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

13 MARIA M. GONZALEZ, et al.,  
14  
Plaintiffs,  
15 v.  
16 STATE OF ARIZONA, et al.  
17 Defendants.

No. CV06-01268 PHX ROS  
No. CV06-1362 PCT ROS (Cons)  
No. CV06-1575 PCT ROS (Cons)

**PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
BY DEFENDANTS STATE OF  
ARIZONA AND THE ARIZONA  
SECRETARY OF STATE, TWELVE  
COUNTY DEFENDANTS AND  
DEFENDANT PINAL COUNTY**

(Assigned to the Honorable  
Roslyn O. Silver)

1 Pursuant to the Court's Order dated May 19, 2008, Defendants State of Arizona,  
2 Arizona Secretary of State, and the Twelve County Defendants ("Defendants") submit  
3 the following Proposed Findings of Fact and Conclusions of Law pertaining to the  
4 claims asserted in the first amended complaint in Case No. CV 06-1268 and the  
5 complaint in Case No. CV 06-1362.

6 **Defendants' Proposed Findings of Fact**

7 1. On November 2, 2004, Arizona voters adopted by ballot initiative  
8 Proposition 200 ("Prop 200").

9 2. Sections 3, 4 and 5 of Prop 200 amended Arizona's voting laws in two  
10 substantive ways: (1) applicants to register to vote for the first time in an Arizona  
11 county were required to submit proof of U.S. citizenship; and (2) voters who choose to  
12 vote in-person at the polls on Election Day (as opposed to early voters) would be  
13 required to present identification.

14 3. Prop 200 was implemented in January 2005.

15 4. Arizona has a history of close elections thereby triggering an automatic  
16 recount of votes. Examples of such close races include the 1992 race for Arizona House  
17 of Representatives District 6, the 1994 Democratic Primary race for U.S. Senate, the  
18 1994 Arizona House of Representatives District 27 race, the 1996 Republican Primary  
19 race for Arizona House of Representatives District 18, the 2004 Republican Primary  
20 race for the Arizona House of Representatives District 20.

21 5. Since 2004, fourteen Maricopa County voters were charged with election  
22 crimes after they were found not to be United States citizens. The crimes charged  
23 included presentment of a false instrument for filing and voting while not being entitled  
24 to vote. Twelve of those individuals were convicted, one case was dismissed and one  
25 case is pending.

26 6. The Maricopa County jury commissioner promptly notifies the Maricopa  
27 County Recorder of juror questionnaires that indicate the individuals are not U.S.  
28 citizens. In 2007, the Maricopa County Elections Department documented the names of  
approximately 237 individuals whose voter registrations were canceled upon receiving  
the commissioner's notifications. One hundred and sixty-eight of those cancellations

1 were because the registrants were not U.S. citizens. Among those individuals who  
2 attested that they were U.S. citizens, six voted in the 2002 Primary Election, 19 voted in  
3 the 2002 General Election, 7 voted in the 2004 Primary Election, 33 voted in the 2004  
4 General Election, 5 voted in the 2006 Primary Election, and 19 voted in the 2006  
5 General Election.

6 7. The Maricopa County jury commissioner promptly notifies the Maricopa  
7 County Recorder of juror questionnaires that indicate the individuals are convicted  
8 felons. In 2007, the Maricopa County Elections Department documented the names of  
9 approximately sixty-nine such individuals whose voter registrations were canceled upon  
10 notification by the commissioner.

11 8. Since August 2003, the U.S. Citizenship and Immigration Services  
12 (USCIS) has requested information from Maricopa County regarding voter registration  
13 and voting history of individuals that have applied to become naturalized citizens. The  
14 Maricopa County Elections Department has kept a record of the USCIS requests for  
15 such information; there have been 100 requests. Of those 100 individuals, 74 were  
16 registered to vote and 25 had voted in an Arizona election. Karen Osborne, Maricopa  
17 County Elections Director, estimates that since August of 2003, approximately 24  
18 individuals contacted the Elections Department about being induced to register to vote,  
19 although they were not U.S. citizens.

20 9. The Maricopa County Recorder has the duty to maintain a current and  
21 accurate voter registration registry. In so doing, the Elections Department must  
22 constantly update the registry for such circumstances as voters moving without updating  
23 their voter registration, a voter's death, or a voter becoming ineligible based on a  
24 criminal conviction.

25 10. Maricopa County documents the number of voter registration forms  
26 submitted by voter registration organizations. One such organization is Petition  
27 Partners. The Elections Department documented the number of voter registration forms  
28 submitted by Petition Partners and rate of acceptability of such forms from September  
2005 through September 2007. In that two-year period, Petition Partners submitted  
27,745 voter registration forms, of which only 6,706, or 24%, were added to the voter

1 registration rolls.

2 11. Due to the activities of Petition Partners and other paid circulators,  
3 Maricopa County receives large batches of voter registration forms that are either not  
4 completed by the person supposedly registering or are completed for a person who does  
5 not exist. Those registration submissions have alerted County officials to the possibility  
6 of fraud. The matching required by the Prop 200 proof of citizenship requirement  
7 prevented fraudulent registrations from being entered into the voter rolls.

8 12. Some voter registration organizations have registered legal residents, who  
9 were not yet U.S. citizens.

10 13. Before Prop 200 was adopted, non-citizens registered to vote in Maricopa  
11 County because the registrant was not required to prove citizenship.

12 14. Following the passage of Prop 200, the rate of rejection of voter  
13 registration forms was high at first, then declined in 2006, but increased again in 2007.  
14 Ms. Osborne attributes the increase in rejections in 2007 to another large voter  
15 registration organization that pays its circulators a set dollar amount per completed form.  
16 Before Prop 200 was enacted, counties could reject registration forms only if they were  
17 forged or fabricated as demonstrated on their face. With the implementation of Prop  
18 200, the registrant must prove that he or she is the person completing the form, rather  
19 than a forger, and the registrant must be a person that actually exists.

20 15. By enacting the voter identification law, the State is able to ensure that a  
21 person may not vote using the name of a non-existent voter that may have been added to  
22 the voter registration database before the proof of citizenship requirement existed. Thus,  
23 the voter identification requirement allows the State and its citizens to be assured that the  
24 person voting is in fact the same eligible person who is registered on the voter rolls.

25 16. Plaintiffs in Case No. CV 06-1268 include: Maria Gonzalez, Jesus  
26 Gonzalez, Bernie Abeytia, Debbie Lopez, Georgia Morrison Flores, Southwest Voter  
27 Registration Education Projection, Valle Del Sol, Friendly House, Chicanos Por La  
28 Causa, Inc., Arizona Hispanic Community Forum, Common Cause, Project Vote, and  
Association of Community Organizations for Reform Now (collectively, “Gonzalez  
plaintiffs”).

1           17. Plaintiffs in Case No. CV 06-1362 include: Hopi Tribe, Inter Tribal  
2 Council of Arizona, Inc., League of Women Voters of Arizona, League of United Latin  
3 American Citizens Arizona, Arizona Advocacy Network, and Rep. Steve M. Gallardo  
4 (collectively, “ITCA plaintiffs”).

5           18. None of the ITCA plaintiffs lacks proof of citizenship sufficient to comply  
6 with Prop 200.

7           19. None of the ITCA plaintiffs lacks voting identification sufficient to  
8 comply with Prop 200.

9           20. ITCA plaintiffs have identified only two individuals, Eva Steele and  
10 Shirley Preiss, who allegedly lack proof of citizenship to comply with Prop 200.

11           21. Neither Ms. Steele nor Ms. Preiss is a plaintiff in these consolidated cases.

12           22. Neither Eva Steele nor Shirley Preiss claims to be Latino or Native  
13 American.

14           23. Eva Steele is registered to vote in Maricopa County.

15           24. ITCA Plaintiffs have identified only one individual, Eva Steele, who  
16 allegedly lacks voting identification sufficient to comply with Prop 200.

17           25. Maricopa County, where Eva Steele is registered, provides at least two  
18 forms of acceptable non-photo identification to registered voters free of charge. Thus,  
19 Ms. Steele could obtain acceptable non-photo identification at no cost.

20           26. All but one of the ITCA plaintiffs lack knowledge of the number or  
21 identities of individuals lacking proof of citizenship.

22           27. Each of the Arizona tribes represented by the ITCA, and for which  
23 discovery was provided, issues tribal enrollment or identification cards to their  
24 respective members, and all but one of those tribes issue such cards without charge.

25           28. None of the Gonzalez plaintiffs lacks proof of citizenship sufficient to  
26 comply with Prop 200.

27           29. None of the Gonzalez plaintiffs lacks voting identification sufficient to  
28 comply with Prop 200.

          30. Plaintiff Maria Gonzalez possesses a certificate of naturalization and is  
registered to vote in Yuma County.

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31. Plaintiff Jesus Gonzalez possesses a certificate of naturalization.

32. Plaintiff Bernie Abeytia possesses a valid Arizona driver's license that was issued after October 1, 1996. Mr. Abeytia is registered to vote in Maricopa County and has voted in Arizona since Prop 200 was implemented.

33. Plaintiff Georgia Morrison Flores possesses a valid Arizona driver's license that was issued after October 1, 1996. The name on her current Arizona driver's license is Georgia Ann Morrison-Flores. Ms. Morrison Flores is registered to vote in Yuma County but is not registered with a recognized Arizona political party.

34. Plaintiff Debbie Lopez is registered to vote in Maricopa County. Ms. Lopez possesses voting identification sufficient to comply with Prop 200.

35. Naturalized citizens may provide their alien registration number to comply with the proof of citizenship requirement. Every naturalized citizen is entitled to a certificate of naturalization issued by the United States.

36. Individuals who have a tribal enrollment card or other tribal identification may provide the identification number on such card to comply with the proof of citizenship requirement.

37. As of August 2006, at least 87.4% of Arizona's voting eligible citizens possessed a valid Arizona driver's license or non-operating license.

38. Prop 200 does not intentionally discriminate against individuals on the basis of race, color or national origin.

39. All Arizona county elections departments are required to issue voter registration cards at no cost to individuals who register to vote in those respective counties.

40. All Arizona county recorders are required to provide a Recorder's Certificate at no cost to individuals who sufficiently establish their identity as a registered voter in the respective counties.

41. All Arizona counties establish polling places and times and dates for early voting for each primary and general election. Early voting in each Arizona county is conducted for approximately one month before each primary and general election. Any Arizona elector may vote early in any county or state election. If an elector votes early,

1 he or she is not required to provide voting identification. In addition, a person who votes  
2 early may vote on the day of the election and take his or her ballot to any polling place  
3 in the county of registration by the close of the polls.

4 42. There is no disparate impact on Latino citizens' voter registrations in  
5 Arizona since the implementation of Prop 200.

6 43. There is no disparate impact on Latino citizens' voter turnout in Arizona  
7 since the implementation of Prop 200.

8 44. There is no evidence of any disparate impact on Native American citizens'  
9 voter registrations in Arizona since the implementation of Prop 200.

10 45. Arizona voter registrations have increased since the implementation of  
11 Prop 200 over the number of registrations in the comparable pre-Prop 200 period.

12 46. Latino voter registrations and non-Latino registrations have increased  
13 since the implementation of Prop 200 by approximately the same percentage over the  
14 comparable pre-Prop 200 period.

15 47. There is no causal connection between historical and social discrimination  
16 against Latino citizens in Arizona and a lesser likelihood that such individuals obtain or  
17 possess proof of citizenship sufficient to comply with Prop 200.

18 48. There is no causal connection between historical and social discrimination  
19 against Latino citizens in Arizona and a lesser likelihood that such individuals obtain or  
20 possess voting identification sufficient to comply with Prop 200.

21 49. There is no causal connection between historical and social discrimination  
22 against Native Americans in Arizona and a lesser likelihood that such individuals obtain  
23 or possess proof of citizenship sufficient to comply with Prop 200.

24 50. There is no causal connection between any racially polarized voting in  
25 Arizona and a lesser likelihood that Latino citizens in Arizona obtain or possess proof of  
26 citizenship sufficient to comply with Prop 200.

27 51. There is no causal connection between any racially polarized voting in  
28 Arizona and a lesser likelihood that Latino citizens in Arizona obtain or possess voting  
identification sufficient to comply with Prop 200.

52. The ITCA and Gonzalez plaintiffs who engaged in voter registration

1 activities before the implementation of Prop 200 are able to engage in those same  
2 registration activities following the implementation of Prop 200.

### 3 **Conclusions of Law**

4 1. Plaintiffs seeking to invalidate election laws based on the equal protection  
5 clause must demonstrate that the laws actually impose an undue burden on plaintiffs or  
6 some class of voters. *Crawford v. Marion County Election Board*, 128 S. Ct. 1610, 1623  
7 (2008).

8 2. To establish a facial challenge to the voting restrictions, plaintiffs must  
9 show that “no set of circumstances exists under which the Act would be valid.”  
10 *Washington State Grange v. Washington State Republican Party*, 128 S. Ct. 1184, 1190  
11 (2008). Even as-applied challenges require a showing of the burden imposed on the  
12 challengers’ voting rights. *Burdick v. Takushi*, 504 U.S. 428, 438-39 (1992) (holding  
13 that the prohibition on write-in voting imposed only a limited burden on voters’ rights,  
14 which was justified by the state’s interest in promoting the integrity of its primary  
election system).

15 3. States have an important interest in deterring and detecting voter fraud and  
16 in public confidence in the integrity of the electoral process. *Crawford*, 128 S. Ct. at  
17 1617. Laws that impose only reasonable, non-discriminatory restrictions on voting  
18 rights generally are justified by a state’s important regulatory interests. *E.g.*, *Burdick*,  
19 504 U.S. at 434. Moreover, courts give great deference to restrictions that relate to voter  
20 qualifications. *Crawford*, 128 S. Ct. at 1616 (“evenhanded restrictions that protect the  
21 integrity and reliability of the electoral process itself are no invidious and satisfy the  
22 standard set forth in *Harper*”) (internal quotations omitted).

23 4. The ITCA and Gonzalez plaintiffs must show that *their* right to vote is  
24 unduly burdened by the proof of citizenship and voting identification requirements.  
25 Moreover, they must show more than some minimal burden to establish a constitutional  
26 violation. *Burdick*, 504 U.S. at 433 (“[e]lection laws will invariably impose some  
burden upon individual voters”).

27 5. Neither the ITCA plaintiffs nor the Gonzalez plaintiffs have shown that  
28 Arizona’s proof of citizenship unduly burdens their right to vote. None of the plaintiffs

1 is unable to register to vote because he or she lacks proof of citizenship. Indeed, all but  
2 one plaintiff, Jesus Gonzalez, is registered to vote. Jesus Gonzalez admittedly possesses  
3 proof of citizenship.

4 6. Plaintiffs have identified only two individuals, Eva Steele and Shirley  
5 Preiss, who allegedly lack proof of citizenship. Ms. Steele is registered to vote. Ms.  
6 Preiss is not a plaintiff in these cases. Thus, the fact that she allegedly lacks proof of  
7 citizenship does not establish that plaintiffs' right to vote is burdened by the proof of  
8 citizenship requirement. In addition, a showing of one individual who lacks proof of  
9 citizenship does not establish that the proof of citizenship requirement is  
10 unconstitutional in all its applications, as required for a facial challenge. *Crawford*, 128  
11 S. Ct. at 1621 (stating that although "the burden may not be justified as to a few voters,  
12 that conclusion is by no means sufficient to establish petitioners' right to the relief they  
13 seek in this litigation").

14 7. Similarly, neither the ITCA plaintiffs nor the Gonzalez plaintiffs have  
15 shown that Arizona's voting identification unduly burdens their right to vote. None of  
16 the plaintiffs is unable to vote in person at the polls on Election Day because he or she  
17 lacks voting identification. In addition, every Arizona voter may vote early or by mail  
18 without identification.

19 8. Plaintiffs have identified only one individual, Eva Steele, who allegedly  
20 lacks voting identification. Ms. Steele is not a plaintiff in these cases. Thus, the fact  
21 that she lacks voting identification does not establish that plaintiffs' right to vote is  
22 burdened by the voting identification requirement. In addition, a showing of one  
23 individual who lacks voting identification does not establish that the identification  
24 requirement is unconstitutional in all its applications, as required for a facial challenge.  
25 *Crawford*, 128 S. Ct. at 1621.

26 9. Moreover, Ms. Steele is registered to vote in Maricopa County and  
27 therefore could obtain voting identification at no charge from Maricopa County in the  
28 form of a voter registration card, recorder's certificate and election mail. In addition,  
Ms. Steele could vote through early in-person voting or by mail without identification.  
Accordingly, Ms. Steele's right to vote is not unduly burdened by the voting

1 identification requirement.

2 10. To establish a claim under § 2 of the Voting Rights Act, plaintiffs must  
3 show that the challenged restrictions actually result in discrimination based on race.  
4 *Smith v. Salt River Project Agric. Improvement & Power Dist.*, 109 F.3d 586, 595 (9<sup>th</sup>  
5 Cir. 1997) (“Only a voting practice that results in discrimination gives rise to § 2  
6 liability.”). Plaintiffs cannot meet their burden by showing merely a bare statistical  
7 impact on a racial minority. *Id.*

8 11. Although plaintiffs may show that social and historical factors interaction  
9 with the challenged voting practice to result in a disparate impact, plaintiffs must prove  
10 that the voting practice is itself connected to the prohibited result, *i.e.*, voting  
11 discrimination. Thus, in these cases, plaintiffs must prove that historical or social  
12 discrimination is causally related to a lack of proof of citizenship or voting identification  
13 on the part of a racial minority (here, Latinos and Native Americans). *E.g.*, *Badillo v.*  
14 *City of Stockton*, 956 F.2d 884, 890 (9<sup>th</sup> Cir. 1992) (“[T]he challenged device must be  
15 shown actually to impair the ability of minority voters to elect representatives of their  
16 choice.”).

17 12. Because neither the ITCA plaintiffs nor the Gonzalez plaintiffs have  
18 shown that there is any disparate impact on either Latino or Native American citizens in  
19 Arizona caused by the proof of citizenship requirement, they have not established a  
20 claim under § 2.

21 13. Similarly, neither the ITCA plaintiffs nor the Gonzalez plaintiffs have  
22 shown that there is any disparate impact on Latino citizens in Arizona caused by the  
23 voting identification requirement, and thus they have not established a claim under § 2.

24 14. In addition, plaintiffs have not shown that there is any causal connection  
25 between discrimination against Latino or Native American citizens and the possession of  
26 proof of citizenship by such citizens. Consequently, for that independent reason  
27 plaintiffs have not established a claim under § 2 based on the proof of citizenship  
28 requirement.

15. Similarly, plaintiffs have not shown that there is any causal connection  
between discrimination against Latino citizens and the possession of voting

1 identification by such citizens. Consequently, for that independent reason plaintiffs have  
2 not established a claim under § 2 based on the voting identification requirement.

3 16. To establish a Title VI claim, plaintiffs must show that they have been  
4 discriminated against on the basis of race or national origin. E.g., *Thomas v. City of*  
5 *Saint Paul*, 526 F. Supp. 2d 959, 967 (D. Minn. 2007) (stating that Title VI “prohibits  
6 discrimination on the basis of race, color, or national origin”); *see also* 42 U.S.C.  
7 § 2000d (“No person . . . shall, on the ground of race, color, or national origin, be  
8 excluded from participation in, be denied the benefits of, or be subjected to  
9 discrimination under any program or activity receiving Federal financial assistance.”).

10 17. Because plaintiffs have not shown that they have been discriminated  
11 against on the basis of race or national origin by the proof of citizenship or voting  
12 identification requirements, they have not established a claim under Title VI.

13 18. Moreover, a Title VI plaintiff must establish that the challenged practice  
14 *intentionally* discriminates on the basis of race or national origin. *Alexander v.*  
15 *Sandoval*, 532 U.S. 275, 280 (2001) (it is “beyond dispute” that “§ 601 prohibits only  
16 intentional discrimination”); *see also Chance v. Reed*, 538 F. Supp. 2d 500, 510-11 (D.  
17 Conn. 2008) (granting summary judgment in favor of the defendants on Title VI claim  
18 where the plaintiff did not offer direct evidence of discriminatory intent for the  
19 defendants’ conduct); *Thomas*, 526 F. Supp. 2d at 967-68 (granting summary judgment  
20 in favor of the defendant where the evidence was insufficient as a matter of law to show  
21 that the defendant had intentionally discriminated against the plaintiffs).

22 19. Plaintiffs have not shown that the proof of citizenship or voting  
23 identification requirements intentionally discriminate against Latino citizens on the basis  
24 of race or national origin. For that independent reason, plaintiffs have not established a  
25 Title VI claim.

26 20. To establish a First Amendment claim, plaintiffs must show that the  
27 challenged restrictions unduly burden their free speech or associational rights. *Rubin v.*  
28 *City of Santa Monica*, 308 F.3d 1008, 1014 (9<sup>th</sup> Cir. 2002) (upholding an election  
restriction in a First Amendment challenge where the plaintiff did not show that the  
restriction imposed a severe burden and where the state had important regulatory

1 interests furthered by the restriction). “Courts will uphold as ‘not severe’ restrictions  
2 that are generally applicable, even-handed, politically neutral, and which protect the  
3 reliability and integrity of the election process.” *Id.*

4 21. Plaintiffs have not shown that the proof of citizenship requirement imposes  
5 a severe burden on their free speech or associational rights. Arizona’s proof of  
6 citizenship requirement is politically neutral, applies to every individual in the state,  
7 does not infringe on core political speech, and does not favor one type of speech over  
8 another. *See id.* at 1015-16. Plaintiffs may register individuals to vote in Arizona  
9 without any restriction on plaintiffs’ speech or associational rights. The proof of  
10 citizenship requirement imposes no First Amendment restriction on plaintiff  
11 organizations, but rather requires registrants to prove their qualification to register.

12 22. Because the proof of citizenship does not impose a severe burden on  
13 plaintiffs’ First Amendment rights, the requirement should be upheld if it is a reasonable  
14 and nondiscriminatory measure that furthers an important state interest. *See id.* at 1017.

15 23. “There is no question about the legitimacy or importance of the State’s  
16 interest in counting only the votes of eligible voters.” *Crawford*, 128 S. Ct. at 1619.  
17 States also have an important interest “in protecting the integrity and reliability of the  
18 electoral process.” *Id.* at 1617. Specifically, states have an important interest in  
19 deterring and detecting voter fraud and in safeguarding voter confidence in the electoral  
20 process. *Id.*

21 24. The proof of citizenship requirement is neutral and non-discriminatory and  
22 is a reasonable measure to ensure that only qualified individuals vote and register to  
23 vote. Accordingly, the proof of citizenship requirement does not impose an  
24 unconstitutional burden on plaintiffs’ First Amendment rights.

25 25. Because the ITCA and Gonzalez plaintiffs have failed to establish any of  
26 their respective claims, Defendants are entitled to judgment. Accordingly, the Court  
27 grants judgment in favor of Defendants on all remaining claims.  
28

1 RESPECTFULLY SUBMITTED this 18th day of June, 2008.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 18th day of June, 2008, I electronically transmitted  
3 the attached document to the Clerk's Office using the ECF System for filing, and  
4 transmittal of a Notice of Electronic Filing to the following ECF registrants:

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14 **COPY** also served this 18<sup>th</sup> day of June, 2008, by U.S. Mail with Notice of  
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18 The Honorable Roslyn O. Silver  
19 United States District Court  
20 Sandra Day O'Connor U.S. Courthouse, Suite 624  
21 401 West Washington Street, SPC 59  
22 Phoenix, AZ 85003-2158

23 /s Elizabeth Stark

24 228492  
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26  
27  
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