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

16	Maria M. Gonzalez, et al.,)	No. CV-06-1268-PHX-ROS(Lead)
)	No. CV-06-1362-PCT-JAT(Cons.)
17	Plaintiffs,)	No. CV-06-1575-PHX-EHC(Cons.)
)	
18	vs.)	GONZALEZ PLAINTIFFS'
)	MOTION IN LIMINE
19	State of Arizona, et al,)	
)	(Assigned to the
20	Defendants.)	Honorable Roslyn O. Silver)
21)	

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23 Gonzalez Plaintiffs move in limine to preclude certain exhibits listed by County
24 and State Defendants and testimony related to those exhibits on the grounds that they
25 are irrelevant and prejudicial. In support of their motion, Gonzalez Plaintiffs will show:
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1 1. In their disclosure of planned trial exhibits, *see* Dkt. No. 788, County and State
2 Defendants jointly listed three documents that purport to contain evidence of non-U.S.
3 citizen voter registration in Maricopa County. State Defendants also list one additional
4 document that purports to contain evidence of non-U.S. citizen voter registration. In
5 fact, none of the four exhibits show non-citizen voter registration and thus are
6 irrelevant. To the extent that they are meant to suggest, without showing, the existence
7 of non-citizen registration they are prejudicial.

9 2. The first exhibit is County Defendants' Trial Exhibit 1/State Defendants' Trial
10 Exhibit 61 (1) which is described as a "List of individuals about whom the U.S.
11 Citizenship and Immigration Services (USCIS) requested information regarding voter
12 registration and voting history." *See* document, attached as Ex. A. The document, on
13 its own or in conjunction with any other of County or State Defendants' exhibits,
14 provides no indication that any of the named individuals on the list were or are non-
15 citizens. Thus, it does not provide evidence of non-citizens registered to vote or of non-
16 citizen voting.

18 3. The document itself is titled "Public Requesting Letters for ICE." The
19 Immigration and Customs Enforcement (ICE) is the agency within the U.S. Department
20 of Homeland Security that combines the law enforcement arms of the former
21 Immigration and Naturalization Service (INS) and the former U.S. Customs Service.
22 No text in the proposed trial exhibit states or suggests the list of people has anything to
23 do with U.S. Citizenship and Immigration Services (USCIS), as claimed by Defendants
24 in their description of the proposed trial exhibit.
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1 4. Furthermore, the list, which only provides names of individuals and some
2 information about whether they were registered to vote, provides no information about
3 why these individuals appeared at the Recorder's Office. The proposed trial exhibit is
4 not accompanied by any documents showing correspondence from ICE or USCIS with
5 regard to the individuals listed on the form. Any testimony by county officials about
6 what was said by these individuals about their reasons for appearing at the Recorder's
7 Office is hearsay and does not provide admissible evidence.
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9 5. Most importantly, Defendants' proposed trial exhibit does not show that any of
10 the individuals on the list are non-citizens. Any testimony by county officials about
11 what was said by these individuals about their citizenship status is hearsay and does not
12 provide admissible evidence. The list itself, even with the reference to ICE, or the
13 claimed connection to USCIS, does not demonstrate the citizenship status of the people
14 on the list. United States citizens may seek evidence of their voter registration to prove
15 their citizenship, seek an immigration benefit for another person, or to help establish
16 their residence for the purpose of proving derivative citizenship of a family member. It
17 is simply not possible to conclude, based on the proposed trial exhibit, that any of the
18 people listed in the document are not U.S. citizens.
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20 6. The second exhibit is County Defendants' Trial Exhibit 3/State Defendants' Trial
21 Exhibit 61 (3), which is described as "Lists of individuals whose voter registrations
22 were cancelled upon notification by the jury commissioner that the individuals were
23 convicted felons." *See* document, attached as Ex. B. Even if the document accurately
24 shows the names of persons whose voter registrations were cancelled by the County
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1 because of a felony conviction, this information is unrelated to non-citizen registration
2 and Proposition 200's documentary proof of citizenship requirement.

3 7. Whether or not any convicted felons have registered to vote, and whether or not
4 eligible voters failed to cancel their voter registration after being convicted of a felony,
5 is not an issue in this case, which is about Proposition 200's documentary proof of
6 citizenship requirement. The State of Arizona has a system of verifying court records of
7 felony convictions each night in its VRAZ system in order to ensure that felony
8 convictions of individuals on the voter rolls are identified and addressed by the counties.
9 *See* 1/11/08 Craig Stender depo at 13:2-18, attached as Ex. C. Arizona's system of
10 checking the voter rolls against court records of felony convictions is not at issue in this
11 case.
12

13 8. It goes without saying that a person convicted of a felony may still possess
14 documentary proof of citizenship and identification documents. Proposition 200's
15 requirement of documentary proof of U.S. citizenship for voter registration and
16 identification for voting were not intended and are not designed to identify felons on the
17 voter rolls and evidence related to voters who are felons cannot provide a state interest
18 in implementing the challenged provisions of Proposition 200.
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20 9. The third exhibit is County Trial Exhibit 4/State Defendants' Trial Exhibit 61
21 (4), which is described as "List of the number of voter registration forms submitted by
22 Petition Partners and rate of acceptability," which does not show whether any non-
23 citizens attempted to register to vote. *See* document, attached as Ex. D.
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1 10. The Maricopa County Recorder testified in her deposition that many of the
2 rejections reflected in the exhibit were the result of bad addresses and commented that,
3 “There is everything that could make a form unacceptable on there.” *See* 1/23/08 Karen
4 Osborne Dep. at 11:9-14, attached as Ex. E. Furthermore, counsel for County
5 Defendants explained that the registration applications referenced in the exhibit were
6 “rejected for a range of problems – illegible, incomplete, bad address, and no proof of
7 citizenship.” *See* Colleen Connor email to Nina Perales, 11/16/07, attached as Ex. F.

9 11. The Maricopa County Voter Registration Manager testified in his deposition that
10 County Trial Exhibit 4 does not show how many, if any, of registrations rejected from
11 this drive were for lack of proof of U.S. citizenship. *See* 1/23/08 Jasper Altaha Dep. at
12 6:11-13, attached as Ex. G.

13 12. Even if County Trial Exhibit 4 did show voter registrations rejected for lack of
14 proof of citizenship, which it does not, such rejections do not mean that the voter
15 applicants were not U.S. citizens. The record demonstrates that thousands of voter
16 registration forms have been rejected by Maricopa County for lack of proof of
17 citizenship, even though the applicants were U.S. citizens. The record further
18 demonstrates that voter registration forms submitted by U.S. citizens were rejected for
19 lack of proof of citizenship because the registration forms themselves did not call for
20 proof of citizenship, because the applicant was a naturalized citizen who provided a
21 certificate of naturalization number, and because the applicant lacked a driver’s license
22 issued after October 1, 1996 and did not also mail copies of citizenship documents like a
23 birth certificate or passport.
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1 13. The fourth exhibit is State Defendants’ proposed trial exhibit 61 (5), described as
2 “court records of the following cases involving election related crimes.” *See* document,
3 attached as Ex. H. However, none of the papers included in the exhibit show that any
4 person has been convicted of non-citizen voter registration or voting.

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6 14. First, the pages related to an individual named Allan Dale Rouse discuss a drug
7 offense and appear to have no relationship to voting or to this case.

8 15. Second, the pages related to the following persons all appear to involve
9 convicted felons and, for the reasons stated above, would not provide evidence relevant
10 to the justification for Proposition 200: David Eagans; Lori Susunkewa; Hector Gamez;
11 Timothy Burud; Dale Schwartz; Kristi Smith; Mark Anthony Sandoval; Lawrence
12 Henderson; Jason Hein and Millard Baird.

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14 16. The remainder of the proposed exhibit shows that some individuals were accused
15 of non-citizen voter registration and/or voting but were not convicted of the crime of
16 non-citizen voter registration and/or voting.

17 17. For example, the pages of the proposed exhibit dealing with criminal charges that
18 were dropped provide no relevant or useful evidence in this case. These are pages
19 related to the following individuals: Israel Rivera; Irma Lemons; Margarito Blancas;
20 Andre Gysberts and Carlos Magallanes.

21
22 18. In addition, the exhibit contains no information showing a criminal conviction of
23 any of the following individuals: Eugene Frederick Woltz; William Cowling; Armando
24 Laguna; Mano Rene Neal; Esequiel Longoria Morales.

1 19. Finally, a small number of pages show persons who were convicted or pled
2 guilty to “presentment of a false instrument.” This conviction does not provide
3 evidence of voter registration or voting by non-U.S. citizens. The conviction documents
4 also say nothing regarding the citizenship status of the persons convicted.

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6 20. The exhibits described above have one thing in common: they do not show any
7 information about the citizenship status of voter registrants or voters. They therefore
8 cannot provide any evidence tending to show that non-citizens have attempted to
9 register to vote, registered, or voted.

10 21. Rule 402 of the Federal Rules of Evidence provides that “evidence which is not
11 relevant is inadmissible.” FED. R. EVID. 402. Rule 401 further defines relevant
12 evidence as “all evidence having a tendency to make the existence of any fact that is of
13 consequence to the determination of the action more probable or less probable than it
14 would be without the evidence.” FED. R. EVID. 401. Even if the evidence is deemed
15 relevant, Rule 403 permits the court to exclude evidence “if its probative value is
16 substantially outweighed by the danger of ... confusion of the issues, or misleading the
17 jury, or by considerations of undue delay [or] waste of time.” FED. R. EVID. 403. *See*
18 *U.S. v. W.R. Grace*, 504 F.3d 745 (9th Cir. 2007).

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20 22. The “fact that is of consequence” to Defendants’ justification of Proposition 200
21 is that non-citizens have registered to vote and voted. However, “evidence having a
22 tendency to make the existence of [non-citizen voter registration] more probable” must,
23 by definition, show information about non-citizen voter registration. Lists of rejected
24 voter registration forms, and lists of individuals, by themselves cannot prove non-citizen
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1 registration and voting unless they show something about the individuals' citizenship
2 status. The glaring omission in the exhibits described above is that they show nothing
3 about citizenship status; for this reason they are inadmissible. *See D.A.N. Joint Venture*
4 *v. Binafard*, 116 Fed.Appx. 93 (9th Cir. 2004) (affirming exclusion of evidence that
5 "would not assist the trier of fact in determining" the fact in dispute and that was unduly
6 prejudicial).
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8 23. With these proposed exhibits, Defendants intend to "bootstrap" evidence about
9 convicted felons on the voter rolls, incomplete voter registration forms, people seeking
10 information about their voter registration status and convictions for undefined election
11 offenses into proof of non-citizen voter registration. Because the documents are not
12 proof of non-citizen registration, any use of the documents by the County Defendants
13 therefore only raises the specter of voter fraud by non-citizens. Without showing
14 evidence of non-citizen voter registration, the exhibits hold no probative value, cannot
15 assist this Court to resolve any issues in the case, and are inadmissible under Rules 401
16 and 402. Furthermore, they serve no other purpose than to prejudice Gonzalez Plaintiffs
17 and are inadmissible under Rule 403.
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DATED this 16 day of June, 2008.

Respectfully submitted,

By: s/Nina Perales
Nina Perales

Counsel for Plaintiffs
Gonzalez, et al.

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June, 2008, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

COPY of the foregoing filed electronically this 16th day of June, 2008.

COPY of the foregoing mailed with Notice of Electronic Filing this 16th day of June, 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