactive voter signature roster page at the end of the signature roster.  
17 [Tr. Ex. 4 at 130].

18 91. The Arizona Election Procedures Manual provides that if a poll worker is unable  
19 to locate the elector's name on the signature roster, inactive voter list, or add-  
20 on list after the elector presents one form of identification that bears the name,  
21 address, and photograph of the elector or two different forms of identification  
22 that bear the name and address of the elector, the elector shall be permitted to  
23 vote using a provisional ballot after the election official has: verified the  
24 voter's address on the precinct map to make sure it is within the precinct, and  
25  
26

1 determined whether the voter has recently moved within the county. [Tr. Ex. 4  
2 at 130].

3 92. The Arizona Election Procedures Manual provides that if the elector presents a  
4 Recorder's certificate to the poll worker, the poll worker shall treat the  
5 Recorder's certificate in the same manner as if the information on the  
6 Recorder's certificate appeared in the signature roster and compare the  
7 elector's identification to the Recorder's certificate. [Tr. Ex. 4 at 130].  
8

9 93. The Arizona Election Procedures Manual provides that if the elector presents one  
10 form of identification that bears the name, address, and photograph of the  
11 elector and the name and address on the identification and the Recorder's  
12 certificate reasonably appear to be the same and the photo reasonably appears  
13 to be the elector, then the elector shall be issued a regular ballot. [Tr. Ex. 4 at  
14 130, 131].  
15

16 94. The Arizona Election Procedures Manual provides that if the name or address on  
17 the identification does not reasonably appear to be the same as the name or  
18 address on the Recorder's certificate or the photo does not reasonably appear to  
19 be the elector, then the elector shall not be issued a regular ballot, but shall be  
20 issued a provisional ballot. [Tr. Ex. 4 at 131].  
21

22 95. The Arizona Election Procedures Manual provides that if the elector presents two  
23 forms of identification, one of which is the Recorder's certificate, that bear the  
24 name and address of the elector without a photograph of the elector, the poll  
25 worker shall compare the name and address on the two pieces of identification  
26

1 with the name and address on the Recorder's certificate. If both pieces of  
2 identification reasonably appear to be the same as the name and address on the  
3 Recorder's certificate the elector shall be issued a regular ballot. [Tr. Ex. 4 at  
4 131].

5  
6 96. The Arizona Election Procedures Manual provides that if the name or address on  
7 either piece of provided identification does not reasonably appear to be the  
8 same as the name and address on the Recorder's certificate then the elector  
9 shall not be issued a regular ballot, but shall be issued a provisional ballot. [Tr.  
10 Ex. 4 at 131].

11  
12 97. The Arizona Election Procedures Manual provides that if the elector has presented  
13 sufficient identification to receive a regular ballot, the poll worker shall add the  
14 elector's name to the next consecutive sequence number at the end of the  
15 signature roster. The poll worker shall then have the elector sign the signature  
16 roster and the poll worker shall give the elector a ballot. [Tr. Ex. 4 at 131].

17  
18 98. The Arizona Election Procedures Manual provides that if the elector has moved  
19 within the precinct and his or her name is on the Recorder's certificate but the  
20 address on the identification[s] is not the same as the Recorder's certificate, the  
21 elector shall be issued a provisional ballot. [Tr. Ex. 4 at 131].

22  
23 99. The Arizona Election Procedures Manual provides that if the elector presents only  
24 the Recorder's certificate as one form of identification that bears the name and  
25 address of the elector without a photograph of the elector, the elector shall be  
26 issued a conditional provisional ballot. [Tr. Ex. 4 at 131].

- 1 100. The Arizona Election Procedures Manual provides that if the voter indicates  
2 that he or she has moved within the county and the voter presents one form of  
3 identification that bears the name, address, and photograph of the elector or  
4 two different forms of identification that bear the name and address of the  
5 elector, the voter shall be permitted to vote using a provisional ballot. [Tr. Ex.  
6 4 at 132].  
7
- 8 101. The Arizona Election Procedures Manual provides that a voter who moves  
9 from the address at which he/she is registered to another address within the  
10 same county and who fails to notify the County Recorder of the change of  
11 address before the date of an election shall be permitted to correct the voter  
12 registration records at the appropriate polling place for the voter's new address  
13 and be permitted to vote using a provisional ballot. [Tr. Ex. 4 at 132].  
14
- 15 102. The Arizona Election Procedures Manual provides that in areas of the state  
16 where residence street addresses are not assigned, the voter shall orally provide  
17 their residence location within the voting precinct. [Tr. Ex. 4 at 132].  
18
- 19 103. The Arizona Election Procedures Manual provides that a person who is  
20 dropping off any early ballot at a precinct voting location is not required to  
21 show identification. [Tr. Ex. 4 at 133].  
22
- 23 104. The Arizona Election Procedures Manual provides that voters who vote using  
24 early ballots do not need to vote using a provisional ballot. [Tr. Ex. 4 at 133].  
25
- 26 105. The Arizona Election Procedures Manual provides that if the voter has the  
early ballot in his or her possession but insists on voting using a provisional

1 ballot issued at the polling place, the voter may vote after providing acceptable  
2 identification. [Tr. Ex. 4 at 133].

3 106. The Arizona Election Procedures Manual provides that if the voter has  
4 changed his/her name and address, the voter must indicate their new name and  
5 their former name on the provisional ballot form. The provisional ballot form  
6 will be used by the Recorder to change the voter's name and address on the  
7 registration rolls. [Tr. Ex. 4 at 134].

9 107. The Arizona Election Procedures Manual provides that the official signature  
10 rosters for use at the polling places shall include the elector's residence address  
11 and the mailing address, if different from the residence address, from the  
12 elector's registration form. [Tr. Ex. 4 at 134-135].

13 108. The Arizona Election Procedures Manual provides that identification bearing  
14 the mailing address of the elector is sufficient identification if the name and  
15 address reasonably appear to be the same as the elector's name and address  
16 contained in the signature roster or Recorder's certificate. [Tr. Ex. 4 at 135].

17 109. The Arizona Election Procedures Manual provides that an elector who  
18 identifies himself or herself as a member of a federally recognized Native  
19 American tribe and who does not provide one form of identification that bears  
20 the name, address, and photograph of the elector or two different forms of  
21 identification that bear the name and address of the elector shall be issued a  
22 provisional ballot upon presenting one form of tribal identification that bears  
23 the name of the elector. [Tr. Ex. 4 at 135].  
24  
25  
26

1 110. The Arizona Election Procedures Manual provides that if an elector does not  
2 provide the required identification, the elector shall be issued a conditional  
3 provisional ballot. The conditional provisional ballot shall be placed in a  
4 provisional ballot envelope. The provisional ballot envelope shall indicate that  
5 the elector did not provide identification. [Tr. Ex. 4 at 135].  
6

7 111. The Arizona Election Procedures Manual provides that the poll worker shall  
8 notify the elector that he or she must provide identification to the County  
9 Recorder or to an official deemed acceptable by the County Recorder. [Tr. Ex.  
10 4 at 135].

11 112. The Arizona Election Procedures Manual requires that the proof of  
12 identification must be received by the County Recorder's office by 5:00 p.m.  
13 on the fifth business day after a general election that includes an election for a  
14 federal office, or 5:00 p.m. on the third business day after any other election  
15 for the provisional ballot to be processed and counted. [Tr. Ex. 4 at 135].  
16

17 113. The Arizona Election Procedures Manual requires that the oath statement on  
18 the signature roster include a statement that the poll worker obtained valid  
19 proof of identification from every elector, or if identification was not  
20 presented, that the provisional ballot envelope was marked appropriately to  
21 indicate that the conditional provisional ballot was used because the elector did  
22 not present identification. [Tr. Ex. 4 at 135].  
23  
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1 114. Secretary of State’s office has taken the position that Proposition 200 does not  
2 apply to the mail balloting process or in the early voting process, only to voting  
3 at the polls. [Kanefield 1/16/08 Dep. 107:24-108:5].

4 115. The Maricopa County Elections Director admitted that the system of  
5 identification and determining who receives a conditional provisional ballot  
6 and who receives a regular provisional ballot is confusing. [Osborne 7/31/06  
7 Dep. 81:16; Tr. Ex. 229, 231, pending].

8 116. Employers are not required to give employees time off for a trip to a county  
9 office to provide verification for their conditional provisional ballot. [Osborne  
10 7/31/06 Dep. 73:16-19].

11  
12 **II. Prop 200 Imposes Greater and More Difficult Burdens on Naturalized**  
13 **Citizens**

14  
15 **a. The Text of Prop 200 Treats Naturalized Citizens Differently**

16 **i. Prop 200 Requires In-Person Presentation of the**  
17 **Naturalization Certificate**

18 117. Proposition 200 specifically requires the physical presentation of only one  
19 document – the naturalization certificate -- as opposed to a photocopy of other  
20 documents such as a birth certificate or passport. (Tr. Ex. 14).

21  
22 118. The Secretary of State’s office has always interpreted the language “a  
23 presentation to the County Recorder” in Prop 200 to mean that the  
24 naturalization certificate must be presented and not copied, as reflected in the  
25  
26

1 language of the law. (Tr. Ex. 4 at 48; Kanefield 7/16/08 Tr. 699:17-25; 7/17/08  
2 Tr. 765:20-766:8; 1/11/08 Dep. 15:11-23].

3 119. The Secretary of State interprets Proposition 200 to state that a photocopy of  
4 the naturalization certificate is insufficient to satisfy Proposition 200's  
5 presentation requirement. The Secretary of State determined that certificate of  
6 naturalization must be presented in person in order to establish evidence of  
7 citizenship. [Kanefield 07/16/08 Tr.699:17-25; Kanefield 07/17/08 Tr. 765:20-  
8 766:8].

10 120. In January 2005, Joe Kanefield determined that if USCIS could not verify  
11 one's status by inquiry of their certificate of naturalization number, then  
12 presentation of naturalization documents would be necessary. (Tr. Ex. 305).

13 121. The Arizona Election Procedures Manual requires that the correspondence to  
14 notify the registrant that further citizenship proof may be necessary shall  
15 indicate that the registrant may present his or her naturalization papers to the  
16 Recorder to satisfy the proof of citizenship requirement. (Tr. Ex. 4 at 47).

18 122. If the County Recorder's staff has seen the registrant's original naturalization  
19 certificate, the certificate number is not confirmed with the federal  
20 government. (Rodriguez 8/2/06 Dep. 62:4-11; Rodriguez 1/22/08 Dep. 35:5-  
21 12; Hansen 8/1/06 Dep. 27:6-14; Altaha 1/14/08 Dep. 20:12-21:23).

23 **ii. Prop 200 Requires That Only the Naturalization Certificate is**  
24 **Subject to Third Party Verification.**

25 123. Proposition 200 states that the only citizenship document that must be verified  
26 by the County Recorder is the certificate of naturalization. (Tr. Ex. 1).

1 124. Maricopa County Elections Director Karen Osborne testified before the U.S.  
2 Committee on House Administration that among the documents that a voter  
3 registrant can use to prove their citizenship - an Arizona driver's license or  
4 Arizona non-operator identification issued after October 1996, U.S. Passport,  
5 U.S. Birth Certificate, Tribal Identification or Naturalization Certificate - only  
6 the Naturalization Certificate must be confirmed prior to processing the voter  
7 registration. (Pending Tr. Ex. 310).  
8

9 125. When eligible voter registrants fills out their voter registration forms using  
10 their certificate of naturalization numbers, they are automatically required to  
11 reapply and take additional steps, such as providing their "A number" or  
12 presenting their naturalization certificate in person, in order to register to vote.  
13 [Rodriguez 8/2/06 Dep. 65:9-21, 66:14-20; Hansen 8/1/06 Dep. 29:21-30:5;  
14 Osborne 7/31/06 Dep. 36:2-16; Dean-Lytle 1/16/08 Dep. 54:18-55:6, 68:13-  
15 69:2; Justman 1/8/06 Dep. 27:4-24].  
16

17 126. The Arizona Election Procedures Manual also provides that if the alien  
18 registration number from the certificate of naturalization is provided for  
19 citizenship purposes, the number shall be verified with the United States  
20 Citizenship and Immigration Services before the registrant may be added to the  
21 registration rolls. (Tr. Ex. 4 at 47).  
22

23 127. The Arizona Election Procedures Manual requires that voters registered at a  
24 naturalization ceremony from outside the county must have their voter  
25 registrations bundled by county and sent them to the County Recorder with an  
26

1 official cover letter stating that all alien registration numbers were verified by  
2 County Recorder personnel. (Tr. Ex. 4 at 49).

3 128. Based on the recommendations of the VRAZ II County Advisory Committee,  
4 other Counties should accept in-person voter registration forms which are filled  
5 out at swearing in ceremonies. These forms are to be accepted as long as the  
6 registrant's A number, initials on the form and date are verified by county  
7 personnel. (Tr. Ex. 166).

9 129. The Arizona Election Procedures Manual requires that if after 120 days, the  
10 registrant has not provided a valid alien registration number, the County  
11 Recorder shall send the registrant correspondence stating that the registration  
12 form has been rejected and the reason why along with a new voter registration  
13 form. (Tr. Ex. 4 at 47).

15 130. By contrast, The Secretary of State's office does not instruct the Counties that  
16 they should verify a birth certificate or verify pages of a United States passport.  
17 (Kanefield 1/11/08 19:25-20:4; 20:25-21:17).

18 131. The Arizona Election Procedures Manual also provides that a legible  
19 photocopy of pertinent pages of the registrant's United States passport is  
20 considered proof of citizenship. The pertinent pages of a United States  
21 passport are considered the pages that contain the passport number, name,  
22 nationality, date of birth, gender, place of birth, and signature. (Tr. Ex. 4 at  
23 48).  
24  
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1 132. The Counties do not verify photocopies of birth certificates or U.S. passports  
2 that they receive with voter registrations. (Rodriguez 1/22/08 Dep. 86:23-87:6;  
3 Dean-Lytle 1/16/08 Dep. 50:8-17; Osborne 1/14/08 Dep. 50:10-21; Wayman-  
4 Trujillo 1/9/08 Dep. 63:8-16, 64:7-13, 64:19-65:1; Rodriguez 1/22/08 Dep.  
5 87:7-87:10; Dean-Lytle 1/16/08 Dep. 50:21-23; Osborne 1/14/08 Dep. 50:22-  
6 25).

7  
8  
9 **b. Following Passage of Prop 200, the Secretary of State Changed**  
10 **the Voter Registration Form.**

11 133. The Secretary of State is responsible for changes made to the state voter  
12 registration form and ensures that any new forms are properly approved before  
13 they are used. The Secretary of State often takes suggestions from County  
14 Recorders and other election officials when deciding to change the voter  
15 registration form. (Wayman-Trujillo 1/9/08 Dep. 24:15-22).

16 134. Joseph Kanefield is the State Election Director for the Secretary of State.  
17 (Kanefield 7/25/06 Dep. 14:11-13) He works in the Election Services Division  
18 which is one of the divisions of the Secretary of State's office. (Kanefield  
19 7/25/06 Dep. 15:17-18).

20  
21 135. The Election Services Division of the Secretary of State's office has a staff of  
22 ten or eleven people. The office certifies federal and statewide legislative  
23 candidates for the ballot. They oversee the state campaign finance system and  
24 filing structure. The office also receives initiative referendum filings for  
25 statewide measures. The office works with the Counties on election matters.  
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The office drafts the instructions and procedures manual, which the Counties follow in administering their elections. The office certifies voting equipment and performs logic and accuracy tests on the voting equipment prior to the elections. (Kanefield 7/25/06 Dep. 14:20-15:9).

136. The Secretary of State, as well as the counties, produce and distribute hard copies of the voter registration form to the public. (Kanefield 1/11/08 Dep. 12:20-22; Osborne 1/14/08 16:12-16).

137. The Secretary of State’s Election Procedures Manual provides the instructions for processing voter registration forms. [Kanefield 07/16/08 Tr. 696:2-11].

138. With respect to the citizenship requirement, the Secretary of State’s office promulgated a new voter registration form that reflected the new requirements to properly instruct voters registering that they would now need to provide evidence of citizenship. That process took several months of working with the Counties and other interest groups. (Kanefield 7/25/06 Dep. 16:20-17:2).

139. The 2004 publicity pamphlet published by the Secretary of State that lays out the text of Proposition 200 and states that the certification of naturalization number can be provided as one form of proof of citizenship for registering to vote. [Kanefield 07/16/08 Tr. 697:1-20].

140. Proposed changes to the Arizona Voter Registration Form pursuant to Proposition 200 included a paragraph to instruct the registrant on new proof of citizenship requirements, and changed the formatting to simplify the form as

1 much as possible while properly instructing the registrant how to complete a  
2 voter registration form. (Pending Tr. Ex. 125).

3 141. Mr. Kanefield stated there are no other State regulations relating to the proof of  
4 citizenship requirement, only the revised voter registration form. (Kanefield  
5 7/25/06 Dep. 17:22-25).

6 142. Counties did not start using the registration form reflecting Prop. 200's  
7 citizenship requirements until June 2005, six months after Prop. 200 went into  
8 effect. [Rodriguez 1/22/08 Dep. 44:8-24].

9 143. The Secretary of State, following the passage of Proposition 200 made a  
10 change to the state's voter registration form to include box 20 that specifically  
11 requests the certificate of naturalization number. [Kanefield 07/16/08  
12 Tr.697:22-698:2].

13 144. It is possible that a new Secretary of State could return to the literal text of  
14 Proposition 200 and ask for the certificate of naturalization number on voter  
15 registration forms. [Kanefield 07/16/08 Tr. 718: 14-18].

16  
17  
18 **c. Following Passage of Prop 200, the Secretary of State Updated**  
19 **its Elections Procedures Manual**

20 145. The Arizona Election Procedures Manual requires that every qualified elector  
21 is required to show proof of identity at the polling place before receiving a  
22 ballot. [Tr. Ex. 4 at 127].

23 146. The Arizona Election Procedures Manual requires that the elector announce  
24 his/her name and place of residence to the election official and present one  
25 form of identification that bears the name, address, and photograph of the  
26

1 elector or two different forms of identification that bear the name and address  
2 of the elector. [Tr. Ex. 4 at 127].

3 147. The Arizona Election Procedures Manual provides that an elector who does not  
4 provide one form of identification that bears the name, address, and  
5 photograph of the elector or two different forms of identification that bear the  
6 name and address of the elector shall not be issued a regular ballot, but shall  
7 receive a conditional provisional ballot. [Tr. Ex. 4 at 127, 128].

9 148. The Arizona Election Procedures Manual provides that if the elector identifies  
10 himself or herself as a Native American, the elector shall be processed under a  
11 procedure titled "Identification Requirements for Native American Electors,"  
12 all others shall be processed under the procedure for Conditional Provisional  
13 Ballots. [Tr. Ex. 4 at 128].

15 149. The Arizona Election Procedures Manual provides that identification is  
16 deemed valid unless it can be determined on its face that it has expired. [Tr.  
17 Ex. 4 at 128].

18 150. The Arizona Election Procedures Manual provides that a utility bill is limited  
19 to electric, gas, water, solid waste, sewer, telephone, cellular phone, or cable  
20 television. [Tr. Ex. 4 at 128].

21 151. The Arizona Election Procedures Manual provides that if the elector has  
22 provided the acceptable form of identification[s], the poll worker shall  
23 compare the information on the identification[s] with the information the  
24 elector announced. If the name on the identification[s] reasonably appears to  
25

1 be the same as the announced name, the poll worker shall compare the  
2 identification to the signature roster, inactive voter list, or add-on list. If the  
3 name on the identification[s] does not reasonably appear to be the same as the  
4 announced name, the elector shall be provided a conditional provisional ballot.  
5 [Tr. Ex. 4 at 129].  
6

7 152. The Arizona Election Procedures Manual provides that if the elector presents  
8 two forms of identification that bear the name and address of the elector  
9 without a photograph of the elector, the poll worker shall compare the name  
10 and address on the two pieces of identification with the name and address on  
11 the signature roster. If both pieces of identification reasonably appear to be the  
12 same as the name and address on the signature roster, inactive voter list or add-  
13 on list the elector shall be issued a regular ballot. If the name or address on  
14 either piece of provided identification does not reasonably appear to be the  
15 same as the name and address on the signature roster then the elector shall not  
16 be issued a regular ballot, but shall instead be issued a provisional ballot. [Tr.  
17 Ex. 4 at 129].  
18  
19

20 **i. The Secretary of State Made Clear that Naturalization**  
21 **Certificates Cannot be Photocopied to Satisfy Prop 200**  
22

23 153. Joseph Kanefield stated that the naturalization certificate should always be  
24 presented in person and that the document shall never be copied. Mr.  
25 Kanefield states that if anyone has ever interpreted that the naturalization  
26

1 certificate can be copied, he wanted to know about it because he does not  
2 believe that reflects the language of the law. [Kanefield 1/11/08 Dep. 15:11-  
3 19].

4 154. The certificate of naturalization states that it is punishable by U.S. law to copy,  
5 print or photograph the certificate. (Tr. Ex. 711).  
6

7 155. The Government Printing Office has language on the certificate of  
8 naturalization stating that the certificate cannot be reproduced. (Quinn 4/22/08  
9 Dep. 75:20-22).

10 156. The naturalization certificate states that it is a violation of law to photocopy or  
11 duplicate the certificate. (Ratliff 4/22/08 Dep. 81:16-19)  
12

13 157. Federal law criminalizes the copying of a naturalization certificate “without  
14 lawful authority.” 18 U.S.C. § 1426 (h) provides:

15           Whoever, without lawful authority, prints, photographs,  
16 makes or executes any print or impression in the  
17 likeness of a certificate of arrival, declaration of  
18 intention to become a citizen, or certificate of  
19 naturalization or citizenship, or any part thereof - Shall  
20 be fined under this title or imprisoned not more than 25  
21 years (if the offense was committed to facilitate an act of  
22 international terrorism (as defined in section 2331 of this  
23 title)), 20 years (if the offense was committed to  
24 facilitate a drug trafficking crime (as defined in section  
25 929(a) of this title)), 10 years (in the case of the first or  
26 second such offense, if the offense was not committed to  
facilitate such an act of international terrorism or a drug  
trafficking crime), or 15 years (in the case of any other  
offense), or both.

158. Only a few counties accept photocopies of a naturalization certificate as proof  
of citizenship, despite Secretary of State guidance not to accept photocopies of

1 naturalization documents and warnings on the face of the documents  
2 themselves that photocopying them is illegal. [Rodriguez 8/2/06 Dep. 63:5-7;  
3 Dean-Lytle 1/16/08 Dep. 53:2-6; Hansen 8/1/06 Dep. 27:20-23; Osborne  
4 7/31/06 Dep.39:22-25; Osborne 1/14/08 Dep. 31;9-14; Tr. Ex. 218, 220, 223,  
5 413; Dean-Lytle 1/16/08 Dep. 53:2-13; Marin 1/18/08 Dep. 43:12-43:15].

6  
7 159. However, some counties do not inform the public that they will accept  
8 photocopies of naturalization certificates. (*See* Tr. Exs. 282, 284 (listing  
9 photocopies as acceptable for all documents except naturalization papers)).

10 160. Some county officials know that it is illegal to copy a naturalization certificate  
11 without lawful authority. (Rodriguez 8/2/06 Dep. 64:4-10; Marin 1/18/08 Dep.  
12 44:13-45:6).

13  
14 161. Pinal County has knowledge that naturalized citizens attempting to register to  
15 vote were concerned that their naturalization certificate indicated that they  
16 could not duplicate or copy it. (Tr. Ex. 291).

17 162. Pinal County notified Joe Kanefield, State Election Director for Arizona, and  
18 Craig Stender that registrants who were naturalized U.S. citizens were  
19 concerned that the face of their naturalization certificate indicated that they  
20 could not copy it. (Tr. Ex. 291).

21  
22 163. The Pima County Recorder's Office specifically noted in its educational  
23 materials that "federal law prohibits making a photocopy of a Naturalization  
24 certificate." (Tr. Ex. 18).

1                    **ii.     The Secretary Changed its Procedures Manual to Require**  
2                    **Counties to use the SAVE Program to Verify Citizenship**

3                    164.    Jan Brewer made a request on January 12, 2005 to Stephen Fickett, District  
4                    Director for the Phoenix District of USCIS to help implement A.R.S. § 16-  
5                    166(F)(4), the section that relates to verification of the naturalization  
6                    certificate. She requested instituting a procedure that would involve the county  
7                    records transmitting the number of the certificate of naturalization provided by  
8                    registrants. (Tr. Ex. 107)

9  
10                  165.    On June 9, 2005, all Counties in Arizona were ordered by the SOS to establish  
11                  an account with USCIS and sign an MOU to access SAVE. (Pending Tr. Ex.  
12                  306).

13  
14                  166.    The Elections Procedures Manual instructs the County Recorder's Office to  
15                  enter into an agreement with federal immigration authorities to create a  
16                  connection between the county and the SAVE database, and this verification is  
17                  done independently and separately from VRAZ. [Kanefield 07/16/08 Tr.,  
18                  735:17 – 22 and Tr. Ex. 4 at 47].

19                  167.    According to USCIS, the Systematic Alien Verification for Entitlements  
20                  Program (SAVE) is used primarily to verify noncitizen eligibility for public  
21                  benefits. (Ratliff 4/22/08 Dep. 20:17-20).

22  
23                  168.    The SAVE program runs a database called the Verification Information System  
24                  (VIS). VIS is not a primary source database. It is comprised of nightly  
25                  uploads of information from primary source databases. The primary databases  
26

1 are in the USCIS Central Index System, which is referred to as CIS. (Ratliff  
2 4/22/08 Dep. 14:8-17).

3 169. The VIS database does not contain all of the information about a particular  
4 alien that is found in the Central Index System. (Ratliff 16:18-20)The VIS  
5 database also does not contain an alien's status history. The database only  
6 contains current status information. (Ratliff 4/22/08 Dep. 18:19-20).  
7

8 **1. The Secretary of State and Counties are Aware that Naturalizations**  
9 **are not Reflected in SAVE for two Weeks or Longer.**

10  
11 170. According to USCIS, when a person takes the oath of citizenship, that  
12 information is updated by a person in the local district USCIS office. The  
13 updated information would be entered into the CLAIMS 4 database, which  
14 updates the CIS database. How quickly the CIS database receives this  
15 information is a direct function of how quickly the local office can update the  
16 system in CLAIMS 4. (Ratliff 4/22/08 Dep. 62:1-63:16).  
17

18 171. Once an individual has naturalized, the information is updated by a USCIS  
19 employee in a local field office where the individual resides. The field office  
20 will "close the ceremony," which means update the new information in the  
21 CLAIMS 4 database. Subsequently, that information is input into the Central  
22 Index System database. (Quinn 4/22/08 Dep. 34:4-11).

23 172. Once an adjudicator updates the new information and closes out the file, there  
24 is no further action for the individual who naturalized. The file is sent to  
25 National Archives location. (Quinn 4/22/08 Dep. at 45:4-12).  
26

- 1 173. Files housed at the National Archives remain for seventy five years and  
2 subsequently get destroyed. (Quinn 4/22/08 Dep. at 45:21-46:7).
- 3 174. The State of Arizona had knowledge that USCIS does not immediately update  
4 its databases after a person has naturalized. (Tr. Exs. 304, 307). The Secretary  
5 of State understands that there is a delay in time between the day somebody  
6 takes the oath of U.S. citizenship and the day in which their record is updated  
7 in the SAVE system. .[Kanefield 07/16/08 Tr. 700:1-5 ].
- 9 175. The VRAZ county advisory committee continued to advise Counties to reject  
10 applications that the Recorder could not verify in SAVE, despite knowing that  
11 there was delay between the day a person naturalized and the day the  
12 information was updated into the SAVE system. (Tr. Exs. 304, 307).
- 13 176. The Arizona Election Procedures Manual states that it takes approximately two  
14 weeks from the time after a new citizen takes his or her oath at the citizenship  
15 ceremony before that citizen's alien registration number is placed in the SAVE  
16 database. (Tr. Ex. 4 at 47).
- 18 177. Because of delays in the data entry of citizenship information into SAVE  
19 following naturalization ceremonies, County Recorders are unable to confirm  
20 citizenship of newly-naturalized citizens in SAVE for two weeks or longer.  
21 [Tr. Ex. 4 at 47; Ratliff 4/22/08 Dep. 19:16-19, 32:14-19, 35:13-21, 44:2-4,  
22 54:7-14; Rodriguez 8/2/06 Dep. 61:16-62:3; Rodriguez 1/22/08 Dep. 36:6-  
23 37:13; Marin 1/18/08 Dep. 51:7-9; Osborne 7/31/06 Dep. 99:10-19].
- 24  
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1 178. The Election Procedures Manual states that if the registration is received  
2 within 14 days of the voter registration deadline, the County Recorder shall  
3 notify the registrant that further citizenship proof may be necessary in order to  
4 assure that the voter is registered on time. (Tr. Ex. 4 at 47).

5  
6 179. The Secretary of State's office relied on information from County Recorders  
7 and communications with the local director of the immigration office for the  
8 statement in the Secretary of State's Procedure Manual stating, it takes  
9 approximately two weeks from the time after a new citizen takes his or her  
10 oath at the citizenship ceremony before that citizen's alien registration number  
11 is placed in the SAVE database. (Kanefield 1/11/08 Dep. 16:4-17:8).

12  
13 180. Some of the Counties have been informed that there have been periods in the  
14 past where the SAVE program has fallen behind by at least two weeks or more  
15 in entering the A numbers of recently naturalized citizens. [ Rodriguez 1/22/08  
16 Dep. 36:6-37:13, 80:16-18 Rodriguez 8/2/06 Dep. 1:16-62:3; Marin 1/18/08  
17 Dep. 51:7-9; Osborne 7/31/06 Dep. 99:10-19; Altaha 1-14-08 Dep. 21:16-23].

18 181. In a situation where the County Recorder has received a voter registration  
19 application, and she cannot verify the alien registration number and an election  
20 registration deadline is going to occur within the next two weeks, the Secretary  
21 of State instructs the County Recorder to notify the registrant that further  
22 citizenship proof may be necessary in order to assure that the voter is  
23 registered on time, which is simply asking the County Recorders to notify that  
24 person and inform that person that because of the timing, that person may not  
25  
26

1 be able to verify citizenship through that process. (Kanefield 1/11/08 Dep.  
2 17:19-18:7).

3  
4 **2. The Secretary of State Advised Counties that Counties**  
5 **may Have to Request More Citizenship Proof from**  
6 **Naturalized Applicants.**

7 182. Recognizing that the SAVE system may not reflect the U.S. citizenship status  
8 of recently-naturalized citizens, the Elections Procedures Manual instructs the  
9 County Recorders to advise naturalized citizens that they may have to provide  
10 *additional* documentary proof of citizenship when they register to vote if the  
11 SAVE system cannot confirm their citizenship before the registration deadline  
12 for an upcoming election. (Tr. Ex. 4 at 47).

13  
14 183. The Secretary of State instructs County Recorders that they must reject  
15 applications for voter registration that are not accompanied by satisfactory  
16 proof of citizenship. [Kanefield 7/25/06 Dep. 80:13-17, 81:2-9; Kanefield  
17 07/16/08 Tr. 696:19-22].

18 184. County election officials acknowledge that many of the registrations rejected  
19 for lack of proof of citizenship were for individuals born outside the United  
20 States. [Osborne 7/31/06 Dep. 22:11-24; Johnson 8/1/06 Dep. 14:11-16].

21  
22 185. Mr. Kanefield indicated that there is a two-step process for naturalized citizens  
23 who follow the text of the Arizona voter registration form and provide their  
24 certificate of naturalization number. This process requires the County  
25 Recorder to reject the application and contact the registrant after his  
26

1 application is submitted and ask for his alien registration number. (Kanefield  
2 7/25/06 Dep. 98:23-99:8).

3  
4 **3. SAVE is Designed to Verify Alien Eligibility for Public Benefits, Not**  
5 **Citizenship**

6 186. The SAVE Program was created in response to the congressional enactment of  
7 the Immigration Reform and Control Act and the Personal Responsibility and  
8 Work Opportunity Act, and specifically for the requirement that the  
9 Department of Homeland Security (DHS) establish a system for verifying  
10 immigration status of noncitizen applicants for and recipients of certain types  
11 of federally funded benefits. (Ratliff 4/22/08 Dep. 21:20-22:13).

13 187. Relatively few verifications in the SAVE Program are conducted to determine  
14 U.S. citizenship. (Ratliff 4/22/08 Dep. 23:18-21) Only the State of Arizona  
15 uses the SAVE Program to verify U.S. citizenship for voter registration  
16 purposes. (Ratliff 4/22/08 Dep. 24:1-3).

18 188. The SAVE Program, unlike the E-Verify Program, cannot verify U.S.-born  
19 citizens. (Ratliff 4/22/08 Dep. 20:10-12) Also, the SAVE Program and the E-  
20 Verify Program do not always access the same data. (Ratliff 4/22/08 Dep.  
21 28:12-18).

22 189. Although USCIS uses a form that can be used by state agencies to verify  
23 information about individuals who are applying for a benefit, that form does  
24 not list any possible response that would indicate the person is a naturalized  
25 citizen. (Ratliff 4/22/08 Dep. 35:13-21).  
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**4. SAVE Charges User Fees and as a Result, not all Counties Participate in SAVE, Instead Sending Private Information About Applicants to Other Counties for Verification.**

190. SAVE charges user fees that not all counties are willing to pay. As a result, some counties have withdrawn from the SAVE program and are passing confidential and highly private information about naturalized citizens to workers in other counties in order to verify citizenship status of voter registrants. (Altaha 1/1/4/08 Dep. 30:17-31:6; Wayman-Trujillo 1/9/08 Dep. 57:18-58:12; Ratliff 4/22/08 Dep. 37:4-7).

191. In order for a state or local government agency to be authorized to use the SAVE Program, it must sign a Memorandum of Understanding (MOU). (Ratliff 4/22/08 Dep. 25:7-10) It is a legal requirement that a SAVE Program user have an MOU with the federal government. (Ratliff 4/22/08 Dep. 36:12-15) The MOU serves to protect from the misuse or improper sharing of private information. (Ratliff 4/22/08 Dep. 37:4-7).

192. A separate MOU is required for each county in Arizona. It would be a violation of the federal rules if a county were to use the SAVE Program without an MOU. (Ratliff 4/22/08 Dep. 37:8-19) Every person who has permission to access the SAVE Program is given a password, and if someone were to share their login or password with someone else, it would violate the MOU. (Ratliff 4/22/08 Dep. 45:1-5).

193. Maricopa County was the first county to enter into an MOU on March 15, 2005. (Ratliff 4/22/08 Dep. 72:12-16).

1 194. Maricopa County uses its account with the SAVE database to verify “A  
2 numbers” of voter registration applicants. Occasionally, other Counties  
3 without access to SAVE, including Yavapai County, call or email the  
4 Maricopa County Recorder’s Office and give them an applicant’s private  
5 information in order to have Maricopa County verify A numbers through  
6 SAVE. (Altaha 1/14/08 Dep. 30:17-31:6; Wayman-Trujillo 1/9/08 Dep. 57:18-  
7 58:12).

9 195. As of April 17, 2008 there were only four Arizona Counties that entered into  
10 an MOU to use the SAVE Program. There were four additional Counties that  
11 previously had an MOU but they recently self-terminated. (Ratliff 4/22/08  
12 Dep. 66:20-67:1).

14 196. The Counties of La Paz, Yavapai, Navajo, Coconino and Pinal have never run  
15 a query in the SAVE Program. (Ratliff 4/22/08 Dep. 67:18-68:4).

16 **5. County Recorders Cannot Verify Naturalization Certificate**  
17 **Numbers in SAVE.**

18 197. The Web 1 access method in SAVE, which is used by Counties in Arizona,  
19 only allows queries by A numbers. The query cannot be made by a Certificate  
20 of Naturalization number. (Ratliff 4/22/08 Dep. 19:16-19, 44:2-4). According  
21 to USCIS, the SAVE Program does not allow someone to see or access  
22 information about the number of the Certificate of Naturalization for a  
23 naturalized citizen. (Ratliff 4/22/08 Dep. 32:14-19).

25 198. If there is a non-responsive query in the SAVE Program, the user can follow  
26 through and request additional verification. Then the user would have to wait

1 until DHS conducted a manual search for verification purposes. (Ratliff  
2 4/22/08 Dep. 54:7-14).

3 199. Although the state requested the naturalization certificate number on the first  
4 voter registration application promulgated after the passage of Proposition 200,  
5 the number cannot be verified with the SAVE program, which is the program  
6 used by County Recorders. (Rodriguez 8/2/06 Dep. 54:7-16, 56:14-23, 59:21-  
7 23).

8  
9 200. The Counties must use the “A number” or “Alien registration number” to  
10 verify citizenship with the federal government. [Rodriguez 8/2/06 Dep. 53:12-  
11 54:4, 59:21-23; Marin 1/18/06 Dep. 46:24-47:1; Osborne 1/14/08 Dep. 34:14-  
12 24].

13  
14 201. Joseph Kanefield admitted that certain applicants correctly completed the form  
15 by providing their certificate of naturalization number but that the County  
16 Recorder was unable to verify that number with federal immigration offices.  
17 (Kanefield 1/25/06 Dep. 94:17-23; Kanefield 07/16/08 Tr. 717:24-718:6.

18 202. The Arizona Election Procedures Manual states that the Alien Registration  
19 Number is the only number from a registrant’s naturalization documents that  
20 can be validated against the SAVE system. (Tr. Ex. 4 at 47).

21  
22 203. Mr. Kanefield stated that he was aware that County Recorders had problems  
23 verifying the certificate of naturalization number through the SAVE Program  
24 because the number that is needed for verification in SAVE is the alien  
25  
26

1 registration number. (Kanefield 7/25/06 Dep. 94:3-10; Kanefield 7/16/08 Tr.  
2 698:3-16; Rodriguez 8/2/06 Dep. 59:21-23).

3 204. As a result, when a naturalized citizen properly completes a voter registration  
4 form that asks for the number of the certificate of naturalization, the County  
5 Recorder is unable to verify that number in SAVE and automatically rejects  
6 that voter registration application. (Rodriguez 8/2/06 Dep. 60:18:22).

7  
8 205. Many counties rejected voter registration forms that provided the certificate of  
9 naturalization number. (Rodriguez 8/2/06 Dep. 60:18-22; Hansen 8/1/06 Dep.  
10 29:21-30:5).

11 206. The Counties are aware that there are two numbers on the naturalization  
12 certificates, but are inconsistent in their treatment of the numbers. [Rodriguez  
13 8/2/06 Dep. 57:13-19; Johnson 8/1/06 Dep. 23:25-25:17; Tr. Exs. 257 at 5;  
14 Justman Dep. 8/1/06 Dep. 27:4-24; Wayman-Trujillo 1/9/08 Dep. 39-40]

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16  
17 **iii. The Secretary of State Instructs Counties to Conduct no**  
18 **Verification of Tribal ID Numbers Provided as Proof of**  
19 **Citizenship.**

20 207. Tribal documentation and a tribal number are accepted on their face as valid  
21 proof of citizenship, and the Secretary of State does not provide any additional  
22 guidance to County Recorders on how to recognize a tribal number. [[Dean-  
23 Lytle 1/16/08 Dep. 51:5-7; Osborne 1/14/08 Dep. 36:22-37:6, 51:19-22,  
24 96:23-25, 97:1-12; Johnson 8/1/06 Dep. 20:6-21:3; Marin 1/18/08 Dep. 46:20-  
25 23; Kanefield 1/11/08 Dep. 20; 5-21; Kanefield 7/16/08 Tr. 700:13-19].

1 208. The Secretary of State has not provided any official guidance or advice to  
2 counties on how to recognize a tribal number. [Kanefield 07/16/08 Tr.700:20 -  
3 701:1].

4 209. In addition, the Arizona Election Procedures Manual provides if a registrant  
5 submits tribal documentation or a tribal number on his/her form, it will be  
6 presumed valid as proof of citizenship for voter registration purposes. (Tr. Ex.  
7 4 at 48).  
8

9 210. The Secretary of State's office does not know whether all persons with tribal  
10 documentation or tribal numbers are United States citizens. (Kanefield 1/11/08  
11 Dep. 20: 22-2).

12 211. Yuma County does not take any steps to verify a Bureau of Indian Affairs card  
13 number when it is filled out on the voter registration form as proof of  
14 citizenship. (Marin 1/18/08 Dep. 46:10-13, 16-19).  
15

16 **1. Not all holders of Arizona Tribal ID are U.S. Citizens.**

17  
18 212. The Secretary of State's instructions to accept all tribal identification numbers  
19 on their face assumes that all members of Arizona tribes are U.S. citizens.  
20 (Kanefield 7/16/08 Tr. 701:2-11). However, at least four Arizona tribes include  
21 enrolled members who were born on the Mexico side of the U.S.-Mexico  
22 border and who may not be U.S. citizens. [Kanefield 1/11/08 Dep. 21:22-24;  
23 John Lewis 7/15/08 Tr. 476:22-478:2].  
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1 213. Some Native Americans who possess tribal enrollment cards are not born in  
2 the United States, such as some members of the Tohono O’odham tribe who  
3 were born in Mexico. [Rodriguez 8/2/06 Dep. 41:19-24].

4 **d. Following Passage of Prop 200, the Secretary of State Issued Proof**  
5 **of Citizenship Guidance to the Counties Through VRAZ Advisory**  
6 **Committee.**

7 214. The VRAZ-II County Advisory Committee, which is coordinated by the  
8 Secretary of State, is a conduit for the Secretary of State to inform and guide  
9 counties in implementing the proof of citizenship requirements of Prop 200 as  
10 well as compliance with other rules associated with the statewide voter  
11 registration database. The VRAZ-II County Advisory Committee issued  
12 uniform language that Counties could use to inform registrants that proof of  
13 citizenship needed to be submitted before their voter registration would be  
14 processed. The Committee also informed each county that they would need to  
15 submit their own version of the letter to the Department of Justice for  
16 preclearance and translate the letter into Spanish. [ Tr. Ex. 159].

17  
18 215. The VRAZ-II County Advisory Committee acknowledged that County  
19 Recorders often get requests for information to determine how many voter  
20 registration applications are rejected due to lack of citizenship proof. [ pending  
21 Tr. Ex. 160].

22  
23 216. The VRAZ-II County Advisory Committee decided that keeping statistics is  
24 optional for the Counties. Members also expressed a strong desire for VRAZ-II  
25 to have the ability to keep such statistics. [ pending Tr. Ex. 160].  
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217. The VRAZ-II County Advisory Committee recommended that Counties accept proof of citizenship such as a U.S. birth certificate, naturalization document or U.S. Passport even if the registrants name has changed since the document was issued, as long as the registrant also provides legal documentation of the name change such as a marriage certificate, court name change document, etc. [ Tr. Ex. 161].

218. The VRAZ-II County Advisory Committee also recommended that Counties accept voter registration forms where a U.S. birth certificate is provided and the name on the birth certificate is different from the voter registration if the following five fields match: First Name, Middle Name, Place of Birth, Date of Birth and Parents Name. If not all five fields match, the birth certificate must be accompanied by a legal documentation of the name change. [ Tr. Ex. 161].

219. The VRAZ-II County Advisory Committee recommended that if a registrant has been registered in one county, and their registration is legitimately canceled from the voter registration list, when that person re-registers in the same county they must meet all the requirements of a first time registrant. [ pending Tr. Ex. 162].

220. The VRAZ County Advisory Committee created a checklist of issues raised by the passage of Proposition 200 to determine what additional policy changes would need to be made. [ Tr. Ex. 172].

- 1 221. The VRAZ committee has distributed and continues to distribute issue papers  
2 and emails to the Counties that clarify certain election and registration issues.  
3 [Wayman-Trujillo 1/9/08 Dep. 37-38].
- 4 222. The VRAZ committee advised counties that Driver's License types "F" and  
5 "N" are issued by MVD to people legally in the country who are not citizens. [  
6 Tr. Ex. 175].
- 7  
8 223. The VRAZ Advisory Committee advised Counties that when Counties receive  
9 a report of an "F" or "N" driver license number entered on a voter registration  
10 form, they first check to be sure the driver license number was entered  
11 correctly, then check to see if the registrant is already registered to vote and is  
12 just changing information, or has provided other citizenship documents if they  
13 are a first time voter. [ Tr. Ex. 175].
- 14  
15 224. The VRAZ Advisory Committee advised Counties that when Counties receive  
16 a report of an "F" or "N" driver license number entered on a voter registration  
17 form, the VRAZ-II County Advisory Committee states that if it is first time  
18 registrant in that county, and no other proof of citizenship documents have  
19 been provided, that registrant has not satisfactorily proved citizenship. [ Tr.  
20 Ex. 175].
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22 225. The VRAZ Advisory Committee advised Counties that until VRAZ-II is  
23 implemented, voter registration records without satisfactory proof of  
24 citizenship should be canceled or deleted in the voter registration system and a  
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correspondence sent to the registrant asking for proof of citizenship. [ Tr. Ex. 175].

226. The VRAZ Advisory Committee advised Counties that VRAZ-II should automatically generate correspondence when certain actions take place such as, rejection of a voter registration record due to lack of citizenship, an MVD non-match, issuing a voter registration identification card for a new registration, cancellation due to a court notification, cancellation since received notification from a jury questionnaire that voter marked “not a citizen,” ask registrant to present naturalization papers or provide A number, etc. [ Tr. Ex. 176].

227. On February 24, 2005, the VRAZ Advisory Committee announced that if voter registration records lack key information not relating to citizenship proof, the voter registration record is placed as “pending” in status and allows the registrant between 35 days and 90 days to respond to the request for information before the record is deleted. [ Tr. Ex. 137].

228. The VRAZ Advisory Committee determined that the registration date is to be backdated to the registration date on the original form for “pending” status records. [ Tr. Ex. 137].

229. The VRAZ Advisory Committee determined that if a voter registration request is missing proof of citizenship, the voter registration record is marked as “rejected” and registrant is allowed between 35 days and 90 days to respond to request for information before the record is deleted. [ Tr. Ex. 137].

1 230. The VRAZ Advisory Committee determined that for citizenship proof cases,  
2 requests for information must be accompanied by a blank voter registration  
3 form. [ Tr. Ex. 137].

4 231. The VRAZ Advisory Committee determined that the registration date for  
5 citizenship proof cases will be the new registration date that the registrant  
6 enters on the form. [ Tr. Ex. 137].

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8 232. The VRAZ Advisory Committee determined that the county should file the  
9 rejected application by the date received and archive it for two years. [ Tr. Ex.  
10 137].

11 233. The VRAZ Advisory Committee determined that if a registrant registers in  
12 person with proof of citizenship, the County Recorder personnel need only to  
13 indicate on the voter registration form that the person provided such proof but  
14 does not need to make or retain any copies. [ Tr. Ex. 137].  
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16  
17 **e. Following Passage of Prop 200, the Secretary of State Modified its**  
18 **VRAZ System to Flag Type F licenses, Subjecting Naturalized Citizens**  
19 **to Further Disparate Treatment When They try to use Their Driver's**  
20 **Licenses to Register to Vote.**

21 234. The system that the Secretary of State uses to manage and update the statewide  
22 voter registration database is called VRAZ.[Kanefield 07/16/08 Tr. 702:1-4].

23 235. VRAZ is made up of all County voter registration systems that interface with a  
24 statewide system. [ 7/16/08 Tr. 664:20-666:1].

25 236. The Secretary of State's VRAZ program collects voter registration information  
26 from the 15 counties and nightly compares the information about the

1 registrants and existing voters against various databases, including the Arizona  
2 MVD database, the Social Security Administration database, as well as  
3 Arizona death records and records of felony convictions. [Tr. Exs. 38, 165,  
4 167, 307; Stender 1/11/08 Dep. 13:2-16:8; Kanefield 7/16/08 Tr. 702:1-703:8;  
5 Rodriguez 8/2/06 Dep. 19:15-22; Altaha 1-14-08 Dep. 33:14-35:22; Hansen  
6 8/1/06 Dep. 30:6-32:8; Dean-Lytle 1/16/08 Dep. 17:18-19:7, 75:25-78:22].

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8 237. After the comparison against the databases, the VRAZ system reports back to  
9 each county so that the county can take action if needed. [7/16/08 Tr. 665:19-  
10 66:1].

11 238. Following passage of Prop 200, the Secretary of State modified the statewide  
12 voter registration computer program (VRAZ) to flag as ineligible any voter  
13 registrant whose Arizona driver's license was coded "Type F" in the Motor  
14 Vehicles Division computer database. [Tr. Exs. 126, 153, 175].

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16 239. In addition, if a driver's license number entered on a voter registration form  
17 was issued before October 1, 1996, or is a license type "F", the report will  
18 show the match in the "severe" category. [ Tr. Ex. 175].

19 240. When a registrant submits a voter registration application with information that  
20 does not match the records at MVD, the information must be clarified,  
21 regardless of whether it is critical to the registration of the registrant. The  
22 VRAZ-II County Advisory Committee issued a uniform letter that Counties  
23 could send to voters to inform them that their registration does not match  
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1 existing records. [Tr. Exs. 167, 930; Rodriguez 8/2/06 Dep. 20:4-19; Altaha 1-  
2 14-08 Dep. 36:25-37:4; Dean-Lytle 1/16/08 Dep. 37:8-38:3].

3 241. Voter registration applications are rejected if proper citizenship information is  
4 not provided or if the VRAZ system cannot verify citizenship through the  
5 centralized matching process. [pending Tr. Ex. 151].  
6

7 **i. Counties Believe That a Type F Flag means the Applicant is**  
8 **Ineligible to Register Because of Non-Citizenship and Require**  
9 **Additional Proof of Citizenship From The Applicant.**

10 242. Arizona driver's licenses that are Type F or "foreign" licenses are deemed  
11 insufficient to fulfill the proof of citizenship requirements for voter  
12 registration..[Kanefield 07/16/08 Tr. 705:7-18].

13 243. Counties believe that Type F driver's licenses indicate that a voter registrant is  
14 a noncitizen and should not be added to the voter rolls, despite the fact that the  
15 registrant may have naturalized since the time their license was issued.  
16 [Rodriguez 1/22/08 Dep. 113:7-13, 114:5-9; Dean-Lytle 1/16/08 Dep. 82:14-  
17 24].  
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19 244. The Secretary of State believes the MVD determines whether or not a person is  
20 authorized to be in the country legally. [Kanefield 1/11/08 Dep. at 40:9-17].

21 245. However, Mr. Kanefield, as a representative of the Secretary of State, cannot  
22 say specifically whether the MVD is verifying an individuals U.S. citizenship  
23 versus verifying one's authorized presence. [Kanefield 1/11/08 Dep. at 41:23-  
24 42:13].  
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1                   **1. Type F Licenses Are Issued by the Motor Vehicles Division and are**  
2                   **not Related to U.S. Citizenship.**

3                   246. Different from an Arizona regular license, Arizona also issues Type F licenses.  
4                   These licenses are issued for a limited period of time. [Collins 1/10/08 Dep.  
5                   23:1-3].

6                   247. Type F (“Foreign”) licenses were created to allow the Motor Vehicle  
7                   Department to bypass the need to enter a social security number and to allow  
8                   the manual insertion of the expiration date so that the system does not issue an  
9                   extended license. [Yanofsky 1/10/08 Dep. 32:13-19; 73:15-22].

10                  248. According to the Arizona Motor Vehicles Department (MVD), Arizona Driver  
11                  Licenses are available to any qualified individual with authorized presence in  
12                  the United States, whether they are a citizen or not. [Yanofsky 1/10/08 Dep.  
13                  13: 19-25].

14                  249. Arizona’s Motor Vehicle Division’s Establishing Authorized Presence policy  
15                  provides guidelines for Customer Service Representatives (CSR) to use when  
16                  establishing authorized presence for purposes of issuing Arizona Driver  
17                  Licenses. [ Tr. Ex. 25; Tr. Ex. 21] .

18                  250. Arizona’s Motor Vehicle Division’s General Information on Authorized  
19                  Presence Eligibility outlines that in order to prove authorized presence in the  
20                  United States under federal law the customer is required to present qualified  
21                  proof of authorized presence when applying for an original Arizona license,  
22                  ID, or permit, a renewal of a limited Arizona license, the renewal of an  
23                  extended Arizona license or the reinstatement of any license. [ Tr. Ex. 103].  
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- 1 251. Arizona's Motor Vehicle Division's Identification Requirements outlines what  
2 qualifies as primary and secondary documents, the number of these documents  
3 that the applicant needs to present and other specifications deemed necessary  
4 in order to complete the customer's application. [ Tr. Ex. 102].  
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- 6 252. According to the MVD, U.S. citizenship is not a factor in determining whether  
7 someone will receive a license in Arizona. [Yanofsky 1/10/08 Dep. 12:24-  
8 13:9].
- 9 253. Motor Vehicles Division customer records do not contain any information as to  
10 whether a customer is a U.S. Citizen. [Gage 1/10/08 Dep. 86:25-87:4; 82:14-  
11 86:24].
- 12 254. Arizona's Motor Vehicle Division's Establishing Authorized Presence policy  
13 allows Arizona to issue a Type F limited license to certain customers who use  
14 certain documentation as a primary form of identification and any supporting  
15 documentation at the time of application. [ Tr. Ex. 25; Collins 1/10/08 Dep.  
16 23:7-16].
- 17 255. For example, if someone presents an immigration document, the MVD will use  
18 a USCIS Class Matrix that lists customer immigration characteristics and  
19 documents required for all INS visa classes. It is used by the MVD in deciding  
20 whether to issue class F licenses. [Tr. Ex. 30].  
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- 22 256. Individuals who possessed licenses prior to 1996 and did not have to establish  
23 authorized presence will not have Type F licenses and will not be asked to  
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provide proof of authorized presence in order to be eligible for a new Arizona driver license. [Yanofsky 1/10/08 Dep. 23:12-25; 25:23- 26:2; 26: 9-23].

257. The MVD will not issue a Type F license to an individual who satisfies the identity and lawful presence requirements with an out of state license from a list of “reciprocity” states maintained by the MVD. That person instead would receive a regular license, even if that person is a non-citizen. [Yanofsky 1/10/08 Dep. 71:9 – 72.17; 77:25 – 78:11].

258. All information related to whether a customer has a type F license is contained in the base record of the individual. [Gage 1/10/08 Dep. 17:18 –18:6].

259. After an individual is assigned a record by the MVD, that record is used for all future transactions with the same customer. [Gage 1/10/08 Dep. 14:19-25].

260. The MVD has no system that allows it to do routine updates on customer records with respect to changes in immigration status. [Collins 1/10/08 Dep. 20:24-21:2] In fact, at some point immigration related information is purged from the system. [Gage 1/10/08 Dep. 94:7-13].

261. The Motor Vehicles Division has no procedures to update the customer database to reflect that someone became a naturalized citizen. [Gage 1/10/08 Dep. 90:12-15].

262. Neither the Department of Homeland Security nor any of the federal immigration agencies can update the customer record in the Motor Vehicles Division database. [ Gage 1/10/08 Dep. 54: 22-25].

- 1 263. The MVD does not have a means to confirm immigration documents through  
2 either the VIS database or the SAVE Program. [Collins 1/10/08 Dep. 19:3-5].
- 3 264. Proposition 200 does not mention Type F licenses. [Kanefield 1/11/08 Dep.  
4 39:8-9].
- 5 265. Mr. Kanefield, as a representative of the Secretary of State, does not know  
6 whether Type F licenses were in existence at the time of the passage of  
7 Proposition 200 in 2004. [Kanefield 1/11/08 Dep. 43:2-5].
- 8 266. The Secretary of State does not know how many of the approximately 1,300  
9 individuals prevented from registering online, who had a Type F license or a  
10 license dated before October 1, 1996, were not U.S. citizens. [Kanefield  
11 1/11/08 Dep. 30:15-31:6].
- 12 267. Maricopa County is aware that there are people who hold driver's licenses  
13 issued after 1996 that are not citizens. [Osborne 1/14/08 Dep. 42:21)].

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17 **2. MVD Issues Regular Licenses to Non-Citizens who Show  
Documents Other Than Immigration Documents to MVD.**

- 18 268. The MVD will accept a variety of documents so that MVD can determine  
19 one's legal name, age, and authorized presence. [Yanofsky 1/10/08 Dep.  
20 13:6-9].
- 21 269. A citizenship document is only one of many primary documents that can be  
22 presented to establish authorized presence. [Yanofsky 1/10/08 Dep. 44:9-18 ].
- 23 270. The MVD does not always know whether someone is a U.S. citizen or not.  
24 [Yanofsky 1/10/08 Dep. 63:19-64:4].  
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- 1 271. For example, an individual who is a non-citizen can present a driver's license  
2 from another state and that will satisfy the requirement to show authorized  
3 presence. In this instance, a person will receive a regular Arizona driver's  
4 license. [Yanofsky 1/10/08 Dep. 45:1-13; 47:25-48:10].
- 5  
6 272. In addition, the MVD does not require certain individuals to present proof of  
7 authorized presence if they are already in the MVD database. This occurs even  
8 if their license was issued prior to 1996. [Yanofsky 1/10/08 Dep. 24:1-16;  
9 27:11-28:1].
- 10 273. For example, if a person requests a duplicate of a previous license issued  
11 before 1996, he or she will not have to provide proof of authorized presence.  
12 [Yanofsky 1/10/08 Dep. 24:1-16].
- 13  
14 274. Another instance occurs when people need a new photograph taken to comply  
15 with Arizona's 12-year update requirement. These individuals are merely  
16 getting duplicates of an existing license and are not required to present  
17 authorized presence documents. [Yanofsky 1/10/08 Dep. 27:17-28:12].
- 18 275. Arizona also issues extended driver licenses, which are licenses that are valid  
19 until the individual is age 65. [Yanofsky 1/10/08 Dep. 21:18-19] Arizona  
20 began issuing extended licenses to all qualified applicants in 1993. [Gage Dep.  
21 62: 2-5] If a person previously had an extended license and wants to re-activate  
22 it, they will not have to provide proof of authorized presence. [Yanofsky  
23 1/10/08 Dep. 25:23-26:2] In this instance, a person will receive a regular  
24 driver's license. [Yanofsky 1/10/08 Dep. 58:9-17].  
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1 276. The individuals who are exempt from presenting proof of authorized presence  
2 will carry licenses that reflect the new issue date that any action was taken.  
3 [Yanofsky 1/10/08 Dep. 48:19-24] . Thus, anyone with a regular license dated  
4 before October 1, 1996 (and who did not have to show authorized presence)  
5 who receives a duplicate, replacement or license with a new photograph, will  
6 have a new license with a new current date of issue.  
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9 **ii. The Secretary of State’s Recent Decision to Change the Voter  
10 Registration Form to Request Applicant’s Alien Registration  
11 Numbers Does not Cure the Disparate Treatment of Naturalized  
Citizens.**

12 277. According to USCIS, the A number and the Certificate of Naturalization  
13 number are separate and distinct numbers. (Quinn 4/22/08 Dep. 74:3-6).

14 278. The naturalization certificate number is used to track certificates, which are  
15 secured documents. DHS uses this number to track certificates carefully for  
16 antifraud purposes, for inventory control, and so that certificates are not  
17 disappearing and being sold. (Ratliff 4/22/08 Dep. 73:8-14).

18  
19 279. The Alien Registration Number (“A number”) is a number that USCIS assigns  
20 to a person at certain steps, such as when an individual files an application for  
21 immigration benefits many years ahead of the time of filing for naturalization.  
22 (Ratliff 4/22/08 Dep.72:20-73:2).

23 280. An A number stays with an individual throughout his relationship with USCIS.  
24 When one becomes naturalized, the naturalization certificate has a new number  
25 printed on it, that is different from an A number. (Ratliff 4/22/08 Dep. 73:3-7).  
26

- 1 281. Importantly, not all naturalization certificates have an alien registration number  
2 on them. (Tr. Ex. 961).
- 3 282. An individual is supposed to relinquish his green card when he naturalizes and  
4 it is possible that a naturalized citizen will not be in possession of his A  
5 number. (Ratliff 4/22/08 Dep. 83:4-6, 17-20; Quinn 4/22/08 Dep. 40:9-16).
- 6 283. After someone has been naturalized, there is no legal duty to continue  
7 notifying USCIS of one's address. (Ratliff 4/22/08 Dep. 87:4-9).
- 8 284. There is no legal requirement for a naturalized citizen to carry documentary  
9 proof of naturalization. (Ratliff 4/22/08 Dep. at 87:10-15).
- 10 285. The "A number" is no longer necessary for a federal purpose after a person  
11 naturalizes. (Quinn 4/22/08 Dep. 51:3-20).
- 12 286. USCIS has no interest in an individual once that person has naturalized.  
13 (Ratliff 4/22/08 Dep. 88:6-12).
- 14 287. For persons born abroad with U.S. citizen parents the only way the Central  
15 Index System will show one's citizenship will be if a person affirmatively  
16 applies for a certificate of citizenship. (Quinn 4/22/08 at 88:1-8).
- 17 288. In addition, the A number was not always in use. Before the inception of the  
18 Central Index System database that was created in 1975, "certificate numbers"  
19 or "C numbers" were issued and used to track individuals. (Quinn 4/22/08  
20 Dep. 53:21-54:8).
- 21 289. Certain certificates of naturalization do not have an A-number on the face of  
22 the certificate. (Quinn 4/22/08 Dep. at 56:11-15; Tr. Ex. 961).
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1 290. If an individual only has a C number, it would likely not be found in the  
2 Central Index System. (Quinn 4/22/08 Dep. at 56:16-20). If a person was  
3 naturalized in 1960 for instance, it is likely he or she would not be found in the  
4 Central Index System. (Quinn 4/22/08 Dep. at 64:9-16).

5  
6 291. The files with a C number are maintained on microfiche and microfilm. One  
7 would have to search the old archived records and research using various  
8 criteria to find the C number for a particular naturalized citizen. (Quinn  
9 4/22/08 Dep. at 61:21-63:9).

10 292. USCIS Form N-565 is the application an individual would submit in order to  
11 request a replacement of the naturalization certificate. The fee by the USCIS is  
12 currently \$380.00. If a person applied for a replacement of his naturalization  
13 certificate, the original "A file" needs to be retrieved from the location where  
14 the file was retired. [Tr. Ex 114; Tr. Ex 670; Tr. Ex. 957(pending)].

15  
16 293. There are different National Archives locations. The bulk of the files are in  
17 Lee's Summit, Missouri, but there are some files in Maryland, Washington,  
18 and California. (Quinn 4/22/08 Dep. 47:16-48:2).

19 294. Some "A files" cannot be retrieved from their archives because USCIS cannot  
20 find them. (Quinn 4/22/08 at 50:4-7).\

21  
22 **iii. The Secretary of State's Decision to Request the Alien Registration**  
23 **Number is an Imperfect Attempt to Re-Write Prop 200 That Carries**  
24 **its own Problems for Naturalized Citizens.**

25 295. Recent changes made from the previous voter registration form include  
26 changes requesting the alien registration number in box 19 where the form

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previously requested the naturalization certificate number. (Kanefield 1/11/08 Dep. 8:21-25).

296. The previous form instructed registrants to fill in the number of their certificates of naturalization. The new form changed the box to read “Presentation to the county recorder of US naturalization documents or fill in your alien registration number in box 19.” (Kanefield 1/11/08 Dep. 9:24-10:8).

297. Mr. Kanefield took part in the decision to change the voter registration form itself to replace that language with the words alien registration number. (Kanefield 1/11/08 Dep. 10:9-11).

298. The Secretary of State explains that the recent change to the voter registration form was intended to save the County Recorders the step of having to contact voter registrants, if the registrants put the naturalization number, in order to ascertain the alien registration number and to get the person registered more quickly. (Kanefield 1/11/08 Dep. 11:1-8).

299. However, in the new Secretary of State Elections Procedures Manual dated October 30th of 2007, no changes were made to the procedure relating to how registration forms are processed in regard to proof of citizenship. (Kanefield 1/11/08 Dep. 6:20-7:1).

300. The Secretary of State’s Procedures Manual continues to list the number of the certificate of naturalization as satisfactory evidence of citizenship. It states that acceptable proof of citizenship includes: “United States naturalization

1 documents or the number of the certificate of naturalization (Alien Registration  
2 Number)” (Tr. Ex. 4 at 43).

3 301. The Secretary of State claims that all certificates of naturalization carry an  
4 alien registration number. [Kanefield 1/11/08 Dep. 13:18-20; Kanefield  
5 07/16/08 Tr. 719:18-23].

6 302. The Secretary of State’s office is not aware whether an individual has to turn in  
7 to DHS his alien registration card at the time that he or she is naturalized.  
8 (Kanefield 1/11/08 Dep. 13:21-24).

9 303. The Secretary of State’s office is not aware of any documents, besides the alien  
10 registration card and the certificate of naturalization that may carry the alien  
11 registration number. (Kanefield 1/11/08 Dep. 13:25-14:3).

12 304. The Secretary of State’s office is not aware of any occasions, besides voter  
13 registration in Arizona, in which a naturalized U.S. citizen might use his or her  
14 alien registration number. (Kanefield 1/11/08 Dep. 14:4-9).

15 305. The Arizona Secretary of State’s office was aware that errors could occur as a  
16 result of the confusion between the naturalization number and the alien  
17 registration number. (Kanefield 1/11/08 Dep. 10:22-11:3).

18 306. According to the Secretary of State, a question related to verifying the  
19 citizenship of an applicant through the SAVE Program would be a question  
20 that the Counties would have to work out themselves with the federal  
21 authorities rather than asking the Secretary of State’s office for guidance.  
22 (Kanefield 1/11/08 Dep. 38:13-16).

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- 1 307. The voter registration form provided on many *current* county websites requires  
2 the certificate number, and not the “A number,” as proof of citizenship. (*See,*  
3 *e.g.,* Tr. Exs. 219, 221, 223) Likewise, many Counties provide the public with  
4 lists of documents to prove citizenship with the same instruction to provide the  
5 number of the certificate of naturalization. (*See, e.g.,* Tr. Exs. 223, 245, 246,  
6 247, 257, 282).  
7
- 8 308. Pima County’s website only asked for the number of the certificate of  
9 naturalization for the purpose of proving citizenship for voter registration.  
10 (Rodriguez 8/2/06 Dep. 59:2-5; Tr. Ex. 15).  
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- 12 309. The Pima County Recorder’s Office sent letters and posted notices requesting a  
13 photocopy of a certificate of naturalization or to provide the “number of  
14 certification of naturalization.” This was done even though SAVE could not  
15 verify citizenship with the number of the certificate of naturalization. (Tr. Ex.  
16 294).  
17
- 18 310. In Yavapai County, the only way for a naturalized citizen to find out that in  
19 order to register they must provide their “A number,” rather than their  
20 certificate of naturalization number, is by calling or appearing in person at the  
21 County Recorder’s office. (Wayman-Trujillo 1/9/08 Dep. 46: 6-16).  
22
- 23 311. The Secretary of State’s Office did not investigate whether naturalized citizens  
24 have access to their Alien Registration Numbers before revising the voter  
25 registration form and changing their guidance to the Counties on implementing  
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1 Prop 200 in the Procedures Manual. [Kanefield 1/11/08 Dep. 10:22-14:9;  
2 Kanefield 07/16/08 Tr. 718:19-719:2].

3 312. The Secretary of State states it can be confusing to have different versions of  
4 the voter registration form circulating. (Kanefield 1/11/08 Dep. 12:10-11).

5 313. The Secretary of State is aware that county officials may not have implemented  
6 usage of the new registration forms. [Kanefield 07/16/08 Tr. 715: 15-20].

7 314. Election officials in Arizona continue to make available English and Spanish-  
8 language voter registration forms that have a box designated for a “Certificate  
9 of Naturalization Number.” (Tr. Ex. [Tr. Ex. 4 at 48; Kanefield 7/16/08 Tr.  
10 699:17-25; 7/17/08 Tr. 765:20-766:8; 1/11/08 Dep. 15:11-23).

11 315. The Secretary of State does not know the number of forms that ask for a  
12 naturalization number in Box 20 that are in circulation in Arizona counties.  
13 [Kanefield 07/16/08 Tr. 716:6-9].

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16 **iv. The Secretary of State and County Officials Acknowledge that**  
17 **Prop 200 Does not Include Any Reference to the Alien Registration**  
18 **Number.**

19 316. Joseph Kanefield agreed that ARS 16-166 at 4 states that an applicant for voter  
20 registration shall provide the number of the certificate of naturalization and  
21 does not use the language “alien registration number.” (Kanefield 1/25/06 Dep.  
22 97:14-16).

23 317. County officials are not aware of any portion of Prop. 200 that authorizes them  
24 to collect the A number for the purposes of voter registration. [Rodriguez  
25  
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1 1/22/08 Dep. 67:10-19; Dean-Lytle 1/16/08 Dep. 54:18-55:6; Wayman-Trujillo  
2 1/9/08 Dep. 39:25-40:6].

3 318. Mrs. Maria Gonzalez testified that she was confused when the Yuma County  
4 Recorder requested her alien registration number because she is already a U.S.  
5 citizen and her alien registration number serves no purpose for naturalized  
6 citizens. [Maria Magdalena Gonzalez 7/10/10 Tr. 213:17-23].  
7

8 **f. The Number of Individuals Naturalizing in Arizona is Increasing.**  
9

10 319. In 2005 alone, 6,785 people in Arizona naturalized and became eligible to  
11 register to vote. Tr. Ex. 862-Table 5.

12 320. Hispanics are becoming naturalized citizens at an accelerating rate. [ Tr. Ex.  
13 862, [Chapa Report at Table 5); Chapa 7/9/08 Tr. 37: 18-24]. From 2004 to  
14 2005, the number of naturalizations for Hispanics increased by 8.3 percent in  
15 contrast to the number of naturalizations for immigrants from non-Hispanic  
16 countries, which increased by only 1.4 percent. [Tr. Ex. 862, [Chapa Report at  
17 Table 5); Chapa 7/9/08 Tr. 37:18-24].  
18

19 **g. The Secretary of State Recognizes That Significant Portions of Prop**  
20 **200's Proof of Citizenship Requirement are Inoperable.**

21 321. Secretary of State Brewer asked Attorney General Goddard for an opinion as  
22 to whether a driver license issued after October 1, 1996 would serve as proof  
23 of citizenship for purposes of voting in Arizona. [ Tr. Ex. 138].  
24

25 322. Attorney General Terry Goddard's opinion stated that an Arizona driver or  
26 nonoperating license identification issued after October 1, 1996 is satisfactory

1 evidence of United States citizenship for the purposes of registering to vote  
2 because of the plain language of the statute, even though noncitizens whose  
3 presence in the U.S. is authorized are eligible for Arizona driver or  
4 nonoperating licenses and Arizona driver and nonoperating licenses do not  
5 indicate citizenship on their face. [ Tr. Ex. 138].  
6

7 323. In addition, the Secretary of State's office has interpreted A.R.S. § 16-666 to  
8 permit out-of-state driver's licenses as proof of citizenship only if they indicate  
9 on their face that the driver is a citizen, but knows of no state that marks  
10 licenses in such a way. [Kanefield 07/16/08 Tr., 733:3-734:7]; [Hansen 8/1/06  
11 Dep. 19:3-20:24] At this time, there are no out-of-state driver's licenses that  
12 indicate on their face that the driver is a citizen. [Osborne 7/31/06 Dep.  
13 24:15-22].  
14

15 324. Proposition 200 states that individuals can prove their U.S. citizenship with  
16 documents that do not exist or are not in use in Arizona. Tribal Treaty Cards  
17 and Bureau of Indian Affairs Cards are not in use in Arizona. [Kanefield  
18 7/25/06 Dep. 33:19-36:10; Johnson 8/1/06 Dep., 17:17-18:7; Hansen 8/1/06  
19 Dep. 25:17-26:3; Osborne 7/31/06 Dep. 26:2-3; Rodriguez 8/2/06 Dep. 40:10-  
20 19; Justman 8/1/06 Dep. 20:15-23].  
21

22 325. In addition, "other documents or methods of proof that are established  
23 pursuant to the Immigration Reform and Control Act of 1986" do not establish  
24 any documents that prove U.S. citizenship. 8 U.S.C. 1324a.  
25  
26

1                   **h. Counties Reject Automatically and Require Re-Registration of**  
2                   **People who use Their Certificate of Naturalization Number to**  
3                   **Register to Vote.**

4                   326. The Pima County Recorder's Office sends letters notifying individuals who  
5                   wrote their certificate of naturalization numbers on voter registration forms that  
6                   the office could not process their applications because they were submitted  
7                   with naturalization certificate numbers. (Tr. Ex. 292).

8                   327. Some Counties contact those who provided a certificate of naturalization  
9                   number and instruct them to reapply and provide their alien registration  
10                  number in order to register to vote. (Rodriguez 1/22/08 Dep. 65:9-23; Hansen  
11                  8/1/06 Dep. 29:21-30:5; Osborne 7/1/06 Dep. 36:10-16).

12                   **i. Contrary to the Assertion of the Secretary of State, Most**  
13                   **Counties do not Backdate Voter Registrations that are Submitted to**  
14                   **Cure Problems with Proof of Citizenship.**

15                  328. If an individual provides citizenship information after it was initially left off a  
16                  voter registration application, the date of registration is the date the information  
17                  is provided, not the date the person submitted the original voter registration  
18                  form. [Osborne 1/1/4/08 Dep. 34:20-35:4; Wayman-Trujillo 1/9/08 Dep.  
19                  52:20-53:5]

20                   **ii. Facts related to voter registration experiences of Mr. and Mrs.**  
21                   **Gonzalez and other individuals.**

22                  329. Some U.S. citizens are forced to apply more than once even though they  
23                  correctly filled out the voter registration application and followed instructions.  
24                  [Maria Magdalena Gonzalez Testimony]; [Jesus Maria Gonzalez Testimony ].  
25

- 1 330. Maria Magdalena Gonzalez resides at 727 Huron Ct., Somerton, Arizona.  
2 [7/10/08 Tr. 207:2-3; Tr. Ex. 696]. She is a resident of Yuma County.  
3 [7/10/08 Tr. 207:4-5]. Ms. Gonzalez has lived in the United States for over  
4 forty years. [*Id.* at 207:10-11]. She is currently a housewife. [*Id.* at 207:6-7].  
5
- 6 331. On August 18, 2005, Ms. Gonzalez took her oath of U.S. citizenship in a  
7 naturalization ceremony held in Yuma, Arizona. [*Id.* at 207:16-18, 23-25].  
8
- 9 332. The same day after that ceremony, Ms. Gonzalez applied to register to vote.  
10 [7/10/08 Tr. 208:15-18]. She completed the voter registration application form  
11 with the assistance of her daughter. [7/10/08 Tr. 209:15-17; Tr. Ex. 696]. Ms.  
12 Gonzalez then signed the form and handed it to the voter registration volunteer  
13 outside the courthouse for delivery to the Yuma County Recorder's Office.  
14 [7/10/08 Tr. 208:15-21, 24-25].
- 15 333. Ms. Gonzalez said she was sure she had correctly completed her voter  
16 registration application. [7/10/08 Tr. 211:18-20]. The application form  
17 requested her "Certificate of Naturalization number." [Tr. Ex. 696]. Ms.  
18 Gonzalez filled in the number into the space requested, copying it from the  
19 certificate of naturalization that she had just received during the ceremony that  
20 day. [7/10/08 Tr. 208:16-18; Tr. Ex. 715].  
21
- 22 334. After Ms. Gonzalez submitted her voter registration application, she received a  
23 form letter from the Yuma County Recorder's Office enclosing her rejected  
24 application. [7/10/08 Tr. 209:18-25, 210:8-14; Tr. Ex. 717]. The letter stated:  
25 "Your registration form has been rejected for the following reason: First time  
26

1 registration requires proof of citizenship which was not included. Please fill in  
2 any missing blanks and return enclosed form with your proof of citizenship.”  
3 [Tr. Ex. 717].

4 335. Although Ms. Gonzalez's voter registration application contained the number  
5 of her certificate of naturalization, it was returned to her; on her original  
6 application, the certificate of naturalization number was crossed out and  
7 someone had written over it “A#.” [7/10/08 Tr. 209:18-20, 210:8-14; Tr. Exs.  
8 696, 717].

10 336. The letter from the Yuma County Recorder's Office further advised Ms.  
11 Gonzalez that “satisfactory evidence of citizenship” includes “A presentation  
12 to the county recorder of the applicants' United States naturalization documents  
13 or the 'A number' on the certificate of naturalization form.” [Tr. Ex. 717].

15 337. Ms. Gonzalez did not understand why her voter registration application was  
16 rejected since she had provided the number of her certificate of naturalization  
17 as they instructed her to do on the registration form. [7/10/08 Tr. 212:6-12].  
18 Ms. Gonzalez further testified that she did not understand why she was asked  
19 for her “A#” since she was no longer an alien but a United States citizen.  
20 [7/10/08 Tr. 213:17-23].

22 338. In 2006, Ms. Gonzalez again attempted to register to vote and was successful.  
23 [7/10/08 Tr. 213:24-214:7].

24 339. Ms. Gonzalez is Hispanic/Latino and was born in Mexico. [7/10/08 Tr.  
25 207:19-21]. When she was denied the opportunity to register the first time, she  
26

1 felt like she was discriminated against because of her national origin. [7/10/08  
2 Tr. 214:8-11]. Ms. Gonzalez did not understand why she was questioned about  
3 her citizenship despite the fact that she had already provided her citizenship  
4 certificate number and signed a sworn declaration of her citizenship. [7/10/08  
5 Tr. 213:17-23].  
6

7 340. Ms. Gonzalez has lived in the United States for many decades. [7/10/08 Tr.  
8 207:10-11]. She has heard of many people being treated differently in this  
9 country because of their national origin and has herself experienced  
10 discrimination. [7/10/08 Tr. 214:16-18; 217:11-13, 21-24]. In 2006, she went  
11 to apply for a U.S. passport at a local post office. [7/10/08 Tr. 216:9-14.].  
12 She was told by the postal agent at the counter that she could not apply for the  
13 passport because she did not speak English. [*Id.* at 216:15-20].  
14

15 341. Jesus Maria Gonzalez is 58 years old and also was rejected for voter  
16 registration after properly completing a registration form with the number of  
17 his certificate of naturalization. [7/10/08 Tr. 224:7-9; Tr. Ex. 709].  
18

19 342. Mr. Gonzalez resides at 727 Huron Ct., Somerton, Arizona. [7/10/08 Tr.  
20 221:9-10; Tr. Ex. 712]. He is a resident of Yuma County. [7/10/08 Tr.  
21 221:11-12]. He has lived in the United States for 43 years. [*Id.* at 221:17-18].  
22

23 343. On August 18, 2005, Mr. Gonzalez took his oath of U.S. citizenship in a  
24 naturalization ceremony held at the federal courthouse in Yuma. [Tr. Ex. 711].  
25

26 344. After Mr. Gonzalez completed the naturalization ceremony, he applied to  
register to vote. [7/10/08 Tr. 222: 11-15]. He filled out the voter registration

1 form and then signed and submitted it to the voter registration volunteer to be  
2 delivered to Yuma County officials. [7/10/08 Tr. 223:13-19].

3 345. Mr. Gonzalez wrote, in the box where the form requested his “Certificate of  
4 Naturalization number,” the number from that certificate, which he had just  
5 received during his citizenship ceremony. [*Id.* at 223:13-25; Tr. Ex. 712].

6  
7 346. Shortly after Mr. Gonzalez submitted his voter registration application, he  
8 received a form letter from the Yuma County Recorder's Office enclosing his  
9 rejected application. [7/10/08 Tr. 224:7-19; Tr. Ex. 712]. The letter stated,  
10 “Your registration form has been rejected for the following reason: First time  
11 registration requires proof of citizenship which was not included. Please fill in  
12 any missing blanks and return enclosed form with your proof of citizenship.”  
13 [Tr. Ex. 712].

14  
15 347. Mr. Gonzalez's voter registration application included the number of his  
16 certificate of naturalization as requested by the application form. However, on  
17 the form that was returned to him, the certificate of naturalization number was  
18 crossed out and someone had written over it “A#.” [7/10/08 Tr. 223:15-25; Tr.  
19 Ex. 712].

20  
21 348. The letter from the Yuma County Recorder's Office further advised Mr.  
22 Gonzalez that “satisfactory evidence of citizenship” includes “A presentation  
23 to the county recorder of the applicants' United States naturalization documents  
24 or the 'A number' on the certificate of naturalization form.” [Tr. Ex. 712].  
25  
26

1 349. In October 2006, Mr. Gonzalez made a second attempt to register to vote, this  
2 time using the ServiceArizona internet-based voter registration system  
3 sponsored by the Arizona Motor Vehicles Department. [7/10/08 Tr. 225:9-  
4 12]. However, after he entered his personal information, including his valid  
5 Arizona driver's license number from a license issued before October 1, 1996,  
6 the website rejected his voter registration application. [*Id.* at 225:13-14]. As a  
7 result, he was unable to register to vote using the ServiceArizona system.  
8 [*Id.*].

10 350. Mr. Gonzalez is Hispanic/Latino and was born in Mexico. [7/10/08 Tr. 222:3-  
11 4]. He believes that he has been treated differently than other citizens in  
12 Arizona because he was born in Mexico and gained citizenship through  
13 naturalization. [7/10/08 Tr. 228:20-25].

15 351. On November 8, 2006, Mr. Gonzalez was issued a U.S. Passport. [7/10/08 Tr.  
16 227:20-23; Tr. Ex. 709]. He paid \$112.95 for his passport. [Tr. Ex. 709].

17 352. As a Mexican national, Mr. Gonzalez has suffered from discrimination while  
18 living in the United States. [7/10/08 Tr. 227:24-229:7]. Early on, he worked  
19 as a farm worker under very difficult conditions while working in the fields.  
20 [7/10/08 Tr. 228:6-14]. Mr. Gonzalez remembers drinking water from a canal  
21 like an animal. [*Id.* at 228:12-14]. He believes he was treated this way by his  
22 employer because he was Mexican. [*Id.* at 228:6-14]. He recognizes that  
23 Mexicans have a history of being discriminated against in this country. [*See*  
24 7/10/08 Tr. 228].  
25  
26

1 353. When Mr. Gonzalez's application for voter registration was denied, he was  
2 upset. [7/10/08 Tr. 225:5-8]. Once again, he felt like he was treated this way  
3 because he was Mexican American. [7/10/08 Tr. 228:20-25].

4 354. To this day Mr. Gonzalez remains unregistered. [7/10/08 Tr. 225:15-18,  
5 229:16-18].

6 355. Herta Antoinette Weber naturalized in 1960 and her naturalization certificate  
7 does not have an Alien Registration Number on it. [Tr. Ex. 961].

8 356. Ms. Weber's voter registration form, complete with the number of her  
9 certificate of naturalization in box 19 of the form, was rejected by Maricopa  
10 County. [Tr. Ex 961 and 896 at box 2, part 1, p. 738].

11 357. Martha Higuera's voter registration form, complete with the number of her  
12 certificate of naturalization in box 19 of the form, was rejected by Maricopa  
13 County. [Tr. Ex 896 at box 4, part 2, p. 874].

14  
15  
16 **III. Prop 200 has Resulted in the Rejection of Over 38,000 Voter**  
17 **Registration Applications and has a Disparate Impact on Latino Voter**  
18 **Registrants.**

19 358. Thousands of voter registration forms were rejected in the wake of Prop 200's  
20 implementation. [Tr. Ex. 895, 896].

21 359. County election officials acknowledge that after Prop 200 passed, counties had  
22 higher rejection rates than before Prop 200's implementation because  
23 registration forms informing the voter of the new requirements were not  
24 available. [Rodriguez 8/2/06 19:9-12; Osborne 7/31/06 Dep. 43:12-44:9;  
25 Dean-Lytle 1/16/08 Dep. 69:19-70:14, 71:3-72:15].  
26

- 1 360. Since the passage of Proposition 200, over 38,000 voter registration  
2 applications have been rejected due to the documentary proof of citizenship  
3 requirements. [Tr. Ex. 896].
- 4 361. County elections officials believe that U.S. citizens are disenfranchised by  
5 Proposition 200's requirements. [Pew 8/1/06 Dep. 12:3-8; Hansen 8/1/06 Dep.  
6 35:11-16; Rodriguez 8/2/06 Dep. 90:15-18].
- 7  
8 362. The Maricopa County Manager of Voter Registration reported on October 25,  
9 2005, that rejections went down to 35% from 40%. [Pending Tr. Ex. 209].
- 10 363. From January 24, 2005 to July 13, 2006 the Maricopa County Recorder  
11 received 118,209 voter registration forms through the mail or over the counter,  
12 and 15,090 were rejected for failure to provide proof of citizenship. [Osborne  
13 7/31/06 Dep. 21:12-19].
- 14  
15 364. In Maricopa County in 2005, thirty-five percent of new voter registrations were  
16 rejected for insufficient proof of citizenship. That amounts to 11,197 potential  
17 voters. [Tr. Ex. 894].
- 18 365. In Maricopa County in 2006, seventeen percent of new voter registrations were  
19 rejected for insufficient proof of citizenship. That amounts to 6,686 potential  
20 voters. [Tr. Ex. 894].
- 21  
22 366. In Maricopa County in 2007, twenty-four percent of new voter registrations  
23 were rejected for insufficient proof of citizenship. That amounts to 9,044  
24 potential voters. [Tr. Ex. 894].
- 25  
26

- 1 367. In the first week of January 2008, in Maricopa County, eighteen percent of  
2 new voter registrations were rejected for insufficient proof of citizenship. That  
3 amounts to 108 potential voters. [Tr. Ex. 894].
- 4 368. From January 24, 2005 to mid-2006, Apache County rejected 132 of 3,333  
5 voter registration forms for failure to provide proof of citizenship, despite  
6 believing that the prospective voters were citizens. [Johnson 8/1/06 Dep.  
7 13:22-14:16].
- 8 369. From January 24, 2005 to mid-2006, Coconino County rejected 494 voter  
9 registration forms for failure to provide proof of citizenship. [Hansen 8/1/06  
10 Dep. 15:25-16:8].
- 11 370. From December 1, 2007 to February 14, 2008, Coconino County rejected  
12 ninety-one people for failing to prove citizenship. [Tr. Ex. 896].
- 13 371. From January 24, 2005 to mid-2006, Navajo County rejected 175 of 3,935  
14 voter registration forms for failure to provide proof of citizenship. [Justman  
15 8/1/06 Dep. 14:10-17].
- 16 372. Most new voter registrants have used a driver's license number or non-  
17 operating identification license number to register. [stipulated fact].
- 18 373. Tammy Patrick, Federal Compliance Officer for Maricopa County, indicated  
19 that since the passage of Proposition 200 Maricopa County has been forced to  
20 reject voter registration applications because the registrants lacked the  
21 necessary documentary proof of citizenship. She attributes the high rate of  
22 rejected voter registration applications to Proposition 200's documentary proof  
23  
24  
25  
26

1 of citizenship. She also had attempted to reconcile, unsuccessfully, the  
2 statute's demand for the certificate of naturalization number with the fact that  
3 the certificate number cannot be verified. [Pending Tr. Ex. 636, 638, 650].

4 374. On April 28, 2005 Coconino County reported 131 rejected Voter Registration  
5 Forms. [Tr. Ex. 647].

6  
7 **a. Dr. Lanier Analyzed Voter Registration Forms Rejected Pursuant to Prop  
8 200 and Found a Disparate Impact on Latino Voters.**

9 375. Plaintiffs' expert Dr. Louis Lanier is a Senior Economist and Practice Director  
10 at Econ One Research, Incorporated. Dr. Lanier specializes in performing  
11 statistical and other analyses on large databases. [Lanier 7/10/08 Tr. 236:4-  
12 241:2]

13 376. Dr. Lanier examined rejected voter registration applications, uncounted ballots  
14 and the Arizona voter roll to determine whether or not Prop 200 had had an  
15 effect on registration and voting of both Latinos and non-Latinos and to see  
16 whether or not, if there was any effect, whether it was different for Latinos  
17 than it was for non-Latinos. [Lanier 7/10/08 Tr. 241:3-12].

18  
19 377. Dr. Lanier performed analyses of voter registration data based on scanned  
20 copies of rejected voter registration forms for fourteen of the fifteen Arizona  
21 counties. [Tr. Exh. 883 [Third Supplemental Report of Dr. Louis Lanier at  
22 Table 1; Lanier 7/10/08 Tr. 241: 3-20].

23 378. The rejected voter registration forms were provided in a format that is not  
24 useable for statistical analysis. Therefore, Dr. Lanier oversaw the work of a  
25 professional data entry firm to enter the information from these handwritten  
26

- 1 registration forms into a useable electronic dataset. [Lanier 7/10/08 Tr. 241:13-  
2 22].
- 3 379. Dr. Lanier supervised the entry of data from over 38,000 voter forms that were  
4 produced by Arizona counties under the court's order to provide Plaintiffs with  
5 copies of the voter registration forms that were rejected for failure to meet the  
6 documentary proof of citizenship requirement of Prop 200. Following the data  
7 entry, Dr. Lanier analyzed the information from the rejected voter registration  
8 forms and identified which forms had been completed by Latinos. [Lanier  
9 7/10/08 Tr. 241:13-242:9].
- 10  
11 380. Dr. Lanier used for his study an electronic Excel file used by the Census  
12 Bureau containing Hispanic surnames, classified by their likelihoods of  
13 representing a Hispanic individual. [Lanier Report 3; Lanier 7/10/08 Tr.,  
14 242:20-24].
- 15  
16 381. Dr. Lanier considered an individual registrant to be Hispanic if his/her surname  
17 is classified in the two classifications having the highest likelihood of  
18 representing a Hispanic individual. [Lanier Report 3; Lanier 7/10/08 Tr.  
19 241:13-242:9].
- 20  
21 382. Dr. Chapa testified that in his professional opinion, the Passel-Word Spanish  
22 Surname list is "a very good list" for determining Spanish surnames among  
23 individuals. [7/9/08 Tr. 45:13:16].
- 24  
25 383. Defendants' expert Dr. Jeffrey Zax testified that he had no quarrel with Dr.  
26 Lanier's use of the Passel Word list to identify Latinos for his analysis.

1 [7/17/08 Tr. 800:21-24]. He further testified that Dr. Lanier's use of the Passel  
2 Word Spanish Surname List would not have an effect on the interpretation of  
3 the information regarding the effect of prop 200. [Zax 07/17/08 Tr. 894:4-11].  
4  
5 384. In order to narrow the analysis to affected individuals, as opposed to instances  
6 of rejected voter registrations, Dr. Lanier eliminated incomplete forms and  
7 duplicates. [Lanier 7/10/08 Tr. 242:10-19; Lanier 7/15/08 Tr. 333:3-334:12].  
8  
9 385. For his study, Dr. Lanier also relied on the Arizona voter rolls which contains  
10 records of voter registrations for a time period ending in August 2007. [ Tr.  
11 Exh. 886 [Lanier Fifth Supplemental Report 2); Lanier 7/10/08 Tr. 243:8-22]  
12  
13 386. According to Dr. Lanier, all fourteen counties for which data are available  
14 recorded rejections due to the provisions of Prop 200. [ Tr. Exh. 883 [Lanier  
15 Third Supplemental Report, Table 1)].  
16  
17 387. Dr. Lanier identified approximately 31,550 individuals whose voter  
18 registration applications were rejected. Like the population of Arizona in  
19 general, Dr. Lanier observed that the majority of rejected voter applicants were  
20 non-Hispanic and over 90 percent of them reported having been born in the  
21 United States. [Lanier 7/10/08 Tr. 242:25-243:7].  
22  
23 388. Dr. Lanier further observed that only approximately one third, or 11,000 of  
24 these rejected individuals ultimately successfully registered. [Lanier 7/15/08  
25 Tr. 329:13-23]  
26  
27 389. Dr. Lanier provided tables in his study showing that among rejected voter  
registrants, 86.6% of Latinos reported being born in the U.S. and 92.9% of

1 non-Latinos reported being born in the U.S. [Lanier 7/10/08 Tr. 247:18-  
2 248:4].

3 390. Dr. Lanier further examined several categories of voters whose applications  
4 were rejected because of Prop 200. Dr. Lanier divided these voters into those  
5 who made a later successful application and those who never joined the voter  
6 rolls. [Lanier 7/15/08 Tr. 330:23-332:3].

7  
8 391. Dr. Lanier determined which rejected voter were later successful by comparing  
9 the names on the rejected voter registration forms to the Arizona voter roll  
10 produced by State Defendants. [Lanier 7/10/08 Tr. 244:8-19].

11 392. Dr. Lanier examined two phenomena: first the extent to which Latinos' voter  
12 applications were rejected for failure to comply with Prop 200; second, the  
13 extent to which Latinos were ultimately successful in joining the voter rolls.  
14 [Lanier 7/10/08 Tr. 244:20-245:8].

15  
16 393. When he examined Latinos in particular, Dr. Lanier found that among the  
17 rejected voters, 16.7 percent were Latino. Among those who were rejected but  
18 then later successfully registered, 11 percent were Latino. Among those who  
19 were rejected and never joined the voter rolls, 19.8 percent were Latino. [Tr.  
20 Ex. 884 Table 2 and [Lanier 7/10/08 Tr. 243:8-244:7].

21  
22 394. Dr. Lanier combined the rejected voter registration forms with the voter rolls to  
23 create a dataset of people who would have been on the voter roll had not Prop  
24 200 been in effect. Based on this information, Dr. Lanier concluded that the  
25 representation of Latinos among the rejected voters was 2.8% higher than the  
26

1 representation of Latinos among all registration applicants during the same  
2 period following Prop 200. [Tr. Ex. 884 Table 5; Lanier 7/10/08 Tr. 245:9-  
3 246:7].

4 395. Dr. Lanier further found that the difference between Latinos who successfully  
5 registered and Latinos who were rejected and ultimately not successful was  
6 6.1%. [Tr. Ex. 884 Table 5; Lanier 7/10/08 Tr. 246:8-14].

7  
8 396. The time period for Dr. Lanier's study was January 1, 2005 until September  
9 2007 which is the end period for the Arizona voter roll provided by State  
10 Defendants. [Lanier 7/10/08 Tr. 246:15-19].

11 397. Dr. Lanier's study did not include rejected voter registration forms from Santa  
12 Cruz County, which did not produce any forms, and did not include a portion  
13 of rejected forms from Yuma County. [Lanier 7/10/08 Tr. 246:20-247:5].

14  
15 398. Dr. Lanier produced a series of descriptive tables showing the information  
16 provided by the rejected voter registration forms. [Lanier 7/10/08 Tr. 242:20-  
17 24].

18 399. Based on his study, Dr. Lanier concluded that Latinos were more likely to be  
19 rejected than what would be predicted by their representation among all  
20 registration applicants during the time period and also that the representation of  
21 Latinos among those who were ultimately unsuccessful at registering is higher  
22 than would be predicted by the percentage among those who were initially  
23 rejected. [Lanier 7/10/08 Tr. 247:6-17].  
24  
25  
26

1 400. The rejected voter data also shows that in certain counties, the disparate impact  
2 on Latinos was much higher than the statewide average. For example, in  
3 Yuma County, Latinos comprised 34.9% of all registration applicants but  
4 40.5% of applicants rejected because of Prop 200 – a difference of 5.7%.  
5 Yuma County Latinos were similarly over-represented among voter  
6 registration applicants who were rejected pursuant to Prop 200 and never  
7 subsequently joined the voter rolls. [Tr. Ex. 884 Table 5].  
8

9 401. Based on his analysis, Dr. Lanier concluded that the effect of Proposition 200  
10 fell disproportionately on Latinos with respect to rejections. Dr. Lanier also  
11 concluded that Latinos were less likely to successfully reregister after having  
12 their registration forms rejected pursuant to Prop 200. [Lanier 7/10/08 Tr.  
13 262:10-263:1].  
14

15 **b. Dr. Lanier did not Base his Conclusions on Any Regression Analyses.**

16 402. Dr. Lanier did not perform regressions or any statistical analysis on the  
17 rejected voter registration forms or uncounted ballots he examined in this case.  
18 Dr. Lanier testified that because he had the full data set of rejected registration  
19 forms and uncounted ballots, he did not need to do any extrapolation or make  
20 inferences in order to determine whether the effect of Prop 200 was different  
21 between Latinos and non-Latinos. [Lanier 7/10/08 Tr. 258:18-259:9].  
22

23 403. Given the difficulty obtaining the rejected forms and uncounted ballots, it was  
24 impossible to complete the task of manually entering the data prior to the due  
25 date for Dr. Lanier's January 4, 2008 report. [Lanier 7/10/08 Tr. 263:5-264:7]  
26

1 404. Before he received the rejected voter registration forms and uncounted ballots,  
2 Dr. Lanier performed a preliminary regression analysis of the voter roll in  
3 order to submit a report before the January 4, 2008 deadline. This analysis  
4 showed that Prop 200 had a negative effect on both Latino and non-Latino  
5 registrations and that the effect on Latinos tended to be larger. Dr. Lanier did  
6 not continue to work on this regression analysis after he received the rejected  
7 voter registration forms and uncounted ballots. [Lanier 7/10/08 Tr. 263:2-25].

9 405. Dr. Lanier explained that the purpose of his preliminary analysis on January 4  
10 was to try to glean information from the voter rolls given that he did not yet  
11 have the data from the rejected voter registration forms and the uncounted  
12 ballots that he was retained to analyze. The data Dr. Lanier received from the  
13 forms themselves superceded his earlier analysis of the voter rolls. As a result,  
14 Dr. Lanier based his conclusions in the case on his analysis of rejected voter  
15 forms and uncounted ballots and did not base any of his conclusions in the case  
16 on his preliminary analysis of the voter rolls. [Lanier 7/10/08 Tr. 264:1-11].

18 406. Dr. Lanier incorporated a number of dummy variables into his analysis to  
19 control for monthly variations in the election cycle, as well as changes in  
20 registration patters associated with even years and presidential election years.  
21 Most importantly, Dr. Lanier sought to measure the effect of Prop 200 in the  
22 context of time trends in registration. [Lanier 7/10/08 Tr. 328:3-329:12].

24 407. Although Dr. Zax claimed that Dr. Lanier had misspecified variables in his  
25 regression analysis of the voter roll, Dr. Zax conceded that he had performed  
26

1 no analysis to confirm whether Dr. Lanier's observation of a negative  
2 regression effect was actually due to a negative effect of prop 200 on voter  
3 registration. [Zax 07/18/08 Tr. 929:25-930:7].

4 408. Dr. Zax further conceded that his only suggestion regarding how to better  
5 specify the variables in Dr. Lanier's regression analysis of the voter roll would  
6 have made it impossible to measure the effect of prop 200 on voters. [Zax  
7 07/17/08 Tr. 903:6-905:25].

8 409. Dr. Zax further testified that he had taken no steps to even begin to figure out if  
9 one could measure the specific effect of prop 200 on voter registration while  
10 also using year-specific dummy variables. [Zax 07/17/08 Tr. 906:1-24].

11 410. Defendants' expert Dr. Zax did nothing to determine whether there was an  
12 upward time trend in Arizona voter registrations although he conceded that  
13 such information would be relevant to determining whether prop 200 had a  
14 negative effect on Latino voter registrations. [Zax 07/17/08 Tr. 897:18-898:2].

15 411. Dr. Zax further conceded that prop 200 could have a negative effect on voter  
16 registration while at the same time the overall number of registered voters in  
17 Arizona would increase and that he had done no analysis to investigate whether  
18 this was true in the wake of prop 200. [Zax 07/17/08 Tr. 908:17-911:17]

19 412. Dr. Zax conceded that the graphics presented in his report's discussion of Dr.  
20 Lanier's specification of variables are not based on any true number values in  
21 this case and were constructed by a graphic artist colleague. [Zax 07/18/08 Tr.  
22 927:3-928:23].

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- 1 413. Dr. Zax took the position that information about voter registration should be  
2 excised from any regression analysis but did not perform a regression analysis  
3 or demonstrate that removing information from the analysis would render it  
4 more accurate. [Zax 07/17/08 Tr. 899:9-900:18].  
5
- 6 414. Dr. Zax further testified that his excision of data from Dr. Lanier's graph was  
7 something he advocated only in the context of this case and he had never  
8 before excised data graphically in his professional career and had never seen  
9 such an approach in a scholarly journal. [Zax 07/17/08 Tr. 900:19-902:3].  
10
- 11 415. Dr. Zax did not investigate whether the increase in Latino voter registrations in  
12 Maricopa County in the spring of 2007 was the result of a targeted voter  
13 registration drive. [Zax 07/17/08 Tr. 911:18-912:13].  
14
- 15 416. Dr. Zax made no determination whether the rise in Latino voter registration in  
16 the spring and summer of 2007 ought to be controlled for. [Zax 07/18/08 Tr.  
17 934:1-7].  
18
- 19 417. Dr. Zax characterized Latino voter registration following prop 200 as  
20 “markedly higher” but then conceded that this opinion was based on eyeballing  
21 a graph without knowing the values of the numbers on the graphs. [Zax  
22 07/18/08 Tr. 934:8-17].  
23
- 24 418. Dr. Lanier responded to Dr. Zax’s critique of his analysis of rejected voter  
25 registration forms by explaining that it was relevant to include in his analysis  
26 all persons who remained unregistered after being rejected pursuant to Prop  
200. This category of affected individuals includes people who were rejected  
for voter registration pursuant to Prop 200 and who made subsequent  
unsuccessful attempts to register to vote as well as those who were rejected and  
did not make a subsequent attempt to register to vote. [Lanier 7/10/08 Tr.  
264:12-265:16].

1                   **c. Defendants do not Dispute Dr. Lanier’s Findings Based on Rejected**  
2                   **Voter Registration Forms.**

3                   419. Dr. Zax offered no opinions to undermine the analysis done by Dr. Lanier of  
4                   rejected voter forms and testified that he did not dispute the existence or  
5                   numerosity of the rejected voter forms analyzed by Dr. Lanier. [Zax 07/17/08  
6                   Tr. 893:4-13]. Instead, Dr. Zax claimed the number of affected voters was  
7                   “not nearly large enough, in my estimation, to be thought of as substantively  
8                   important.” [Zax 07/17/08 (am) Tr. 800:24-801:17]. However, Dr. Zax  
9                   provided no scientific bases for this opinion [Zax 07/18/08 Tr. 920:19-922:6].  
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11  
12                   **d. Dr. Espino Analyzed the Flow of Voter Registrations Before and After**  
13                   **Prop 200 and Found a Disparate Impact on Latinos.**

14                   420. Plaintiffs’ expert witness, Dr. Rodolfo Espino, is an assistant professor of  
15                   political science at Arizona State University in Tempe, who areas of teaching  
16                   and research include american political behavior and political statistics.  
17                   [Espino 07/15/08 Tr. 371:7-374:25].

18                   421. Dr. Espino examined the effect of Prop 200 on the flow of voter registrations  
19                   in Arizona and its individual counties. Dr. Espino examined registration rates  
20                   before and after the implementation of Prop 200 with a particular focus on any  
21                   changes in Latino registration rates. [Espino 07/15/08 Tr. 375:13-23].

22  
23                   422. Dr. Espino reported that Latinos comprise a lower percentage of registered  
24                   voters than non-Latinos in Arizona. Latinos comprise a lower percentage of  
25                   registered voters than non-Latinos because Latinos are a minority population in  
26

1 Arizona and because certain factors such as lower socioeconomic status  
2 contribute to lower voter registration among eligible Latinos. [Espino  
3 07/15/08 Tr. 375:24-376:15].

4 423. Dr. Espino explained that when looking at voter registration in Arizona, one  
5 would expect to see a steady increase over time because Arizona is a fast-  
6 growing state and its population is increasing. In addition, one would expect to  
7 see cyclical increases in voter registration associated with elections. [Espino  
8 07/15/08 Tr. at 378:5-379:8].

10 424. Dr. Espino further testified that because Latinos are a faster growing  
11 population in Arizona, one would expect Latino voter registration to increase at  
12 a greater rate than non-Latino voters. [Tr. Ex. 963; Espino 7/15/08 Tr. at  
13 379:9-380:3].

15 425. To conduct his study, Dr. Espino analyzed the Arizona statewide voter roll that  
16 had been coded for Spanish surname in order to identify Latino and non-Latino  
17 applicants. [Espino 7/15/08 Tr. 376:16-377:1].

18 426. Dr. Espino examined two time periods for his study. The 941 days following  
19 implementation of Prop 200 and through the time period covered by the  
20 Arizona voter roll and a similar period of 941 days preceding the  
21 implementation of Prop 200. [Espino 7/15/08 Tr. 377:2-16].

23 427. Dr. Espino conducted his analysis by aggregating individual registration dates  
24 up to weekly and monthly registration rates. Dr. Espino then reported the  
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monthly registration trends in graphic and numeric form. [Espino 7/15/08 Tr. 377:17-378:4].

428. Dr. Espino's analysis revealed that in the period following implementation of Prop 200, Latino voter registration dropped as a percentage of total registration. [Espino 7/15/08 Tr. 380:4-381:7, 382:9-383:2; Tr. Ex. 874 Figure 1, pg. 3].

429. Dr. Espino testified that an increase in the percent of Latino voter registrants in the spring and summer of 2007 was the result of targeted voter registration drives by a political party and by candidates for Phoenix city council. [Espino 7/15/08 Tr. 381:8-382:8, 383:3-9].

430. Dr. Espino further looked at Latino voter registration in individual counties in the wake of Proposition 200. Dr. Espino found that in certain counties, including Greenlee and Yuma, Latino voter registration as a percent of total registration dropped dramatically when compared to the pre-Prop 200 period. [Espino 7/15/08 Tr. 383:10-385:2; Tr. Ex. 874 Figure 2].

431. Dr. Espino noted that in certain counties with significant Latino populations such as Yuma and Pima counties, where one would expect percent Latino registrants to increase over time, the percent of Latino registrants decreased in the wake of Prop 200 when compared to the pre-Prop 200 period. [Espino 7/15/08 Tr. 385:3-15; Tr. Ex. 874 Figure 2].

- 1 432. Dr. Espino did not use any estimations or projections in his analysis because he  
2 analyzed the full population of voter registrants before and after Prop 200.  
3 [Espino 7/15/08 Tr. 385:16-386:2].
- 4 433. Dr. Espino chose not to look farther back in his analysis than 941 days  
5 preceding the implementation of Prop 200 and explained that the farther back  
6 in time one looks at the voter registration roll, the less accurate the information  
7 is. [Espino 7/15/08 Tr. 386:3-11].
- 8 434. Dr. Espino looked not only at the graphs showing percent Latino voter  
9 registration following Prop 200 but also examined the numbers behind the  
10 graph when forming his conclusions. [Espino 7/15/08 Tr. 386:12-387:2].
- 11 435. Dr. Espino found that in the period prior to the implementation of Prop 200, an  
12 average of 60 Latinos registered per week. Following Prop 200, an average of  
13 only 38 Latinos registered per week. [Defense Imp. Ex. 2; 7/15/08; Espino Tr.  
14 429:21-430:7].
- 15 436. Dr. Espino also found that 372 non-Hispanics registered per week before Prop  
16 200. Following Prop 200 that figure was 239 individuals which is a difference  
17 of about 133. Def. Imp. Ex. 2; [Espino 7/15/08 Tr. 431:9-1].
- 18 437. Dr. Espino's analysis showed that the greater numerical drop in voter  
19 registration following Prop 200 was experienced by non-Latinos, which is the  
20 larger demographic group in Arizona. Dr. Espino also found that Latino voters  
21 experienced the greater drop as a percentage of their voter registration when  
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compared to non-Latinos. [Def. Imp. Ex. 2 at Table 3; Espino 7/15/08 Tr. 431:15-432:1].

438. Based on his analysis of voter registration statewide before and after Prop 200, Dr. Espino concluded that the percentage drop for Latinos was greater than that of non-Latinos. [Def. Imp Ex. 2 Table 3].

439. Based on his analysis of voter registration in individual counties, Dr. Espino concluded that the percentage drop for Latinos was greater than that of non-Latinos in the following counties: Apache, Gila, Graham, Greenlee, Pima, Santa Cruz, and Yuma. [Def. Imp Ex. 2 Table 4; Espino 7/15/08 Tr. 432:2-433:7].

440. Based on his analysis, Dr. Espino concluded that both Latinos and non-Latinos experienced a drop in their registration rates following the implementation of Proposition 200 when compared to the period before Prop 200. However, Latinos statewide showed a greater percentage drop in their weekly registration rates when compared to non-Latinos. [Def. Imp. Ex. 2 at Table 3; Espino 7/15/08 Tr. 391:20-25].

441. Based on his analysis, Dr. Espino further concluded that in certain individual counties Latino voter registration dropped more than the statewide average, including Pima, Greenlee and Yuma counties. [Espino 7/15/08 Tr. 393:23-394:7].

442. On March 11, 2008, Dr. Espino corrected several data errors in his March 7, 2008 report. [Def. Imp. Ex. 2; Espino 7/15/08 Tr. 427:12-429:18].

1 443. Although Dr. Espino presented regression analyses in his second rebuttal  
2 report, Dr. Espino did not rely on the regression analyses in forming his  
3 conclusions in the case. [Espino 7/15/08 Tr. 394:25-396:25].

4 444. Dr. Espino explained that the number showing the percent change in the  
5 regression slope in his second rebuttal report does not signify that the percent  
6 Latino registration is higher than the percent non-Latino registration in the  
7 wake of Prop 200. These numbers represent the regression slopes multiplied  
8 by the indicator variable for the number of weeks beyond the starting point and  
9 show whether a slope in period one is different than a slope in period two. [Tr.  
10 Ex. 877 Table 1; Espino 7/15/08 Tr. 433:8-436:14].

11 445. Thus, Latinos can show a greater positive change in the regression slope for  
12 their voter registration before and after Prop 200 when compared to non-  
13 Latinos, while at the same time experiencing a greater negative impact of Prop  
14 200 on their voter registration. For example, the percent change in the  
15 regression slope can be driven by non-Prop 200 factors such as rapid  
16 population growth or a targeted voter registration drive. At the same time,  
17 Prop 200 can have a greater negative impact on Latino registrations when  
18 compared to non-Latino registrations. [Espino 7/15/08 Tr. 440:9-442:4].

19 446. For example, in Gila County, Latino registration was 30% lower when  
20 compared to the period before Prop 200. At the same time, the difference in the  
21 regression slopes for Latino registration was +39% in the post Prop 200 period.  
22 [Compare Def. Imp. Ex. 2 table 4 info for Gila County with Table 1 in Ex.  
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1 877). This means that although Latino registrations rose overall in the post-  
2 Prop 200 period in Gila County, Latinos suffered a greater negative impact  
3 from Prop 200 when compared to non-Latinos.

4 **e. Dr. Zax's Critique of Dr. Espino's Analysis was not Credible Because**  
5 **it Contained no Independent Analysis and Defendants Never Provided Dr.**  
6 **Zax with Dr. Espino's Corrected Report.**

7 447. Dr Zax testified at length regarding what he perceived as errors in the March 7,  
8 2008 report of Dr. Espino but Dr. Zax was never provided with the corrected  
9 report of Dr. Espino served on defendants March 11, 2008 and marked by  
10 Defendants as Defendants' Impeachment Exhibit 2. [Zax 07/18/08 Tr. 924:5-  
11 18].

12 448. The charts with horizontal lines presented by Dr. Zax in his reports were not  
13 based on regression analysis but instead created by a graphic artist outside the  
14 presence of Dr. Zax. [Zax 07/17/08 Tr. 902:6-903:5].

15 449. Dr. Zax admitted that his opinion Latino voter registration had not suffered in  
16 Greenlee and Yuma counties was based on putting his fingers over the graphs  
17 presented by Dr. Espino. [Zax 07/18/08 Tr. 934:22-935:21].

18 450. Dr. Zax further confessed that instead of performing regressions on the voter  
19 roll data, he asked a graphic artist colleague to superimpose lines over the  
20 graphs presented by Dr. Espino that would show a zero regression slope while  
21 admitting the data might have shown a negative regression slope. [Zax  
22 07/18/08 Tr. 935:22-938:24].  
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1 451. Dr. Zax recommended excising time periods from Dr. Espino's study of the  
2 AZ voter roll but conceded he had no information demonstrating that Latino  
3 voter registration, as a percentage of total registration, varied systematically  
4 with the presidential election cycle. [Zax 07/18/08 Tr. 933:15-19].

5  
6 452. Dr. Zax criticized Dr. Espino for performing no test of statistical significance  
7 on the real numbers in Dr. Espino's report but Dr. Zax himself performed no  
8 test of statistical significance to disprove the significance of Dr. Espino's  
9 findings. [Zax 07/18/08 Tr. 925:3-7].

10 **f. Defendants' Expert Witness, Dr. Zax, did not Perform Any Analysis of**  
11 **Prop 200's Effect on Voter Registration.**

12  
13 453. Dr. Zax performed no original analysis to answer the question whether prop  
14 200 had a negative impact on voter registration in general or Latino voter  
15 registration. [Zax 07/17/08 Tr. 885:11-15, 07/17/08 Tr. 898:3-8].

16 454. Dr. Zax described his conclusions variously as "intuition," "a strong sense,"  
17 and "informed speculations rather than conclusions based on actual  
18 examination of the data and calculation of the alternative regression  
19 specifications" and conceded that he performed no formal analysis to confirm  
20 his "speculations." [Zax 07/17/08 Tr. 885:16-886:6, 07/17/08 Tr. 907:14-19  
21 and 07/18/08 Tr. 932:8-19].

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23 455. Dr. Zax testified that although he discussed with defense counsel the idea of  
24 conducting his own original analysis, his client "had no particular interest in  
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1 encouraging [him] to provide independent analysis.” [Zax 07/17/08 Tr.  
2 883:12-19].

3 456. Dr. Zax further testified that although he was provided with the data used by  
4 plaintiffs’ experts for their analysis, and he opened and examined the Arizona  
5 voter roll used by Drs. Lanier and Espino, he performed no independent  
6 analysis of the evidence relied upon by plaintiffs’ experts. [Zax 07/17/08 Tr.  
7 883:24-885:10].

8  
9 457. Dr. Zax testified that he thought Latino voter registration was numerically  
10 higher following Prop 200 but then conceded that his conclusion was based on  
11 a visual inspection of Dr. Lanier’s graph without performing any analysis or  
12 knowing what exact values were present on the graph. [Zax 07/17/08 Tr.  
13 895:22-897:3].

14  
15 **g. Plaintiffs Debbie Lopez and Organizations Were Harmed in**  
16 **Their Efforts to Register Voters Following Prop 200.**

17 458. For many years now, Ms. Lopez has dedicated a substantial amount of her time  
18 to working to improve the condition of the Latino community in Arizona by  
19 increasing voter registration and voter turnout. [Pending Tr. Ex. 713, 7/16/08  
20 Tr. at 605:24-606:8].

21 459. Ms. Lopez feels that Proposition 200 has harmed her professional and personal  
22 efforts in this regard. Prior to the implementation of Proposition 200, she  
23 would register eligible individuals by assisting them with filling out the forms  
24 and ensuring that those forms were submitted to the Counties. However, since  
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1 the implementation of Proposition 200, her ability to register voters has  
2 suffered. [7/16/08 Tr. at 608:17-609:18].

3 460. Ms. Lopez says in her experience many people in the Latino community do not  
4 carry around evidence of their United States citizenship such as their birth  
5 certificates or naturalization certificates. Thus, even if her or her fellow voter  
6 registration workers wanted to help these people register to vote, they could  
7 not register unless they have a driver's license issued after October 1, 1996.  
8 [7/16/08 Tr. at 612:2-22].

9  
10 461. In Ms. Lopez's experience even if voter applicants did carry documentary  
11 proof of citizenship, she had no way of duplicating their documents in the  
12 field. As a result, Ms. Lopez feels that today she can register fewer people  
13 when compared to number of people she could register with the same resources  
14 prior to the passage of Proposition 200. [7/16/08 Tr. at 611:15-20; 612:23-  
15 613:14].

16  
17 462. Ms. Lopez stated that Proposition 200 has also required her to spend a  
18 significant amount of time navigating problems with the new registration  
19 forms. [7/16/08 Tr. at 614:6-10].

20  
21 463. Ms. Lopez has spent her own personal money on voter registration after the  
22 passage of Proposition 200. Ms. Lopez paid for phone calls to educate eligible  
23 registrants about the requirements of Proposition 200 and address other  
24 problems that Proposition 200 has created. Ms. Lopez also paid for  
25 photocopying original documents and gasoline in order to drive to prospective  
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1 registrants' homes to gather the necessary information required by Proposition  
2 200. Ms. Lopez stated that as a result of Proposition 200, she has spent over a  
3 thousand dollars of her money for which she has never been reimbursed.  
4 [7/16/08 Tr. at 614:17-19; 616:19-23; 622:21-623:12].

5  
6 464. In addition, in a time of heightened fear of identity theft, Ms. Lopez stated that  
7 even if it were possible to obtain a copy or picture of the required identification  
8 documents, few voter registration applicants would be willing to allow a  
9 volunteer to copy their citizenship documents, such as birth certificates or  
10 passports. [7/16/08 Tr. at 613:8-14].

11 465. Following the passage of Proposition 200, SB 1219 was introduced by Senator  
12 Marilyn Jarrett in the Arizona Legislature in 2005, which would prohibit  
13 anyone but a government official from photocopying proof of citizenship  
14 documents. Government officials acknowledged that this would impact voting  
15 drives, but believed it necessary to prevent identity theft. SB 1219 passed the  
16 Senate, but ultimately did not pass, as it failed to get a vote in the House of  
17 Representatives. [bill history found at  
18 <http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/47leg/1r/bills/sb12>  
19 [19o.asp](http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/47leg/1r/bills/sb12)].  
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21  
22 466. Debbie Lopez formerly worked as the Director of the Latino Vote Project.  
23 After the passage of Proposition 200, the funding for the project was  
24 eliminated because the new law's voter registration restrictions resulted in  
25 fewer successful voter registrations during registration drives when compared  
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to the number of successful registrations they could achieve using the same resources prior to the passage of Proposition 200. [7/16/08 Tr. at 608:17-609:9].

467. Luz Sarmina is the President & CEO of Valle del Sol. [7/15/08 Tr. at 491:4-7].

468. Luz Sarmina has served as President & CEO of Valle del Sol for thirteen years.[7/15/08 Tr. at 491:4-7].

469. Plaintiff Valle del Sol is a non-profit and community based organization that also operates as a non-partisan organization committed to the delivery of behavioral health, social services and leadership development. Valle del Sol has conducted several voter registration campaigns in Arizona. Valle del Sol has conducted its voter registration activities at community-based sites such as school campuses and churches. Valle del Sol stated that because the effects of Proposition 200 has limited the number of persons that Valle del Sol can register to vote and impaired the ability of Valle del Sol to conduct voter registration and turnout efforts, they have been injured by Proposition 200. [Pending Tr. Ex. 469-471; 7/15/08 Tr. at 490:19-24, 492:6-497:12].

470. Valle del Sol is one of Arizona’s largest non-profit organizations focused on services to both the Latino community and community-at-large and has registered voters through the years. [Tr. Ex. 562; 7/15/08 Tr. at 490:19-491:3, 491:14-492:15].

471. Valle del Sol organized precinct walks to provide voter information and registration. [7/15/08 Tr. at 492:6-18].

1 472. When Valle del Sol did voter registration drives, Valle del Sol gathered  
2 volunteers for precinct walks and provided them a script with voter registration  
3 forms. [7/15/08 Tr. at 492:6-18].

4 473. Valle del Sol stated that in order to counteract the effects of Proposition 200  
5 they had to expend additional staff hours on meetings, trainings, strategy  
6 sessions, and on the ground outreach to the community. Approximate resources  
7 depleted on voter education and registration efforts consitute about \$7,000 in  
8 direct costs which include trainings, newsletters, and extra services, while  
9 indirect costs incurred include copies of identification forms and telephone  
10 calls to clarify and correct mistakes on voter registration forms. [Pending Tr.  
11 Ex. 470, 474 & 477; 7/15/08 Tr. at 497:12-498:18; 509:16-20; 511:5-7; 514:8-  
12 515:5, 9-19].

13 474. As a non-profit organization, Valle del Sol, received funding from two sources:  
14 contracts with organizations and entities such as the government and United  
15 Way; and through fundraising activities. Because Valle del Sol's budget  
16 reflects its core businesses of behavioral health, social services and leadership  
17 development, the only costs the agency incurred before the implementation of  
18 Prop. 200 were the cost of overhead, occupancy and staff supervision. If Valle  
19 del Sol spends greater resources on voter registration campaigns, it would  
20 impair their ability to conduct our core services in meeting the needs of our  
21 consumers. [7/15/08 Tr. at 498:2-498:18; 514:22-515:8].

- 1 475. Valle del Sol stated that Proposition 200's proof of citizenship requirements  
2 for voter registration has severely impaired their ability to register voters.  
3 [7/15/08 Tr. at 501:13-502:8].
- 4 476. Valle del Sol stated that Proposition 200's proof of citizenship requirements  
5 will greatly hinder their voter registration efforts by requiring all canvassers to  
6 bring along photocopy machines to places where voters gather, or to bring such  
7 a machine door to door in a neighborhood. Valle del Sol does not have the  
8 resources to equip canvassers with portable photocopy machines or scanners  
9 and printers in order to conduct voter registration campaigns in Arizona.  
10 [7/15/08 Tr. at 497:12-498:9]. \
- 11 477. Sal Martinez is the Director of Human Resources for Chicanos Por La Causa  
12 ["CPLC"]. [7/16/08 Tr. at 552:9-18].
- 13 478. CPLC is a statewide community development organization in Arizona  
14 committed to building stronger, healthier communities. CPLC promotes  
15 positive change and self-sufficiency to enhance the quality of life for the  
16 benefit of those it serves. [7/16/08 Tr. at 551:21-552:1-6].
- 17 479. CPLC provides direct services in the areas of political opportunity, voter  
18 registration, voter outreach, and other areas. CPLC encourages its daily  
19 clientele to become involved in civic life. As a result, CPLC attempts to  
20 register its daily clientele at its different direct service sites. In addition, CPLC  
21 conducts voter registration out in the community. [7/16/08 Tr. at 552:22-  
22 553:6, 11-13].
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- 1 480. CPLC has also expended funds, time and human resources to provide the  
2 community with accurate information regarding the new voter and voter  
3 registration requirements imposed by Proposition 200. CPLC initiated a state-  
4 wide campaign to register new voters and counteract the new voter registration  
5 requirements of Proposition 200. [7/16/08 Tr. at 554:17-555:5].  
6
- 7 481. Prop 200 has burdened CPLC in terms of its voter registration efforts by  
8 increasing the cost of performing the actual registration of individuals desiring  
9 to vote. [Tr. Ex. 538, 563, 565-566, 569-570; 7/16/08 Tr. at 554:9-14].
- 10 482. CPLC has a staff person who is solely dedicated to voter education and voter  
11 registration efforts. Through the program called “La Causa Advocacy,” CPCL  
12 focuses on voter outreach. The program was implemented to assist with the  
13 voter registration changes implemented by Proposition 200. CPCL also  
14 provides a training document used to familiarize its staff on the procedures  
15 used to register its clientele to vote. [Tr. Ex. 538 & 567; 7/16/08 Tr. at 555:18-  
16 23; 556:7-13; 575: 14-22; 577:25-578:21; 579:7-19].  
17
- 18 483. Because of Proposition 200, CPLC’s voter registration efforts have suffered.  
19 [7/16/08 Tr. at 579:7-19].  
20
- 21 484. Latinos who attempt to register to vote in community-based registration  
22 campaigns are unlikely to have proof of citizenship with them. [7/16/08 Tr. at  
23 559:22-560:4].
- 24 485. CPLC has found that Latinos often feel dejected when they truly want to  
25 register but do not possess the proper documents required by Proposition 200  
26

1 and often do not return with proper documentation to complete registration.  
2 [7/16/08 Tr. at 559:22-560:4, 17-561:3].

3 486. Proposition 200 has effectively obstructed voter registration by making the  
4 registration process costly and frustrating, thus obstructing the accomplishment  
5 of CPLC's mission. [7/16/08 Tr. at 561:21-562:7].  
6

7 **IV. Prop 200's Voter ID Requirement Has Prevented Thousands of Voters From**  
8 **Having Their Ballots Counted and has a Disparate Impact on Latinos.**

9 **a. Following Prop 200, the Secretary of State Changed its Elections**  
10 **Procedures Manual to Require an Address Match for Voters with Valid**  
11 **Identification**

12 487. The Arizona Election Procedures Manual provides that there are seven reasons  
13 a voter may vote using a provisional ballot: 1. the voter has not provided  
14 sufficient identification at the polling location; 2. the voter's name does not  
15 appear on the signature roster or inactive list, and the voter has not moved; 3.  
16 the voter has moved within the precinct; 4. voter has moved to a new precinct  
17 within the county; 5. voter has been issued an early ballot; 6. voter has changed  
18 names; or 7. the voter is challenged at the polling place. [Tr. Ex. 4 at 136].

19 **b. Counties Changed Their Practices at the Polls Following Prop 200.**

20 488. All Arizona counties establish polling places and times and dates for early  
21 voting for each primary and general election. [stipulated fact].  
22

23 489. Early voting in each Arizona county is conducted for approximately one month  
24 before each primary and general election. [stipulated fact].  
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- 1 490. Similar to State procedures, Voters must provide identification at the polls that  
2 match their name and address on the Signature Roster. [Tr. Ex. 500 at 23; Tr.  
3 Ex. 502 at 21; Tr. Exs. 445, Pending Tr. Exs. 374, 425, 445, 504, 505, & 512].  
4 These voters follow the Standard Voting Procedure. [Tr. Ex. 500 at p. 23; Pl.  
5 Tr. Ex. 502 at p. 21; Tr. Exs. 514 & 251; Pending Tr. Ex. 514].  
6
- 7 491. Voter ID clerks determine whether a voter will receive a regular, provisional,  
8 or conditional provisional ballot. [Hoyos 1/16/08 Dep. 20:4-7].
- 9 492. As is the case under state ID procedures, voters who do not have sufficient  
10 voter identification to meet the requirements of Proposition 200 are provided a  
11 conditional provisional ballot. [Hoyos 1/16/08 Dep. 12:1-25-13:1-2; Pending  
12 Tr. Exs. 431, 496, Tr. Ex. 500 at 25; Tr. Ex. 502 at 21].  
13
- 14 493. As under State Id procedures, voters whose name and/or address on their  
15 identification does not match the name and/or address on the Signature Roster  
16 must vote using a provisional ballot, not a conditional provisional ballot. [Tr.  
17 Ex. 500 at 28; Tr. Ex. 502 at 21 & 29; Tr. Ex. 518].
- 18 494. Voters who have sufficient identification but have another issue with their  
19 qualification to vote at the polling place, such as their name not appearing on  
20 the Signature Roster or if the voter previously received a vote-by-mail ballot,  
21 are provided a “provisional” ballot. [Tr. Ex. 387].  
22
- 23 495. However, Yavapai County’s website states that voters without sufficient  
24 identification do not receive a ballot at all. [Pending Tr. Exs. 459 & 461].  
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- 1 496. Voters who fill out a provisional or conditional provisional ballot are to be  
2 provided a receipt from the polling place that explains why they had to fill out  
3 a provisional ballot, rather than a standard ballot. [Tr. Exs. 436, 501 & 510 at  
4 27].
- 5  
6 497. When a voter receives a provisional ballot, he must fill out and sign a  
7 “Provisional Ballot Envelope” in which he places his completed ballot. [Tr.  
8 Ex. 4] The Provisional Ballot Envelopes were developed by each county  
9 according to the Secretary of State’s guidelines. [Tr. Ex. 384].
- 10 498. Persons who are not allowed to cast their ballot at the polls, but instead receive  
11 conditional provisional ballots because they do not have the identification  
12 required by Proposition 200, must return to the County Recorder’s Office or  
13 another place designated by the County Recorder to show identification for  
14 their ballot to be counted. [Pew 8/1/06 Dep. 27:16-25, 28: 12; Pending Tr. Ex.  
15 507].
- 16  
17 499. Poll workers are supposed to provide voters who fill out a conditional  
18 provisional ballot with a list of the locations that will accept his or her  
19 identification. [Tr. Ex. 500 at p. 28; Tr. Ex. 502 at p. 29; Tr. Ex. 510 at 27].
- 20  
21 500. If a voter returns to a polling place on election day after having previously  
22 voted using a conditional provisional ballot because the voter did not originally  
23 have sufficient identification, the voter must fill out a Proof of Identification  
24 form, which is then placed in the provisional ballot box. The voter may not  
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- 1 retrieve their conditional provisional ballot and cast it on election day. [Tr. Ex.  
2 500 at 30; Tr. Ex. 502 at 31].
- 3 501. If a voter who filled out a conditional provisional ballot does not return to  
4 show sufficient identification, his or her ballot is not counted. [Tr. Ex. 510 at  
5 28].
- 6  
7 502. The Counties determine what locations will be used to verify identification for  
8 voters who filled out conditional provisional ballots. The Counties also  
9 determine who will be allowed to verify the voters' identification and whether  
10 political party representatives will be involved. [Pending Tr. Exs. 521 & 526].
- 11 503. Some Counties do not perform any background checks of poll workers who are  
12 charged with reviewing identification documents at the polls in order to protect  
13 voters from identity theft and other potential security risks. [Wayman-Trujillo  
14 1/9/08 Dep. 91:18-25 – 92:1-18; Pending Tr. Ex. 335].
- 15  
16 504. County election officials have had to inform voters who they know personally  
17 that they cannot vote because they lack the identification required by  
18 Proposition 200 and have expressed concerns that poll workers will be asked to  
19 review identification from voters who they know personally. [Hoyos 1/16/08  
20 Dep. 38:6-20; Tr. Ex. 363; Pending Tr. Exs. 484 & 320].
- 21  
22 505. For voters who elect to vote early by mail, the Counties use a signature  
23 verification process that they believe is sufficient to verify the voter's  
24 identification. [Rodriguez 7/31/06 Dep. 12:14-13:9; Hoyos 1/16/08 Dep. 43:8-  
25 21; Osborne 7/31/06 Dep. 51:23-52:9; Wayman-Trujillo 1/9/08 Dep. 110:7-11,  
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- 1 113:6-13; Justman 8/1/06 Dep. 34:15-35:13]. No identification is required for  
2 those early voters. [Tr. Ex. 244 at 5, 4 at 73, 445; Hoyos 1/16/08 Dep. 81:6-7].
- 3 506. Voters who receive a vote-by-mail ballot can drop off their completed ballots  
4 at any polling place and do not have to show identification at the poll. [Tr. Ex.  
5 500 at 26; Tr. Ex. 502 at 27].
- 6
- 7 507. For voters who elect to vote early in person, the Counties do not require the  
8 voters to present identification, but they do verify the voter's signature. [Tr.  
9 Ex. 445, 244; Pending Tr. Ex. 499 at 3; Justman 8/1/06 Dep. 34:15-35:13].
- 10 508. Some Counties were concerned that the list of acceptable ID under Prop. 200 is  
11 not comprehensive enough based on what they observed while implementing  
12 Prop. 200. [Rodriguez 1/22/08 Dep. 149:9-150:8; Justman 8/1/06 Dep. 35:24-  
13 36:17; Johnson 8/1/06 Dep. 34:22-37:15].
- 14
- 15 509. Pima County has only issued approximately 11 recorder's certificates over the  
16 past five years. [Rodriguez 8/2/06 Dep. 44:5-12; Hoyos 1/16/08 Dep. 32:2-12  
17 [does not happen "too often" in Pinal county since Prop 200]. In her seven  
18 years of service, the Apache County Elections Director has not seen a  
19 recorder's certificate issued. [Pew 8/1/06 Dep. 20:5-20:12].
- 20
- 21 510. Some Counties believe that the effect of limiting polling place ID results in the  
22 disenfranchisement of Arizona voters. [Rodriguez 1/22/08 Dep. 151:2-5; Pew  
23 8/1/06 Dep. 8:18-25; Justman 8/1/06 Dep. 34:3-14; Johnson 8/1/06 Dep.  
24 41:20-42:2].
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1 511. After the implementation of Proposition 200, at least one County did not have  
2 the fund to adequately communicate information about the new identification  
3 requirements for voting to the public. [Pew 8/1/06 Dep. 9:23-25, 10:1-10].

4 512. After the implementation of Proposition 200, a few Counties have provided  
5 registered voters with documents that the county will accept as a valid form of  
6 identification for voting at the polls because there is a concern that some voters  
7 will not have the identification documents required by Proposition 200.  
8 [Hoyos 1/16/08 Dep. 27:10-25, 28:1-4; Pew 8/1/06 Dep. 21:8-25- 22:1-24;  
9 Wayman-Trujillo 1/9/08 Dep. 106:12-25- 13:1-5; Tr. Ex. 511 at 2; 288, 289 &  
10 290]. Pinal County, for example, distributes “sample ballots” prior to every  
11 federal, state and county election at a cost of approximately \$70,000 to  
12 \$80,000 per distribution. [Hoyos 1/16/08 Dep. 41-42]. Other Counties do not  
13 provide voters with official mailers that can be used as a form of identification  
14 at the polls. [Stall worth 1/18/08 Dep. 32: 15-17].

15 513. At least one County only mailed out educational material about the new voter  
16 identification requirements of Proposition 200 to the public one time because  
17 the mailings were a costly effort. [Hoyos 1/16/08 Dep. 26:1-25, 27:1-25].

18 514. In some Counties, funds to pay for the cost of producing and distributing  
19 mailers and documents such as “sample ballots” and other forms of “official  
20 election” mail that are accepted as one form of identification for voting at the  
21 polls have not been budgeted for future elections. [Wayman-Trujillo 1/9/08  
22 Dep. 108:3-25, 109:1-10].  
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- 1 515. Maricopa County is considering eliminating mailers for the November 2008  
2 elections to address budget issues. [Osborne 1/14/08 Dep. 83:25, 84:11].
- 3 516. The Counties are not required to send out election mail that can be used as  
4 proof of identification at the polls. [Pew 8/1/06 Dep. 23:4-24:18; Hoyos  
5 1/16/08 Dep. 54:10-56:25; Dastrup 8/1/06 Dep. 10:7-12; Osborne 7/31/06 Dep.  
6 62:11-25-63:1-3; Wayman-Trujillo 1/9/08 Dep. 106: 12-25-107: 1-12; Tr. Exs.  
7 404 & 405].
- 8 517. Of the fifteen Counties in Arizona, only a few Counties provide official  
9 mailers to registered voters that can constitute one of the two forms of non-  
10 photo identification required to vote under Proposition 200. [Pew 8/1/06 Dep.  
11 23:4-24:18; Hansen 8/1/06 Dep. 56:4-9; Hoyos 1/16/08 Dep. 54:15-55:23;  
12 Dastrup 8/1/06 Dep. 10:7-12; Osborne 7/31/06 Dep. 63:1-3; Wayman-Trujillo  
13 106:22-109:10; Tr. Exs. 404, 405; Stallworth 1/1808 Dep. 32:15-33:9; Dean-  
14 Lytle 1/16/08 Dep. 41:11-20, 101:18-24; Johnson 8/1/06 Dep. 44:23-46:4]
- 15 518. Some “official election mail” from the Counties cannot be used as  
16 identification because it is mailed to households, and therefore does not show  
17 the voter’s name. [Osborne 7/31/06 Dep. 64:3-10; Pending Tr. Ex. 528].
- 18 519. Some Counties do not have any information posted on their websites about the  
19 voter identification requirements of Proposition 200. [Hoyos 1/16/08 Dep.  
20 33:2-10; Dean-Lytle 1/16/08 Dep. 93:6-11].
- 21 520. Some Counties have not done any outreach in Spanish-language media outlets  
22 or other events regarding the voter identification requirements of Proposition  
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1 200. [Hoyos 1/16/08 Dep. 33:11-19; Stallworth 1/18/08 Dep. 24:20-25;  
2 Wayman-Trujillo 1/9/08 Dep. 82:3-15].

3 521. After and because of the implementation of Proposition 200, some Counties do  
4 not accept valid out-of-state driver's licenses as sufficient identification for  
5 voting at the polls. [Hoyos 1/16/08 Dep. 2:21-25, 23:1-17; Stallworth 1/18/08  
6 Dep. 20:5-17]. However, Yavapai County does accept valid out-of-state  
7 driver's licenses as sufficient identification for voting at the polls and Mohave  
8 County would give a conditional provisional ballot to a voter with only an out-  
9 of-state driver's license. [Wayman-Trujillo 1/9/08 Dep. 127:16-24; Tr. Ex.  
10 472].  
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12 522. For proof of identification at the polls, Apache County accepts documents that  
13 are not listed in the statute as long as the documents have the voter's name and  
14 address. [Pew 8/1/06 Dep. 19:8-20:1-20; Tr. Ex. 417 at 4]. Coconino and  
15 Mohave Counties will not accept two utility bills from the same company as  
16 acceptable voter identification, but Apache County would call the County  
17 Attorney's office for guidance on this issue. [Hansen 8/1/06 Dep. 41:16-24];  
18 Tr. Ex. 472; Pew 8/1/06 Dep. 29:14-25]. By contrast, it is the policy of  
19 Maricopa County to accept two utility bills from the same company as  
20 acceptable voter identification. [Osborne 7/31/06 Dep. 54:21-55:6, 83:15-18].  
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22 523. Coconino County will not accept statements from financial institutions other  
23 than banks. [Hansen 8/1/06 Dep. 42:18-23]. Navajo County would leave it up  
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- 1 to the poll worker to determine if the identification were reliable. [Dastrup  
2 8/1/06 Dep. 19:24-20:8].
- 3 524. Coconino County does not take credit card bills as proof of identification,  
4 Apache County does, and Navajo County does not know. [Dastrup 8/1/06  
5 Dep. 19:19-21; Pew 8/1/06 Dep. 19:18-22].
- 6  
7 525. Although they are not listed in the Elections Procedures Manual, Apache and  
8 Maricopa Counties accept bills from Internet Service Providers and satellite  
9 TV companies as proof of identification. [Pew 8/1/06 Dep. 19:8-14; Osborne  
10 7/31/06 Dep. 52:19-53:23]. Navajo County accepts satellite TV bills.  
11 [Dastrup 8/1/06 Dep. 17:19-21].
- 12  
13 526. The Counties do not accept passports or military identification cards for  
14 identification at the polls. [Tr. Ex. 450; Pending Tr. Ex. 499 & 395].
- 15 527. Individual poll workers make the decision as to what forms of identification  
16 are reliable, leaving the implementation of the provisions to the workers and  
17 which leads to inconsistency across the Counties. [Dastrup 8/1/06 Dep. 18:6-  
18 15; Osborne 7/31/06 Dep. 87:11-19; Pew 8/1/08 Dep. 31:20-32:12].
- 19  
20 528. Maricopa County has “zero level of confidence” that all election boardworkers  
21 would come to the same decision regarding when a particular identification  
22 was acceptable and when it would require voting a conditional provisional  
23 ballot. [Osborne 7/31/06 Dep. 87:11-19].
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25 529. Even though the Counties have discretion to allow additional forms of  
26 identification, some Counties have chosen not to exercise that discretion and

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have limited the identification they accept to those listed in the Secretary of State’s Elections Manual. [Tr. Ex. 530].

530. Prior to the implementation of Proposition 200, registered voters could enter a polling place run by their county, announce their name, sign in, and proceed to get a ballot. [Hoyos 1/16/08 Dep. 9:20-10:2].

531. After and because of the implementation of Proposition 200, Counties have had to develop methods by which to review the forms of identification in the possession of voters at the polling place in order to determine whether voters are eligible to vote. [Hoyos 1/16/08 Dep. 9:20-10:12; Stallworth 1/18/08 Dep. 29:16-21].

532. Because Arizona is a covered jurisdiction under the Voting Rights Act, the Counties were required to submit their new polling place procedures to the Department of Justice for preclearance. [Tr. Ex. 511, 262 (Pima County submission), 509 (Cochise County submission)].

533. After and because of the implementation of Proposition 200, one County had to reconfigure their polling places to include voter identification stations, where voters have their identifications checked by voter “I.D. clerks” before they are allowed to cast their ballots. [Hoyos 1/16/08 Dep. 9:20-10:11, 11:8-19].

534. After and because of the implementation of Proposition 200, one County had to reconfigure their polling places to include provisional ballot stations, where

- 1 voters who cannot present the forms of identification required by Proposition  
2 200 are referred. [Hoyos 1/16/08 Dep. 12:11-25].
- 3 535. The Counties are responsible for hiring and training the additional poll workers  
4 that are required at the polls due to Proposition 200. [Hoyos 1/16/08 Dep. 14:5-  
5 19; Dastrup 8/1/06 Dep. 25:1-3; Hansen 8/1/06 Dep. 10:1-9].
- 6 536. Some counties had poll workers quit and had a harder time recruiting poll  
7 workers as a result of the enactment of Proposition 200. [Wayman-Trujillo  
8 1/9/08 Dep. 90:17-91:17; Tr. Ex. 410; Stallworth 1/18/08 Dep. 25:17-26:1].
- 9 537. After and because of the implementation of Proposition 200, voters who have  
10 been told that they may only receive a provisional ballot or a conditional  
11 provisional ballot have raised objections and have been upset that they cannot  
12 cast their ballots. [Hoyos 1/16/08 Dep. 16:20-17:6].
- 13 538. Maricopa county reported that in 2006, 82 % of voters over 65 who did not  
14 have sufficient ID and were turned away at the polls did not return with proper  
15 ID. [Pending Tr. Ex. 638].
- 16 539. Maricopa County indicated that since Proposition 200 was implemented, 739  
17 conditional provisional ballots were not counted in the county.
- 18 540. Prior to the implementation of Proposition 200, there was no ballot that a voter  
19 was offered that would require the voter to return to the polling place with  
20 additional documentation to satisfy an identification requirement before he or  
21 she could cast his or her vote. [Hoyos 1/16/08 Dep. 17:24-18:3].
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- 1 541. Counties provide training in signature verification for their election staff.  
2 [Rodriguez 1/22/08 Dep. 152:2-12; Hoyos 1/16/08 Dep. 14:5-15:18; Wayman-  
3 Trujillo 1/9/08 Dep. 87:17-21].
- 4 542. Pima County's training in signature verification is open to all other Arizona  
5 counties. [Rodriguez 8/2/06 Dep. 75:24-76:4].
- 6 543. County officials believe that it would not be difficult to do signature  
7 verification on conditional provisional ballots in cases where the registrant did  
8 not return with a proper form of identification. [Rodriguez 1/22/06 Dep.  
9 134:16-22; Osborne 1/14/08 Dep. 77:8-16; Hoyos 1/16/08 Dep. 48:3-49:15;  
10 Hansen 8/1/06 Dep. 70:11-72:17; Justman 8/1/06 Dep. 34:3-35:23].
- 11 544. The Secretary of State carved out exceptions to the Prop 200 requirement of  
12 voter ID for Native American voters. [Tr. Ex. 503 at 3; Tr. Ex. 314 at 3; Tr.  
13 Ex. 4 at 135].
- 14 545. The revised Election Procedures Manual provides that an elector who identifies  
15 himself or herself as a member of a federally recognized Native American  
16 tribe, but who does not have one form of identification with the name, address,  
17 and photograph of the elector or two of the approved forms of identification  
18 with the name and address of the elector, may present one form of tribal  
19 identification bearing only the voter's name. The Native American voter will  
20 then be allowed to vote using a provisional ballot. [Tr. Ex. 446 at 3; Tr. Ex. 4  
21 at 15].
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- 1 546. In other words, that Native American individual would need not come back  
2 with any other form of identification within the time period prescribed in the  
3 procedure for those that, for example, show up to the polls without any  
4 identification. [Kanefield 7/25/06 Dep. 27:2-28:5]  
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- 6 547. The Secretary of State claims that the provisional ballot procedure for Native  
7 Americans adequately protects against voter fraud. [Kanefield 7/25/06 Dep.  
8 56:17-20].
- 9 548. The Secretary of State concluded that the signature verification, as it applies to  
10 Native American voters, provides sufficient protection against voter fraud.  
11 [Kanefield 7/25/06 Dep. 162: 8-14].
- 12 549. The Secretary of State's Procedures Manual does not extend the Special  
13 Procedures to non-Native Americans who reside on reservations and who may  
14 lack identification showing their voter registration address. [Tr. Ex. 967  
15 (Declaration of Brenda Rogers)].
- 16 550. Counties with high populations of Native American citizens, like Apache  
17 County, expressed concerns about the effect of Proposition 200 on Native  
18 American voters. [Tr. Exs. 321, 420; Pew 8/1/06 Dep. 9-131; Rodriguez 8/2/06  
19 Dep. 71:16-73:20; Osborne 7/31/06 Dep. 77:14-78:22; Hansen 8/1/06 Dep.  
20 59:6-61:7; Pew 8/1/06 Dep. 9:23-10:1; Justman 8/1/06 Dep. 33:15-34:14;  
21 Johnson 8/1/06 Dep. 31:23-33:2, 40:7-42:2].  
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1 551. Native American voters are more likely to vote at polling places in person than  
2 by mail because they require language assistance that they do not get through  
3 the mail. [Pew 8/1/06 Dep. 13:15-34].

4 552. Ballots are not printed in the Navajo language. [Pew 8/1/06 Dep. 13:22-24].

5 553. Although Arizona's procedures provide that one form of acceptable  
6 identification is a "form of tribal identification," poll workers are not provided  
7 with a list of all federally recognized tribes in the United States. [Tr. Ex. 926].

8 554. Coconino county reported that seventy-four (74) out of eighty-two (82) of the  
9 "voter registration forms rejected[,] not because of lack of citizenship," but  
10 instead the majority had address problems. Candace Owens, Coconino County  
11 Recorder, explained the problem was due to the "observation of the meaning of  
12 'residence' to a Navajo voter is that of their parents' or clan and is the location  
13 of their chapter membership, not their mailing or actual current residence. As a  
14 result, the voter registration records of their residence are not the same as the  
15 documents they present for identification. Therefore, they are unable to present  
16 proper identification and cannot vote." [Tr. Ex. 617; Pending Tr. Ex. 600, 607,  
17 610].

18 555. The Navajo Nation does not issue anything called a Bureau of Indian Affairs  
19 Card Number, a Tribal Treaty Card, or a Tribal Enrollment number. [Johnson  
20 8/1/06 Dep. 16:22-17:21; Hansen 8/1/06 Dep. 24:14-25:3].

21 556. Some county officials have never seen a Bureau of Indian Affairs Card or a  
22 Tribal Treaty Card from any tribe. [Hansen 8/1/06 Dep. 25:17-26:3; Osborne  
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1 7/31/06 Dep. 26:2-3; Rodriguez 8/2/06 Dep. 40:10-19; Dean-Lytle 1/16/08  
2 Dep. 50:24-51:3; Justman 8/1/06 Dep. 20:15-23; Wayman-Trujillo 1/9/08 Dep.  
3 65:7-18].

4 557. Maricopa County is not aware of any tribal identification cards that include the  
5 individual's address. [Osborne 7/31/06 Dep. 49:8-13].

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7 558. In the Counties with high populations of Native American voters, voters may  
8 travel over fifty miles to polling places; those without sufficient identification  
9 will nevertheless be turned away at the polls. [Pew 8/1/06 Dep. 11:6-16;  
10 Pending Tr. Ex. 317]. In Apache County, at least one voter returned home four  
11 times during an election to try and bring the forms of identification required by  
12 Proposition 200, but ultimately was not able to cast a ballot. [Pew 8/1/06 Dep.  
13 32:16-25-33:1-5].

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15 559. Some counties have tried to expand their early voting programs to specifically  
16 target Native American populations in an attempt to alleviate the obstacles to  
17 voting that Prop. 200 has created. [Rodriguez 8/2/06 Dep. 71:16-73:20;  
18 Johnson 8/1/06 Dep. 44:23-46:16].

19 560. Many Native American communities are very rural and spread out, making it  
20 very difficult for a voter who filled out a conditional provisional ballot to  
21 return on election day or later with additional identification. The Counties  
22 urged the Secretary of State to take these issues into consideration when  
23 issuing the polling place procedures, but she refused. [Tr. Ex. 368; Pending Tr.  
24 Exs. 317, 359, 362, 366].  
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**i. Proposition 200 has caused thousands of ballots cast by qualified voters to go uncounted**

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3 561. Proposition 200 has resulted in scores of uncounted ballots because voters  
4 were unable to fulfill the statutes' voter identification requirements. [Tr. Ex.  
5 601– 606, 609, 611– 616, 618, 621– 627, 631-632; 596, 608, 611, pending].  
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7 562. Because of the identification requirements of Proposition 200, a number of  
8 voters received conditional provisional ballots instead of being allowed to vote,  
9 and many never provided the identification required in order to “cure” their  
10 ballots, therefore, their votes were not counted. [Hoyos 1/16/08 Dep. 81:6-22;  
11 Osborne 1/14/08 Dep. 77:23-78:19].  
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13 563. Maricopa County reported that from the time Proposition 200 was  
14 implemented to March 31, 2006, 86% of voters who needed to return to an ID  
15 Verification Site after casting a conditional provisional ballot did not return  
16 and their ballots were not processed. [Tr. Ex. 642, 652 pending].

17 564. For the November 1, 2006 elections, the counties reported 2,044 individuals  
18 who left their polling place without casting a ballot. Ninety-one people in  
19 Coconino County alone were not allowed to vote due to identification  
20 problems. [Tr. Ex. 589, 645 pending].  
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22 565. In the March and May 2007 elections in Maricopa County, only thirty-five  
23 percent of voters who cast conditional provisional ballots returned with proper  
24 identification. [Osborne 7/31/06 Dep. 76:16-22].  
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- 1 566. In addition, in some Counties, there is no record of how many qualified voters  
2 had to cast a conditional provisional ballot and had to return to show their  
3 identification in order to vote because some Counties do not record such events  
4 if the voter returned with the required identification on the same day. [Hoyos  
5 1/16/08 Dep. 62:15-63:22, 77:21-78:3].  
6
- 7 567. Maricopa County anticipates 5,000 to 6,000 conditional provisional ballots will  
8 be cast in the 2008 general election. [Osborne 7/31/06 Dep. 68:13-22].
- 9 568. On March 15, 2006, Maricopa County reported that 134 of the 177 conditional  
10 provisional ballots cast in its last election were never resolved. Thus, 55% of  
11 those conditional provisional ballots cast went uncounted. They reported a  
12 total of 108 Conditional Ballots for its May 16, 2006 election. The county also  
13 reports the percentage of unresolved conditional provisional ballots increased  
14 from 55% in March of 2006 to 65% in May of that year. [Tr. Ex. 637 pending,  
15 640, 641 pending, 643 pending, 648].  
16
- 17 569. Maricopa County reported a total of 130 conditional provisional ballots cast in  
18 its Spring 2006 elections. For its General Election in 2006, the county reported  
19 73% of the unconditional provisional ballots cast were not counted, and for the  
20 Primary of that year 57% of the unconditional provisional ballots cast were not  
21 counted. [Tr. Ex. 643 pending, 649 pending].  
22
- 23 570. Also, in the November 2006 election in Maricopa County, 1,301 of 2,275  
24 conditional provisional ballot voters did not return. All of the ballots whose  
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voters did not return with ID were never counted. [Osborne 7/31/06 Dep. 75:9-21].

571. In Maricopa County on the Saturday following the May 2006 election there was only one station available to voters who had to return with the proper identification to ensure their conditional provisional ballot was counted. [Osborne 7/31/06 Dep. 70:5-71:8].

572. Apache County will issue provisional ballots to people with a photo identification that has no address. [Pew 8/1/06 Dep. 28:14-29:9]. Coconino County would issue such a voter a conditional provisional ballot. [Hansen 8/1/06 Dep. 84:17-85:1]. Maricopa County, however, would issue a conditional provisional ballot if the voter had nothing else besides a photo identification with no address on it, but a provisional ballot if he produced a utility bill. [Osborne 7/31/06 83:9-18].

573. Employers are not required to give employees time off for a trip to a county office to provide verification for their conditional provisional ballot. [Osborne 7/31/06 Dep.73:16-19)].

574. In addition, in Pinal County there were forty voters in the 2006 general election who were given conditional provisional ballots and whose ballots were never counted because they did not have the identification required by Proposition 200. [Hoyos 1/16/08 Dep. 47:15-24].

575. In Yuma County, there were forty-five voters in the 2006 general election who were given conditional provisional ballots and whose ballots were never

- 1 counted because they did not have the identification required by Proposition  
2 200. [Stallworth 1/18/08 Dep. at Ex. D; Tr. Ex. 573, pending].
- 3 576. Also, Yuma County reported over fifty-three uncounted conditional  
4 provisional ballots in select elections between May 2006 and May 2007. [Tr.  
5 Ex. 573, pending].
- 6  
7 577. On August 6, 2005, Judy Allen-Wise from the Registrar of Voter of Yavapai  
8 County, wrote to State Senator Bennett and voiced her disapproval of voter ID  
9 requirements of Prop 200. [Tr. Ex. 634, pending].
- 10 578. Tammy Patrick from Maricopa County Elections reported that for the county's  
11 2008 Presidential Preference Election, 739 of the 897 conditional provisional  
12 ballots cast were never cured and ultimately went uncounted. [Tr. Ex. 954].
- 13  
14 579. Initially, Arizona was not going to allow any type of ballots for voters who  
15 lacked ID. [Pending Tr. Ex. 343]
- 16 580. Arizona Secretary of State Jan Brewer disagreed with the counsel of Arizona  
17 Attorney General Terry Goddard and sought to implement Proposition 200  
18 with a requirement that voters without the proper identification not be given a  
19 ballot of any kind. [Pending Tr. Ex. 343]
- 20  
21 581. The Attorney General's office advised the Secretary of State that such a  
22 procedure would constitute a denial of the voters' fundamental right to vote.  
23 [Tr. Ex.376].
- 24 582. Specifically, on February 4, 2005, Arizona Secretary of State Jan Brewer wrote  
25 to Arizona Attorney General Terry Goddard to seek his approval on a change  
26

1 to the manual for election day procedures which contained revisions made to  
2 conform with the requirements of Proposition 200. [Tr. Ex. 350].

3 583. On February 9, 2005 Arizona Attorney General Terry Goddard responded to  
4 Secretary of State Jan Brewer's February 4, 2005 letter and stated that he did  
5 not believe the proposed identification requirements under Proposition 200  
6 could meet its burden under Section 5 of the Voting Rights Act to show that it  
7 did not have a retrogressive effect on minority voters. He explained that many  
8 minority voters may not have the necessary documents to receive a ballot  
9 under the proposed provisions. He insisted that the State must allow voters  
10 who do not have the necessary identification to cast provisional ballots. [Tr.  
11 Ex. 350].

12  
13 584. The Counties also strenuously objected to the Secretary of State's original plan  
14 because they believed it would disenfranchise voters. [Tr. Ex. 380, Pending  
15 Tr. Exs. 344, 359]. Some Counties objected to the non-photo identification  
16 restrictions because some voters, including the elderly and students, would be  
17 unlikely to have an approved form of identification even though they were  
18 qualified to vote. [Pending Tr. Exs. 381, 359 & 362, Tr. Ex. 330, Rodriguez  
19 1/22/08 Dep. 155:12-25; Pew 8/1/06 Dep. 12:3-20; Dean-Lytle 1/16/08 Dep.  
20 97:13-25].

21  
22  
23 585. The Counties also felt that the changes were rushed and did not allow  
24 sufficient time for the County Recorders to review and comment on the  
25 proposals, nor for the County Boards of Supervisors to comply with Arizona's  
26

1 Open Meetings Law to conduct a public session regarding the proposals. [Tr.  
2 Ex. 383; Pending Tr. Ex. 359].

3 586. The United States Election Assistance Commission staunchly disagreed with  
4 Arizona’s original position that voters who lacked the requisite identification  
5 could not receive a provisional ballot. [Tr. Ex. 367; Pending Tr. Ex. 135]

6  
7 587. Some Counties objected to any limitation on the types of identification that  
8 would be accepted at polling places because the statutory language did not put  
9 any such limitations on the identification, and the Counties believed that the  
10 Secretary of State should not impose additional restrictions not contemplated  
11 by the statute. [Tr. Ex. 383 at 4].

12  
13 588. Some of the Counties also believed that the Secretary of State’s initial voter ID  
14 plan would have a disparate impact on many demographic groups, including  
15 Native American and rural voters. [Tr. Ex. 367; Pending Tr. Ex. 359].

16  
17 589. Some Counties were concerned that the Secretary of State’s requirement that  
18 an identification card “appear” to match the voter would lead to the partisan  
19 disenfranchisement of voters. [Tr. Ex. 364].

20  
21 590. Many of the Counties’ concerns were never addressed by the Secretary of  
22 State, even though it is the Counties who run the elections and have to  
23 implement the procedures. [Tr. Exs. 360-361; Pending Tr. Ex. 358-359, 362].

24  
25 591. On April 15, 2005, Sheldon Bradshaw, Principal Deputy Assistant Attorney  
26 General, wrote to Arizona Secretary of State Janice Brewer in response to her  
question as to whether it is permissible for a state to mandate that potential

1 voters show identification at the polls prior to receiving a provisional ballot. In  
2 his letter he explained that Arizona's Proposition 200, which required that  
3 voters show identification before they receive a provisional ballot, does not  
4 violate the Help America Vote Act [HAVA].  
5 [http://www.azsos.gov/Releases/2005/pressrelease10/DOJ\_Opinion\_on\_PRO  
6 P200.pdf].  
7

8 592. In September of 2005, however, Bradley J. Schlozman, Acting Assistant  
9 Attorney General, wrote to Secretary Brewer to clarify Bradshaw's  
10 interpretation "in order to ensure an accurate representation of the Justice  
11 Department's views". In that letter Schlozman contradicted Bradshaw and  
12 explained that HAVA does in fact require all of the States to allow voters to  
13 cast provisional ballots. [Pending Tr. Ex. 352,  
14 [http://www.usdoj.gov/crt/voting/hava/az\\_id.htm](http://www.usdoj.gov/crt/voting/hava/az_id.htm)].  
15

16 **ii. Implementation of Voter ID is Causing Rejection of Ballots by Eligible Voters.**

17 593. Georgia Morrison-Flores is 54 years old. [Tr. Ex. 707].

18 594. Georgia Morrison-Flores is life-long resident of Yuma, Arizona and currently  
19 lives at 510 S. 17<sup>th</sup> Ave. She is a U.S. citizen and a registered voter. [Tr. Ex.  
20 707].  
21

22 595. Georgia Morrison-Flores registered to vote for the first time in September 2004  
23 in a community-based voter registration drive. She was a newlywed at the  
24 time and she used her married name to register. [Tr. Ex. 707].  
25  
26

1 596. On Election Day, November 7, 2006, Georgia Morrison-Flores attempted to  
2 vote at her polling place at the Dr. Martin Luther King Jr. Neighborhood  
3 Center, which is approximately four to five blocks from her home on the south  
4 side of Yuma, Arizona. The Center is located at 300 W. 13<sup>th</sup> Ave. The poll  
5 workers at Georgia Morrison-Flores' polling place turned her away. [Tr. Ex.  
6 707].  
7

8 597. The election workers at the poll told Georgia Morrison-Flores that her valid  
9 license did not meet the requirements of Proposition 200. Ms. Morrison-Flores  
10 was told that her license was insufficient as voter identification because the  
11 name on her license did not match her name on the voter rolls and therefore,  
12 she could not vote. [Tr. Ex. 707].  
13

14 598. Ms. Morrison-Flores' driver's license reflected the name Georgia Morrison-  
15 Vasquez and her name on the voter list was Georgia A. Morrison-Flores. [  
16 Flores 1/17/08 Dep. 43:22-43:18].  
17

18 599. Georgia Morrison-Flores was turned away from voting despite the fact that she  
19 personally knew at least two election workers at the polling place. One of the  
20 election workers lived across the street from her and knew her from the time  
21 she was a child. [Tr. Ex. 707].  
22

23 600. The election workers did not offer Georgia Morrison-Flores a provisional  
24 ballot or conditional provisional ballot to vote. [Tr. Ex. 707].  
25

26 601. Georgia Morrison-Flores had to pay a fee of approximately \$4 to update her  
name on her driver's license in 2007. [Morrison-Flores 1/17/08 Dep. 56:9-25].

- 1 602. Due to the fact that Georgia Morrison-Flores is not currently employed and  
2 does not receive any kind of outside income, she receives food stamps every  
3 month to buy groceries. [Morrison-Flores 1/17/08 Dep. 30:22-31:5].
- 4 603. Plaintiff Georgia Morrison Flores possesses a valid Arizona driver's license  
5 that was issued after October 1, 1996. [stipulated fact].
- 6 604. The name on plaintiff Georgia Morrison-Flores' current Arizona driver's  
7 license is Georgia Ann Morrison-Flores. [stipulated fact].
- 8 605. Plaintiff Georgia Morrison-Flores is registered to vote in Yuma County.  
9 [stipulated fact]
- 10 606. Donna Fae Fulton is over the age of 18. She currently lives at 3220 West  
11 Hanna Road, Eloy, Arizona 85231. She is a United States citizen and a  
12 registered voter. Mrs. Fulton was born in Arizona and has lived in Arizona for  
13 most of her life. She currently works for the Immigration and Customs  
14 Enforcement Division of the Department of Homeland Security. Prior to this  
15 employment, Mrs. Fulton worked for the Arizona Department of Corrections  
16 for twelve years. [Tr. Ex. 968].
- 17 607. In late 2007, Mrs. Fulton and her husband moved from Safford, Arizona,  
18 where they were registered voters, to Eloy, Arizona. [Tr. Ex. 968].
- 19 608. In December 2007, Mrs. Fulton's husband went to the post office and obtained  
20 voter registration forms. [Tr. Ex. 968].
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- 1 609. Mrs. Fulton filled out her voter registration form with her new address along  
2 with other required information and mailed the completed voter registration  
3 form to the Pinal County Recorder's Office. [Tr. Ex. 968].
- 4 610. Mrs. Fulton did not receive a new voter registration card from Pinal County  
5 prior to the Presidential Preference primary election held on February 5, 2008.  
6 [Tr. Ex. 968].
- 7  
8 611. Mrs. Fulton proceeded to her local polling place to cast her vote in the primary  
9 election assuming her registration form had been received and processed. [Tr.  
10 Ex. 968].
- 11 612. When Mrs. Fulton arrived at the table used to accept voters, the poll worker  
12 could not find her name on the list of registered voters. Mrs. Fulton had  
13 submitted the voter registration form more than 30 days prior to the election.  
14 [Tr. Ex. 968].
- 15  
16 613. The poll worker said that since Mrs. Fulton was not registered to vote, she had  
17 to vote using a provisional ballot. [Tr. Ex. 968].
- 18 614. Mrs. Fulton was asked to show identification. She thus provided her driver's  
19 license, birth certificate, several utility bills with her new address on them, and  
20 her old voter registration card from Safford, Arizona. [Tr. Ex. 968].
- 21  
22 615. The poll worker made copies of Mrs. Fulton's various forms of identification.  
23 The poll worker allowed her to complete the provisional ballot. [Tr. Ex. 968].
- 24 616. The poll worker never asked Mrs. Fulton to return to the County Recorder's  
25 Office after the election to provide her identification again. [Tr. Ex. 968].  
26

- 1 617. One month after the election, Mrs. Fulton received a letter in the mail stating  
2 that her provisional ballot was rejected and her vote was not counted. [Tr. Ex.  
3 968].
- 4 618. The letter explained that Mrs. Fulton's ballot was rejected because she failed to  
5 provide proper proof of citizenship. [Tr. Ex. 968].
- 6 619. Mrs. Fulton's husband called the County Registrar's Office and was told that  
7 their ballots were rejected because the address on their forms of identification  
8 did not match. [Tr. Ex. 968].
- 9 620. Mrs. Fulton was very upset that her provisional ballot was not counted when  
10 she provided numerous forms of identification, including forms of  
11 identification with her new address on them. [Tr. Ex. 968].
- 12 621. It has been over five months since Mrs. Fulton submitted her voter registration  
13 form and she still has not received her new voter registration card. [Tr. Ex.  
14 968].
- 15 622. Brenda C. Rogers is over the age of 18. She lives on the Gila River  
16 Reservation in Pinal County. Mrs. Rogers and her husband, Charles K.  
17 Rogers, pastor the Santan Baptist Church, an all-Native American church on  
18 the reservation, and live in a house provided by the reservation on the campus  
19 of the church. [Tr. Ex. 967].
- 20 623. Mrs. Rogers is a U.S. citizen and a registered voter in Pinal County. Mrs.  
21 Rogers moved to Arizona six years ago and successfully voted in Arizona  
22 elections before the passage of Proposition 200. [Tr. Ex. 967].
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1 624. Mrs. Rogers' home does not have a street address. Mrs. Rogers lives on a dirt  
2 road, with no street signs, located in a little village called Stotonic. The part of  
3 the reservation in which she resides is in District 4. Her registered voter  
4 address is: 0 Gila River Dist 4B, Sacaton, Arizona 85247. Sacaton is the  
5 nearest recognized town to her home. [Tr. Ex. 967].  
6

7 625. If Mrs. Rogers has a package that is going to be delivered to her house, such as  
8 a UPS package, she writes her address as "Stotonic and Levee Road." The  
9 UPS driver knows the reservation and can find her house. [Tr. Ex. 967].

10 626. Mrs. Rogers receives mail at: P.O. Box 13493, Chandler, Arizona 85248. This  
11 address is also on her voter record. [Tr. Ex. 967].  
12

13 627. Before Mrs. Rogers moved to the campus of her church, she and her husband  
14 rented home in Chandler, AZ. Her Arizona Driver's License reflects this  
15 previous address in Chandler. When she moved to their current home on the  
16 reservation, Mrs. Rogers and her husband updated their addresses at the Motor  
17 Vehicle Division, but they did not purchase new licenses because they were  
18 told the machine that made license cards was broken that day. [Tr. Ex. 967].  
19

20 628. Mrs. Rogers and her husband are both registered Republicans and were eligible  
21 to vote in the Presidential Preference Election held on February 5, 2008. On  
22 the day of the election, Mrs. Rogers and her husband went together at 7:00 a.m.  
23 to the District 4 Service Center. They were the first voters to arrive. [Tr. Ex.  
24 967].  
25  
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- 1 629. When Mrs. Rogers and her husband approached the table to receive their  
2 ballots they showed their voter registration cards and their Driver's Licenses.  
3 The poll workers at the table found Mr. and Mrs. Rogers' names on the voter  
4 rolls, but informed the couple that they could not vote because their driver's  
5 license addresses did not match their registered voter address. [Tr. Ex. 967].  
6
- 7 630. Mrs. Rogers and her husband also brought two previous month's water and  
8 electric bills as proof of the location of their house. These bills were addressed  
9 to their P.O. Box in Chandler and reflected her husband's and the Santan  
10 Baptist Church's name. Mrs. Rogers told the poll workers that the address of  
11 the P.O. Box on the utility bills matched the P.O. Box address on the voter  
12 rolls and that they should be allowed to vote. Despite this, the poll workers  
13 gave them both provisional ballots. [Tr. Ex. 967].  
14
- 15 631. Mrs. Rogers showed the poll workers her social security card. One poll worker  
16 told Mrs. Rogers that in order for the ID to be sufficient, the address on the  
17 driver's license had to match the address on the voter registration card. The  
18 poll worker stated that because the addresses on their driver's licenses didn't  
19 match the addresses on their voter registration cards they would have to cast  
20 provisional ballots. The poll workers also tried to use maps to identify the  
21 location of their house, but they were unable to locate the house. [Pl. Tr. Ex.  
22 967].  
23
- 24 632. Mrs. Rogers and her husband were at the polling place for 45 minutes and  
25 ultimately cast conditional provisional ballots. None of the poll workers  
26

1 informed the Rogers that they had to return with more identification in order  
2 for their votes to be counted. [Tr. Ex. 967].

3 633. In May of 2008, Mrs. Rogers and her husband went again to the District 4  
4 Service Center to vote. Again they presented their driver's licenses and were  
5 told that they needed to cast conditional provisional ballots because they  
6 lacked sufficient identification. On May 20, 2008, they received letters  
7 informing them that their ballots had not been counted. [Tr. Ex. 967].  
8

9 634. The document entitled 2006 General Election ID and Citizenship Complaints is  
10 a spreadsheet created by the Election Services Division of the Secretary of  
11 State's office. [Ex. 409; Kanefield 1/11/08 Dep. 23:3-13]. It was generated  
12 from a larger database created by the Election Services Division to log  
13 complaints regarding election day. The larger database contains subcategories  
14 to categorize election complaints, two of which are identification at the polls  
15 complaints and citizenship complaints. The document entitled 2006 General  
16 Election ID and Citizenship Complaints represents the complaints pulled from  
17 the database from those specific categories. [Ex. 409; Kanefield 1/11/08 Dep.  
18 23:14-25].  
19

20 635. The complaints database created by the Secretary of State's office was  
21 designed to provide a mechanism for the Secretary of State's office to  
22 document grievances and complaints quickly on election day, during which a  
23 high-volume of all calls are generated. [Ex. 409; Kanefield 1/11/08 Dep. 24:  
24 24-25, 25:1-14].  
25  
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- 1 636. According to Joe Kanefield, the 2006 General Election and Citizenship  
2 Complaints database would not likely contain complaints about proof of  
3 citizenship to register to vote, since the database only contains calls and  
4 complaints received on election day. [Ex. 409; Kanefield 1/11/08 Dep. 25: 15-  
5 25-26:1-23].  
6
- 7 637. The Secretary of State's office does not log every complaint received into a  
8 database, but rather only those received on or around election day. [Ex. 409;  
9 Kanefield 1/11/08 Dep. 27:9-14].
- 10 638. The Secretary of State's complaint database does not include any grievances  
11 received by any Counties. [Ex. 409; Kanefield 1/11/08 Dep. 27:25- 28:1-17].  
12
- 13 639. If a county official took action to resolve an election day problem and the  
14 Secretary of State's staff knew about the action, then the staff may or may not  
15 have documented that action in the complaints database. [Kanefield 1/11/08  
16 Dep. 27:25- 28:1-17].
- 17 640. Kris Waite is the Assistant Election Director and supervises the individuals  
18 who receive calls and attempt to respond to grievances at the Secretary of  
19 State's office. [Stender 1/11/08 Dep. Ex. 1].  
20
- 21 641. 2006 General Election ID and Citizenship Complaints shows that staff from  
22 the Secretary of State responded to complaints in the 2006 General Election by  
23 contacting counties to make sure county officials understood and were  
24 implementing the state's procedures properly. [Ex. 409]  
25  
26

1 642. Entries by the Secretary of State staff on the 2006 General Election ID and  
2 Citizenship Complaints include “Gave the message to Kris to contact Maricopa  
3 County to ensure that the ID at the polls laws are understood at the polling  
4 location,” “I also informed Kris that the poll workers did not explain different  
5 options or what the function of the conditional provisional ballot as well as the  
6 pollworker not taking the voter registration card and sample ballot as proof of  
7 identification,” and “I told him I would follow up with Maricopa County so  
8 they could work with their poll workers in the precinct if need be,” . [Ex. 409].  
9

10 643. The 2006 General Election ID and Citizenship Complaints shows Secretary of  
11 State staff responding to complaints about the implementation of Prop 200’s  
12 voter ID provisions in Cochise, Coconino, Maricopa, Mohave, Navajo, Pima,  
13 Yavapai and Yuma counties.  
14

15 644. In particular, the Secretary of State staff responded to pollworkers who were  
16 not properly implementing the provisions that required pollworkers to give a  
17 *regular provisional* ballot, not a *conditional provisional* ballot, to voters with  
18 valid ID where the address on the ID did not match the address on the voter  
19 rolls. Entries by Secretary of State’s staff on the Complaints spreadsheet  
20 include: “Told her that we would contact Maricopa County to let them know  
21 that the pollworkers did not handle the situation with the new residence  
22 properly,” “instructed the voter to go to the new polling place and request a  
23 provisional ballot. He should not be turned away at the polls,” and “[in an  
24  
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1 email to the voter] Your driver license has an address on it, however the  
2 address did not match what is on the registration rolls.” [Ex. 409]  
3

4 **c. Dr. Lanier’s Findings Demonstrate a Disparate Impact on**  
5 **Latino Voters of Prop 200’s Voter ID Provisions.**

6 645. Dr. Lanier compared Hispanic turnout to Hispanic representation among the  
7 uncounted conditional provisional ballots from the 2006 general election to  
8 observe whether or not the ID requirement of Prop 200 disproportionately and  
9 negatively affected Hispanic voters. [ Tr. Exh. 886 [Fifth Supplemental Report  
10 of Louis R. Lanier, Ph.D. at 2, June, 4 2008 [“Lanier Fifth Supplemental  
11 Report”)].

12 646. Dr. Lanier also supervised the entry of data from the envelopes used to hold  
13 ballots that were not counted because the voter lacked sufficient ID pursuant to  
14 Prop 200. After he received the data, Dr. Lanier cleaned it and again removed  
15 duplicates to focus his study on individuals whose votes went uncounted as  
16 opposed to incidents in which a ballot went uncounted. [Lanier 7/10/08 Tr.  
17 249:2-17].

18  
19 647. The voters whose ballots went uncounted for lack of sufficient ID under Prop  
20 200 were drawn from three elections [2006 Primary Election, 2006 General  
21 Election and the 2008 Presidential Preference Election) and were from all of  
22 Arizona’s 15 counties. Dr. Lanier presented descriptive tables showing  
23 information about the between 4,100 and 4,200 voters with uncounted ballots  
24 pursuant to Prop 200. Dr. Lanier observed that approximately 11% of these  
25  
26

1 rejected voters were Latino. [Lanier 7/10/08 Tr. 249:18-251:8; Tr. Exh. 886  
2 [Lanier Fifth Supplemental Report 2)].

3 648. Dr. Lanier reported that in the 2006 General Election race for Governor [the  
4 race that received the highest number of votes in that election) Latinos  
5 comprised between 2.6% and 4.2% of the voters who turned out that day. Dr.  
6 Lanier also reported that in the 2006 General Election, Latinos cast 10.3% of  
7 ballots that went uncounted because of insufficient ID under Prop 200. [Tr.  
8 Exh. 886 [Lanier Fifth Supplemental Report 2)].

9  
10 649. Hispanic representation on the Arizona voter roll as of September 2007 was  
11 12.3 percent. This 12.3 percent corresponds to 451,306 Hispanic registered  
12 voters. [Tr. Exh. 886 [Lanier Fifth Supplemental Report 2); Lanier 7/10/08 Tr.  
13 251:25 -252:3].

14  
15 650. Dr. Lanier noted that in Dr. Engstrom's supplemental report, Dr. Engstrom  
16 presented two estimates of Hispanic voter turnout for the 2006 general  
17 election—an ER estimate of 8.8 percent turnout and an EI estimate of 14.6  
18 percent turnout. [Tr. Exh. 886 [Lanier Fifth Supplemental Report 2)].

19  
20 651. According to Dr. Lanier, if these two turnout figures are applied to the number  
21 of Hispanic registered voters [451,306), then the ER estimate of 8.8 percent  
22 predicts that approximately 39,715 Hispanics voted, while the EI estimate of  
23 14.6 percent predicts that approximately 65,891 Hispanics voted in the 2006  
24 general election. [ Tr. Exh. 886 [Lanier Fifth Supplemental Report 2)].

- 1 652. Dr. Lanier compared these two estimates to total voter turnout in the 2006  
2 general election in order to determine Hispanic representation as a percentage  
3 of all voters in that election. [ Tr. Exh. 886 [Lanier Fifth Supplemental Report  
4 2)].
- 5 653. The 2006 general election official canvass, reports that 1,553,032 individuals  
6 voted in the 2006 general election. [ Tr. Exh. 886 [Lanier Fifth Supplemental  
7 Report 2)].
- 8 654. Dr. Lanier found that if the ER and EI predictions of Hispanic voters are  
9 represented as a percentage of all voters, then Hispanic representation among  
10 all voters in the 2006 general election is predicted to have been between 2.6  
11 percent [39,715 / 1,553,032) and 4.2 percent [65,891 / 1,553,032), according to  
12 the ER and EI voter turnout estimates, respectively. [ Tr. Exh. 886 [Lanier  
13 Fifth Supplemental Report 2)].
- 14 655. Both of these estimates of Hispanic representation among voters in the 2006  
15 general election are lower than the 10.3 percent Hispanic representation among  
16 uncounted conditional provisional ballots from that election and this disparity  
17 demonstrates that a greater proportion of Latinos were prevented from voting  
18 because of the ID requirement of Proposition 200. [Lanier 7/10/08 Tr. 247: 6-  
19 17; 250:18-251:25].  
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1                   **d. Dr. Lanier’s Findings are Supporteded by Independent Analysis by**  
2                   **Maricopa County Elections Staff.**

3                   656. Tammy Patrick from Maricopa County Elections reported that for the county’s  
4                   2008 Presidential Preference Election Latinos accounted for 17% of the  
5                   uncounted conditional provisional ballots cast. [Tr. Ex. 954].

6                   **e. Plaintiffs Debbie Lopez and Organizations are Harmed in Their**  
7                   **Efforts to Turn out Voters Following Passage of Prop 200’s Voter ID**  
8                   **Provision.**

9                   657. The Pima County Recorder has observed difficulties that community based  
10                  organizations have encountered because of the implementation of Prop. 200.  
11                  [8/22/06 Rodriguez Dep. 94:25-95:16, 97:8-12].

12                 658. Plaintiff Debbie Lopez testified that she spends resources compensating for the  
13                 negative effect of Prop 200’s voter ID provision. [Lopez 7/16/08 Tr. at 614:17-  
14                 19, 616:19-23, 622:21-623:12]

15                 659. Sal Martinez testified that Chicanos Por La Causa spends resources  
16                 compensating for the negative effect of Prop 200’s voter ID provision.  
17                 [Martinez 7/16/08 Tr. 554:17-555:5].

18                 660. Luz Sarmina testified that Valle del Sol spends resources compensating for the  
19                 negative effect of Prop 200's voter ID provision. Sarmina 7/15/08 Tr. at  
20                 497:12-498:18, 509:16-20, 511:5-7, 514:8-515:5, 9-19].  
21

1 **V. Arizona has no Evidence of Voter Fraud to Support Prop 200's Restrictions**  
2 **on Voter Registration and Voting.**

3 661. The purpose in drafting the Procedure For Proof of Identification at the Polls  
4 was to require identification at the polls in order to prevent voter fraud.  
5 [Kanefield 07/25/06 Dep. 24:6-11]

6 662. Although the Secretary of State concluded that the regular provisional ballot  
7 process sufficiently protected against voter fraud because it provided for  
8 signature verification, it did not provide guidance for signature verification as  
9 an alternative to returning with voter ID. [Kanefield 07/25/06 Dep. 126:10-  
10 16].

11 663. Joseph Kanefield, as a representative of the Secretary of State's office, is not  
12 aware of any specific allegations that a non-US citizen registered to vote in  
13 Arizona. [Kanefield 1/11/08 Dep. 29:23-30:9]

14 664. The Secretary of State's office has no knowledge of any incident since January  
15 1, 1996 involving allegations of fraud in military personnel registering to vote  
16 using the Federal Post Card Application. [Kanefield 1/11/08 Dep. 21:21-22:2].

17 665. The Secretary of State's office has no knowledge of any incident since January  
18 1, 1996 involving allegations of fraud in any overseas individuals registering to  
19 vote using the Federal Post Card Application in Arizona. [Kanefield 1/11/08  
20 Dep. 22:3-7].

21 666. The Secretary of State's office does not believe Proposition 200 addresses  
22 voter fraud in the mail or absentee balloting. [Kanefield 7/25/06 Dep. 106:  
23 22-25].  
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- 1 667. The Secretary of State is not in possession of any information relating to any  
2 incident since January 1, 1996 involving allegations that a non-U.S. citizen  
3 voted in Arizona by early ballot. [Kanefield 1/11/08 Dep. 33:11-16]  
4
- 5 668. Since January 1, 1996 the Secretary of State’s office does not have any specific  
6 information involving allegations that an individual has impersonated a  
7 registered voter at a polling place. [Kanefield 1/11/08 Dep. 33:17-34:2].  
8
- 9 669. Before the passage and implementation of Proposition 200, the Secretary of  
10 State believed that the “strong desire to remain in the United States and fear of  
11 deportation outweigh [noncitizen’s] desire to deliberately register to vote  
12 before obtaining citizenship. Those who are in the county illegally are  
13 especially fearful of registering their names and addresses with a government  
14 agency for fear of detection and deportation.” [Tr. Ex. 312, pending].  
15
- 16 670. There have been no cases of voter impersonation fraud in Pinal County in the  
17 last twenty-five years. [Hoyos 1/16/08 Dep. 9:4-6, 40:3-9; Dean-Lytle 1/16/08  
18 Dep. 88:1-12].  
19
- 20 671. No non-citizens have registered to vote in Apache, Coconino or Navajo  
21 Counties since January 1, 1996. [Johnson 8/1/06 Dep. 11:10-20; Hansen  
22 8/1/06 Dep. 86:10-21; Justman 8/1/06 Dep. 11:15-19].  
23
- 24 672. Yavapai County has not had an instance of voter fraud in the ten years that  
25 County Recorder Ana Wayman-Trujillo has worked for Yavapai County.  
26 [Wayman-Trujillo 1/9/08 Dep. 29:9-17].

1 673. The Counties have had no experience with voter impersonation fraud at the  
2 polls. [Hoyos 1/16/08 Dep. 40:3-5; Osborne 7/31/06 Dep. 18:23-20:6;  
3 Stallworth 1/18/08 Dep. 20:18-21:11; Justman 8/1/06 Dep. 12:1-13:4; Johnson  
4 8/1/06 Dep. 11:21-12:6; Dean-Lytle 1/16/08 Dep. 88:1-12].

5  
6 674. County election officials believe that signature verification is sufficient to  
7 prevent fraud. [Rodriguez 8/2/06 Dep. 75:17-20; Rodriguez 1/22/08 Dep.  
8 151:20-152:1; Pew 8/1/06 Dep. 19:5-7; Hansen 8/1/06 Dep. 71:21-24);  
9 Dastrup 8/1/06 Dep. 28:23-29:1; Hoyos 1/16/08 Dep. 43:8-21; Osborne  
10 7/31/06 Dep. 51:23-52:9; Wayman-Trujillo 1/9/08 Dep. 110:7-11, 113:6-13;  
11 Justman 8/1/06 Dep. 34:15-35:13].

12  
13 675. County election officials acknowledge that not many of the registrations  
14 rejected for lack of proof of citizenship were for individuals born outside the  
15 United States. [Osborne 7/31/06 Dep. 22:11-24; Johnson 8/1/06 Dep. 14:11-  
16 16].

17 676. The Maricopa County Elections Director testified in her deposition that she  
18 recalled only two people who said they had been told they were eligible to vote  
19 as non-citizens. [Osborne 7/31/06 Dep. 18:23-19:25; Osborne 1/31/08 Dep.  
20 15:13-16:10].

21  
22 677. The Maricopa County Elections Director testified in her deposition that some  
23 U.S. citizens claim to be non-citizens in order to avoid jury service. [Osborne  
24 1/14/08 Dep. 91:4-9; Altaha 1/23/08 Dep. 7:20-25, 8:1-14].

1 678. The Maricopa County elections Director testified in her deposition that many  
2 of these applications were rejected because they had bad addresses and “There  
3 is everything that could make a form unacceptable on there.” [Osborne  
4 1/23/08 Dep. 11:9-17; Tr. Ex. 617 (specifically regarding Coconino County)].

5  
6 679. Counsel for Maricopa County also wrote in 2007 that the registration  
7 applications in this drive were rejected “for a range of problems – illegible,  
8 incomplete, bad address and no proof of citizenship.” [Tr. Exs. 962 (pending),  
9 617 (specifically regarding Coconino County)].

10  
11 **VI. Prop 200 Denies the Vote and Dilutes Latino Voting Strength in Violation of**  
12 **Section 2 of the Voting Rights Act.**

13 **a. Voting is Racially Polarized in Arizona Elections.**

14 680. Plaintiffs expert, Dr. Richard Engstrom, is a leading political scientist whose  
15 work on racially polarized voting has been cited repeatedly by the U.S.  
16 Supreme Court. [Engstrom 7/10/08 TR at 93:5-97:25].

17  
18 681. Dr. Engstrom analyzed ten racially contested elections held in Arizona since  
19 2002 to determine whether voting is racially polarized. [Engstrom 7/10/08 Tr.  
20 at 99:19-117:9].

21 682. Dr. Engstrom used three methodologies in his analysis. He employed  
22 ecological regression and homogenous precinct analysis, both of which were  
23 accepted in Thornburg v. Gingles. In addition, Dr. Engstrom used ecological  
24 inference which is a newer methodology developed by Professor Gary King at  
25 Harvard University. [Engstrom 7/10/08 Tr. at 100:6-23].  
26

1 683. Dr. Engstrom testified that the standard methodologies to measure racially  
2 polarized voting are: ecological regression; homogeneous precinct analysis and  
3 ecological inference. [Engstrom 7/10/08 Tr. at 100:24-102:16].

4 684. Dr. Engstrom concluded, looking across the ten elections he studied, that  
5 Latino voters have a clear preference for Latino candidates in Latino versus  
6 non-Latino elections or candidate pools. [Engstrom 7/10/08 Tr. at 116:16-  
7 121:9].

8  
9 685. Dr. Engstrom further found that the preference for the Latino candidate is not  
10 shared by non-Latino voters, with the exception of Congressman Ed Pastor, a  
11 long-time Latino incumbent in a Latino majority district. In addition,  
12 Congressman Raul Grijalva, the other Latino congressmen in a Latino majority  
13 district, receives competitive support from non-Latinos. [Engstrom 7/10/08 Tr.  
14 at 121:10- 122:24].

15  
16 686. Dr. Engstrom found that with respect to all statewide elections, and elections  
17 held outside majority-Latino congressional districts, voting between Latinos  
18 and non-Latinos was racially polarized. [Engstrom 7/10/08 Tr. at 127:1-13].

19 687. Dr. Zax conceded that statewide elections involve more voters than elections  
20 held in a single congressional district. [Zax 07/18/08 Tr. 926:2-6]

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23 Tr. Ex. 872 (below).  
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**TABLE**

**Estimated Divisions in Vote for Latino Candidates**

In the following order:  
King's Ecological Inference  
Regression Analysis  
Homogeneous Precinct Analysis

(Results reported for 2006 in *italics* rely on voter registration in precincts rather than voting age population)

<u>Election</u>	<u>Percent of Latino Voters</u>	<u>Percent of Non-Latino Voters</u>	<u>Correlation Coefficient</u>
<u>Democratic Primary, 2002</u>			
<i>Governor (Maricopa County)</i>			
Alfredo Gutierrez	62.4 67.6 NA	13.9 12.1 14.8	.812*
<i>U.S. Hse D. 7</i>			
All Latino Candidates	75.7 82.5 75.3	50.3 43.1 46.6	.514*
Raul M. Grijalva	48.9 54.2 43.2	30.8 25.8 27.8	.333*
<i>St. Sen. D. 13</i>			
Richard Miranda	NA 92.0 NA	NA -37.1 NA	.667*
<i>St. Sen. D. 14</i>			
Earl Wilcox	83.5 120.0 NA	32.3 26.5 NA	.871*

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General Election, 2004

*U.S. Hse D. 2*

Randy Camacho	84.6	36.8	
	NA	36.2	.499*
	NA	36.8	

*U.S. Hse D. 4*

Ed Pastor^	98.5	62.8	
	146.2	61.2	.653*
	NA	61.4	

*U.S. Hse D. 7*

Raul M. Grijalva^	85.4	49.4	
	87.9	48.4	.547*
	88.9	56.4	

General Election, 2006

*Secretary of State*

Israel Torres	62.8	37.9	
	74.6	37.5	.274*
	85.9	37.8	
	95.3	36.7	
	250.7	33.5	.605*
	NA	35.5	

*U.S. Hse D. 4*

Ed Pastor^	74.1	71.9	
	73.9	72.1	.038
	NA	72.0	
	92.6	68.7	
	114.4	65.7	.553*
	NA	70.1	

U.S. Hse D. 7

Raul M. Grijalva^	84.4	51.3	
	85.5	50.3	.486*
	86.0	54.5	
	99.3	48.3	
	102.1	46.7	.596*
	NA	56.0	

**Table note:** All of the Latino candidates in the general elections are Democrats. An asterisk (\*) following a correlation coefficient indicates the relationship is statistically significant at the .05 level or better. NA indicates that the EI procedure failed to produce an estimate, that a regression analysis produced a negative turnout estimate for Latinos, and that in the homogeneous precinct analysis no homogeneous precinct was present for that group. An up sign (^) indicates the candidate was an incumbent.

688. Dr. Engstrom found that voting was racially polarized in the following elections: Democratic Primary for Governor [2002]; Democratic Primary for Congressional District 7 [2002]; Democratic Primary for State Senate District 13 [2002]; Democratic Primary for State Senate District 14 [2002]; Congressional District 2 [2004]; Secretary of State [2006]. [Tr. Ex. 872 (above)].
689. Dr. Engstrom found that voting was not racially polarized in majority-Latino Congressional District 4, in which Ed Pastor is a long-time Latino incumbent. [Engstrom 7/10/08 Tr. at 121:10-122:13].
690. Dr. Engstrom found that in the 2004 race for Congressional District 7, only the homogeneous precinct analysis showed incumbent Raul Grijalva receiving a majority of non-Latino support; the ecological regression and ecological inference estimates showed Representative Grijalva receiving 48.4 and 49.4 non-Latino support respectively. Cite to table. By 2006, Representative Grijalva received a slight majority of non-Latino votes. *See table above.*

1 691. Dr. Engstrom explained that incumbency in a Latino majority electoral district  
2 is an important contextual fact in the racially polarized voting analysis.  
3 [Engstrom 7/10/08 Tr. 121:10-123:18, 169:23-170:14].

4 692. In Latino majority districts, a Latino incumbent can receive higher levels of  
5 non-Latino voter support than the same Latino incumbent would receive in a  
6 non-Latino majority district. This is because the electoral context features an  
7 expectation that a Latino will be elected in this district because of its majority  
8 Latino status. [Engstrom 7/10/08 Tr. 122:25-123:18]. *See Thornburg v.*  
9 *Gingles* 478 U.S. 30, 57 (1986)(incumbency is a special circumstance that may  
10 explain minority electoral success in an otherwise racially polarized  
11 electorate); *Ruiz v. City of Santa Maria* 160 F.3d 543, 556 (9th Cir.  
12 1998)(“When [incumbency] is present, voters may behave differently than they  
13 would otherwise--as such, that election is not probative of whether a Section 2  
14 majority voting bloc usually defeats the minority's preferred candidate.”).

15 693. Dr. Engstrom explained that although Representative Pastor receives a  
16 majority of non-Latino support in his current district, in light of the racial  
17 polarization in Arizona elections, Dr. Engstrom would not necessarily expect  
18 Representative Pastor to receive a majority of non-Latino support in a non-  
19 Latino majority district.<sup>1</sup> [Engstrom 7/10/08 Tr. 122:25-123:18].  
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23 <sup>1</sup>Dr. Engstrom’s analysis showed that Latino-majority Congressional Districts 4 and 7  
24 afford Latino voters the opportunity to elect their candidate of choice and do in fact elect the  
25 Latino-preferred candidate. The success of these districts, and the concomitant higher levels of  
26 non-Latino crossover support for the incumbents in these districts, is proof of the efficacy of  
remedial districts drawn under the Voting Rights Act and does not undermine the finding of  
racial polarization in general in Arizona elections.

1 694. In situations in which Latino candidates ran as non-incumbents, or ran for  
2 statewide office, Dr. Engstrom testified that voting was consistently racially  
3 polarized: Latino voters gave the majority of their support to the Latino  
4 candidate and non-Latino voters gave the majority of their support to the non-  
5 Latino candidate. 7/10/08 TR at 168:5-170:14. Dr. Engstrom further found  
6 that voting is racially polarized in Arizona primary elections. [Engstrom  
7 7/10/08 Tr. 124:11-125:3].  
8

9 695. Dr. Engstrom testified that polarization in partisan primary elections is  
10 significant for a number of reasons. First, primary elections are a fundamental  
11 part of the political process. They comprise a necessary step toward being  
12 elected to a partisan office. Second, the candidate preferred by Latino voters  
13 can be eliminated at the stage of the primary election. Thus, the presence of  
14 racially polarized voting in the primary can serve to block the ability of Latino  
15 voters to elect their candidate of choice. [Engstrom 7/10/08 TR at 123:19-  
16 125:4].  
17

18 696. Dr. Zax agreed that the candidate of choice of Latino voters can be eliminated  
19 when there is racially polarized voting in the party primary. [Zax 07/18/08 Tr.  
20 926:11-20].  
21

22 697. Dr. Engstrom further testified that turnout in any particular election does not  
23 affect the finding of racially polarized voting because regardless of turnout it is  
24 the voters in any particular election who decide the outcome of that election.  
25 [Engstrom 7/10/08 Tr. at 172:16-173:5].  
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698. Dr. Zax agreed that an election is only decided by the voters who turn out to vote in that election. [Zax 07/18/08 Tr. 926:7-10].

699. With respect to the voter turnout data generated with the ecological regression and ecological inference analyses, Dr. Engstrom found that in general elections, Latino turnout is considerably lower than that of non-Latino turnout. [Engstrom 7/10/08 Tr. 125:23-126:15,127:14-128:24; Tr. Ex. 870 [below]].

700. Dr. Zax performed no original analysis to explore the question whether there is racially polarized voting in Arizona. [Zax 07/17/08 Tr. 880:20-24]

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**TABLE 2**  
**Estimated Turnout in the Primary and General Elections**

In the following order:  
King's Ecological Inference  
Regression Analysis  
Homogeneous Precinct Analysis

<u>Election</u>	Percent of Latino VAP	Percent of <u>Non-Latino VAP</u>
<u>Democratic Primary, 2002</u>		
<i>Governor</i>		
Maricopa County	3.2	4.4
	3.4	4.3
	NA	4.6
Pima	6.1	9.0
	9.2	8.0
	12.2	8.7
Pinal	18.3	4.2
	17.9	1.0
	NA	4.8
Yuma	5.4	5.2
	5.6	5.0
	4.5	5.4
Santa Cruz	15.7	13.5
	15.9	12.9
	17.4	NA
LaPaz	6.4	4.2
	6.2	4.2
	NA	4.2

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<i>U.S. Hse D. 7</i>	10.0 9.7 12.4	6.5 6.8 7.5
<i>St. Sen. D. 13</i> 1.9	3.2 NA	4.1 NA
<i>St. Sen. D. 14</i>	2.7 2.0 NA	7.5 8.3 NA
<u>General Election, 2004</u>		
<i>U.S. Hse D. 2</i>	17.6 -5.2 NA	56.2 59.1 58.1
<i>U.S. Hse D. 4</i>	10.1 5.2 NA	42.1 47.5 62.2
<i>U.S. Hse D. 7</i>	31.1 30.5 34.6	42.3 42.7 36.0
<u>General Election, 2006</u>		
<i>Secretary of State</i>	16.2 12.6 21.7	40.3 41.3 41.7
<i>U.S. Hse D. 4</i>	14.8 11.1 NA	21.1 22.2 21.8
<i>U.S. Hse D. 7</i>	XX 20.2 22.4	XX 31.3 28.6

**Table note:** NA indicates that in the homogeneous precinct analysis no homogeneous precinct was present for that group. XX indicates an inability to locate the results.

701. Dr. Engstrom further found that in the 2006 general election for Governor that Latino turnout was between 14.6 and 8.8 percent. In that same election, Dr. Engstrom found that non-Latino turnout was between 45 and 45.8 percent. [Engstrom 7/10/08 Tr. 128: 8-14].

1 702. Dr. Engstrom concluded, in light of the racial polarization in Arizona elections,  
2 that new election rules that contain a racial disparity in impact would  
3 contribute to the dilution of the minority voting strength in the state. [Engstrom  
4 7/10/08 Tr. 128: 25-129:7].

5 **b. Arizona's Citizen Latino Population is Growing Rapidly but**  
6 **Lags Behind Non-Latinos in Socioeconomic Status.**

7 703. According to Dr. Jorge Chapa, Arizona's population grew very rapidly since  
8 the year 2000. [ Tr. Ex. 862 [Expert Report of Dr. Jorge Chapa Table 1,  
9 January 4, 2008 ["Chapa Report"])].

10 704. Between 2000 and 2006, Arizona's population increased by more than one  
11 million people, or by twenty percent. [ Tr. Ex. 862,[Chapa Report at Table 1)].

12 705. About half of the total increase was due to the even more rapid growth of  
13 Arizona's Hispanic population. [ Tr. Ex. 862, [Chapa Report at Table 1);  
14 Chapa 7/9/08 Tr. 36: 16-22].

15 706. In 2006, about three out of every ten Arizona residents was Hispanic. [ Tr. Ex.  
16 862, [Chapa Report at Table 1); Chapa 7/9/08 Tr. 36:16-22].

17 707. According to Dr. Chapa, Mexican-Origin Hispanics are by far the largest group  
18 and comprise almost ninety percent of all Hispanics in Arizona. [ Tr. Ex. 862,  
19 [Chapa Report at Table 1)].

20 708. Migrants are a large part of Arizona's population. [ Tr. Ex. 862, [Chapa  
21 Report at Table 2a)].

- 1 709. In 2006, a substantial majority of Arizona's residents in 2006 were born in  
2 other states than were born in Arizona. [ Tr. Ex. 862, [Chapa Report at Table  
3 2a)].
- 4 710. In 2006, 15.1 percent of Arizona's population were foreign-born. [ Tr. Ex.  
5 862, [Chapa Report at Table 2a); Chapa 7/9/08 Tr. 36:23-25; 37:1-3].
- 6 711. In 2006, Mexico was, by far, the leading country of origin for Arizona's  
7 foreign-born population. [Tr. Ex. 862, [Chapa Report at Table 2b); Chapa  
8 7/9/08 Tr. 37:4-7].
- 9 712. In 2006 about ninety percent of Arizona's Hispanic population under age  
10 eighteen were U.S. citizens. [ Tr. Ex. 862, [Chapa Report at Table 3)].
- 11 713. In 2006, sixty percent of Arizona Hispanics aged eighteen and older were U.S.  
12 citizens. [ Tr. Ex. 862, [Chapa Report at Table 3); Chapa 7/9/08 Tr. 37: 13-  
13 17].
- 14 714. In 2006, almost all of the non-Hispanics in Arizona, regardless of age, were  
15 U.S. citizens. [ Tr. Ex. 862, [Chapa Report at Table 3)].
- 16 715. In 2006, one of every four voting-age citizens in Arizona was Hispanic. [Tr.  
17 Ex. 862, [Chapa Report at Table 4a)].
- 18 716. In 2006, about one-half of all naturalized voting-age citizens in Arizona were  
19 Hispanic. [Tr. Ex. 862, [Chapa Report at Table 4b)].
- 20 717. In 2006, seventy percent of Arizona's voting-age Hispanic population were  
21 citizens compared to approximately ninety percent of the voting-age non-  
22 Hispanics. [Tr. Ex. 862, [Chapa Report at Table 4b)].
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- 1 718. According to Dr. Chapa, between 2000 and 2006 there was a strong, steady  
2 increase in the Hispanic citizen voting-age population [CVAP]. [ Tr. Ex. 862,  
3 [Chapa Report at Table 4c and Table 9e); Chapa 7/9/08 Tr. 38:9-15].
- 4 719. Arizona Hispanics, including foreign-born Hispanics, have lower levels of  
5 education when compared to non-Hispanics. [Tr. Ex. 862 [Chapa Report at  
6 Table 6a and 6b); Chapa 7/9/08 Tr. 41:13-25; 42:1-2].
- 7  
8 720. According to Chapa, Hispanics typically have low levels of education and  
9 earnings. [ Tr. Ex. 862 [Chapa Report at Tables 7, 6a and 6b)].
- 10 721. In Arizona, educational disparities persist among third generation Arizona  
11 Hispanics, or the U.S.-born children of U.S.-born parents. [Tr. Ex. 862 [Chapa  
12 Report at Table 6b); Chapa 7/9/08 Tr., 41:23 – 42:18].
- 13  
14 722. In Arizona, the U.S.-born Hispanic children of U.S.-born parents have  
15 achieved educational levels that are substantially different and lower than those  
16 of third and third-plus generation white non-Hispanics. [Tr. Ex. 862 [Chapa  
17 Report at Table 6b); Chapa 7/9/08 Tr. 41:23 – 42:18].
- 18 723. Third-generation Hispanics in Arizona have far lower earnings than white non-  
19 Hispanics in Arizona. [ Tr. Ex. 862 [Chapa Report at Table 7); Chapa 7/9/08  
20 Tr. 42:24 – 43:4].
- 21  
22 724. Differences between the earnings of Hispanics and white non-Hispanics are  
23 related to group differences in educational attainment. [ Tr. Ex. 862 [Chapa  
24 Report at Tables 6a, 6b and 7)].
- 25  
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1 725. Hispanics have not achieved parity with Anglos in terms of the commonly used  
2 measures of assimilation--that is, educational and economic levels. [ Tr. Ex.  
3 862 [Chapa Report at Tables 6a, 6b and 7); Chapa 7/9/08 Tr., 43:19 – 44:3].

4 726. Hispanic U.S. citizens lag far behind the white non- Hispanic citizens in voter  
5 registration and voting. [Tr. Ex. 862 [Chapa Report at Table 8a); Chapa 7/9/08  
6 Tr. 43:5 – 43:18].

7  
8 727. U.S.-born Hispanics in Arizona have not yet overcome the consequences of  
9 past discrimination in education, employment and civic participation. [ Tr. Ex.  
10 862 [Chapa Report at Tables 6a, 6b, 7 and 8a); Chapa 7/9/08 Tr. 31:1 – 32:5].

11 728. According to Dr. Chapa, the income and education disparities that persist  
12 among third generation Hispanics are due to discrimination in employment,  
13 educational opportunities, housing, the use of public facilities, civic  
14 participation, and voting. [Tr. Ex. 862 [Chapa Report at Tables 6a, 6b, 7 and  
15 8a); Chapa 7/9/08 Tr. 43:19 – 44:3].  
16

17  
18 **c. Latino Citizen Voting Age Population Growth has not Slowed in Arizona.**

19  
20 729. Examining U.S. Decennial Census and American Community Survey data, Dr.  
21 Chapa found that between 2000 and 2006 there was a strong, steady increase in  
22 the Hispanic citizen voting-age population (CVAP). [Tr. Ex. 862, (Chapa  
23 Report at Table 4c and Table 9e); Chapa 7/9/08 Tr. At 38:9-15].

24  
25 730. Dr. Chapa testified that it is important to look at population data over time and  
26 that since 2000, Hispanic citizen voting age population (CVAP) has been

1 growing at a rapid rate. [ Tr. Ex. 862 [Chapa Report at Tables 9e); Chapa  
2 7/9/08 Tr. 36, 40:9 – 41:10].

3 731. Defendants' claim that Latino population growth is slowing, and that such a  
4 trend would explain lower rates of Latino voter registration following Prop  
5 200, is not supported by the data. Latino population growth is not slowing.  
6 Dr. Chapa's analysis shows that the average rate of growth for Latinos from  
7 2000 to 2004 is similar to the rate from 2004 to 2005. [Tr. Ex. 826 (Chapa  
8 Report at 1 & Table 5)]. Dr. Chapa cautioned that the best analysis is to look  
9 for the pattern of growth across multiple years and that this pattern shows that  
10 Latino growth is not slowing. 7/9/08 Tr. 40:20-41:12.

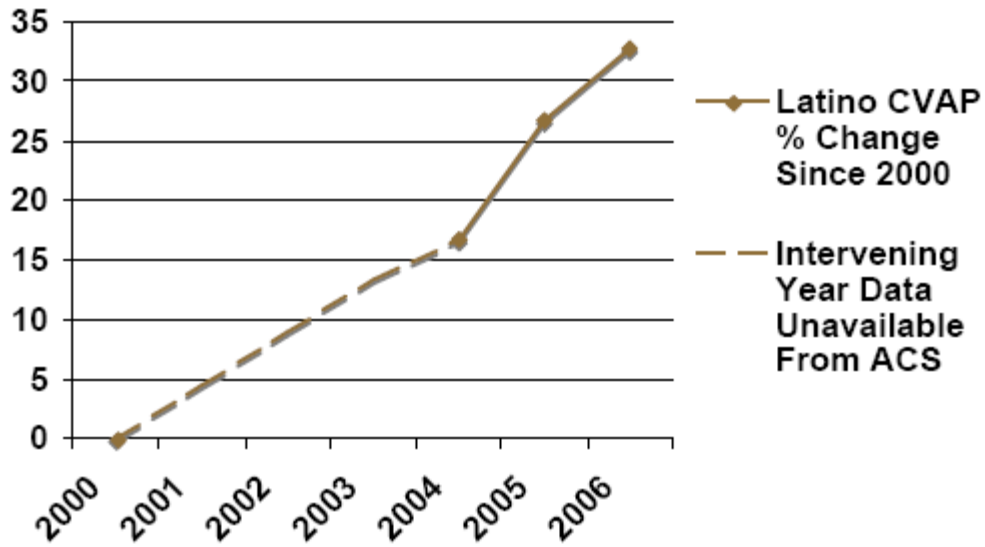
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12 732. Second, because the pool of individuals eligible to register to vote in any  
13 particular year is not limited to those turning 18 or moving to Arizona, it is  
14 illogical to assume that a similar growth rate for Latinos and non-Latinos in a  
15 one year interval explains the disproportionate decline in Latino voter  
16 registration following Prop 200.

17  
18 733. Dr. Zax based his conclusion regarding the growth rate of Latinos in Arizona  
19 on a mistake in his calculations. [Zax 07/17/08 Tr. 889:12-891:7]. Dr. Zax  
20 further testified that he did not investigate whether the 1.2% difference he  
21 found in the Latino and non-Latino growth rates in 2005 was a real difference  
22 that was not subsumed by the confidence interval around those numbers. [Zax  
23 07/18/08 Tr. 925:8-926:1].

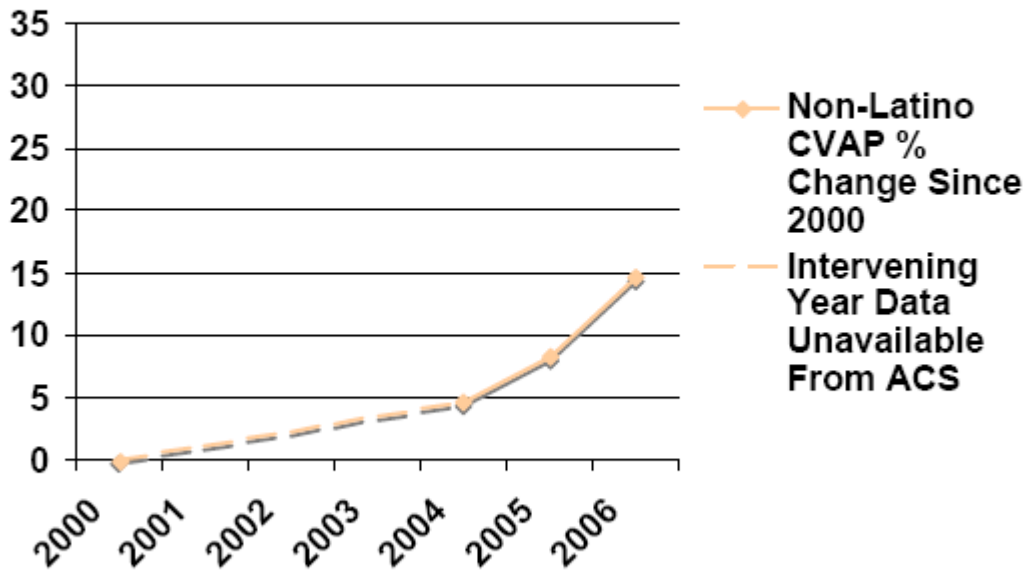
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26 [Data taken from Tr. Ex. 862 (Expert Report of Dr. Jorge Chapa)].

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### Latino CVAP Percentage Change Since 2000



### Non-Latino CVAP Percentage Change Since 2000



1 734. Dr. Zax performed no independent analysis of demographic data for Arizona  
2 and accepted Dr. Chapa's data as accurate. [Zax 07/17/08 Tr. 886:7-10,  
3 07/17/08 Tr. 887:23-888:16]. Dr. Zax further testified that he was not familiar  
4 in detail with the demographic characteristics of Latinos in Arizona and had  
5 not researched or made a study of Latino demographics in Arizona. [Zax  
6 07/17/08 Tr. 895:12-21].  
7

8 735. Defendant's expert witness Dr. Zax further did not dispute that Latinos in  
9 Arizona show lower levels of education and income when compared to non-  
10 Latinos. [Zax 07/17/08 Tr. 888:17-889:7]  
11

12 **d. Dr. Lanier Similarly Found that Latino Rejected Voters Have a Lower  
13 Socioeconomic Status When Compared to the Statewide Average.**

14 736. Dr. Lanier conducted a demographic analysis of the voters with rejected voter  
15 registration forms and uncounted ballots. Dr. Lanier conducted this analysis  
16 by geocoding the addresses of the rejected registrants and rejected voters and  
17 examining the demographic characteristics of the Census block groups in  
18 which the individuals lived. [Lanier 7/10/08 Tr. 259:10-260:14].  
19

20 737. Based on his demographic analysis, Dr. Lanier found that Latinos whose voter  
21 registration forms were rejected for failure to satisfy Prop 200 were more likely  
22 to live in urban areas and were more likely to live in census blocks that had a  
23 higher concentration of Latinos, lower average median income and lower  
24 levels of educational attainment than the statewide averages. [Lanier 7/10/08  
25 Tr. 260:15-261:20].  
26

1 738. Based on his demographic analysis, Dr. Lanier found that Latinos whose  
2 ballots went uncounted because of failure to provide ID under Prop 200 were  
3 more likely to live in rural areas and were more likely to live in census blocks  
4 that had a higher concentration of Latinos, lower average median income and  
5 lower levels of educational attainment than the statewide averages. [Lanier  
6 7/10/08 Tr. 261:5-262:9].  
7

8 **i. There is a History of Discrimination Against Latinos in Arizona in**  
9 **the Areas of Political Participation, Housing and Employment.**

10 739. According to Dr. F. Arturo Rosales, the history of Mexican origin people in the  
11 State of Arizona has been characterized by racial and ethnic repression.  
12 [Rosales 7/15/08 Tr. 353-54].  
13

14 740. While still a U.S. territory, Arizona legislators adopted constitutional codes  
15 that restricted electoral eligibility requirements that allowed only white males  
16 and white Mexican males, a vast minority, to vote. This measure disqualified  
17 American Indians, mestizos, and Mexican Indians from the electoral process.  
18 [Rosales 7/15/08 Tr. 354].  
19

20 741. From the beginning of Arizona's territorial history, Mexicans were excluded  
21 from the political process and discriminated against. [Rosales 7/15/08 Tr. 353-  
22 55].

23 742. In 1877, legislators passed additional laws in which non whites were  
24 disqualified from practicing law. [Rosales 7/15/08 Tr. 354].  
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1 743. At the same time, modernization brought in a new influx of Mexicans. As a  
2 consequence of this demographic change, the antipathy that Anglo Americans  
3 felt toward Mexicans was exacerbated, increasing the incidences of  
4 discrimination. [Rosales 7/15/08 Tr. 356-357].

5  
6 744. In 1877, legislators passed additional laws in which non whites were  
7 disqualified from practicing law. [Rosales 7/15/08 Tr. 354].

8 745. In the early 20th century the U.S. Congress considered accepting a bid in  
9 which both Arizona and New Mexico would enter the Union as one state.  
10 Arizona politicians resisted the overture primarily because of the extensive  
11 Hispanic influence in New Mexico. The justification was that New Mexico  
12 contained “too many greasers.”[Rosales 7/15/08 Tr. 354-355].

13  
14 746. According to Dr. Rosales, after Arizona attained statehood in 1912, there was  
15 an anti-immigrant campaign characterized by increasingly racist rhetoric and a  
16 series of proposals restricting Mexican immigrants’ political rights and the  
17 right to work in Arizona. [Rosales Report 9].[Rosales 7/15/08 Tr. 359-360].

18 747. In 1912, the new Arizona constitution restricted non-citizens from working on  
19 public projects. [Rosales 7/15/08 Tr. 361-362].

20  
21 748. In 1914, the legislature enacted the “eighty per-cent law” which stated that  
22 eighty percent of the employees in businesses that had five or more employees  
23 had to be “native-born citizens of the United States.” [Rosales 7/15/08 Tr.  
24 361-362].

- 1 749. Just prior to 1910, Arizona voters passed a literacy law that explicitly targeted  
2 Mexicans and disqualified non-English speakers from voting in state elections.  
3 [Rosales 7/15/08 Tr. 353-54].
- 4 750. One attempt to block the efforts of Mexican American community  
5 organizations took place in South Tucson in the mid 1930's. Dr. Rosales  
6 contends that the literacy requirement coupled with a local property ownership  
7 requirement, excluded many Mexican Americans from voting in the election.  
8 [Rosales 7/15/08 Tr. 353-54].
- 9 751. As late as 1960's, these literacy requirements were a precondition to voter  
10 registration in Arizona. [Rosales 7/15/08 Tr. 353-54].
- 11 752. Until the 1960's Potential voters were required to register at the county  
12 recorder's office, which was only open during business hours, limiting access  
13 for many poor people, including Mexican-Americans. [Rosales 7/15/08 Tr.  
14 354].
- 15 753. Many Arizona voters were prevented from casting ballots to vote because they  
16 were purged from the rolls. For example, when a voter failed to cast a ballot in  
17 a primary and a general election, the state purged their votes and did not  
18 subsequently inform the voter of the purge or of the need to re-register.  
19 [Rosales 7/15/08 Tr. 355].
- 20 754. In 1964, a national project called Operation "Eagle Eye," was designed in  
21 order to challenge the legality of a voter's registration at the polling site.  
22 [Rosales 7/15/08 Tr. 355-56].
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- 1 755. Under Operation “Eagle Eye,” Republicans would mail letters to all registered  
2 voters in South Phoenix, an area which was predominantly Hispanic and  
3 African American, using the addresses from voter registration records.  
4 Returned letters were then taken to the corresponding polling place on the date  
5 of the election. As voters stood in line waiting to vote they were challenged on  
6 the grounds that they did not live at the address listed in the voter rolls.  
7 [Rosales 7/15/08 Tr. 354-56].  
8
- 9 756. Under Operation “Eagle Eye,” these poll watchers would also specifically  
10 target Mexican Americans waiting in line to vote, challenging their ability to  
11 vote. [Rosales 7/15/08 Tr. 354].  
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- 13 757. Century institutions such as housing, theaters, swimming pools, parks and  
14 restaurants were regularly segregated. [Rosales 7/15/08 Tr. 362].
- 15 758. After World War II, Phoenix segregated Mexican American veterans in  
16 separate housing units. [Rosales 7/15/08 Tr. 362].
- 17 759. According to Dr. Rosales, the school segregation of Mexican Americans in  
18 Arizona was particularly pervasive in Arizona during the first decade of the  
19 20th century. [Rosales 7/15/08 Tr. 358-59].  
20
- 21 760. The Segregation of Mexicans in Arizona took many forms: between schools,  
22 within schools, and even within classrooms. [Rosales 7/15/08 Tr. 356-57].
- 23 761. According to Dr. Rosales, even after Mexican parents began to challenge  
24 school segregation successfully in court, school districts failed to comply with  
25  
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- 1 integration rulings, and segregation continues in different guises to this day.  
2 [Rosales 7/15/08 Tr. 357-58].
- 3 762. According to Dr. Rosales, language and pedagogical issues are still a source of  
4 concern in the Mexican American community. [Rosales 7/15/08 Tr. 358-59].
- 5 763. Federal law passed in 1974 mandated that Arizona establish laws for English  
6 Language Learner (ELL) programs. [Rosales 7/15/08 Tr. 358-59].
- 7 764. According to Dr. Rosales, the lack of adequate state funding has made it  
8 difficult for Arizona school districts to comply with the ELL mandates.  
9 [Rosales 7/15/08 Tr. 358-59].
- 10 765. Arizona has not yet complied with the court ordered mandate to provide  
11 adequate funding for ELL students. [Rosales 7/15/08 Tr. 358-59].
- 12 766. The failure to adequately provide ELL education has the greatest detrimental  
13 impact on the Latino population. [Rosales 7/15/08 Tr. 358-59].
- 14 767. According to Dr. Rosales, job discrimination was common in Arizona  
15 throughout the beginning of the century and into the war years. [Rosales  
16 7/15/08 Tr. 360-61].
- 17 768. According to Dr. Rosales, before the Second World War, many unions did not  
18 accept many Mexican American workers. [Rosales 7/15/08 Tr. 360-61].
- 19 769. A sociological study in the 1940's found that many Arizonians in Tucson  
20 reported that they would not hire Mexicans. [Rosales 7/15/08 Tr. 360-61].
- 21 770. Mexican workers were often the victims of workplace abuse, and their  
22 employers were not penalized. [Rosales 7/15/08 Tr. 363].
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1 771. According to Dr. Rosales, there was a clear, multi-tiered, racialized class  
2 structure in Arizona's mines in the early 1900s. This was very common here in  
3 the valley and in agriculture in Yuma in which Mexicans would work picking  
4 cotton but they couldn't drive the tractors. It was just absolutely forbidden in  
5 the 1910's and 1920's. They also could not work as foremen in the packing  
6 sheds, for example. [Rosales 7/15/08 Tr. 360].  
7

8 772. According to Dr. Rosales, because Mexican mine workers were  
9 disproportionately worked in the most dangerous types of jobs, they were more  
10 likely to be subject to diseases such as "black lung." [Rosales 7/15/08 Tr. 360-  
11 61].  
12

13 773. Employers in Tucson generally would not hire Mexicans as telephone  
14 operators. [Rosales 7/15/08 Tr. 360-61].

15 774. Dr. Rosales contends that employment discrimination has continued to affect  
16 Arizona Mexican Americans in recent years. [Rosales 7/15/08 Tr. 360-61].

17 775. As recently as the 1990's in Tempe, Mexican-Americans brought a successful  
18 federal lawsuit in which they alleged systematic racial discrimination in  
19 employment practices against the City of Tempe. [Rosales 7/15/08 Tr. 360-  
20 61].  
21

22 776. Mexicans also faced racial discrimination and violence in the Arizona from  
23 law enforcement agencies during the 19th century. [Rosales 7/15/08 Tr. 363].

24 777. During the 19th century, Mexicans were hung by lynch mobs. [Rosales 7/15/08  
25 Tr. 363].  
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1 778. In the late 1970's, the infamous Hannigan case took place in which two  
2 brothers and their father, robbed and tortured three Mexican farm workers who  
3 had entered the United States illegally were acquitted. [Rosales 7/15/08 Tr.  
4 363].

5  
6 779. Dr. Rosales concluded that the discrimination of Mexican Americans in  
7 Arizona has hindered and continues to hinder the ability of Mexican  
8 Americans to fully participate in the political process in the state. [Rosales  
9 7/15/08 Tr. 363].

10 780. Dr. Zax offered no opinions regarding plaintiffs' evidence of a history of  
11 discrimination against Latinos in Arizona. [Zax 07/17/08 Tr. 880:5-19].

12  
13 **e. Defendants' Expert Witness, Dr. Jeffrey Zax, has Been Found Not**  
14 **Credible in Past Cases Addressing Vote Dilution Under the Voting**  
15 **Rights Act.**

16 781. Dr. Zax purported to assess the work by Dr. Lanier and Dr. Espino according  
17 to peer review standards but this testimony cannot be credited. When asked  
18 directly in his deposition about the reasons for two of his papers concerning  
19 ecological regression analysis having been rejected by peer reviewed journals,  
20 Dr. Zax made no mention of the fact that his work had been criticized as being,  
21 among things, "misleading", "incomplete" and "skewed". *See Shirt v.*  
22 *Hazeltine*, 336 F. Supp. 2d 976, 1002 (D.S.D. 2004).

23 782. Dr. Zax admitted on cross-examination that his response had been incomplete,  
24 and more generally that peer-review criticisms using those terms in rejecting  
25 an article would be a cause for concern. Even if the Court were to overlook the  
26

1 questions about Dr. Zax's credibility as an expert raised by this criticism, his  
2 failure to respond forthrightly when asked about this peer review experience  
3 leads the Court to conclude that his testimony purporting to critique other  
4 experts upon peer review criteria does not meet the standards for admissible  
5 expert testimony.  
6

7 783. Furthermore, although when questioned by the Court, Dr. Zax argued that  
8 incumbency should be factored into a regression analysis used to evaluate  
9 racially polarized voting, Dr. Zax later admitted on cross-examination that he  
10 was unaware of any case in which incumbency was factored into a regression  
11 analysis. [Zax 07/18/08 Tr. 926:21-927-2].  
12

13 784. Dr. Zax's intentional omission of independent analysis from his critiques of  
14 Plaintiffs' experts, combined with his willingness to offer conclusions based on  
15 "speculation" and his lack of forthrightness in testifying regarding his own past  
16 experiences with peer reviewed scholarship renders his opinions unreliable and  
17 without basis in scientific analysis.  
18

19  
20 DATED this 28th day of July, 2008.

Respectfully submitted,

21 By:        /s Nina Perales  
22 Nina Perales

23 Counsel for Plaintiffs  
24 Gonzalez, et al.  
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CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> 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 filed electronically this 28<sup>th</sup> day of July, 2008.

COPY of the foregoing mailed with Notice of Electronic Filing this 28<sup>th</sup> 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