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

17 Maria M. Gonzalez, et al.,) No. CV-06-1268-PHX-ROS(Lead)
18) No. CV-06-1362-PCT-JAT(Cons.)
Plaintiffs,) No. CV-06-1575-PHX-EHC(Cons.)
19)
vs.) GONZALEZ PLAINTIFFS'
20) CORRECTED RESPONSE TO
State of Arizona, et al,) DEFENDANTS' MOTION FOR
21) SUMMARY JUDGMENT
Defendants.)
22)
(Assigned to the
23 Honorable Roslyn O. Silver)

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I.
INTRODUCTION

The State and Defendant Maricopa County (“Defendants”) have moved for summary judgment on all claims in this case. Summary judgment is not appropriate on any of Plaintiffs’ claims because there remain issues of disputed material fact that are critical to resolving each of Plaintiffs’ claims. Importantly, the parties dispute the impact of Proposition 200’s voting provisions on Arizona’s voters and voter registration applicants. In addition, the parties dispute the extent to which voter fraud has occurred in Arizona. Finally, even if Defendants’ assertions of fact were true, Defendants misapprehend the legal standards applicable to this case and thus cannot carry their burden of demonstrating that they prevail as a matter of law on any of Plaintiffs’ claims.

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II.
FACTUAL BACKGROUND

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It can hardly be disputed that the Arizona Taxpayer and Citizen Protection Act (“Proposition 200”) or (“Prop 200”) has significantly altered the landscape of registration and voting across the State. [SOF 5] Voter registration applicants, who formerly proved their U.S. citizenship and eligibility to vote by completing and signing the registration application under penalty of perjury, must now also provide additional documentary proof of U.S. citizenship with their application. [SOF 5,132] This documentary proof of citizenship requirement has resulted in a registration disaster in the state, forcing counties to reject over 37,000 registration applications submitted by voters between January 2005 and September 2007 solely because they did not include the documentary proof of citizenship demanded by the new law. [SOF

1 133,724,539,423,729,725,825,826,532, 35,726, 57,775,132,783] The overwhelming
2 majority of these rejected applicants indicated they were U.S. citizens born in the
3 United States. [SOF 1532] In addition, voter registration organizations have been
4 unable to conduct community registration drives because many of the people they
5 encounter wish to register but are not carrying their citizenship documents and because
6 the voter registration organizations themselves lack the ability to photocopy citizenship
7 documents where they register voters at community fairs, houses of worship and
8 shopping malls. [SOF 1091-1147]

9
10 The forms of identification Proposition 200 requires to register to vote require a
11 fee and are not universally held. [SOF 798-803] Both the Maricopa and Pima County
12 Recorders agree that there are U.S. citizens who lack the necessary documents to
13 register to vote in the wake of Proposition 200. [SOF 715,733,720] In addition, there
14 are many individuals who register to vote and who must register again because the
15 information they provided on the first registration form was not acceptable under
16 Proposition 200. [SOF 57,769,418]

17
18 Perhaps most egregiously, Proposition 200 forces the rejection of the voter
19 registration application of every naturalized U.S. citizen who relies on his or her
20 naturalization document and, following the instructions of the statute, puts the number
21 of the certificate of naturalization on the application. [SOF 362,1037,12,540-546,138-
22 139] Because county officials are unable to verify the number of the certificate of
23 naturalization with the Department of Homeland Security, officials reject all
24 applications containing this number as proof of citizenship of the applicant. [SOF 540]
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1 These naturalized applicants are thus automatically rejected and forced to register to
2 vote a second time in order to be added to the voter rolls. [SOF 141,1088,540-546,138-
3 139, 1030-1063] Additionally, although Proposition 200 permits applicants to submit
4 photocopies of birth certificates and passports, Proposition 200 requires an in-person
5 “presentation” of the naturalization certificate to the County Recorder. [SOF
6 7,161,140,1052,176,572] Proposition 200 is drafted specifically to ensure that foreign-
7 born U.S. citizens are treated differently and face greater burdens in the voter
8 registration process. [SOF 5]

10 Proposition 200's voter identification requirements have also worked to
11 disenfranchise eligible voters throughout the State. County Defendants have produced
12 over 4,200 conditional provisional ballots that were cast and never counted in the 2006
13 Primary Election, 2006 General Election and 2008 Presidential Preference Election.
14 [SOF 741]. The voters who cast these uncounted conditional provisional ballots were
15 denied the ability to vote solely because of the identification requirements of
16 Proposition 200. *Id.*

18 Finally, Proposition 200's requirements of documentary proof of citizenship and
19 voter identification have had a negative and disparate impact on Latinos in Arizona.
20 [SOF 1262-1287,1312-1355,1470-1502, 1507,1517-1525,1530-1534] Latinos are
21 over-represented among those voters casting conditional provisional ballots because of a
22 lack of sufficient voter identification and are less likely to “cure” their conditional
23 provisional ballots after casting them. [SOF 1417,1527]

1 With respect to Proposition 200's registration requirements, Latino
2 representation among rejected voter applicants is higher than Latino representation
3 among all registration applicants, demonstrating that Latinos are disproportionately
4 rejected relative to their representation among all applicants. Among rejected
5 applicants, Latinos are less likely than non-Latinos to achieve success in getting on the
6 voter rolls. [SOF 1472-1535]
7

8 Arizona has a long history of discrimination against racial minority voters,
9 including Latinos. [SOF 1542-1650, 1407-1415; 1434-1437] The legacy of this history
10 of exclusion of Latino voters interacts with present day circumstances and the
11 provisions of Proposition 200 to discriminate against Latino voters and registration
12 applicants in Arizona. Although Latinos are a growing proportion of Arizona's eligible
13 voter population, Proposition 200 has operated to deny or abridge their right to vote.
14

15 III.

16 APPLICABLE LEGAL STANDARD

17 Summary judgment is appropriate only when no genuine issue of material fact
18 exists. *See* Fed. R. Civ. P. 56(c). The moving party bears the burden of demonstrating
19 by "clear and convincing" evidence the absence of a genuine issue of material fact. *See*
20 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Upon reviewing a motion
21 for summary judgment, courts do not weight conflicting evidence with respect to a
22 disputed material fact. *See id.* Courts also do not make credibility determinations with
23 respect to statements made in affidavits, answers to interrogatories, admissions, or
24 depositions. *See id.* These determinations are left for the trial. *See T.W. Electrical*
25
26

1 *Serv., Inc., v. Pacific Electrical Contractors Assoc.*, 809 F.2d 626, 630-31 (9th Cir.
2 1987). Therefore, at summary judgment, “[t]he evidence of the nonmovant is to be
3 believed, and all justifiable inferences are to be drawn in his favor.” *Anderson*, 477
4 U.S. at 255. “Put another way, if a rational trier of fact might resolve the issue in favor
5 of the nonmoving party, summary judgment must be denied.” *T.W. Electrical Serv.* at
6 631 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587
7 (1986)).

9
10 **IV.
ARGUMENT**

11 **A. Summary Judgment is not Appropriate on Plaintiffs' Claim that the**
12 **Requirements of Proposition 200 Violate Their Rights Under Section 2 of**
13 **the Voting Rights Act.**

14 Gonzalez Plaintiffs have alleged that Proposition 200 dilutes Latino voting
15 strength in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973 *et*
16 *seq.* See Dkt. Entry No. 352 at 21-22, Gonzalez Plaintiffs’ First Amended Complaint.

17 Section 2 of the Voting Rights Act prohibits official practices that “result in a
18 denial or abridgement of the right of any citizen of the United States to vote on account
19 of race or color . . .” 42 U.S.C. 1973 (a). A violation of Section 2 exists when, “based
20 on the totality of circumstances, it is shown that the political processes leading to
21 nomination or election in the State or political subdivision are not equally open to
22 participation by [Latinos] in that its members have less opportunity than other members
23 of the electorate to participate in the political process and to elect representatives of
24 their choice.” 42 U.S.C. 1973 (b).

1 Plaintiffs' vote dilution claims turns on a number of factors, including the
2 presence of racially polarized voting, a disparate impact on Latino voters and a
3 demonstration that the challenged practice results in "less opportunity" for Latino voters
4 "based on the totality of circumstances." 42 U.S.C. 1973 (b).¹ See *Mississippi State*
5 *Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400 (5th Cir. 1991).

7 1. Arizona Elections are Characterized by Racially Polarized Voting

8 Elections in Arizona are characterized by racially polarized voting between
9 Latinos and non-Latino voters. [SOF 1170-1355] Studying recent racially-contested
10

11 ¹ The "totality of circumstances" includes the following factors mentioned by
12 Congress in the Senate Report accompanying its 1982 amendment of §2:

- 13 1. the history of official voting-related discrimination in the state or political
subdivision;
- 14 2. the extent to which voting in the elections of the state or political subdivision is
15 racially polarized;
- 16 3. the extent to which the state of political subdivision has used voting practices or
17 procedures that tend to enhance the opportunity for discrimination against the
18 minority group, such as unusually large election districts, majority-vote
requirements, and prohibitions against bullet voting;
- 19 4. the exclusion of members of the minority group from candidate slating
processes;
- 20 5. the extent to which minority group members bear the effects of discrimination in
21 areas such as education, employment, and health, which hinder their ability to
participate effectively in the political process;
- 22 6. the use of overt or subtle racial appeals in political campaigns; and
- 23 7. the extent to which members of the minority group have been elected to public
24 office in the jurisdiction.

25 S.Rep. No. 417, 97th Cong., 2nd Sess. 28-29, reprinted in 1982 U.S.Code Cong. &
26 Admin. News 177, 206-07.

1 elections across Arizona, Dr. Richard Engstrom concluded that: voting is racially
2 polarized; Latino voters have been cohesive in their support for Latino candidates; and
3 that non-Latinos did not provide any non-incumbent Latino candidate with a majority of
4 their votes in any instance. Dr. Engstrom further concluded that “[i]n this context, any
5 registration or voting requirement that has a disproportionately negative impact on
6 Latinos voting would impede that group’s ability to elect representatives of its choice.”
7 [SOF 1262]

9 Current and former elected officials have also testified that voting in Arizona is
10 racially polarized. [SOF 1429-1431] Defendants have conducted no statistical analysis
11 of racially polarized voting and have presented no facts or study concluding that
12 Arizona elections are not racially polarized. [SOF 1183-1188]

13
14 2. Proposition 200’s Requirements Have a Disparate Impact on Latinos.

15 The documentary proof of citizenship requirement for voter registration and the
16 voter identification requirement in Proposition 200 have disproportionately and
17 negatively affected Latinos in Arizona. [SOF 1262-1287; 1312-1355; 1470-1539]

18 a. Latinos are Less Likely to Successfully Register as a Result of Proposition
19 200’s Documentary Proof of Citizenship Requirement.

20
21 Since the implementation of Proposition 200’s requirement of documentary
22 proof of citizenship, over 37,000 voter registration applications have been rejected for
23 failure to provide citizenship documents.² [SOF 1468-1536] Gonzalez Plaintiffs’

24
25 ² This number of Proposition 200 rejected voter registration forms does not
26 include rejected forms from Santa Cruz County, which produced no forms, and includes
only a portion of forms from Yuma County, whose election officials shredded the

1 expert Dr. Louis Lanier studied 31,550 of these Proposition 200 rejected voter
2 registration forms which provided complete information about the rejected voter
3 applicants. [SOF 1468-1536] Dr. Lanier concluded that Latino representation among
4 rejected voter applicants is higher than Latino representation among all registration
5 applicants, demonstrating that Latinos are disproportionately rejected relative to their
6 representation among all applicants. [SOF 1468-1536] Among rejected applicants,
7 Latinos are less likely than non-Latinos to achieve success in a subsequent attempt to
8 register.³ [SOF 1468-1536]

10 Dr. Espino further found that after Proposition 200 was implemented in Arizona,
11 Latino voter registration as a percentage of all registration dropped dramatically. [SOF
12 1266,1267-1274;1280-1284,1315-1318, 1322-1324] His study demonstrates that the
13 negative affects of Prop 200 were felt more strongly by Latinos than non-Latinos.⁴

16 Proposition 200 rejected voter registration forms following Plaintiffs' request for their
17 production.

18 ³ State Defendants offer no criticism of Dr. Lanier's findings with respect to
19 rejected voter registration forms. *See* State Defendants' Summary Judgment Motion at
20 3-4 and 10-11 (taking issue with an earlier report of Dr. Lanier before he studied the
21 rejected registrations forms produced by County Defendants). In any event, Dr. Lanier
has successfully rebutted the critiques offered by Defendants' expert Dr. Zax. [SOF
1468-1536]

22 ⁴ State Defendants' criticism of Dr. Espino's study falls short because it
23 misapprehends the nature of his inquiry. Although Dr. Espino studied actual changes in
24 Latino and non-Latino registration, without making projections or estimates, State
25 Defendants argue inexplicably that Dr. Espino was required to perform tests of
26 statistical significance on a non-statistical examination. *See* State Defendants'
Summary Judgment Motion at 4. Similarly, State Defendants erroneously claim that
Dr. Espino should have *excluded* important 2004 registration data from his study in
order to increase the accuracy of his conclusions. *Id.* Once again, State Defendants fail

1 [SOF 1325-1342] Both Dr. Lanier and Dr. Espino were able to observe the separate
2 effects of Prop 200 on Latinos and non-Latinos and conclude that Latinos were
3 disproportionately negatively affected when compared to non-Latinos. [SOF 1262-1287,
4 1312-1355, 1470-1539]

5
6 Dr. Lanier further studied the demographic characteristics of the Census block
7 groups containing Latinos who were rejected for voter registration because of Prop 200.
8 [SOF 1526] He found that Latino rejected voters come from areas of Arizona where
9 the population: is less likely to speak English well, possesses less schooling, and earns a
10 lower household income than the averages for the state. [SOF 1529] Latino rejected
11 voters are also from areas where the population is more highly Latino in makeup, areas
12 that are more likely to use public transportation and areas that are more urban (less
13 rural) than statewide averages. [SOF 1536]

14
15 State Defendants claim in their motion that there can be no disparate impact on
16 Latino voter registration as a result of Proposition 200 because the raw number of
17 registered Latino voters has increased. *See* State Defendants' Motion at 4, 10-11.
18 However, the population of Arizona grows naturally over time. [SOF 1358-1359] As a
19 result, the number of both Latino and non-Latino registered voters has continued to rise.
20 [SOF 1373,1388-1389] The question whether total voter registration has increased
21 along with the population of Arizona is not relevant to the Court's inquiry in this case.
22 The numerical increase in registered voters in Arizona after 2005 does not erase the fact
23

24
25 to grasp that Dr. Espino studied actual registrations, not estimates based on past
26 registration data. [SOF 1266-1355]

1 that over 37,000 voter registration applications have been rejected pursuant to
2 Proposition 200 during this same period and that Latinos have been disproportionately
3 over-represented among rejected voter applicants as well as among applicants who are
4 ultimately unsuccessful at registering to vote. [SOF 1266-1355]

5
6 In another argument that misses the mark, State Defendants argue that Plaintiffs
7 can only demonstrate disparate impact on Latino voter registrants by showing that
8 Latinos are less likely to possess proof of citizenship. State Defendants' Summary
9 Judgment Motion at 9. This argument mischaracterizes Plaintiff's burden in the case.
10 Like the literacy test and poll tax of the past, Proposition 200's requirement to produce
11 documents in order to register to vote erects barriers for Latinos whose political
12 participation rates already lag behind those of Anglos in Arizona. Latino rejected voter
13 applicants are more likely to be low-income and live in urban areas when compared to
14 the state average.

15
16 Furthermore, it is undisputed that Latinos comprise a greater proportion of
17 naturalized citizens than Anglos [SOF 1369-1375] . It is also undisputed that Prop
18 200's registration requirements impose more onerous burdens on naturalized citizens
19 than native-born citizens.

20
21 Arizona Latinos, who today are disproportionately under-registered when
22 compared to Anglos, now face the hurdles imposed by Proposition 200's additional
23 documentation requirements. The statistical evidence shows that in the face of these
24 additional hurdles, Latinos are less likely to make a second and successful attempt to re-
25 register once they have been rejected. In addition, voter registration organizations,
26

1 who reached out to unregistered Latinos through community-based efforts have been
2 forced to shut down their operations as a result of Proposition 200.

3 Plaintiffs Mr. and Mrs. Gonzalez sought to register to vote on the day they
4 proudly took the oath of U.S. citizenship in their naturalization ceremony. However,
5 because they properly completed their voter registration forms with the number of their
6 certificate of naturalization, they were automatically rejected by the Yuma County
7 Recorder. It was months before they made a second attempt at registration. In his
8 second attempt to register to vote, this time using his Arizona driver's license, Mr.
9 Gonzalez was again rejected, this time because his license was issued before 1996. Mr.
10 Gonzalez remains unregistered today. See also [SOF 808-1062]

11
12
13 b. Latinos are More Likely to Cast Uncounted Conditional Provisional Ballots
14 and Less Likely to "Cure" Uncounted Conditional Provisional Ballots.

15 According to the Arizona Secretary of State, the 2006 General Election was the
16 election with the highest number of ballots cast by voters since the passage of
17 Proposition 200.⁵ The official canvass for the 2006 General Election shows that
18 1,553,032 ballots were cast that day. [SOF 1254] Among the uncounted conditional
19 provisional ballots cast in that election, 10.3% of them were cast by Latino voters. [SOF
20 EX. 576, 1468-1536] However, only between 2.6 % and 4.2 % of voters who participated
21 in the 2006 General Election were Latino. [SOF 1468-1536, 1178-1270(a)] Thus, Latinos
22
23

24 _____
25 ⁵ According to the Arizona Secretary of State, 998,393 ballots were cast in the
26 2008 Presidential Preference Election and 584,526 ballots were cast in the 2006 Primary
Election. [SOF EX. 131]

1 cast uncounted conditional provisional ballots at a rate much greater than their share of
2 the electorate in the 2006 General Election.

3 This finding is supported by other studies conducted by Defendant Maricopa
4 County. For example, one Maricopa County Elections Department study shows that
5 Latinos cast 17% of uncounted conditional provisional ballots in the 2008 Presidential
6 Primary Election, even though Latinos comprise only 12% of Maricopa County's
7 registered voters. [SOF 749] That same study showed that Latinos were also less likely
8 to "cure" their conditional provisional ballots by returning with identification when
9 compared to non-Latino voters. [SOF EX. 337]

11 In fact, 90% of conditional provisional ballots cast by Latinos in the Maricopa
12 County PPE were never counted. [SOF EX. 337] By comparison, 81% of conditional
13 provisional ballots cast by non-Latinos were never counted. [SOF EX. 337].

15 The fact that Latinos are going to the polls and casting a disproportionately high
16 number of uncounted conditional provisional ballots demonstrates the disproportionate
17 negative impact of Proposition 200 on Latinos.

18 Dr. Lanier studied demographic characteristics of the Census block groups
19 containing Latino voters who cast uncounted conditional provisional ballots. He found
20 that Latino voters who cast uncounted conditional provisional ballots come from areas
21 of Arizona where the population: is less likely to speak English well, possesses less
22 schooling, and earns a lower household income than the averages for the state. [SOF
23 1529-1535] Latino voters who cast uncounted conditional provisional ballots are also
24 from areas where the population is more highly Latino. [SOF 1481-1536]

1 State Defendants incorrectly claim that Plaintiffs must demonstrate that Latino
2 voters lack identification in greater numbers than non-Latinos. *See* State Defendants’
3 Summary Judgment Motion at 7. Such a view is overly narrow. The disparate impact
4 of Proposition 200’s voter identification requirements on Latinos reflect a combination
5 of factors, including the extent to which Latinos have acceptable identification under
6 Proposition 200, the extent to which lower educational achievement levels affect the
7 ability of Latinos to navigate the complex rules of acceptable identification at the polls,
8 the rate at which Latinos vote at the polls compared with their rate of mail and early
9 voting, the extent of poll worker training in minority precincts, the presence of language
10 assistance at the polls, and the ability of Latinos to return to the polls to “cure” their
11 conditional provisional ballots. These factors are presented and discussed in Plaintiffs’
12 evidence and, with proof that Latinos are more likely than non-Latinos to cast
13 uncounted conditional provisional ballots and less likely to “cure” their conditional
14 provisional ballots is sufficient to establish the disparate effects of the identification
15 requirements [SOF 813-1063, 1416-1420]

18 2. Under the Totality of Circumstances, Proposition 200’s Requirements Deny
19 Latinos an Equal Opportunity to Participate in the Political Process and to
20 Elect Representatives of Their Choice

21 An examination of the Section 2 “Senate Factors” demonstrates that Proposition
22 200’s registration and voting requirements interact with social, political and historical
23 factors to abridge or deny Latino voting rights. Latinos in Arizona have suffered a
24 history of official exclusion from voting including exclusion based on the State’s
25 literacy test. [SOF 1542-1650, 1407-1437] As demonstrated above in Section 2, *supra*,

1 voting is racially polarized in Arizona. Latinos today still bear the effects of
2 discrimination in areas such as education and employment which reduces their socio-
3 economic status and voter participation rates and hinders their ability to participate
4 effectively in the political process. [SOF 1542-1650, 1407-1437, 1376-1392]. Latino
5 present and past elected officials explain that Latinos are underrepresented in elective
6 office today and that Arizona Latinos have experienced other discriminatory voting
7 mechanisms including slating and racial appeals. [SOF 1393-1430]. State Defendants
8 concede “that there is evidence of historical discrimination against Latinos in Arizona.”
9
10 *See* State Defendants’ Motion at 6.

11 Defendants assert that under the totality of circumstances there is no Section 2
12 violation in this case, relying improperly on *Smith v. Salt River Project Agricultural*
13 *Improvement and Power District*, 109 F.3d 586 (9th Cir. 1997). *See* State’s Motion for
14 Summary Judgment at 6.

15
16 As an initial matter, the political system at issue in *Salt River* was very different
17 from the political system in this case and the unique structure of the District in *Salt*
18 *River* played an important role in the court’s ultimate finding of non-discrimination.
19 The Salt River District operated a federal reclamation project. The association of which
20 it was an arm was formed to represent the landowners who benefit from the Salt River
21 Project and its shareholders were subscribing landowners. *Id* at 588. By statute, the Salt
22 River District had the option of acreage-based voting and its purposes included the
23 reduction of irrigation, drainage and power costs to district landowners through the sale
24 of surplus power. *Id* at 588-89 (9th Cir. 1997).
25
26

1 In the Salt River District, voting was limited to landowners and each landowner
2 cast one vote per acre owned. The 10 electoral districts did not meet one person one
3 vote standards. Finally, Salt River District landowners did not need to live in the
4 District in order to vote their acreage. *Id* at 589.

5
6 Furthermore, the *Salt River* trial court found that the District “has no history of
7 racial politics and its operations do not involve racially-differentiated interests.” *Id* at
8 590. The district court also found, under the totality of circumstances, that plaintiffs
9 had presented no evidence of racial discrimination in District elections and that District
10 functions were not influenced by racial politics. *Id* at 590-91.

11 In this context, the Ninth Circuit affirmed the district court’s ultimate conclusion
12 that plaintiffs had failed to demonstrate a Section 2 violation in their challenge to the
13 District’s land ownership requirement for voting. The Ninth Circuit also deferred to the
14 district court’s finding that the plaintiffs’ evidence showed that differences in the rates
15 of Black and Anglo home ownership were better explained by factors other than race
16 and thus there was no nexus between racial discrimination and the challenged practice.
17 *Id.* at 595.

18
19 By contrast, in the case at hand, plaintiffs have demonstrated that the challenged
20 provisions of Prop 200 have a disparate impact on Latinos and that this disparate impact
21 combines with the legacy of past discrimination and present day racially polarized
22 voting to discriminate against Latinos under the totality of circumstances. *See*
23 *Farrakhan v. Washington*, 338 F.3d 1009 (9th Cir. 2003), *reh’g en banc denied*, 359
24 F.3d 1116 (9th Cir.), *cert. denied*, 125 S. Ct. 477 (2004); *Badillo v. City of Stockton*, 956
25
26

1 F.2d 884, 890 (9th Cir. 1992). Quite simply, Prop 200’s disparate negative effect on
2 Latinos are *not* “better explained by other factors independent of race” that might
3 “adequately rebu[t] any inference of racial bias that the [disparate impact] statistics
4 might suggest.” *Salt River* at 591.

5
6 Defendants advance an incorrect test, which they claim is mandated by *Salt*
7 *River*, which would require no less than a showing of discriminatory racial intent in
8 order to create the causal connection between a challenged practice and race.

9 Defendants argue in their summary judgment motion that if Latinos are less likely to
10 register to vote as a result of Prop 200’s documentary proof of citizenship requirements,
11 and if Latinos are less likely to satisfy Prop 200’s voter identification requirements, this
12 disparate impact is insufficient under Section 2 because Defendants claim there is no
13 direct connection between Prop 200’s provisions and race. This is not the appropriate
14 legal test. Section 2 unequivocally prohibits measures, such as those in Proposition 200,
15 that operate with historical and present day factors to abridge or deny the right to vote.
16

17 For example, Section 2 was enacted in 1965 in the same bill and at the same time
18 that Congress enacted a ban on literacy tests in certain covered jurisdictions. Congress
19 recognized that although literacy tests were facially neutral, because of poverty, lack of
20 educational opportunity and racially polarized voting, literacy tests operated to exclude
21 minorities from voting and were discriminatory. *See* 42 U.S.C. § 1973b. Similarly, in
22 1965 Congress also found that the poll tax:
23

24 in some areas has the purpose or effect of denying persons the right to
25 vote because of race or color. Upon the basis of these findings, Congress
26 declares that the constitutional right of citizens to vote is denied or

1 abridged in some areas by the requirement of the payment of a poll tax as
2 a precondition to voting.

3 *See* 42 U.S.C. § 1973h (a).

4 Thus, Congress has recognized since the passage of Section 2 that certain voting
5 practices, although not explicitly tied to race or facially discriminatory, can interact with
6 social and historical factors to deny or abridge the right to vote. Congress has
7 subsequently continued to recognize and prohibit such measures. *See, e.g.* 42 U.S.C.
8 1973b (f) (finding that in certain jurisdictions the practice of administering English-only
9 elections had an illegal discriminatory impact). Under Defendants’ erroneous legal
10 analysis, *Salt River* would not allow poll taxes, literacy tests or English-only elections to
11 violate Section 2 because there is no direct connection between the challenged practice
12 and racial discrimination.
13
14

15 **B. Summary Judgment is not Appropriate on Plaintiffs' Claim that Proposition**
16 **200 Violates Plaintiffs' Rights Under the Fourteenth Amendment.**

- 17 1. There are Genuine Issues of Fact Regarding Whether Proposition 200's Proof
18 of Citizenship Requirements for Registration Discriminates Against
19 Naturalized Citizens and thus Violates the Equal Protection Clause of the 14th
Amendment to the Constitution.

20 The Equal Protection Clause “is essentially a direction that all persons similarly
21 situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473
22 U.S. 432, 439 (1985); *Rolf v. City of San Antonio*, 77 F.3d 823, 828 (5th Cir. 1996).
23 When a “challenged government action classifies or distinguishes between two or more
24 relevant groups” courts must conduct an equal protection inquiry to determine the
25 validity of the classifications. *Qutb v. Strauss*, 11 F.3d 488, 491 (5th Cir. 1993).
26

1 Just as in every other context of government action, equal protection principles
2 preclude intentional discrimination in the electoral process and voter registration. *See*
3 *Hunter v. Underwood*, 471 U.S. 222 (1985); *Miller v. Johnson*, 515 U.S. at 911; *Garza*
4 *v. County of Los Angeles*, 918 F.2d 763, 778 (9th Cir. 1990), *cert. denied*, 498 U.S.
5 1028 (1991); *Boustani v. Blackwell*, No. 1:06CV2065, slip op. at 5 (N.D. Ohio Oct. 26,
6 2006).

8 In situations where the distinction involves a suspect class, such as national
9 origin, the challenged law is subject to the “strict scrutiny” standard of review.
10 Similarly, because Proposition 200 implicates a fundamental right strict scrutiny
11 applies. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 554 (1964) (“Voting is of the most
12 fundamental significance under our constitutional structure.”); *Graham v. Richardson*,
13 403 U.S. 365, 372 (1971) (classifications based on national origin are inherently
14 suspect). Plaintiffs have alleged that Proposition 200 discriminates with respect to
15 voting on the basis of national origin and cannot survive strict scrutiny.

17 Gonzalez Plaintiffs further allege in this case that Proposition 200 discriminates
18 between classes of citizens (and against naturalized citizens) and thus violates the Equal
19 Protection Clause of the 14th Amendment. *See* Dkt. Entry No. 352 at 21, Gonzalez
20 Plaintiffs’ First Amended Complaint. Specifically, Gonzalez Plaintiffs allege that
21 Proposition 200 imposes greater burdens on naturalized citizens than on native born
22 citizens.

24 Courts have consistently struck down laws that distinguish between native-born
25 and naturalized citizens. *See, e.g., Boustani v. Blackwell*, No. 1:06CV2065, slip op. at 5
26

1 (N.D. Ohio Oct. 26, 2006) (finding unconstitutional an Ohio statute that required
2 naturalized citizens, but not native-born citizens, to provide citizenship documentation
3 when their eligibility to vote was challenged at the polling place); *Faruki v. Rogers*, 349
4 F. Supp. 723, 725 (D.C. Cir. 1972) (portions of Foreign Service Act struck down
5 because of requirement that foreign service officers be U.S. citizens for at least ten
6 years); *Fernandez v. Georgia*, 716 F. Supp. 1475 (M.D. Ga. 1989) (striking down
7 Georgia law that prohibited naturalized citizens from becoming state troopers).
8 In *Schneider*, the Supreme Court found that the Constitution views the naturalized
9 citizen and the native-born alike:

11 ... the rights of citizenship of the native born and of
12 the naturalized person are of the same dignity and are
13 coextensive. The only difference drawn by the
14 Constitution is that only the "natural born" citizen is
15 eligible to be President. Art. II, § 1. While the rights
16 of citizenship of the native born derive from § 1 of the
17 Fourteenth Amendment and the rights of the
18 naturalized citizen derive from satisfying, free of
19 fraud, the requirements set by Congress, the latter,
20 apart from the exception noted, "becomes a member of
21 the society, possessing all the rights of a native citizen
22 and standing, in the view of the Constitution, on
23 footing of a native.

19 377 U.S. 163, 166.

21 Thus the Court in *Schneider* struck down a statute that subjected native-born and
22 naturalized citizens to different standards. The Court concluded that the statute created
23 an unconstitutional "second class" status for naturalized citizens by treating naturalized
24 and native-born citizens differently. *Id.* at 169.

1 In this case, Proposition 200 discriminates on its face against naturalized citizens.
2 Prop 200 states that a naturalized citizen may prove her citizenship by writing her
3 certificate of naturalization number on the voter registration application. Prop 200 then
4 adds that the application cannot be accepted until county officials verify that certificate
5 number with federal immigration authorities. Defendants' implementation of
6 Proposition 200 includes asking naturalized citizens to write their certificate of
7 naturalization number on the voter registration application. [SOF 550] Defendants do
8 not dispute that county officials are unable to verify the certificate of naturalization
9 number with federal immigration authorities [SOF 541, 498, 572, 575, 577, 578]. As a
10 result, county officials reject properly completed voter registration applications that list
11 as proof of citizenship the applicant's certificate of naturalization number. [SOF 540]
12 At the same time, county officials do not verify other forms of proof of citizenship,
13 including photocopies of passports and birth certificates and tribal enrollment numbers.
14 [SOF 392,582,561,557-559]

17 Many voter registration applicants who are naturalized citizens have listed as
18 proof of citizenship their certificate of naturalization numbers. [SOF 810,724] Their
19 voter registration forms were rejected automatically pursuant to Prop 200. [SOF 810-
20 848,9,12, 136,137,138,139]

22 Prop 200 does not authorize state or county officials to request other information,
23 such as an alien registration number, in lieu of the certificate of naturalization number.
24 [SOF 136]. In addition, not all certificates of naturalization show an alien registration
25 number. [SOF 1540]

1 Prop 200 further discriminates on its face against naturalized citizens by
2 requiring them to present in person their original naturalization certificates to the
3 County Recorder. [SOF 7,11,52] By contrast, Prop 200 allows an applicant with a U.S.
4 passport or a birth certificate to mail a photocopy to the county recorder. [SOF 5]

5
6 The plain language of the statute imposes a vicious cycle of application and
7 rejection for naturalized citizens that is unlike any requirement for native born citizens.
8 [SOF 7,11,52]

9 Prop 200's facial discrimination against naturalized citizens is consistent with
10 the focus in that statute on foreign born persons, the verification of immigration status,
11 the perceived negative effects of immigrants in Arizona and the spectrum of immigrants
12 fraudulently registering to vote. [SOF 512, 1415-1433] Whether or not they possess the
13 documentary proof of citizenship demanded by Prop 200, foreign born U.S. citizens
14 should not be singled out for discriminatory treatment in the form of forced double
15 applications and in-person registration.
16

17 2. There are Genuine Issues of Fact Regarding Whether the Documentary Proof
18 of Citizenship Requirements of Proposition 200 Impose an Undue Burden on
19 the Right to Vote.

20 The facial discrimination against naturalized citizens, described above, also
21 creates an undue burden on the right to vote for these naturalized citizens. In addition,
22 each of the documents required to prove citizenship for Proposition 200 costs a fee,
23 including an Arizona Driver's License. [SOF 798-803]. Thus, unlike the law
24 challenged in *Crawford v. Marion County Election Board*, *Crawford v. Marion County*
25 *Election Board*, Nos. 07-21, 07-25, 2008 WL 1848103 (April 28, 2008), Prop 200
26

1 forces voter registration applicants who lack citizenship documents to pay to purchase
2 or replace them before they can register to vote. *See Crawford* at *9 (“[t]he fact that
3 most voters already possess a valid driver's license, or some other form of acceptable
4 identification, would not save the statute under our reasoning in *Harper* if the State
5 required voters to pay a tax or a fee to obtain a new photo identification.”).

7 Furthermore, eligible voter registration applicants are unduly burdened by the
8 requirement to re-register to vote because they were provided an Arizona registration
9 form that did not request proof of citizenship, they received inaccurate information from
10 election officials, or they completed a federal voter registration form pursuant to the
11 National Voter Registration Act or the UOCAVA.

13 3. There are Genuine Issues of Fact Regarding Whether the Voter Identification
14 Requirements of Proposition 200 Impose an Undue Burden on the Right to
15 Vote.

16 Proposition 200 also requires voters who lack photo identification to purchase
17 their identification for a fee and thus unduly burdens the right to vote. In addition, the
18 acceptable identification documents that do not show a photo require some financial
19 expenditure or resources to obtain (e.g. bank statement, car insurance receipt, utility bill,
20 etc). [SOF 798-803]

21 Furthermore, Defendants’ implementation of Prop 200’s voter identification
22 requirements have unduly burdened eligible voters who have some form of valid ID but
23 who are told they cannot vote a regular ballot and who may also never be told to return
24 with identification. This includes voters with irregular street addresses, voters whose
25

1 voter registration addresses don't match the addresses on their identification and voters
2 whose names have changed as a result of marriage. [SOF 849-1029, 1014-1034]

3
4 **C. Summary Judgment is not Appropriate on Plaintiffs' Claim that**
5 **Defendants' Implementation of Proposition 200 Violates Title VI of the Civil**
6 **Rights Act of 1964.**

7 For the same reasons that Prop 200 violates the Equal Protection Clause by
8 discriminating against naturalized citizens, Prop 200 violates the disparate treatment
9 provision of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. See Section IV
10 B supra.

11 Title VI provides:

12 No person in the United States shall, on the ground of race,
13 color, or national origin, be excluded from participation in, be denied
14 the benefits of, or be subjected to discrimination under any program
15 or activity receiving Federal financial assistance.

16 42 U.S.C. 2000d

17 Plaintiffs have shown that Defendants are recipients of federal funds under Title
18 VI and that Proposition 200 discriminates on its face against naturalized citizens by
19 imposing more and greater burdens for voter registration. [SOF 1] This disparate
20 treatment of foreign born U.S. citizens is sufficient to establish a violation of Title VI.
21 *See Alexander v. Sandoval*, 532 U.S. 275 (2001).

22 **D. Summary Judgment is not Appropriate on Plaintiffs' Claim that Defendants**
23 **have Violated their First Amendment Rights.**

24 State Defendants argue that summary judgment is appropriate as to Plaintiffs'
25 claims under the First Amendment

1 Through their voter registration efforts Plaintiffs exercise expressive and
2 associational rights protected under the First Amendment to the U.S. Constitution. [SOF
3 1085-1095] *See Monterey County Democratic Cent. Committee v. United States Postal*
4 *Service*, 812 F.2d 1194, 1196 (9th Cir. 1987). “These rights belong to – and may be
5 invoked by – not just the voters seeking to register, but by third parties who encourage
6 participation in the political process through increasing voter registration rolls.” *Project*
7 *Vote v. Blackwell*, 455 F. Supp. 2d 694, 701 (D. Ohio 2006) (citing *Williams v. Rhodes*,
8 393 U.S. 23, 30 (1968)); *see also League of Women Voters v. Cobb*, 447 F. Supp. 2d
9 1314 (D. Fla. 2006); *Ass'n of Cmty. Orgs. for Reform Now v. Cox*, 2006 U.S. Dist.
10 LEXIS 87080 (N.D. Ga. Sept. 28, 2006).

11
12 State Defendants claim that summary judgment is appropriate as to Plaintiffs'
13 claims under the First Amendment because Proposition 200 imposes no direct
14 restriction on voter registration activities. State Defendants claim that summary
15 judgment is appropriate as to Plaintiffs' claims under the First Amendment because
16 Proposition 200 imposes no direct restriction on voter registration activities. State
17 Defendants are mistaken. First Amendment injuries do not have to be permanent, as
18 State Defendants seem to suggest. The interference with or loss of First Amendment
19 freedoms, even for a short period of time, constitutes an irreparable injury. *See Elrod v.*
20 *Burns*, 427 U.S. 347, 373 (1976).

21
22
23 Moreover, where, as here, an individual has asserted a First Amendment right,
24 the Supreme Court has held that such person is entitled to exercise such right in an
25 effective manner. *See Meyer v. Grant*, 486 U.S. 414, 424 (U.S. 1988). In *Meyer*, the
26

1 Court rejected a state's position that proponents of a state law prohibiting paid petition
2 circulators were not harmed because they could use other means to disseminate their
3 ideas. According to the Court, the opponents of the state law were harmed because the
4 First Amendment protected not only their right to advocate their cause, but also to select
5 what they believed to be the most effective means for so doing. *See id; see also Cobb*,
6 447 F. Supp. 2d at 1334. The Court noted that the fact that the state law left open
7 "more burdensome" avenues to exercise their rights, "[did] not relieve its burden on
8 First Amendment expression." *Id.* (quoting *FEC v. Massachusetts Citizens for Life,*
9 *Inc.*, 479 U.S. 238 (1986)).

11 The Court came to a similar conclusion in *Buckley v. American Constitutional*
12 *Law Foundation, Inc.*, 525 U.S. 182, 195 (1999), when it struck down a state law that
13 required that persons be registered to vote before they could circulate petitions, rejecting
14 the state's argument that the law could withstand constitutional muster because "it is
15 exceptionally easy to register to vote." *Id.* As stated by the Court, "[t]he ease with
16 which qualified voters may register to vote, however, does not lift the burden on speech
17 at petition circulation time." *Id.*

19 Accordingly, the First Amendment protects Plaintiffs' right to engage in what
20 they believe to be the most effective means of registering voters and they have
21 identified important First Amendment freedoms that are at stake and that have been
22 infringed upon – the right to advocate and associate free from the undue burdens of
23 Proposition 200. [SOF 1064 -1147]

25 **E. Summary Judgment is not Appropriate Merely Because Maricopa County**
26 **Claims the State has an Interest in Preventing Voter Fraud.**

1
2 Maricopa County has filed a summary judgment motion claiming that summary
3 judgment on all claims is warranted because Arizona “has a compelling interest in
4 protecting the integrity and reliability of the election process.” Maricopa County
5 Motion at 2.

6 Maricopa County’s motion for summary judgment is utterly devoid of legal
7 analysis and labors under the misperception that the State’s interest in election integrity
8 automatically overcomes the legal or constitutional infirmities of Proposition 200. Even
9 if Arizona has a compelling interest in protecting the integrity and reliability of the
10 election process, that interest is insufficient to support summary judgment on Plaintiffs’
11 constitutional claims without a further showing that Proposition 200 is narrowly
12 tailored. *See Gonzalez v. Arizona*, 485 F.3d 1041, 1049 (requiring in this case that
13 restrictions supported by a compelling state interest also be narrowly tailored to advance
14 that interest) *See Arizona Life Coalition Inc. v. Stanton*, 515 F.3d 956, 968 (9th Cir.
15 2008) (requiring narrow tailoring in First Amendment context).

16
17
18 Furthermore, even assuming Proposition 200 serves a compelling state interest,
19 Maricopa County is not entitled to summary judgment on Plaintiffs’ statutory claims
20 unless Proposition 200 also does not discriminate on the basis of race in violation of
21 Section 2 of the Voting Rights Act and Title VI of the Civil Rights Act of 1964. Not
22 one portion of Maricopa County’s motion addresses the issues of narrow tailoring or
23 non-discrimination, rendering it useless on the question of summary judgment.

24
25 Maricopa County’s motion also presents serious mis-statements of fact that serve
26 to invalidate further its argument in support of summary judgment. For example,

1 Maricopa County claims that Proposition 200 is necessary because there exists a “far-
2 reaching scheme in which legal resident aliens endeavoring to become U.S. citizens
3 have been duped into registering to vote.” Maricopa County further claims that it has
4 been “contacted” by U.S. Citizenship and Immigration Services (“USCIS”) regarding
5 this alleged “practice.” Maricopa County Separate Statement of Facts at ¶ 7

6
7 There is no evidence in the record to support these absurd statements, or the vast
8 fraudulent conspiracy they suggest. In support of these allegations, Maricopa County
9 cites only to testimony by the Maricopa County Recorder that from time to time, an
10 individual appears at the office of the County Recorder with a request for information
11 showing whether he or she is a voter in order to bring that information to U.S.
12 Citizenship and Immigration Services. [SOF EX. 513] No evidence in the case
13 suggests that Maricopa County was ever contacted by US CIS and no evidence in the
14 case supports Maricopa County’s claim in its motion that 24 people told the Recorder
15 that they had been induced to register to vote although they were not citizens. Maricopa
16 County Separate Statement of Facts at ¶ 7. In fact, the Maricopa County Recorder
17 testified in her deposition that she recalled only two people who said they had been told
18 they were eligible to vote as non-citizens. [SOF 1537, 832]

19
20
21 Much of the remaining allegations of non-citizen fraud in Maricopa County’s
22 motion are unsupported by the record. For example, Maricopa County claims that a
23 number of prospective jurors indicated on their questionnaires that they were not U.S.
24 citizens. However, the Maricopa County Recorder testified in her deposition that some
25 U.S. citizens claim to be non-citizens in order to avoid jury service. [SOF 1538]

1 Maricopa County further claims that 14 non-citizens intentionally registered to
2 vote but provides no evidence that they were non-citizens, or that their voter registration
3 was intentional, or that the paperwork offenses to which they plead guilty or were
4 convicted relate in any way to non-citizen voter registration. *See* Maricopa County
5 Motion at 3-8. Instead, Maricopa County hopes that mere accusations will suffice to
6 prove fraud.
7

8 Similarly, Maricopa County claims that a voter registration drive in 2007 included non-
9 citizen registrants. However, the Maricopa County Recorder testified in her deposition
10 that many of these applications were rejected because they had bad addresses and
11 “There is everything that could make a form unacceptable on there.” [SOF 1539]
12 Counsel for Maricopa County also wrote in 2007 that the registration applications in
13 this drive were rejected “for a range of problems – illegible, incomplete, bad address
14 and no proof of citizenship.” [SOF 1541] The Maricopa County Voter Registration
15 Manager testified in his deposition that the document on which Maricopa County relies
16 in its summary judgment motion does not show how many, if any, of registrations
17 rejected from this drive were from non-citizens. *See* Exhibit D to Maricopa Summary
18 Judgment Motion.
19

20
21 Despite its claims to the contrary, Maricopa County is unable to establish that
22 any of the statistics it presents demonstrate that non-citizens have registered to vote.
23 Ultimately, the County is forced to reveal that Proposition 200’s proof of citizenship
24 requirement is a reaction to “illegal immigration,” despite the complete lack of evidence
25 that an undocumented immigrant has ever registered to vote in Arizona. Maricopa
26

1 County Motion at 3. Similarly, Maricopa County omits from its motion entirely any
2 mention of voter impersonation at the polls – because there is no evidence it has ever
3 happened in Arizona or that Proposition 200’s voter identification requirement
4 alleviates any real problem.⁶

5
6 In addition, Maricopa County attempts to present concerns over other aspects of
7 voter eligibility, such as felony convictions, as a justification for the documentary proof
8 of citizenship requirements in Proposition 200. *See, e.g.* Motion at 4 (discussing felons,
9 fictional and dead voters as justification for proof of citizenship requirements); Motion
10 at 5 (discussing non-existent voters and unconsenting voters); Motion at 6 (discussing
11 voters who are not “live person[s] choosing to register” or “person[s] that actually
12 exist”); Motion at 6 (discussing but not defining “garbage”); Motion at 7 (discussing
13 felons); Motion at 8 (discussing “convicted felons”); and Motion at 10 (discussing
14 felons). None of these concerns with consent, fictional registrants or felony convictions
15 are addressed by the documentary proof of citizenship requirement in Proposition 200,
16 although they *are* addressed by other safeguards in the Arizona voter registration
17 system.⁷ Nevertheless, Maricopa County attempts to “bootstrap” their concerns about a
18 range of election problems into a justification for Proposition 200.
19
20

21
22 ⁶ Tacitly acknowledging that there is no evidence in Arizona of either
23 undocumented immigrant voter registration or voter impersonation at the polls,
24 Maricopa County declares that “Arizona voters chose to counteract the *danger* of
25 election fraud,” as opposed to any existing fraud. Motion at 3 (emphasis added).

26 ⁷ In order to ensure that voter registration applications are accepted from live persons
and non-felons, the Arizona Secretary of State verifies every registration form against

1 Finally, and most egregiously, Maricopa County claims that “the rate of [voter]
2 rejection is directly related to the number of fraudulent voter registration forms since the
3 implementation of Proposition 200[.]” To suggest that over 37,000 voter registration
4 applications have been rejected under Proposition 200 because the applicants were
5 ineligible non-citizens flies in the face of the evidence that over 90% of the rejected
6 applications were submitted by persons who stated that they were born in the United
7 States. [SOF 724-734] It further fails to acknowledge the thousands of voter
8 registration applicants who were rejected only because Arizona delayed updating its
9 voter registration form to reflect Proposition 200 requirements, because Arizona now
10 refuses to accept the national voter registration form, and because naturalized citizens
11 who properly rely on their certificate of naturalization number to prove their citizenship
12 were automatically rejected because county officials could not verify that number. It
13 cannot be disputed that Proposition 200 has excluded tens of thousands of eligible voter
14 registrants and that voter registration applications are rejected pursuant to Proposition
15 200 because they lack documentation, not because the applicant is a non-citizen.
16 Thus, the Maricopa County Motion for Summary Judgment is unsupported by legal
17 analysis, mischaracterizes the facts in the record and attempts to create a phenomenon
18 of non-citizen registration that simply does not exist. Most importantly, it does not
19 address how the burdens imposed by Proposition 200’s onerous and exclusionary
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statewide death and court conviction records. This process is separate from the process
of requesting documents to verify citizenship under Propositon 200. [SOF 22]

1 requirements are narrowly tailored to achieve election integrity. In truth, it is the
2 thousands of citizens who have been rejected for voter registration and the thousands of
3 voters whose ballots have gone uncounted who have suffered a loss of confidence in the
4 election system; their exclusion from the electorate has seriously undermined election
5 integrity and public confidence in voting in Arizona. [SOF 1024,1007,822,1420]
6

7 As the Presidential Election approaches, Gonzalez Plaintiffs urge the Court to
8 reject Maricopa County's unsubstantiated claims of fraud and conduct a full trial on the
9 merits of the Proposition 200.

10 **V.**
11 **CONCLUSION**

12 For the reasons stated above, Gonzalez Plaintiffs respectfully request that the
13 Court deny Defendants' Motion for Summary Judgment.

14
15 DATED this 24th day of June, 2008. Respectfully submitted,

16 By: s/Nina Perales
17 Nina Perales

18 Counsel for Plaintiffs
19 Gonzalez, et al.

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on the 24th day of June, 2008, I caused the foregoing
22 document to be electronically transmitted to the Clerk's Office using the CM/ECF
23 System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

24 COPY of the foregoing filed electronically
25 this 24th day of June, 2008.

26 COPY of the foregoing mailed with Notice

1 of Electronic Filing this 24th day of June, 2008 to:

2 The Honorable Roslyn O. Silver
3 United States District Court
4 Sandra Day O'Connor U.S. Courthouse, Suite 624
5 401 West Washington Street, SPC 59
6 Phoenix, AZ 85003-2158

s/Diego Bernal
Diego Bernal

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