

1 Nina Perales, TX SBN: 24005046
2 Diego Bernal, TX SBN: 24048350
3 MEXICAN AMERICAN LEGAL
4 DEFENSE AND EDUCATIONAL FUND
5 110 Broadway, Suite 300
6 San Antonio, TX 78205
7 Ph: (210) 224-5476
8 nperales@maldef.org
9 dbernal@maldef.org

6 Daniel R. Ortega, Jr., SBN: 005015
7 ROUSH, MCCRACKEN, GUERRERO,
8 MILLER & ORTEGA
9 650 North Third Avenue
10 Phoenix, Arizona 85003
11 Ph: (602) 253-3554
12 danny@rmgmoinjurylaw.com

10 Karl J. Sandstrom
11 PERKINS COIE, LLP
12 607 Fourteenth Street, N.W., Suite 800
13 Washington, D.C. 20005
14 (202)434-1639
15 ksansdstrom@perkinscoie.com

13 Attorneys for Gonzalez Plaintiffs

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

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

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4 NOW COME Gonzalez Plaintiffs and file this Post-Trial Memorandum.

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6 I. Prop 200, Enacted in November 2004, Imposes new Documentation
7 Requirements for Voter Registration and Voting
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10 In November, 2004, Arizona voters enacted Proposition 200 (“Prop 200”),
11 which, among other things, imposed new documentation requirements for voter
12 registration and voting at the polls on Election Day. Prop 200, also known as the
13 Arizona Citizen and Taxpayer Protection Act, focused its findings and provisions on
14 foreign born residents of Arizona. The Findings and Declaration of Prop 200
15 repeatedly mentions “immigration status,” “federal immigration policy,” and invokes
16 the “value of citizenship” “and “security of our borders” as requiring protection from
17 fraudulent acts by immigrants. [Tr. Ex. 1].
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20 The statements published in support of Prop 200's voting provisions
21 specifically invoke the specter of immigrants defrauding the election system by
22 registering to vote without U.S. citizenship. *See, e.g.*, “The citizens of Arizona have
23 spoken: they have had enough . . . [Proposition 200's] passage is vital to the security
24 of this state and the sovereignty of our country, “it is not fair or lawful for non-citizens
25 to reap the benefits of citizenship at the expense of law-abiding
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1 taxpayers,”“Proposition 200 [ensures] that illegal aliens who are not entitled to vote or
2 obtain certain benefits cannot subvert the law to access them.” *Id.*

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4 Section F of Prop 200 provides that the County Recorder shall reject any voter
5 registration application that is not accompanied by “satisfactory evidence of
6 citizenship.”¹ [*Id.*, Tr. Ex. 4]. Satisfactory proof of citizenship is comprised of the
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8 following:

- 9 1. The number of the applicant’s Arizona driver’s license or state;
10 identification card, if the card is issued after October 1, 1996;
- 11 2. A photocopy of the applicant’s birth certificate;
- 12 3. A photocopy of the applicant’s U.S. Passport;
- 13 4. A presentation to the County Recorder of the applicant’s U.S.
14 naturalization documents or the number of the certificate of
15 naturalization. If only the number of the certificate of
16 naturalization is provided, the applicant shall not be included in
17 the registration rolls until the number of the certificate is verified
18 with the United States Immigration and Naturalization Service by
19 the County Recorder;
- 20 5. “Other documents or methods of proof that are established
21 pursuant to the Immigration Reform and Control Act of 1986;”
- 22 6. The applicant’s Bureau of Indian Affairs card number, tribal
23 treaty card number or tribal enrollment number.

24 [Tr. Exs.1, 4].

25
26 Prop 200 singles out naturalized citizens for different treatment with respect to
27 providing proof of citizenship for voter registration. First, only naturalized citizens
28 are required to make an in person “presentation” of their citizenship document.

¹Prop 200's documentary proof of citizenship requirement is prospective only and does not address any potential ineligibility of currently registered voters. Prop 200's “grandfather clause” exempts all current registered voters and voters re-registering in their county of residence. Thus, Prop 200 targets those who are entering the electorate for the first time or moving to a new county. [Tr. Exs. 1, 115 (pending)].

1 Native born citizens and those holding a U.S. passport may mail a photocopy of their
2 document to the County Recorder. *Id.* Second, only naturalized citizens are subjected
3 to third party verification of the number of the certificate of naturalization. *Id.*
4

5 II. Prop 200 Imposes Greater and More Difficult Burdens on Naturalized
6 Citizens

7 Following the passage of Prop 200, Arizona, through its Secretary of State,
8 took steps to implement the documentary proof of citizenship requirement of Prop
9 200. The Secretary of State's Office updated its Elections Procedures Manual, a
10 document that directs county officials in the administration of elections and whose
11 provisions carry the force of law. [Kanefield 7/16/08 Tr. 696:2-18]. The Secretary of
12 State further made changes to Arizona's voter registration form, which was then
13 printed and distributed by the 15 counties. [*Id.* at 696:23-697:6; 715:8-10]. Also, the
14 Secretary of State issued a series of guiding memoranda to county officials through
15 the VRAZ Advisory Committee, a body comprised of state and county elections
16 officials. [Stender 1/11/08 Dep. 56:9-58:3; Tr. Exs. 126, 127, 128, 137, 153, 159, 161,
17 165, 166, 167, 168, 172, 175, 176, 178, 307]. Finally, the Secretary of State modified
18 its statewide computer system for voter registration, known as VRAZ, to perform an
19 additional check on new registrations that is meant to confirm citizenship.
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24 The Secretary of State updated the Elections Procedures Manual to make clear
25 that, when naturalized citizens use their naturalization certificates to prove U.S.
26 citizenship, the certificates cannot be photocopied but instead must be presented in
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1 person to the County Recorder. [Tr. Ex. 4 at 48; Kanefield 7/16/08 Tr. 699:17-25;
2 7/17/08 Tr. 765:20-766:8; 1/11/08 Dep. 15:11-23].
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4 The Secretary of State updated the State’s voter registration form, pursuant to
5 Prop 200, to add a new box 20 on the form that requests the “number of the certificate
6 of naturalization.” [Tr. Ex. 147].
7

8 The Secretary of State also updated the Elections Procedures Manual to make
9 clear that County Recorders must establish an account with USCIS to access the
10 federal SAVE database in order to verify the number of the certificate of
11 naturalization of all voter registration applicants who provide that number on their
12 registration forms. [Tr. Ex. 4 at 47]. Recognizing that the SAVE system may not
13 reflect the U.S. citizenship status of recently-naturalized citizens, the Manual further
14 instructs County Recorders to advise naturalized citizens that they may have to
15 provide *additional* documentary proof of citizenship when they register to vote if the
16 SAVE system cannot confirm their citizenship before the registration deadline for an
17 upcoming election. *Id.*
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21 By contrast, the Secretary of State updated its Procedures Manual to instruct
22 County Recorders to accept any tribal identification number on its face when provided
23 on a voter registration form. [*Id.* at 48; Kanefield 7/16/08 Tr. 700:13-19]. The
24 Secretary of State’s instructions to accept all tribal identification numbers on their face
25 assumes that all members of Arizona tribes are U.S. citizens. [Kanefield 7/16/08 Tr.
26 701:2-11]. However, at least four Arizona tribes include enrolled members who were
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1 born on the Mexico side of the U.S.-Mexico border and who may not be U.S. citizens.
2 [Kanefield 1/11/08 Dep. 21:22-24; John Lewis 7/15/08 Tr. 476:22-478:2].
3

4 When it updated the Elections Procedures Manual, the Secretary of State
5 understood that certain portions of Prop 200's requirement of documentary proof of
6 citizenship are without force. For example, the Secretary of State learned that no U.S.
7 state's driver's license shows the holder's citizenship status on its face, and thus only
8 Arizona licenses or identification cards can satisfy Prop 200's Section F 1. [Kanefield
9 7/16/08 Tr. 732:19-733:24]. Similarly, there is no provision of the Immigration
10 Reform and Control Act of 1986 that establishes "other documents or methods of
11 proof" of citizenship, thus rendering Prop 200's section F 5 inoperable. [8 U.S.C.
12 1324a]. Additionally, the Secretary of State is not aware of any "Bureau of Indian
13 Affairs card number [or] tribal treaty card number," and thus portions of Prop 200's
14 Section F 6 are incapable of execution. [Kanefield 7/25/06 Dep. 33:19-36:10].
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18 The Secretary of State's instructions to County Recorders that they verify
19 naturalization certificate numbers in the federal SAVE system carries a host of
20 problems that impeded voter registration by naturalized citizens. The SAVE program,
21 ("Systematic Alien Verification for Entitlements") is used by state and local
22 governments to check eligibility of non-citizens for public benefits. [Ratliff 4/22/08
23 Dep. 20:17-20]. Arizona County Recorders are the only SAVE users in the nation
24 who are attempting to verify citizenship status in SAVE. *Id.* at 24:1-3. Because of
25 delays in the data entry of citizenship information into SAVE following naturalization
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1 ceremonies, County Recorders are unable to confirm citizenship of newly-naturalized
2 citizens in SAVE for two weeks or longer. [Tr. Ex. 4 at 47; Ratliff 4/22/08 Dep.
3 19:16-19, 32:14-19, 35:13-21, 44:2-4, 54:7-14; Rodriguez 8/2/06 Dep. 61:16-62:3;
4 Rodriguez 1/22/08 Dep. 36:6-37:13; Marin 1/18/08 Dep. 51:7-9; Osborne 7/31/06
5 Dep. 99:10-19]. In addition, SAVE charges user fees that not all counties are willing
6 to pay. As a result, some counties have withdrawn from the SAVE program and are
7 passing confidential and highly private information about naturalized citizens to
8 workers in other counties in order to verify citizenship status of voter registrants.
9 [Altaha 1/1/4/08 Dep. 30:17-31:6; Wayman-Trujillo 1/9/08 Dep. 57:18-58:12; Ratliff
10 4/22/08 Dep. 37:4-7].
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15 Most importantly, County Recorders are unable to verify the number of the
16 certificate of naturalization in SAVE. [Kanefield 7/16/08 Tr. 698:3-16; Rodriguez
17 8/2/06 Dep. 59:21-23]. As a result, when a naturalized citizen properly completes a
18 voter registration form that asks for the number of the certificate of naturalization, the
19 County Recorder is unable to verify that number in SAVE and automatically rejects
20 that voter registration application. [Rodriguez 8/2/06 Dep. 60:18:22]. The County
21 Recorder then requires that the applicant, who did nothing wrong in the first place,
22 apply again and provide different citizenship information. [Kanefield 7/25/06 Dep. at
23 98:13-99:15; Rodriguez 8/22/06 Dep. 69:12-14]. Prop 200 thus creates a double-
24 registration requirement for naturalized citizens that is unique among all voter
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1 registrants in Arizona and singles out naturalized citizens for more onerous burdens in
2 the registration process.

3
4 In addition, certain naturalized citizens are also subjected to disparate negative
5 treatment under Prop 200 when they attempt to use their Arizona driver's licenses to
6 register to vote. Following passage of Prop 200, the Secretary of State modified the
7 statewide voter registration computer program (VRAZ) to flag as ineligible any voter
8 registrant whose Arizona driver's license was coded "Type F" in the Motor Vehicles
9 Division computer database. [Tr. Exs. 126, 153, 175].
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11

12 Before the passage of Prop 200, the Secretary of State's VRAZ program would
13 collect voter registration information from the 15 counties and nightly compare the
14 information about the registrants and existing voters against various databases,
15 including the Arizona MVD database, the Social Security Administration database, as
16 well as Arizona death records and records of felony convictions. [Tr. Exs. 165, 167,
17 307; Stender 1/11/08 Dep. 13:2-16:8; Kanefield 7/16/08 Tr. 702:1-703:8]. VRAZ
18 would then report the results of this search to the County Recorders and "flag"
19 problems such as an inability to match a voter registrant's information to the MVD or
20 Social Security databases.
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24 Following Prop 200, the Secretary of State modified the VRAZ program to flag
25 any voter registrant with a Type F license as a non-citizen who is ineligible to vote.
26 [Stender 1/11/08 Dep. 34:6-35:8; Kanfield 1/16/08 Tr. 705:7-18]. However,
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1 naturalized citizens can possess Type F licenses and when they do they are flagged as
2 ineligible for voter registration.
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4 The Arizona MVD codes driver's licenses as "Type F" when the applicant has
5 used an identity document that shows he or she is lawfully present in the United
6 States.² The MVD codes licenses in this manner in order to be able to override certain
7 data entry requirements in its computer database and the MVD does not use the Type
8 F designation on its licenses to keep track of the citizenship of its license holders.
9
10 [Yanofsky 1/10/08 Dep. 32:13-19, 63:19-64:9, 73:15-22]. In fact, because the Type F
11 license does not show its designation on its face, legal permanent residents of the U.S.
12 do not realize they possess a Type F license, even after they become naturalized
13 citizens and do not know that if they want to register to vote using their driver's
14 license number they would have to return to the MVD, show proof of U.S. citizenship
15 and ask for their computer records to be updated. [Yanofsky 1/10/08 Dep. 67:9-12;
16 Gage 1/10/08 Dep. 54:22-25, 90:7-22; Collins 1/10/08 Dep. 20:24-21:2].
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20 In 2005 alone, 6,785 people in Arizona naturalized and became eligible to
21 register to vote. Tr. Ex. 862-Table 5. The Secretary of State does not know how
22 many of these naturalized citizens hold licenses that are coded Type F in the MVD
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25 ²A permanent legal resident who shows her alien registration card ("green card") as
26 proof of identity will receive a drivers license that is coded Type F in the MVD database. A
27 permanent legal resident who shows a valid driver's license from California, for example,
28 will receive a drivers license that is not coded Type F in the MVD database. [Yanofsky
1/10/08 Dep 71:9-72:17; 77:25-78:11]. Thus, in Arizona, non-citizens have regular licenses
and citizens have Type F licenses.

1 database but the Secretary of State does know that since January of 2005, Service
2 Arizona, its online voter registration system, has rejected approximately 1300 voter
3 registration applicants with either Type F licenses or who possess licenses issued
4 before January 1, 1996. [Kanefield 7/16/08 Tr. 711:4-712:17; Kanefield 1/11/08 Dep.
5 30:15-31:3]. The State of Arizona is aware that Type F licenses cannot serve as
6 proxies for non-citizenship, and Prop 200 does not provide for the use of Type F
7 licenses to verify citizenship. Nevertheless, and without knowing how many citizens
8 possess Type F licenses, the Secretary of State has incorporated Type F licenses into
9 its implementation system for Prop 200, thereby preventing naturalized citizens whose
10 licenses (unbeknownst to them) are coded Type F in the MVD database from
11 registering to vote using their driver's licenses.
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16 The Secretary of State's recent decision to change the Arizona voter
17 registration form to request the "Alien Registration Number" has not and cannot cure
18 Prop 200's disparate treatment of naturalized citizens. The plain language of Prop
19 200 requires that an applicant provide the number of his or her certificate of
20 naturalization, not the alien registration number. The statute does not authorize the
21 Secretary of State or County Recorders to request an applicant's alien registration
22 number. [Kanefield 7/16/08 Tr. 713:5-9]. No future Secretary of State is bound by
23 the current practice of requesting the alien registration number and the current practice
24 is vulnerable to a challenge by any citizen to force the State to carry out Prop 200's
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1 specific requirement that applicants provide the number of the certificate of
2 naturalization.

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4 The certificate of naturalization number and the alien registration number are
5 not the same number and are not interchangeable. [Quinn 4/22/08 Dep. 74:3-6].

6 Unlike the certificate of naturalization number required by Prop 200, the alien
7 registration number is used by non-citizens to provide information to USCIS while
8 they are under the supervision and control of the federal government. After
9 naturalization, USCIS has no further business with an immigrant and an individual
10 who naturalizes must turn in her Alien Registration Card to USCIS. [Ratliff 4/22/08
11 Dep. 83:4-6, 88:6-12; Quinn 4/22/08 Dep. 40:9-13, 45:7-12]. The alien registration
12 number serves no purpose for naturalized citizens and to require it as a condition of
13 voting is both demeaning and confusing. [Maria Magdalena Gonzalez 7/10/10 Tr.
14 213:17-23].³

15
16 Furthermore, not all certificates of naturalization show the alien registration
17 number of the former non-citizen. [Tr. Ex. 961]. Nevertheless, the Secretary of
18 State's Office states that it believes that all naturalization certificates show the alien
19 registration number and thus it is appropriate to ask voter registrants to provide it.
20 [Kanefield 7/16/08 Tr. 719:18-23].

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³ "Q. (BY MS. PEREZ) You've identified for the Court that it's a number associated
27 with your green card. Because you've identified that, what was your reaction that they
28 wanted your green card number on your application? A. That it couldn't be, because I'm
already an American citizen, and they were asking me for a document that was irrelevant."

1 Following Prop 200, Arizona’s 15 County Recorders also modified their voter
2 registration procedures to require documentary proof of citizenship. [Rodriguez 8/2/06
3 Dep. 15:25-22:5; Altaha 1/14/08 Dep. 12:20-14:25; Dean-Lytle 01/16/08 Dep. 37:8-
4 38:10; Wayman-Trujillo 01/09/08 Dep. 27:8-16, 22-28:1]. If the Recorders receive
5 voter registration applications that lack “satisfactory evidence of citizenship” under
6 Prop 200, the Recorders reject those applications and send the applicant a letter
7 enclosing a new voter registration application and instructions to reapply and provide
8 proof of citizenship requirement pursuant to Prop 200. [Osborne 1/14/08 34:20-35:11;
9 Rodriguez 8/2/06 Dep. 19:20-20:23; Dean-Lytle 1/16/08 Dep. 37:8-38:10; Justman
10 8/1/06 15:1-17]. Contrary to the testimony of State Elections Director Joseph
11 Kanefield, the County Recorders do not “back date” voter registration applications
12 after receiving proof of citizenship. Instead, the date of registration is the date the
13 applicant provided a new form and included documentary proof of citizenship, even if
14 that date falls after the voter registration deadline for an upcoming election. [*Compare*
15 Kanefield 7/16/08 Tr. 716:20-717:14 *with* Rodriguez 8/2/06 Dep. 23:16-22; Altaha
16 1/14/08 Dep. 22:14-23:3; Dean-Lytle 1/16/08 Dep. 37:8-38:10]. Maria Gonzalez
17 and her husband Jesus Gonzalez completed voter registration applications after
18 proudly taking the oath of citizenship in a naturalization ceremony in August 2005.
19 [Maria Gonzalez 7/10/08 Tr. 208:23-218:2; Jesus Gonzalez 7/10/08 Tr. 221:4-
20 229:13]. Although they filled out the registration forms properly and provided the
21 numbers of their certificates of naturalization, their voter registrations were
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1 automatically rejected pursuant to Prop 200. [Tr. Exs. 896, 696, 712,717, 896]. Mr.
2 Gonzalez made a second attempt to register but was denied again because his driver's
3 license was issued before October 1, 1996 and thus cannot satisfy Prop 200. [J.
4 Gonzalez 7/10/08 Tr. 225:9-21]. Mr. Gonzalez remains unregistered today.
5

6
7 III. Prop 200 has Resulted in the Rejection of Over 38,000 Voter Registration
8 Applications and has a Disparate Impact on Latino Voter Registrants.

9 From January 2005 until September 2007 Arizona counties retained (and
10 produced in this litigation) over 38,000 voter registration forms that were rejected for
11 failure to produce proof of citizenship pursuant to Prop 200.⁴ [Lanier 7/10/08 Tr. at
12 241:13-242:16].
13

14 Plaintiffs' expert Dr. Louis Lanier identified approximately 31,550 individuals
15 whose voter registration applications were rejected.⁵ Dr. Lanier further observed that
16 only approximately one third, or 11,000 of these rejected individuals ultimately
17 successfully registered. [Lanier 7/15/08 Tr. at 329:13-23].
18

19 The effects of Prop 200 have been felt across ethnic groups in Arizona. Dr.
20 Lanier observed that, like the population of Arizona in general, the majority of
21 rejected voter applicants were not Latino and over 90 percent of them reported having
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24 _____
25 ⁴Santa Cruz County produced no rejected voter registration forms. Yuma
26 County produce no rejected voter registration forms dated before 2007. [Tr. Ex. 896].

27 ⁵In order to narrow the analysis to affected individuals, as opposed to instances of
28 rejected voter registrations, Dr. Lanier eliminated incomplete forms and duplicates. [Lanier
7/10/08 Tr. at 242:10-19; 7/15/08 Tr. at 333:3-334:12].

1 been born in the United States. [Lanier 7/10/08 Tr. 242:25-243:7]. However, Dr.
2 Lanier also observed that among rejected voter applicants, Latinos are
3 overrepresented. The representation of Latinos among the Prop 200 rejected
4 applicants was 2.8% higher than the representation of Latinos among all registration
5 applicants during the period following Prop 200. [Tr. Ex. 884 Table 5 and Lanier
6 7/10/08 Tr. at 245:9-246:7]. Dr. Lanier further found that proportionally fewer
7 Latinos successfully registered after being rejected for voter registration pursuant to
8 Prop 200. [Tr. Ex. 884 Table 2 and Lanier 7/10/08 Tr. at 243:8-244:7]. The rejected
9 voter data also shows that in certain counties, the disparate impact on Latinos was
10 much higher than the statewide average.⁶
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15 Based on his analysis, Dr. Lanier concluded that the effect of Proposition 200
16 fell disproportionately on Latinos with respect to voter registration rejections. Dr.
17 Lanier also concluded that Latinos were less likely to successfully reregister after
18 having their registration forms rejected pursuant to Prop 200. [Lanier 7/10/08 Tr.
19 262:10-263:1]. Defendants do not dispute this evidence.
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22 Examining voter registrations over time, Plaintiffs' expert Dr. Espino
23 concluded that both Latinos and non-Latinos experienced a drop in their registration
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26 ⁶For example, in Yuma County, Latinos comprised 34.9% of all registration
27 applicants but 40.5% of applicants rejected because of Prop 200 – a difference of 5.7%.
28 Yuma County Latinos were similarly over-represented among voter registration applicants
who were rejected pursuant to Prop 200 and never subsequently joined the voter rolls. [Tr.
Ex. 884 Table 5].

1 rates following the implementation of Proposition 200 when compared to the period
2 before Prop 200. However, Latinos showed a greater drop in their weekly registration
3 rates when compared to non-Latinos. [Tr. Ex. 875 at Table 3 (Def’s Impeachment Ex.
4 2); Espino 7/15/08 Tr. at 391:20-25]. Dr. Espino further concluded that in certain
5 individual counties, Latino voter registration dropped more than the statewide
6 average, including Pima, Greenlee and Yuma counties. [Espino 7/15/08 Tr. at 393:23-
7 394:7].⁷

10 Plaintiffs Debbie Lopez, Valle Del Sol and Chicanos Por La Causa testified
11 that as a result of Prop 200, they have been forced to expend additional institutional
12 and personal resources in order to register voters and compensate for the negative
13 effects of Prop 200.

14 [Lopez 1/16/08 Tr. 614:4-19;615:8-616:1; 622:21-623:12; Sarmina 7/15/08 Tr. 498:2-
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19 ⁷Dr. Espino explained that the number showing the percent change in the regression
20 slope in his second rebuttal report does not signify that the percent Latino registration is
21 higher than the percent non-Latino registration in the wake of Prop 200. These numbers
22 show whether the regression slope in period one is different than the slope in period two for
23 each county. [Tr. Ex. 877 Table 1; Espino 7/15/08 Tr. 433:8-436:14]. Thus, Latinos can
24 show a greater positive change in the regression slope for their voter registration before and
25 after Prop 200 when compared to non-Latinos, while at the same time experiencing a greater
26 negative impact of Prop 200 on their voter registration. For example, the percent change in
27 the regression slope can be driven by non-Prop 200 factors such as rapid population growth
28 or a targeted voter registration drive. At the same time, Prop 200 can have a greater negative
impact on Latino registrations when compared to non-Latino registrations. [Espino 7/15/08
Tr. 440:9-442:4]. For example, in Gila County, Latino registration was 30% lower when
compared to the period before Prop 200 – a greater drop than that experienced by non-
Latinos. At the same time, the difference in the regression slopes for Latino registration was
+39% in the post Prop 200 period. *Compare* Tr. Ex. 875 (Def’s Impeachment Ex. 2) Table 4
with Table 1 in Tr. Ex. 877.

1 502:8; 514:7-515:19; and Martinez 7/16/08 Tr. 558:20-559:3; 578:20-580:13].

2
3 IV. Prop 200's Voter ID Requirement Has Prevented Thousands of Voters
4 From Having Their Ballots Counted and has a Disparate Impact on Latinos

5 Prop 200 provides that voters who cast ballots at the polls on Election Day
6 “shall present one form of identification that bears the name, address and photograph
7 of the elector or two different forms of identification that bear the name and address of
8 the elector.” [Tr. Ex. 3]. Following the passage of Prop 200, the Secretary of State
9 revised its Elections Procedures Manual to add the requirement that the address on the
10 identification presented by the voter must match the voter’s address on the voter rolls
11 at the precinct. [Tr. Ex. 4 at 30-31 and Kanefield 7/16/08 Tr. at 706:20-707:6].
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15 As a result, voters who possess valid identification are turned away or forced to
16 vote conditional provisional ballots that are never counted. [Morrison 1/17/08 Dep. at
17 18:14-19:23; Tr. Exs. 967 (declaration of Brenda Rogers), 968 (declaration of Donna
18 Fulton)].
19
20

21 Dr. Lanier analyzed between 4,100 and 4,200 envelopes used to hold ballots
22 that were not counted because the voter lacked sufficient ID pursuant to Prop 200.
23 [Lanier 7/10/08 Tr. 249:18-251:8]. Dr. Lanier found that Latinos comprised between
24 2.6% and 4.2% of the voters who turned out to vote in the 2006 General Election race
25 for Governor (the race that received the highest number of votes in that election) but
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1 they cast 10.3% of the uncounted conditional provisional ballots. [Tr. Ex. 886; Tr.
2 Ex. 1355].
3

4 Maricopa County Election staff similarly found that Prop 200's voter ID
5 provision had a disparate impact on Latinos in the 2008 Presidential Preference
6 Election. [Tr. Ex. 954].
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9 Plaintiffs Debbie Lopez, Chicanos Por La Causa and Valle Del Sol testified
10 that they spend resources compensating for the negative effect of Prop 200's voter ID
11 provision. [Sarmina 7/15/08 Tr. at 497:12-498:18, 509:16-20, 511:5-7, 514:8-515:5,
12 9-19; Lopez 7/16/08 Tr. at 614:17-19, 616:19-23, 622:21-623:12 and Martinez
13 7/16/08 Tr. 554:17-555:5].
14
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16 V. Prop 200 Denies the Vote and Dilutes Latino Voting Strength in
17 Violation of Section 2 of the Voting Rights Act

18 The disparate impact on Latinos of Prop 200's documentary proof of
19 citizenship and voter ID requirements, in the context of racially polarized voting and
20 other Senate factors, denies the right to vote of Latinos like Mr. Gonzalez and also
21 dilutes the voting strength of registered Latinos such as Mrs. Gonzalez and Debbie
22 Lopez in violation of Section 2.
23

24 1. Voting is Racially Polarized in Arizona Elections
25

26 Plaintiffs expert, Dr. Richard Engstrom, analyzed ten racially contested
27 elections held in Arizona since 2002 to determine whether voting is racially polarized.
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1 [Engstrom 7/10/08 Tr at 99:18-117:9]. Dr. Engstrom concluded, looking across the
2 ten elections he studied, that Latino voters have a clear preference for Latino
3 candidates in Latino versus non-Latino elections or candidate pools. [Engstrom
4 7/10/08 Tr. at 116:16-121:9]. Dr. Engstrom further found that the preference for the
5 Latino candidate is not shared by non-Latino voters, with the exception of
6 Congressman Ed Pastor, a long-time Latino incumbent in a Latino majority district.
7
8 In addition, Congressman Raul Grijalva, the other Latino congressmen in a Latino
9 majority district, receives competitive support from non-Latinos. [Engstrom 7/10/08
10 Tr. at 121:10- 122:24, 127:1-13, 168:5-170:14; *see also* Tr. Ex. 872, Chart at pp. 5-7].
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13 Dr. Engstrom found that voting was not racially polarized in majority-Latino
14 Congressional District 4, in which Ed Pastor is a long-time Latino incumbent.
15 [Engstrom 7/10/08 Tr. at 121:10-122:13]. Dr. Engstrom found that in the 2004 race
16 for Congressional District 7, only the homogeneous precinct analysis showed
17 incumbent Raul Grijalva receiving a majority of non-Latino support; the ecological
18 regression and ecological inference estimates showed Representative Grijalva
19 receiving 48.4 and 49.4 non-Latino support respectively. [Tr. Ex. 869, 872]. By 2006,
20 Representative Grijalva received a slight majority of non-Latino votes. [Tr. Ex. 872,
21 Chart at pp. 5-7].
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25 Dr. Engstrom explained that incumbency in a Latino majority electoral district
26 is an important contextual fact in the racially polarized voting analysis. [Engstrom
27
28

1 7/10/08 Tr. at 121:10-123:18, 169:23-170:14]. In Latino majority districts, a Latino
2 incumbent can receive higher levels of non-Latino voter support than the same Latino
3 incumbent would receive in a non-Latino majority district. This is because the
4 electoral context features an expectation that a Latino will be elected in this district
5 because of its majority Latino status. [Engstrom 7/10/08 Tr. at 122:25-123:18]. Dr.
6 Engstrom explained that although Representative Pastor receives a majority of non-
7 Latino support in his current district, in light of the racial polarization in Arizona
8 elections, Dr. Engstrom would not necessarily expect Representative Pastor to receive
9 a majority of non-Latino support in a non-Latino majority district.⁸ [Engstrom 7/10/08
10 Tr. at 122:25-123:18].
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15 Dr. Engstrom also found that voting is racially polarized in Arizona primary
16 elections. [Engstrom 7/10/08 Tr. at 124:11-125:3].⁹ With respect to the voter
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18 ⁸Dr. Engstrom’s analysis showed that Latino-majority Congressional Districts 4 and 7
19 afford Latino voters the opportunity to elect their candidate of choice and do in fact elect the
20 Latino-preferred candidate. The success of these districts, and the concomitant higher levels of
21 non-Latino crossover support for the incumbents in these districts, is proof of the efficacy of
22 remedial districts drawn under the Voting Rights Act and does not undermine the finding of
23 racial polarization in Arizona elections. *See Black Political Task Force v. Galvin*, 300
24 F.Supp.2d 291, 303-307 (D.Mass.,2004) (finding that white support for long-time African
25 American incumbent constituted a special circumstance that did not defeat a finding of white
26 bloc voting under the third precondition of *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752,
92 L.Ed.2d 25 (1986)); *Old Person v. Brown*, 312 F.3d 1036, 1048 n. 13 (9th Cir. 2002, *cert.*
denied, 124 S.Ct. 556 (2003) (explaining that “the election of a minority candidate does not
negate a finding that there is bloc voting by a majority, because the candidate’s success can be
explained by ‘special circumstances, such as the absence of an opponent, incumbency, or the
utilization of bullet voting.’”) (quoting *Gingles*, 478 U.S. at 58).

27 ⁹Dr. Engstrom testified that polarization in partisan primary elections is significant
28 for a number of reasons. First, primary elections are a fundamental part of the political

1 turnout data generated with the ecological regression and ecological inference
2 analyses, Dr. Engstrom found that in general elections, Latino turnout is considerably
3 lower than that of non-Latino turnout. [Engstrom 7/10/08 Tr. at 125:23-
4 126:15,127:14-128:24; Tr. Ex. 870 p. 5].¹⁰

6
7 Dr. Engstrom concluded, in light of the racial polarization in Arizona elections,
8 that new election rules that contain a racial disparity in impact would contribute to the
9 dilution of the minority voting strength in the state. [Engstrom 7/10/08 Tr. at 128: 25-
10 129:7].

11
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13 2. Arizona's Citizen Latino Population is Growing Rapidly but Still Lags
14 Behind Non-Latinos in Socioeconomic Status

15 According to Dr. Jorge Chapa, Arizona population grew very rapidly since the
16 year 2000. [Tr. Ex. 862 (Expert Report of Dr. Jorge Chapa Table 1, January 4, 2008
17 (Chapa Report)].

18
19 Examining U.S. Decennial Census and American Community Survey data, Dr.
20 Chapa found that between 2000 and 2006 there was a strong, steady increase in the

21
22 process. They comprise a necessary step toward being elected to a partisan office. Second,
23 the candidate preferred by Latino voters can be eliminated at the stage of the primary
24 election. Thus, the presence of racially polarized voting in the primary can serve to block the
25 ability of Latino voters to elect their candidate of choice. [Engstrom 7/10/08 Tr. at 123:19-
125:4].

26
27 ¹⁰Dr. Engstrom further testified that turnout in any particular election does not affect
28 the finding of racially polarized voting because regardless of turnout it is the voters in any
particular election who decide the outcome of that election. [Engstrom 7/10/08 Tr. at 172:16-
173:5].

1 Hispanic citizen voting-age population (CVAP). [Tr. Ex. 862, (Chapa Report at Table
2 4c and Table 9e); Chapa 7/9/08 Tr. At 38:9-15]. Defendants' claim that Latino
3 population growth is slowing, and that such a trend would explain lower rates of
4 Latino voter registration following Prop 200, is a red herring. Latino population
5 growth is not slowing. Dr. Chapa's report shows that the average rate of growth for
6 Latinos from 2000 to 2004 is similar to the rate from 2004 to 2005. [Tr. Ex. 826
7 (Chapa Report at 1 & Table 5)]. Second, because the pool of individuals eligible to
8 register to vote in any particular year is not limited to those turning 18 or moving to
9 Arizona, it is illogical to assume that a similar growth rate for Latinos and non-Latinos
10 in a one year interval explains the disproportionate decline in Latino voter registration
11 following Prop 200.
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16 Dr. Chapa further found that in Arizona, the U.S.-born Hispanic children of
17 U.S.-born parents lag behind non-Hispanics in educational achievement, earnings and
18 voting. [Tr. Ex. 862 (Chapa Report at Table 6b, 7, 8a); Chapa 7/9/08 Tr. 41:24- 42:2,
19 43:1-2]. Dr. Chapa concluded that U.S.-born Hispanics in Arizona have not yet
20 overcome the consequences of past discrimination in education, employment and civic
21 participation. [Tr. Ex. 862 (Chapa Report at Tables 6a, 6b, 7 and 8a); Chapa 7/9/08
22 Tr., 30:21-32:5].
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1 Dr. Lanier's demographic analysis of the voters with rejected voter registration
2 forms and uncounted ballots confirmed Dr. Chapa's findings. [Lanier 7/10/08 Tr.
3 260:15-261:20].
4

5 Plaintiffs' expert Dr. F. Arturo Rosales testified that Latinos in Arizona have
6 experienced a history of discrimination in civic participation, housing and
7 employment that has persists to this day. [Rosales 7/215/08 Tr. at 349:6-363:25]. Dr.
8 Rosales concluded that the discrimination of Latinos in Arizona has hindered and
9 continues to hinder the ability of Latinos to fully participate in the political process.
10 [Rosales 7/15/08 Tr. at 363:16-23].
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14 **RESPECTFULLY SUBMITTED** this 25th day of July, 2008
15

16 By: s/Nina Perales
17 Nina Perales
18

19 **Counsel for Plaintiffs**
20 **Gonzalez, et al.**
21

22
23 CERTIFICATE OF SERVICE
24

25 I hereby certify that on the 25th day of July, 2008, I caused the foregoing
26 document to be electronically transmitted to the Clerk's Office using the CM/ECF
27 System for filing and transmittal of a Notice of Electronic Filing to CM/ECF
28 registrants.

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

COPY of the foregoing mailed with Notice
of Electronic Filing this 25th 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