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25 UNITED STATES DISTRICT COURT
26 DISTRICT OF ARIZONA

27 Maria M. Gonzalez, et al.,
28 Plaintiffs,

29 v.

30 State of Arizona, et al.,
31 Defendants.

No. CV-06-1268-PHX-ROS(Lead)
No. CV-06-1362-PCT-JAT(Cons.)
No. CV-06-1575-PHX-EHC(Cons.)

**GONZALEZ PLAINTIFFS’
PROPOSED FINDINGS OF FACT**

(Assigned to the Hon. Roslyn O. Silver)

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GONZALEZ PLAINTIFFS’ PROPOSED CONCLUSIONS OF LAW

I. Proposition 200 Violates Section 2 of the Voting Rights Act

A. Arizona Elections are Characterized by Racially Polarized Voting

B. Proposition 200’s Requirements Have a Disparate Impact on Latinos

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

II. Prop 200’s Proof of Citizenship Requirement for Registration Discriminates Against Naturalized Citizens and Violates the Equal Protection Clause of the 14th Amendment to the Constitution

III. The Documentary Proof of Citizenship Requirement of Proposition 200 Imposes an Undue Burden on the Right to Vote in Violation of the Equal Protection Clause of the U.S. Constitution

IV. The Voter Identification Requirement of Proposition Imposes an Undue Burden on the Right to Vote in Violation of the Equal Protection Clause of the U.S. Constitution

V. Proposition 200 Violates Title VI of the Civil Rights Act of 1964.

VI. Proposition 200 Violates Plaintiffs’ First Amendment Rights

VII. The State Interest in Preventing Voter Fraud Cannot Overcome Proposition 200’s Legal and Constitutional Flaws

1 Pursuant to Fed R. Civ. P. 52(a) and this Court's May 19, 2008 Order, Gonzalez
2 Plaintiffs hereby submit their Proposed Findings of Fact and Conclusions of Law:

3 **GONZALEZ PLAINTIFFS' PROPOSED FINDINGS OF FACT**

4 **I. BACKGROUND ON ARIZONA ELECTIONS SYSTEM**

5 **A. The Landscape of Voting in Arizona**

- 6 1. According to the U.S. Census, as of 2005, Arizona had a population of 5,939,292.
7 Twenty-eight percent of Arizona's population was Hispanic. [Exhibit 414]
8 2. As of September, 2007 the Arizona voter roll was comprised of over 3.3 million
9 registered voters. [Exhibit 3]
10 3. Hispanic representation on the Arizona voter roll as of September 2007 was 12.3
11 percent. This 12.3 percent corresponds to 451,306 Hispanic registered voters.
12 [Fifth Lanier Report 2]
13 4. Most Arizona voters reside in Maricopa County and Pima County. The population
14 in those two counties comprise 75% of the population of the entire state. [Exhibit
15 122]

16 **B. Responsibilities of the Secretary of State and County Election Officials**

- 17 5. The County Recorders are the entities in Arizona that are tasked with voter
18 registration. They are responsible for printing and distributing the voter registration
19 form. [Kanefield 13]
20 6. The Secretary of State's office is tasked with designing and promulgating the voter
21 registration form. [Kanefield 13]
22 7. The Secretary of State, as well as the counties, produce and distribute hard copies
23 of the voter registration form to the public. [Kanefield 12 Osborne, 1/14/08, 14:13-
24 24]
25 8. Any new completed voter registration form comes in to the Recorder for
26 processing. [Exhibit 160 at 43]

- 1 9. County Recorders are authorized by the State to designate persons to accept
2 registration forms, distribute mail-in registration forms and designate places for
3 receipt of registration forms. [Exhibit 160 at 54]
- 4 10. Public assistance agencies and disabilities agencies must return or mail completed
5 voter registrations to the County Recorder of the county in which the registrant
6 resides within five days after receipt of those registrations. [Exhibit 160 at 54]
- 7 11. The Secretary of State administers a statewide database of voter registration
8 information that contains the name and registration information of every registered
9 voter in this state. [Exhibit 160 at 50]
- 10 12. All Arizona counties establish polling places and times and dates for early voting
11 for each primary and general election. [stipulated fact]
- 12 13. Early voting in each Arizona county is conducted for approximately one month
13 before each primary and general election. [stipulated fact]

14 **C. The State is Federal Recipient for Conduct of Elections**

- 15 14. Arizona receives federal funds that support election administration and voter
16 registration through the Help America Vote Act. [Plfs. Ex. 778- 860]; [Kanefield
17 34]

18 **II. PROVISIONS OF PROP 200**

19 **A. Purpose of Prop 200**

- 20 15. On November 2, 2004, Arizona voters adopted by ballot initiative Proposition 200
21 (“Prop 200”) amending, among other statutes, A.R.S. §§ 16-152, 16-166 and 16-
22 579. . [stipulated fact]
- 23 16. Under the Arizona Constitution, Article IV, Section 1, the people of Arizona have
24 the power to enact initiative statutes. Initiative statutes become law “when
25 approved by a majority of the votes cast thereon and upon proclamation of the
26 Governor.” Ariz. Const. art. IV, § 1.

1 17. The voting provisions of Proposition 200 require that individuals produce
2 documentary proof of citizenship in order to register to vote and photo
3 identification or two other forms of acceptable non-photo identification to cast a
4 regular ballot. [Plfs. Ex. 1, 2, 3, 5, 6]

5 18. Proposition 200 went into effect on January 25, 2005. [Kanefield 16:11-13]

6 19. The Findings and Declaration in support of Proposition 200 focus on
7 undocumented immigration, stating: “This state finds that illegal immigration is
8 causing economic hardship to this state and that illegal immigration is encouraged
9 by public agencies within this state that provide public benefits without verifying
10 immigration status. This state further finds that illegal immigrants have been given
11 a safe haven in this state with the aid of identification cards that are issued without
12 verifying immigration status, and that this conduct contradicts federal immigration
13 policy, undermines the security of our borders and demeans the value of
14 citizenship. . . .” Tr. Ex. 1.

15 **B. Documentary Proof of Citizenship for Voter Registration**

16 20. Pursuant to Proposition 200, all new voter registrants must provide documentary
17 proof of citizenship as of January 24, 2005. [Exhibit 6]

18 21. “Satisfactory proof of citizenship” is defined as: the number of a driver’s license
19 or state identification card issued after October 1, 1996; a legible photocopy of a
20 birth certificate that verifies U.S. citizenship; a legible photocopy of the pertinent
21 pages of a U.S. passport; presentation of a naturalization certificate; the number of
22 the certificate of naturalization, but only if the number is verified with the
23 Immigration and Naturalization Service; “other documents or methods of proof that
24 are established pursuant to the Immigration Reform and Control Act of 1986;” or
25 the applicant’s Bureau of Indian Affairs Card Number, Tribal Treaty Card Number
26 or Tribal Enrollment Number. Tr. Ex. 1.

1 22. Proof of voter registration from another state is not satisfactory proof of
2 citizenship. Tr. Ex. 1

3 23. Currently registered voters are not required by Proposition to submit proof of
4 citizenship unless they move and register to vote in a different county. Tr. Ex. 1

5 24. Although birth certificates are sufficient to satisfy the citizenship requirement of
6 Prop 200, if the name is different between the registration form and certificate,
7 registrants must also provide legal documentation of the name change. [Exhibit 6]

8 25. Proposition 200 states that the only citizenship document that must be verified by
9 the County Recorder is the number of the certificate of naturalization. [Tr. Ex. 1]

10 26. Proposition 200 specifically requires the physical presentation of only one
11 document – the naturalization certificate -- as opposed to a photocopy of other
12 documents such as a birth certificate or passport. [Exhibit 4]

13 **C. Voter Identification for Election Day Voting at the Polls**

14 27. Section 5 of Proposition 200 amends Section 16-579 of the Arizona Revised
15 Statutes to provide that before receiving a ballot, every qualified elector “SHALL
16 PRESENT ONE FORM OF IDENTIFICATION THAT BEARS THE NAME,
17 ADDRESS AND PHOTOGRAPH OF THE ELECTOR OR TWO DIFFERENT
18 FORMS OF IDENTIFICATION THAT BEAR THE NAME AND ADDRESS OF
19 THE ELECTOR.” Tr. Ex. 1.

20 28. The “Procedure for Proof of Identification at the Polls,” issued by Secretary of
21 State Brewer on September 6, 2005, provides that acceptable forms of voter photo
22 identification include: a valid Arizona driver license; valid Arizona nonoperating
23 identification license; tribal enrollment card or other form of tribal identification;
24 valid United States federal, state, or local government issued identification. These
25 forms of identification are not acceptable for voting unless they bear the same
26 address as that listed in the rolls for the voter.

1 29. The “Procedure for Proof of Identification at the Polls” further provides that
2 acceptable forms of voter non-photo identification includes: a utility bill of the
3 elector that is dated within ninety days of the date of the election; bank or credit
4 union statement that is dated within ninety days of the date of the election; valid
5 Arizona Vehicle Registration; Indian census card; property tax statement of the
6 elector's residence; tribal enrollment card or other form of tribal identification;
7 vehicle insurance card; Recorder's Certificate; or valid United States federal, state,
8 or local government issued identification, including a voter registration card issued
9 by the county recorder. These forms of identification are not acceptable for voting
10 unless they bear the same address as that listed in the rolls for the voter.

11 30. Secretary of State’s office has taken the position that Proposition 200 does not
12 apply to the mail balloting process or in the early voting process, only to voting at
13 the polls. [Kanefield 107:24-108:5]

14 **III. STATE IMPLEMENTATION OF PROOF OF CITIZENSHIP PROVISIONS**
15 **OF PROP 200**

16 31. The Secretary of State is responsible for changes made to the state voter
17 registration form and ensures that any new forms are properly approved before they
18 are used. The Secretary of State often takes suggestions from County Recorders
19 and other election officials when deciding to change the voter registration form.
20 [Exhibit 521 (Wayman-Trujillo Dep. 13-14, Jan. 9, 2008) (“Wayman-Trujillo”)]

21 32. Proposed changes to the Arizona Voter Registration Form due to Proposition 200
22 included a paragraph to instruct the registrant on new proof of citizenship
23 requirements, and changed the formatting to simplify the form as much as possible
24 while properly instructing the registrant how to complete a voter registration form.
25 [Exhibit 157]

26

- 1 33. Joseph Kanefield is the State Election Director for the Secretary of State.
2 [Kanefield 14:11-13]. He works in the Election Services Division which is one of
3 the divisions of the Secretary of State's office. [Kanefield 15:17-18]
- 4 34. The Election Services Division of the Secretary of State's office has a staff of ten
5 or eleven people. The office certifies federal and statewide legislative candidates
6 for the ballot. They oversee the state campaign finance system and filing structure.
7 The office also receives initiative referendum filings for statewide measures. The
8 office works with the Counties on election matters. The office drafts the
9 instructions and procedures manual, which the Counties follow in administering
10 their elections. The office certifies voting equipment and performs logic and
11 accuracy tests on the voting equipment prior to the elections. [Kanefield 14:20-
12 15:9]
- 13 35. With respect to the citizenship requirement, the main task for the Secretary of
14 State's office was to promulgate a new voter registration form that reflected the
15 new requirements to properly instruct voters registering that they would now need
16 to provide evidence of citizenship. That process took several months of working
17 with the Counties and other interest groups.
- 18 36. The State of Arizona implemented Proposition 200's documentary evidence of
19 citizenship requirement after it was pre-cleared by the Department of Justice on
20 January 24, 2005. [stipulated fact]
- 21 37. The State's revised voter registration form was pre-cleared by the Department of
22 Justice, but it was after the effective date of Proposition 200. [Kanefield 16:17-
23 17:5]
- 24 38. Mr. Kanefield stated there are no other State regulations relating to the proof of
25 citizenship requirement, only the revised voter registration form. [Kanefield 17:22-
26 25]

1 39. Mr. Kanefield stated that the six documents listed in the Elections Procedures
2 Manual are the only documents that provide satisfactory evidence of citizenship,
3 and he is not aware of any other documents. [Kanefield 78:16-19]

4 40. The Secretary of State did not make any investigation into the extent to which the
5 types of proof of citizenship outlined in Proposition 200 are or are not universally
6 held in Arizona. [Kanefield 86:18-22]

7 41. The Secretary of State instructs County Recorders that they must reject
8 applications for voter registration that are not accompanied by satisfactory proof of
9 citizenship. [Kanefield 80:13-17; Kanefield 81:2-9]

10 **IV. PROP 200 CALLS FOR “CITIZENSHIP” DOCUMENTS THAT DO NOT**
11 **PROVE CITIZENSHIP**

12 **A. An Arizona Driver’s License Is Not Proof of Citizenship, But**
13 **Proposition 200 Requires That They Serve as “Satisfactory Proof of**
14 **Citizenship”**

15 42. Secretary of State Brewer asked Attorney General Goddard for an opinion as to
16 whether a driver license number issued after October 1, 1996 would serve as proof
17 of citizenship. [Exhibit 166]

18 43. On February 4, 2005 Arizona Attorney General Terry Goddard issued an Opinion
19 that held that “the number of a driver or nonoperating identification license issued
20 in Arizona after October 1, 1996, is satisfactory evidence of United States
21 citizenship to vote.” The Arizona Attorney General based his February 4, 2005
22 Opinion on a literal interpretation of Proposition 200. [Exhibit 169]

23 44. Attorney General Terry Goddard’s opinion stated that an Arizona driver or
24 nonoperating license identification issued after October 1, 1996 is satisfactory
25 evidence of United States citizenship for the purposes of registering to vote, even
26 though noncitizens whose presence in the U.S. is authorized are eligible for
Arizona driver or nonoperating licenses and Arizona driver and nonoperating
licenses do not indicate citizenship on their face. [Exhibit 169]

1 45. The Arizona Attorney General Terry Goddard clarified for the Secretary of State
2 that A.R.S § 16-166(F)(1), as amended by Proposition 200, permits the use of a
3 driver license number issued by the equivalent government agency of another state
4 as proof of citizenship for the purposes of registering to vote, if the agency
5 indicated on the license that the person has provided satisfactory proof of
6 citizenship. [Exhibit 169]

7 46. The Secretary of State's office has interpreted A.R.S. § 16-666 to permit out-of-
8 state driver's licenses as proof of citizenship only if they indicate on their face that
9 the driver is a citizen, but knows of no state that marks licenses in such a way.
10 [Exhibit 507 (Hansen 19:3-20:24 (discussing Coconino Dep. Ex. 9))]

11 47. At this time, there are no out-of-state driver's licenses that indicate on their face
12 that the driver is a citizen. [Exhibit 512 (Osborne vol. 1 24:15-22)]

13 48. Arizona county election officials are aware that a driver's license is not proof of
14 citizenship but they accept the licenses for voter registration. [Exhibit 517
15 (Rodriguez vol. 1 31:8-17); Exhibit 512 (Osborne vol. 1 104:7-21)]

16 49. Maricopa County is aware that there are people who hold driver's licenses after
17 1996 that are not citizens. [Exhibit 513 (Osborne vol. 2 42:21)]

18 50. The counties accept no out-of-state driver's licenses. [Exhibit 517 (Rodriguez vol.
19 1 38:24-39:1); Exhibit 227 (listing requirements for registration); Exhibit 507
20 (Hansen 18:21-19:2); Exhibit 512 (Osborne vol. 1 24:15-25); Exhibit 511 (Marin
21 39:10-16); Exhibits 228 & 229; Exhibit 174 at 8]

22 **B. Proposition 200 Calls for Proof of Citizenship That Does not Exist**

23 51. Proposition 200 states that individuals registering to vote can prove their U.S.
24 citizenship with documents that do not exist or are not in use in Arizona.

25 52. Tribal Treaty Cards and Bureau of Indian Affairs Cards are not in use in Arizona.
26 [Johnson Dep., 17:17-18:7]

1 53. There do not exist “other documents or methods of proof that are established
2 pursuant to the Immigration Reform and Control Act of 1986” because IRCA does
3 not establish any documents that prove U.S. citizenship. 8 U.S.C. 1324a.

4 **C. Proposition 200 Does not Require Verification of Citizenship**
5 **Information Other Than the Number of the Naturalization Certificate**

6 54. Tribal documentation and a tribal number are accepted on their face as valid proof
7 of citizenship, and the Secretary of State does not provide any additional guidance
8 to County Recorders on how to recognize a tribal number. [Kanefield 20]

9 55. Maricopa County Elections Director Karen Osborne testified before the Committee
10 on House Administration that among the documents that a voter registrant can use
11 to prove their citizenship - an Arizona driver’s license or Arizona non-operator
12 identification issued after October 1996, U.S. Passport, U.S. Birth Certificate,
13 Tribal Identification or Naturalization Certificate - only the Naturalization
14 Certificate must be confirmed prior to processing the voter registration. [Exhibit
15 164]

16 56. The Arizona Election Procedures Manual provides that a legible photocopy of
17 pertinent pages of the registrant’s United States passport is considered proof of
18 citizenship. The pertinent pages of a United States passport are considered the
19 pages that contain the passport number, name, nationality, date of birth, gender,
20 place of birth, and signature. [Exhibit 160 at 48]

21 57. The Arizona Election Procedures Manual provides if a registrant submits tribal
22 documentation or a tribal number on his/her form, it will be presumed valid as
23 proof of citizenship for voter registration purposes. [Exhibit 160 at 48]

24 58. The Secretary of State’s office does not know whether all persons with tribal
25 documentation or tribal numbers are United States citizens. [Kanefield 20]

26

- 1 59. The Secretary of State's office does not instruct the Counties that they should
2 verify a birth certificate or verify pages of a United States passport. [Kanefield 19-
3 21]
- 4 60. The Counties do not verify birth certificates or U.S. passports that they receive
5 with voter registrations. [Exhibit 518 (Rodriguez vol. 2 86:23-87:6); Exhibit 505
6 (Dean-Lytle 50:8-17); Exhibit 513 (Osborne vol. 2 50:10-21); Exhibit 521
7 (Wayman-Trujillo 63-64); Exhibit 518 (Rodriguez vol. 2 87:7-87:10); Exhibit 505
8 (Dean-Lytle 50:21-23); Exhibit 513 (Osborne vol. 2 50:22-25)]
- 9 61. Counties accept tribal treaty card numbers or enrollment numbers at face value and
10 do not verify them. [Exhibit 505 (Dean-Lytle 51:5-7); Exhibit 513 (Osborne vol. 2
11 51:19-22, 97:3-13)]; [Exhibit 510 (Johnson 20:6-21:3); Exhibit 511 (Marin 46:20-
12 23)]
- 13 62. Yuma County does not take any steps to verify a Bureau of Indian Affairs card
14 number when it's filled out on the voter registration form as proof of citizenship.
15 [Exhibit 511 (Marin 46:10-13, 16-19)]

16 **V. PROP 200 IMPOSES GREATER BURDENS ON NATURALIZED**
17 **CITIZENS REGISTERING TO VOTE**

18 **A. Prop 200 Requires the Certificate of Naturalization Number which**
19 **cannot be verified by County Recorders**

- 20 63. The Alien Registration Number ("A number") is a number that USCIS assigns to a
21 person at certain steps, such as when an individual files an application for
22 immigration benefits many years ahead of the time of filing for naturalization.
[Exhibit 516 (Ratliff 72:20-73:2)]
- 23 64. An A number stays with an individual throughout his relationship with USCIS.
24 When one becomes naturalized, the naturalization certificate will have a new
25 number printed on it, and that is different from an A number. [Exhibit 516 (Ratliff
26 73:3-7)]

- 1 65. The A number and the Certificate of Naturalization number are separate and
2 distinct numbers. [Exhibit 515 (Quinn 74:3-6)]
- 3 66. The naturalization certificate number is used to track certificates, which are secured
4 documents. DHS uses this number to track certificates carefully for antifraud
5 purposes, for inventory control, and so that certificates are not disappearing and
6 being sold. [Exhibit 516 (Ratliff 73:8-14)]
- 7 67. An individual is supposed to relinquish his green card when he naturalizes and it is
8 possible that a naturalized citizen will not be in possession of his A number.
9 [Exhibit 516 (Ratliff 83:4-6 & 83:17-20); Exhibit 515 (Quinn 40:9-15)]
- 10 68. After someone has been naturalized, there is no legal duty to continue notifying
11 USCIS of one's address. [Exhibit 516 (Ratliff 87:4-9)]
- 12 69. There is no legal requirement for a naturalized citizen to carry documentary proof
13 of naturalization. [Exhibit 516 (Ratliff 87:10-15)]
- 14 70. The "A number" is no longer necessary for a federal purpose after a person
15 naturalizes. [Exhibit 515 (Quinn 51:18-20)]
- 16 71. USCIS has no interest in an individual once that person has naturalized. Exhibit
17 516 (Ratliff 88:6-12)]
- 18 72. Once an individual has naturalized, the information is updated by a USCIS
19 employee in the local field office. The field office will "close the ceremony,"
20 which means update the new information in the CLAIMS 4 database.
21 Subsequently, that information is input into the Central Index System database.
22 [Exhibit 515 (Quinn 34:5-11)]
- 23 73. Once an adjudicator updates the new information and closes out the file, there is no
24 further action for the individual who naturalized. The file is sent to National
25 Archives location. [Exhibit 515 (Quinn 45:7-12)]
- 26

- 1 74. Files housed at the National Archives remain for seventy five years and
2 subsequently get destroyed. [Exhibit 515 (Quinn 45:21-46:7)]
- 3 75. The naturalization certificate number printed at the top of a certificate of
4 naturalization cannot be verified with the SAVE program, which is the program
5 used by County Recorders. [Exhibit 517 (Rodriguez vol. 1 54:7-16, 56:14-23,
6 59:21-23)]
- 7 76. According to USCIS, the SAVE Program does not allow someone to see or access
8 information about the number of the Certificate of Naturalization for a naturalized
9 citizen. [Exhibit 516 (Ratliff 32:14)]
- 10 77. If there is a non-responsive query in the SAVE Program, the user can follow
11 through and request additional verification. Then the user would have to wait until
12 DHS conducted a manual search for verification purposes. [Exhibit 516 (Ratliff
13 54:7-14)]
- 14 78. Although USCIS uses a form that can be used by state agencies to verify
15 information about individuals who are applying for a benefit, that form does not list
16 any possible response that would indicate the person is a naturalized citizen.
17 [Exhibit 516 (Ratliff 35:13-21)]
- 18 79. Mr. Kanefield stated that Proposition 200 requires that a certificate of
19 naturalization number be provided and that is what is requested on the voter
20 registration form. [Kanefield 2006 92:20-22]
- 21 80. Mr. Kanefield stated that he was aware that County Recorders had problems
22 verifying the certificate of naturalization number through the SAVE Program
23 because the number that is needed for verification in SAVE is the alien registration
24 number. [Kanefield 94:3-10]
- 25 81. Mr. Kanefield admitted that certain applicants correctly completed the form by
26 providing their certificate of naturalization number but that the County Recorder

1 was unable to verify that number with federal immigration offices. [Kanefield
2 94:17-23]

3 82. Mr. Kanefield indicated that there is a two-step process for naturalized citizens
4 who follow the text of the Arizona voter registration form and provide their
5 certificate of naturalization number. This process requires the County Recorder to
6 reject the application and contact the registrant after his application is submitted
7 and ask for his alien registration number. [Kanefield Dep. 98:23-99:8]

8 83. As of January 10, 2005, the State was alerted that they did not yet have the ability
9 to verify the certificate of naturalization numbers. [Exhibit 520 (Stender Dep., Jan.
10 10, 2005)]

11 84. Jan Brewer made a request on January 12, 2005 to Stephen Fickett, District
12 Director for the Phoenix District of USCIS to help implement A.R.S. § 16-
13 166(F)(4). She requested instituting a procedure that would involve the county
14 records transmitting the number of the certificate of naturalization provided by
15 registrants. [Exhibit 58].

16 85. Joe Kanefield, State Election Director for Arizona, inquired with the United States
17 Citizenship and Immigration Service (USCIS) office in Phoenix, Arizona on
18 January 12, 2005, as to whether USCIS had a database or program where the
19 government could verify naturalization certificate numbers. [Exhibit 237]

20 86. In January 2005, Joe Kanefield determined that if USCIS could not verify one's
21 status by inquiry of their certificate of naturalization number, then presentation of
22 naturalization documents would be necessary. [Exhibit 238]

23 87. The USCIS Phoenix Office answered Joe Kanefield, State Election Director for
24 Arizona by letter on January 18, 2005 and advised him about the Systematic Alien
25 Verification for Entitlements Program (SAVE). [Exhibit 237]

26

1 88. The USCIS Phoenix Office letter described the SAVE program, the costs
2 associated with the program and how a new agency may begin participating in
3 SAVE. The letter also provided the contact information as to who to contact
4 because the SAVE program was not run out of the Phoenix office. [Exhibit 237]

5 89. On June 9, 2005, all Counties in Arizona were ordered to establish an account with
6 USCIS and sign an MOU to access SAVE. [Exhibit 239]

7 **B. Proposition 200 Requires in-Person Presentation of the Certificate of**
8 **Naturalization**

9 90. The certificate of naturalization states that it is punishable by U.S. law to copy,
10 print or photograph the certificate. [Exhibits 235 & 236]

11 91. The Government Printing Office has language on the certificate of naturalization
12 stating that the certificate cannot be reproduced. [Exhibit 515 (Quinn 75:20-22)]

13 92. The naturalization certificate states that it is a violation of law to photocopy or
14 duplicate the certificate. [Exhibit 516 (Ratliff 81:16-19)]

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

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

1 international terrorism or a drug trafficking crime), or 15 years
2 (in the case of any other offense), or both.

3 94. The Secretary of State's office has always interpreted the language "a presentation
4 to the County Recorder" in Prop 200 to mean that the naturalization certificate
5 must be presented and not copied, as reflected in the language of the law.
6 [Kanefield 15]

7 **C. The SAVE System is Not Designed to Confirm Citizenship for Voter**
8 **Registration**

9 95. The Arizona Election Procedures Manual states that the Alien Registration Number
10 is the only number from a registrant's naturalization documents that can be
11 validated against the SAVE system. [Exhibit 160 at 47]

12 96. According to USCIS, the Systematic Alien Verification for Entitlements Program
13 (SAVE) is used primarily to verify noncitizen eligibility for public benefits.
14 [Exhibit 516 (Ratliff 20:17-20)]

15 97. The SAVE Program was created in response to the congressional enactment of the
16 Immigration Reform and Control Act and the Personal Responsibility and Work
17 Opportunity Act, and specifically for the requirement that the Department of
18 Homeland Security (DHS) establish a system for verifying immigration status of
19 noncitizen applicants for and recipients of certain types of federally funded
20 benefits. [Exhibit 516 (Ratliff 21:20-22:13)]

21 98. Relatively few verifications in the SAVE Program are conducted to determine U.S.
22 citizenship. [Exhibit 516 (Ratliff 23:18-21)]

23 99. Only the State of Arizona uses the SAVE Program to verify U.S. citizenship for
24 voter registration purposes. [Exhibit 516 (Ratliff 24:1-3)]

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

1 in the USCIS Central Index System, which is referred to as CIS. [Exhibit 516
2 (Ratliff 14:8-17)]

3 101. The VIS database does not contain all of the information about a particular
4 alien that would be found in the Central Index System. [Exhibit 516 (Ratliff 16:18-
5 20)]

6 102. The VIS database also does not contain an alien's status history. The
7 database only contains current status information. [Exhibit 516 (Ratliff 18:19-20)]

8 103. The Web 1 access method in SAVE, which is used by Counties in Arizona,
9 only allows queries by A numbers. The query cannot be made by a Certificate of
10 Naturalization number. [Exhibit 516 (Ratliff 19:16-19 & 44:2-4)]

11 104. The SAVE Program, unlike the E-Verify Program, cannot verify U.S.-born
12 citizens. [Exhibit 516 (Ratliff 20:10-12)]

13 105. The SAVE Program and the E-Verify Program do not always access the
14 same data. [Exhibit 516 (Ratliff 28:12-18)]

15 **D. SAVE Does not Update on the day of Naturalization, Causing Delays**
16 **and Possible Rejections for Naturalized Voter Registrants**

17 106. According to USCIS, when a person takes the oath of citizenship, that
18 information is updated by a person in the local district USCIS office. The updated
19 information would be entered into the CLAIMS 4 database, which updates the CIS
20 database. How quickly the CIS database receives this information is a direct
21 function of how quickly the local office can update the system in CLAIMS 4.
22 [Exhibit 516 (Ratliff 62:1-63:16)].

23 107. The State of Arizona had knowledge that USCIS does not immediately
24 update its databases after a person has naturalized. [Exhibit 240; Exhibit 241] The
25 VRAZ county advisory committee continued to advise Counties to reject
26 applications despite knowledge that there was delay between the day a person

1 naturalized and the day the information was actually updated into the SAVE
2 system. [Exhibit 240; Exhibit 241]

3 108. The Secretary of State's office relied on information from County Recorders
4 and communications with the local director of the immigration office for the
5 statement in the Secretary of State's Procedure Manual stating, it takes
6 approximately two weeks from the time after a new citizen takes his or her oath at
7 the citizenship ceremony before that citizen's alien registration number is placed in
8 the SAVE database. [Kanefield 16, 17]

9 109. In a situation where the County Recorder has received a voter registration
10 application, and she cannot verify the alien registration number and an election
11 registration deadline is going to occur within the next two weeks, the Secretary of
12 State instructs the County Recorder to notify the registrant that further citizenship
13 proof may be necessary in order to assure that the voter is registered on time, which
14 is simply asking the County Recorders to notify that person and inform that person
15 that because of the timing, that person may not be able to verify citizenship through
16 that process. [Kanefield 18]

17 **E. Not Every County Possesses the Account With SAVE Necessary to**
18 **Verify Naturalized Citizens**

19 110. In order for a state or local government agency to be authorized to use the
20 SAVE Program, it needs to sign a Memorandum of Understanding (MOU).
21 [Exhibit 516 (Ratliff 25:7-10)]

22 111. It is a legal requirement that a SAVE Program user have an MOU with the
23 federal government. [Exhibit 516 (Ratliff 36:12-15)]

24 112. The MOU serves to protect from the misuse or improper sharing of private
25 information. [Exhibit 516 (Ratliff 37:4-7)]
26

- 1 113. A separate MOU would have to be entered into with each county in
2 Arizona. It would be a violation of the federal rules if a county were to use the
3 SAVE Program without an MOU. [Exhibit 516 (Ratliff 37:8-19)]
- 4 114. Every person who has permission to access the SAVE Program is given a
5 password, and if someone were to share their login or password with someone else,
6 it would violate the MOU. [Exhibit 516 (Ratliff 45:1-5)]
- 7 115. Maricopa County was the first county to enter into an MOU on March 15,
8 2005. [Exhibit 516 (Ratliff 72:12-16)]
- 9 116. Maricopa County uses its account with the SAVE database to verify “A
10 numbers” of voter registration applicants. Occasionally, other Counties without
11 access to SAVE, including Yavapai County, call or email the Maricopa County
12 Recorder’s Office to have them verify A numbers through SAVE. [Exhibit 502
13 (Altaha 30-31); Exhibit 521 (Wayman-Trujillo 57-58)]
- 14 117. As of April 17, 2008 there were only four Arizona Counties that entered into
15 an MOU to use the SAVE Program. There were four additional Counties that
16 previously had an MOU but they recently self-terminated. [Exhibit 516 (Ratliff
17 66:20-67:1)]
- 18 118. The Counties of La Paz, Yavapai, Navajo, Coconino and Pinal have never
19 run a query in the SAVE Program. [Exhibit 516 (Ratliff 67:18-68:3)]
- 20 119. The Secretary of State’s efforts in educating the public about that alien
21 registration number have come primarily through one person -- their voter outreach
22 coordinator, Robert Flores, a full-time employee of that office, whose job is to
23 reach out to the public, conduct voter registration drives, and attend voter outreach
24 events. [Kanefield 15]
- 25
26

1 120. A revised “Register to Vote” insert to be featured in a Press Kit stated that
2 registrants need an AZ driver license or non operating card issued after October 1,
3 1996 in order to register online at servicearizona.com. [Exhibit 168]

4 121. The “Register to Vote” insert informed registrants that they would need to
5 provide an acceptable form of proof of citizenship, but did not state what forms
6 were acceptable. [Exhibit 168]

7 **F. Defendants Have Attempted to Re-write Proposition 200 by Requesting**
8 **Alien Registration Numbers but not Every Naturalized Citizen has an A**
9 **Number**

10 122. In the new Secretary of State Elections Procedure Manual dated October
11 30th of 2007, no changes were made to the procedure relating to how registration
12 forms are processed in regard to proof of citizenship. [Kanefield 6-7]

13 123. However, the Arizona Secretary of State has tried to re-write the statute to
14 cure its obvious flaw with respect to naturalized citizens. The 2007 Secretary of
15 State Procedure Manual continues to list the number of the certificate of
16 naturalization as satisfactory evidence of citizenship. It states that acceptable proof
17 of citizenship includes: “United States naturalization documents or the number of
18 the certificate of naturalization (Alien Registration Number).” [Exhibit 160 at 43]

19 124. However, not all naturalization certificates have an alien registration number
20 on them. [Pl. Tr. Ex. 961]

21 125. The A number was not always in use. Before the inception of the Central
22 Index System database that was created in 1975, “certificate numbers” or “C
23 numbers” were issued and used to track individuals. [Exhibit 515 (Quinn 53:21-
24 54:8)]

25 126. Older certificates of naturalization do not have an A-number on the face of
26 the certificate. [Exhibit 515 (Quinn 56:11-15)]

1 127. If an individual only has a C number, he would likely not be found in the
2 Central Index System. [Exhibit 515 (Quinn 56:16-20)]

3 128. If a person was naturalized in 1960 for instance, it is likely he or she would
4 not be found in the Central Index System. [Exhibit 515 (Quinn 64:9-16)]

5 129. The files with a C number are maintained on microfiche and microfilm. One
6 would have to search the old archived records and research using various criteria to
7 find the C number for a particular naturalized citizen. [Exhibit 515 (Quinn 62:1-
8 63:9)]

9 130. Joseph Kanefield agreed that ARS 16-166 at 4 states that an applicant for
10 voter registration shall provide the number of the certificate of naturalization and
11 does not use the language “alien registration number.” [Pl. Tr. Ex. 916 at 97:14-16]

12 131. Arizona officials did not investigate whether naturalized citizens have
13 access to their Alien Registration Numbers before attempting to insert its revision
14 of Prop 200 in the Procedures Manual.

15 132. The Secretary of State claims that all certificates of naturalization carry an
16 alien registration number. [Kanefield 14]

17 133. The Secretary of State’s office is not aware whether an individual has to
18 turn in to DHS his alien registration card at the time that he or she is naturalized.
19 [Kanefield 13]

20 134. The Secretary of State’s office is not aware of any documents, besides the
21 alien registration card and the certificate of naturalization, that may carry the alien
22 registration number. [Kanefield 13-14]

23 135. The Secretary of State’s office is not aware of any occasions, besides voter
24 registration in Arizona, in which a naturalized U.S. citizen might use his or her
25 alien registration number. [Kanefield 14]

26

1 136. According to the Secretary of State, the current voter registration form went
2 into effect in early December 2007. [Kanefield 8]

3 137. The changes made from the previous voter registration form include
4 changes to the alien registration number in box 19 used to read the naturalization
5 number. [Kanefield 8]

6 138. The previous form instructed registrants to fill in the number of his
7 certificate of naturalization. The new form changed the box to read “Presentation
8 to the county recorder of US naturalization documents or fill in your alien
9 registration number in box 19.” [Kanefield 9-10] Mr. Kanefield took part in the
10 decision to change the voter registration form itself to replace that language with
11 the words alien registration number. [Kanefield 10]

12 139. The Secretary of State explains that the change to the voter registration form
13 was intended to save the County Recorders the step of having to contact voter
14 registrants, if the registrants put the naturalization number, in order to ascertain the
15 alien registration number and to get the person registered more quickly. [Kanefield
16 10]

17 140. The Arizona Secretary of State’s office was aware that errors could occur as
18 a result of the confusion between the naturalization number and the alien
19 registration number. [Kanefield 10-11]

20 141. The Secretary of State states it can be confusing to have different versions
21 of the voter registration form circulating. [Kanefield 12]

22 **VI. STATE PROCEDURES FOR IMPLEMENTING PROOF OF CITIZENSHIP**
23 **REQUIREMENTS OF PROPOSITION 200**

24 **A. The Secretary of State Elections Procedures Manual Establishes a**
Procedure for Processing Proof of Citizenship

25 142. The Arizona Election Procedures Manual requires the voter registration
26 form must be accompanied by proof of citizenship. If the form is not accompanied

1 by proper proof of citizenship, the voter registration form is not valid and either
2 will not be entered into the system or if it was entered into the system, the record
3 shall be canceled. If the registrant subsequently provides proof of citizenship, it
4 must be accompanied by a new voter registration form and a new registration date.
5 [Exhibit 160 at 44]

6 143. The Arizona Election Procedures Manual requires if the registrant is
7 registered in Arizona and now is registering in a new county, the registrant is
8 required to provide proof of citizenship. [Exhibit 160 at 45]

9 144. The Arizona Election Procedures Manual provides that satisfactory evidence
10 of citizenship includes the applicant's driver's license number or non-operating
11 identification license issued after October 1, 1996 by the department of
12 transportation or the equivalent government agency of another state within the
13 United States, if the agency indicates on the applicant's license that the person has
14 provided satisfactory proof of United States citizenship. [Exhibit 160 at 43]

15 145. The Arizona Election Procedures Manual provides that satisfactory evidence
16 of citizenship includes a copy of a birth certificate with supporting legal
17 documentation if the name on the birth certificate is not the same as the registrant's
18 current name. [Exhibit 160 at 43]

19 146. The Arizona Election Procedures Manual requires that the Counties shall
20 also accept a United States birth certificate as proof of citizenship where the name
21 on the birth certificate is different from the voter registration if the following five
22 fields match on both the voter registration form and the birth certificate: First
23 Name, Middle Name, Place of Birth, Date of Birth, and Parents' Name. [Exhibit
24 160 at 43]

25 147. The Arizona Election Procedures Manual requires that in the event a United
26 States citizen is born abroad in a non-military installation, the applicant should

1 have registered with the Department of State and obtained a “Certificate of Birth
2 Abroad,” which counts as a birth certificate. [Exhibit 160 at 43]

3 148. The Arizona Election Procedures Manual allows pertinent pages of a United
4 States passport identifying the registrant to satisfy proof of citizenship
5 requirements. [Exhibit 160 at 43]

6 149. The Arizona Election Procedures Manual allows the registrant’s Bureau of
7 Indian Affairs Card Number, Tribal Treaty Card Number, Tribal Enrollment
8 Number, or Census Number as satisfactory evidence of citizenship. [Exhibit 160 at
9 43]

10 150. The Arizona Election Procedures Manual provides any new voter
11 registration must have the name, residence address or location of residence, date of
12 birth, signature, or if the registrant is unable to sign, a statement that the form was
13 completed according to the registrant’s direction, an answer of “yes” to the
14 question “Are you a citizen of the United States of America?”, and proof of United
15 States citizenship. [Exhibit 160 at 56]

16 151. The Arizona Election Procedures Manual provides that if a voter registration
17 request is missing key information other than proof of citizenship, the voter
18 registration record shall be placed in a “pending” status and the registrant shall be
19 allowed no less than 35 and no more than 90 days as set by the County Recorder to
20 respond to the request for information before deleting the record. The person may
21 be deemed to have been registered on the date the registration was first received.
22 [Exhibit 160 at 53, 54]

23 152. The Arizona Election Procedures Manual provides that if the “Rejected”
24 status will be assigned for voter registrations that have not satisfied the minimum
25 requirements for a valid voter registration application. A voter registration record
26

1 can be rejected prior to ever becoming a full active voter registration record.
2 [Exhibit 160 at 54]

3 153. The Arizona Election Procedures Manual provides that if a voter registration
4 request is missing citizenship proof, the voter registration record shall be placed in
5 a “rejected” status and the registrant shall be allowed no less than 35 and no more
6 than 90 days as set by the County Recorder to respond to the request for
7 information before deleting the record. For citizenship proof cases, the registrant
8 shall be provided a blank voter registration form and the registration date entered
9 on the completed form shall be the official date of registration. [Exhibit 160 at 54]

10 154. The Arizona Election Procedures Manual requires the Recorder shall
11 maintain copies of citizenship proof provided by the voter batched by month and
12 year. After two years, the County Recorder may destroy all documents that were
13 submitted as evidence of citizenship. [Exhibit 160 at 47]

14 155. The Arizona Election Procedures Manual requires if only the alien
15 registration number from the naturalization documents is provided for citizenship
16 purposes, the number shall be verified with the United States Citizenship and
17 Immigration Services before the registrant may be added to the registration rolls.
18 [Exhibit 160 at 47]

19 156. The Arizona Election Procedures Manual requires each County Recorder to
20 establish an account with the United States Citizenship and Immigration Services
21 to utilize the Systematic Alien Verification for Entitlements (SAVE) program.
22 [Exhibit 160 at 47]

23 157. The Arizona Election Procedures Manual states that it takes approximately
24 two weeks from the time after a new citizen takes his or her oath at the citizenship
25 ceremony before that citizen’s alien registration number is placed in the SAVE
26 database. If the registration is received within 14 days of the voter registration

1 deadline, the County Recorder shall notify the registrant that further citizenship
2 proof may be necessary in order to assure that the voter is registered on time.
3 [Exhibit 160 at 47]

4 158. The Arizona Election Procedures Manual requires that the correspondence
5 to notify the registrant that further citizenship proof may be necessary shall indicate
6 that the registrant may present his or her naturalization papers to the Recorder to
7 satisfy the proof of citizenship requirement. [Exhibit 160 at 47]

8 159. The Arizona Election Procedures Manual provides that if the County
9 Recorder obtains the alien registration number from the registrant, the Recorder
10 may enter the alien registration number on the form and validate the number
11 through the SAVE system. [Exhibit 160 at 47]

12 160. The Arizona Election Procedures Manual requires that if after 120 days, the
13 registrant has not provided a valid alien registration number, the County Recorder
14 shall send the registrant correspondence stating that the registration form has been
15 rejected and the reason why along with a new voter registration form. [Exhibit 160
16 at 47]

17 161. The Arizona Election Procedures Manual provides that if the driver's
18 license number entered on the voter registration form was issued on or before
19 October 1, 1996, or the driver license type is "F" (foreign or out of country) or "N"
20 (commercial foreign or out of country) that the recorder shall ensure the driver
21 license number was entered correctly. [Exhibit 160 at 47]

22 162. The Arizona Election Procedures Manual provides that if the Recorder
23 determines the driver's license was not entered correctly on a type F or N driver
24 license, the Recorder shall correct the driver license number on the county system
25 and the new driver license number match will be reported on the statewide voter
26 registration database (VRAZ) the next day. [Exhibit 160 at 48]

1 163. The Arizona Election Procedures Manual provides if the Recorder
2 determines the driver license number was entered correctly on a type F or N driver
3 license, the recorder shall check the current database to determine if the registrant
4 is currently registered to vote in that county. If the voter is registered to vote in
5 that county and is only updating the voter registration information, no citizenship
6 proof is required. [Exhibit 160 at 48]

7 164. The Arizona Election Procedures Manual if the Recorder determines the
8 driver license number was entered correctly on a type F or N driver license and that
9 the voter is a first time registrant or is reregistering in a different county, the
10 recorder shall check to see if other citizenship documents were provided with the
11 voter registration application. If no satisfactory proof of citizenship is provided,
12 the voter registration record should be cancelled and the voter should be contacted
13 within ten business days of receipt of the registration form with a request to
14 provide proper proof of citizenship. [Exhibit 160 at 48]

15 165. The Arizona Election Procedures Manual provides the registrant may
16 present or send the Recorder a legible photocopy of the applicant's birth certificate
17 that verifies citizenship as acceptable proof of citizenship. [Exhibit 160 at 48]

18 166. The Arizona Election Procedures Manual provides that if a registration is
19 conducted in person at the County Recorder's office, the County Recorder
20 personnel shall indicate on the voter registration form (1) that the person provided
21 proof of citizenship, (2) the type of citizenship proof provided, and (3) the name
22 and initials of the employee who made the verification. [Exhibit 160 at 48]

23 167. The Arizona Election Procedures Manual requires that County Recorder
24 personnel who attend naturalization ceremonies and assist new citizens in
25 registering to vote must verify the alien registration number, write their name and
26 initials on the voter registration form, and date the form. [Exhibit 160 at 48]

- 1 168. The Arizona Election Procedures Manual requires that voters registered at a
2 naturalization ceremony from outside the county must have their voter registrations
3 bundled by county and sent them to the County Recorder with an official cover
4 letter stating that all alien registration numbers were verified by County Recorder
5 personnel. [Exhibit 160 at 48, 49]
- 6 169. The Arizona Election Procedures Manual requires that the County Recorder
7 shall also check the Systematic Alien Verification for Entitlements (SAVE)
8 program database administered by the United States Citizenship and Immigration
9 Services at least two weeks before the election for any registrant who submitted a
10 certificate of naturalization and input the verified registrants prior to printing the
11 rosters. [Exhibit 160 at 62]
- 12 170. The Arizona Election Procedures Manual provides that the proof of
13 citizenship requirement for voter registration applies to UOCAVA voters. [Exhibit
14 160 at 81]
- 15 171. According to the Secretary of State, a question related to verifying the
16 citizenship of an applicant through the SAVE Program would be a question that the
17 Counties would have to work out themselves with the federal authorities rather
18 than asking the Secretary of State's office for guidance. [Kanefield 38]
- 19 172. The Secretary of State's office requires the Counties to use the SAVE
20 Program to provide a mechanism for verifying the citizenship status of individuals
21 who are naturalized. [Kanefield 38-39]
- 22 173. The Secretary of State's office does in-person training of county employees
23 regarding implementing the proof of citizenship requirement under Proposition
24 200. [Kanefield 34]

25
26

1 174. The Secretary of State's office does election officer certification training
2 during the summers of the odd-numbered years that trains county election officials
3 on the laws and the procedures regarding elections. [Kanefield 35]

4 175. The election officer certification training includes approximately thirty-five
5 hours of training and the last two trainings -- the training in 2005 and the training
6 in 2007 -- have included a component relating to the voting provisions of
7 Proposition 200. [Kanefield 35]

8 176. The election officer certification training on proof of citizenship and voter
9 identification requirements at the polls both last somewhere between thirty minutes
10 to an hour. [Kanefield 35]

11 177. Every county has someone on staff, including the fifteen county election
12 directors, who have been certified by the Secretary of State's office training
13 program. [Kanefield 36]

14 **B. The State has Failed to Provide Certain Public Information on Voter**
15 **Registration in Spanish**

16 178. The State prepared a Registration Update Needed correspondence to send to
17 Arizona voters along with a new voter registration form. The correspondence
18 mandated registered voters to fill out the new voter registration form immediately
19 in order to verify their signature. This letter was sent in English, with an
20 instruction in Spanish to call the Recorder's office if they need a copy of the letter
21 in Spanish. [Exhibit 170]

22 179. The State of Arizona prepared a MVD Non Match Notice to send to
23 registrant's whose information on their voter registration form did not match the
24 information on file with the MVD. The notice instructed registrants to either fill out
25 the enclosed voter registration form or call the County Recorder's office to correct
26 the information. This letter was sent in English, with an instruction in Spanish to
call the Recorder's office if they need a copy of the letter in Spanish. [Exhibit 8]

1 180. The State of Arizona prepared a Cancellation of Voter Registration due to
2 Duplicate Resolution letter informing registered voters that they have a more recent
3 voter registration in one county, and therefore their older registration in a different
4 county had been cancelled. This letter was sent in English, with an instruction in
5 Spanish to call the Recorder's office if they need a copy of the letter in Spanish.
6 [Exhibit 171]

7 181. The Secretary of State's office and ESS Vote office, when preparing
8 correspondence to be sent to voters, were aware that Arizona requires preclearance
9 and is required by federal law to do all correspondence in English and Spanish.
10 [172]

11 182. The Secretary of State's office felt that it satisfied its federal requirements
12 for sending correspondence in English and Spanish, through the inclusion of a line
13 in Spanish telling voters that that they could call the Registrar of Voters if they
14 needed the document in Spanish. [Exhibit]

15 **C. Arizona Motor Vehicles Division and Voter Registration**

16 183. Arizona Driver Licenses are available to any qualified individual with
17 authorized presence in the United States, whether they are a citizen or not.
18 [Yanofsky Depo 13: 19-25]

19 184. The MVD issues driver's licenses to non-citizens, including legal permanent
20 residents who present alien registration cards as proof of authorized presence.
21 [Exhibit 503 (Collins 1/10/08 31:13-32:19)]

22 185. Arizona's Motor Vehicle Division's General Information on Authorized
23 Presence Eligibility outlines that in order to prove authorized presence in the
24 United States under federal law the customer is required to present qualified proof
25 of authorized presence when applying for an original Arizona license, ID, or
26

- 1 permit, a renewal of a limited Arizona license, the renewal of an extended Arizona
2 license or the reinstatement of any license. [Exhibit 93]
- 3 186. Arizona's Motor Vehicle Division's Establishing Authorized Presence
4 policy provides guidelines for Customer Service Representatives (CSR) to use
5 when establishing authorized presence for purposes of issuing Arizona Driver
6 Licenses. [Exhibit 27; Exhibit 67]
- 7 187. The MVD relies on the Customer Characteristics USCIS Class Matrix to
8 determine lawful presence for the purpose of granting a drivers license. [Exhibit
9 503 (Collins 10: 23-25)]
- 10 188. The MVD utilizes the Class Matrix to determine which documents establish
11 authorized presence sufficient to obtain a license in Arizona and distinguish
12 between different types of immigration documents. [Exhibit 503 (Collins 9:5-9;
13 11:19-25; 20:3-12)]
- 14 189. Arizona's Motor Vehicle Division's Identification Requirements outlines
15 what qualifies as primary and secondary documents, the number of these
16 documents that the applicant needs to present and other specifications deemed
17 necessary in order to complete the customer's application. [Exhibit 92]
- 18 190. Arizona's Motor Vehicle Division's Customer Name Requirement policy
19 provides guidelines for determining a customer's name as they apply to the
20 customer and/or vehicle record. [Exhibit 29]
- 21 191. Arizona's Motor Vehicle Division's Customer Address Requirement policy
22 provides the guidelines for determining a customer's address as they apply to a
23 customer and/or vehicle record. [Exhibit 30]
- 24 192. Arizona Motor Vehicle Department provides the Q series of trainings to
25 Customer Service Representatives about how to recognize the different kinds of
26 documents that establish authorized presence. [Yanofsky Depo 14:20-15; 26]

- 1 193. Motor Vehicle Department employees conduct the Q series of trainings.
2 [Yanofsky Depo 53: 2-4]
- 3 194. Motor Vehicle Department employees use the materials used in the Q series
4 of trainings as reference. [Yanofsky Depo 52:8-14]
- 5 195. Arizona issues extended driver licenses, which are licenses that are good
6 until the individual is age 65. [Yanofsky Depo 21: 18-19]
- 7 196. Arizona began issuing extended licenses to all qualified applicants in 1993.
8 [Exhibit 506 (Gage 62: 2-5)]
- 9 197. Arizona only began mandating that individuals provide documents
10 demonstrating authorized presence in 1996. [Yanofsky Depo 14: 1-6]
- 11 198. Individuals that use alien registration cards, otherwise known as permanent
12 resident cards, as proof of authorized legal presence are not issued extended
13 Arizona driver's licenses; rather they are issued driver's licenses in some portion of
14 a ten-year increment because the alien registration cards are good for ten-year
15 increments. [Exhibit 503 (Collins 27:1-11); Exhibit 69; Exhibit 106; Yanofsky
16 Depo 56: 6-14]
- 17 199. Arizona Type F licenses are those licenses that are issued for a limited
18 period of time. [Exhibit 503 (Collins 23:1-3)]
- 19 200. The USCIS Class Matrix, revised 5/24/07 lists customer immigration
20 characteristics and documents required for all INS visa classes. It is used by the
21 MVD in deciding whether to issue class F licenses. [Exhibit 158]
- 22 201. Arizona's Motor Vehicle Division's General Information on Identity
23 Eligibility notes that foreigners with a Type F credential must be processed by the
24 foreign document expert in the Division's office. [Exhibit 94]
- 25 202. The Motor Vehicle Department issued a document to provide guidance for
26 MVD workers regarding establishing a customer's name and date of birth for

1 obtaining a driver license. This lists acceptable documents for establishing name
2 and date of birth and proving a legal name change. This document noted the Policy
3 change removing the requirement that Type F customers must first change their
4 name with the United States Citizenship Information Service. [Exhibit 153]

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

9 204. Arizona’s Motor Vehicle Division’s Establishing Authorized Presence
10 policy allows Arizona to issue limited Type F licenses to customers who are
11 applying for an identification license of Class D, G, or M driver license or
12 instruction permit as determined by the primary form of identification and any
13 supporting documentation that is presented at the time of application. [Exhibit 27;
14 Exhibit 503 (Collins 23:7-16)]

15 205. The Arizona MVD developed a spreadsheet that details what type of license
16 should be issued, and the corresponding license expiration date depending on the
17 authorized presence document that is presented. [Exhibit 106]

18 206. The MVD bases the expiration date of Type F licenses on this spreadsheet.
19 [Exhibit 503 (Collins 24: 2-13)]

20 207. Alien registration cards are one of the documents listed on the spreadsheet
21 used by MVD. [Exhibit 503 (Collins 26:23-25)]

22 208. Currently if an applicant presents documents to the Motor Vehicle
23 Department for purposes of obtaining a license that demonstrate that that person is
24 a legal permanent resident, and they meet all the other requirements, that person
25 will be issued an F license. [Yanofsky Depo 35:4-36:12]

26

- 1 209. Individuals with expired alien registration cards will be given a driver's
2 license that expires a year from the expiration date of the alien registration card.
3 [Exhibit 503 (Collins 28: 11-17)]
- 4 210. The Motor Vehicle department can issue "temporary cards" that allow
5 people to obtain driver licenses for short periods of time while they are waiting to
6 get the necessary paperwork to establish legal presence. [Yanofsky Depo 42:12-43:
7 12]
- 8 211. The MVD will not issue a Type F license to an individual who satisfies the
9 identity and lawful presence requirements with an out of state license from a list of
10 "reciprocity" states maintained by the MVD. That person instead would receive a
11 regular license. [Yanofsky Depo 71:9 – 72:17; 77:25 – 78:11]
- 12 212. There is nothing on the face of an Arizona driver license that indicates that it
13 is a type F license. [Exhibit 506 (Gage 90: 7-11)]
- 14 213. Arizona was not issuing type F licenses in 1995. [Exhibit 506 (Gage 63:1-
15 3)]
- 16 214. The MVD does not have a means to confirm immigration documents
17 through either the VIS database or the SAVE Program. [Exhibit 503 (Collins 19:3-
18 5)]
- 19 215. The MVD has no system that allows it to do routine updates on customer
20 records with respect to changes in immigration status. [Exhibit 503 (Collins 20:24-
21 21:2)]
- 22 216. The Motor Vehicles Division has no procedures to update the customer
23 database to reflect that someone became a naturalized citizen. [Exhibit 506 (Gage
24 90:12-15)]

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- 1 217. Neither the Department of Homeland Security nor any of the federal
2 immigration agencies can update the customer record in the Motor Vehicles
3 Division database. [Exhibit 506 (Gage 54: 22-25)]
- 4 218. County officials do not understand that an individual with a Type F drivers
5 license may have subsequently naturalized and become a U.S. citizen, although the
6 MVD record would not reflect the new citizenship status. For example, Arizona
7 driver's licenses with F or W numbers indicated to Yuma County that the driver is
8 in the country legally but is not a citizen. [Exhibit 511 (Marin 69:15-25)]
- 9 219. The Secretary of State does not know how many of the approximately 1,300
10 individuals prevented from registering online, who had a driver's license
11 classification that was designated as a non-citizen but had a valid driver's license,
12 were not U.S. citizens. [Kanefield 30-31]
- 13 220. Motor Vehicles Division customer records do not contain any information
14 as to whether a customer is a U.S. Citizen. [Exhibit 506 (Gage 86:25-87:4; 82:14-
15 86:24)]
- 16 221. Arizona's Motor Vehicle Division's General Information on Identity
17 Eligibility outlines that all applicants must prove identity when purchasing a
18 renewal or duplicate credential by presenting the appropriate requested
19 documentation. [Exhibit 93]
- 20 222. People who possessed either extended drivers licenses or identification
21 licenses prior to 1996 do not have to establish authorized presence in order to be
22 eligible for a new Arizona driver license. [Yanofsky Depo 23: 12-25; 25:23- 26:2;
23 26: 9-23]
- 24 223. People who are informed that they must have a new photograph taken to
25 comply with Arizona's 12-year update requirement are considered merely getting
26

- 1 duplicates of an existing license and are not required to present authorized presence
2 documents. [Yanofsky Depo 27: 17-28:12]
- 3 224. Duplicate licenses carry the same expiration date as was on the original.
4 [Yanofsky Depo 30: 6-9]
- 5 225. The issue date of the duplicate licenses, reinstated licenses, and reissued
6 licenses due to name or address change is not backdated, it is listed as whatever
7 day it was issued. [Yanofsky Depo 48: 19-20; 60:1-25]
- 8 226. Arizona's Motor Vehicle Division's Customer Records policy provides the
9 guidelines for Customer Records and the Customer Database. The Customer
10 Database stores information for all customers conducting business with the
11 Division. Each of these customers is assigned a Customer Record. [Exhibit 26]
- 12 227. The Arizona Motor Vehicles Division utilizes a database regarding
13 information on customers. [Exhibit 506 (Gage 11: 6-16)]
- 14 228. After an individual is assigned a record by the MVD, that record is used for
15 all future transactions with the same customer. [Exhibit 506 (Gage 14:19-25)]
- 16 229. Contents of a customer base record include the driver's full name, date of
17 birth, physical description, any restrictions, endorsements, and relevant addresses,
18 voter information and party affiliation. [Exhibit 506 (Gage 15:4-7; 16:2-5; 27:20-
19 23)]
- 20 230. Information related to the type of license a customer would have is
21 contained in the base record. [Exhibit 506 (Gage 17:11-17)]
- 22 231. If a new base record is created that indicates that the person registered to
23 vote through the Motor Vehicles Division, that information and an electronic
24 signature is sent as part of a nightly file that goes to the Secretary of State's office.
25 [Exhibit 506 (Gage 27:17-28:5)]

26

1 232. All information related to whether a customer had a type F license would be
2 contained in the base record. [Exhibit 506 (Gage 17:18 – 18:6)]

3 233. The information about the F license includes information about whether the
4 license is an original or a duplicate. [Exhibit 506 (Gage 57: 22-58:10)]

5 234. In addition to the base record, a customer record includes “child segments.”
6 [Exhibit 506 (Gage 16: 12-21)]

7 235. These “child segments” include the prior license segment; a conviction
8 segment; a comment segment, a warrant statement, a driver improvement segment,
9 a traffic survival school segment, a financial responsibility segment, a traffic
10 complaint segment, a permit segment, a commercial driver accident segment, an
11 also known as segment, a nonresident violator suspension segment, a dishonored
12 check segment, a medical review segment, a commercial driver medical segment,
13 and a customer characteristic segment. [Exhibit 506 (Gage 17:2-10)]

14 236. The Customer Characteristics Chart describes various customer
15 characteristics and the documents required to establish these characteristics.
16 Characteristics listed include immigration status, deceased, peace officer, school
17 bus driver, military personnel, Katrina Evacuee, Racketeering Lien, etc. [Exhibit
18 159]

19 237. At some point immigration related information is purged from the system.
20 [Exhibit 506 (Gage 94:7-13)]

21 **D. EZ VOTER and the VRAZ System**

22 238. One way voters in Arizona can register to vote is through the EZ Voter
23 program, which is an online application that allows citizens of Arizona to
24 completely register to vote over Internet in either English or Spanish.
25 Approximately 33% of Arizona voter registrations are processed through EZ Voter.
26 [Exhibit 35].

- 1 239. The EZ Voter Description and Process Flow states that almost 50% of voter
2 registrations in Arizona are now sent electronically from MVD to the Secretary of
3 State. [Exhibit 143]
- 4 240. Arizona's "EZVoter" system allows for applicants to register online if they
5 have a digitized signature on file with the MVD. [Exhibit 15]
- 6 241. When a voter registration applicant logs onto the Internet to register to vote
7 using EZvoter, the system will not allow the person to progress in the voter
8 registration if he or she has a driver's license dated before October 1, 1996. The
9 applicant is then instructed to register outside the electronic process. [Exhibit 13]
- 10 242. EZvoter also has a process to stop a voter registration if the person who's
11 applying to register to vote holds a Type F or N driver's license. The applicant is
12 then instructed to register outside the electronic process. [Exhibit 15]
- 13 243. If a person registers to vote using a paper voter registration form, the form
14 must be entered by the County into its individual voter registration system through
15 data entry. [Exhibit 11]
- 16 244. Arizonians can also register to vote through the Driver
17 License/Identification Card Application form, which can also serve as a voter
18 registration form if applicants check the box indicating they want to register to
19 vote. [Exhibit15]
- 20 245. Voter registration files are sent to the Secretary of State on a daily basis for
21 verification of information provided by the voter. This information is matched
22 with motor vehicle records and against those records on file with the Social
23 Security Administration. This process is known as the VRAZ system. [Exhibit 8]
- 24 246. Prior to implementation of VRAZ-I, Arizona did not have a computerized
25 system to check voter registrations against databases such as the Motor Vehicles
26 Department database. [Exhibit 11]

1 247. Prior to VRAZ there was no effective mechanism to centrally check if a
2 voter had died, been convicted of felony, or was registered in multiple Counties.
3 VRAZ automatically performs all of the processes for receiving information,
4 performing matching, and reporting back to the Counties on a set schedule without
5 human intervention. [Exhibit 11]

6 248. The goal of the VRAZ system was to increase voter registration while
7 reducing threats to election integrity by removing ineligible voters and preventing
8 individuals from registering to vote in multiple counties. [Exhibit 11]

9 249. The Arizona Secretary of State has not yet fully implemented VRAZ-II, an
10 enhanced version of VRAZ-I. [Exhibit 18]

11 250. VRAZ is made up of fifteen County voter registration systems that interface
12 with a statewide system. [Exhibit 16]

13 251. In contrast to VRAZ I, under VRAZ II, thirteen of the Counties will convert
14 to local versions of a common registration system. [Exhibit16]

15 252. Only Maricopa and Pima Counties will maintain their custom voter
16 registration systems. [Exhibit16]

17 253. VRAZ-II was implemented in six Counties prior to the 2006 Federal
18 Elections. [Exhibit 32].

19 254. VRAZ-II will issue voter identification cards that Counties can order with
20 their county-specific information. [Exhibit 47].

21 255. VRAZ-II will serve as the statewide registration system and compile the
22 official statewide voter registration list. [Exhibit 18]

23 256. The objective of VRAZ-II is to provide a statewide, real-time system that
24 will allow the system to instantly check court, death and MVD records as the voter
25 registration is being added, rather than checking all records in a batch overnight as
26 the VRAZ system does. [Exhibit 37].

1 257. In the current VRAZ-I system, each night around 7 p.m. each county sends a
2 file to the Secretary of State's office containing all voter registration records that
3 have had any activity. These voter registration records are combined in a state file
4 that are sent by the VRAZ system at midnight to the Motor Vehicle Division for
5 matching. The voter registration records are sent by the VRAZ system over the
6 secured state network to the MVD database. [Exhibits 16, 11, 18]

7 258. After the voter registration records are returned to VRAZ by the Motor
8 Vehicle Division's computer, the VRAZ system compares these records to the
9 State's court records database, which includes felon records. [Exhibit 110]

10 259. Following the court records comparison, the VRAZ system compares the
11 voter registration records to death records and duplicates in the voter rolls.
12 [Exhibit 16]

13 260. VRAZ then puts all the information from the database comparisons into a
14 report specific to each county and posts those reports to the counties. [Exhibit 11]

15 261. The VRAZ system does not make changes in voter registration records.
16 VRAZ posts the information that is has received from the database matching
17 process and puts that information into a report for the counties to work with.
18 [Exhibit 11]

19 262. The VRAZ daily report that is sent to each county summarizes the total
20 reports received and lists the number of records matched from court, MVD, death
21 and duplicates. [Exhibit 36].

22 263. The report classifies the matching results under return codes labeled as
23 "severe, notifications, informational and no action needed." [Exhibit 11, 34, 112]

24 264. The VRAZ report category "Informational purposes, no action needed"
25 return codes indicate that no action need by taken by county officials. [Exhibit 11]

26

- 1 265. When matches are fairly certain but not exact, the record is classified as a
2 “notification,” indicating that the record needs to be looked at further. [Exhibit 34].
- 3 266. A “severe” classification will result if records sent by the county do not
4 contain all the mandatory information, a certain match to a felony record was
5 made, or an exact duplicate match with another county voter registration was
6 found. [Exhibit 34].
- 7 267. The return codes considered “severe” indicate that some action should be
8 taken by the county. [Exhibit 11]
- 9 268. The Counties shall process any discrepancies or updates obtained from the
10 MVD match in order to update the statewide voter registration database. If the
11 county has reason to believe that the MVD information is incorrect, the county
12 shall forward the information to the Secretary of State to resolve. [Exhibit 160]
- 13 269. Each County must either electronically or manually process the reports, and
14 may access the custom VRAZ internet system when processing its reports or
15 researching voter information. [Exhibit 11] [Id.]
- 16 270. In the event that a duplicate does exist, the prior county will be responsible
17 for resolving the duplicate and then update any duplicate records found in order to
18 update the statewide voter registration database. [Exhibit 160]
- 19 271. Any duplication between Counties is automatically resolved when the driver
20 license number, the last four digits of the registrant’s social security number,
21 name, and date of birth all match. [Exhibit 160]
- 22 272. If the name, date of birth, and the Driver’s License Number match but no
23 Social Security Number is provided on the form the duplication is automatically
24 resolved. [Exhibit 160]
- 25
26

1 273. If the name, date of birth, and Social Security Number match but no
2 Driver's License Number is provided on the form, the duplication is automatically
3 resolved. [Exhibit 160]

4 274. When a registrant submits a voter registration application with information
5 that does not match the records at MVD, the information must be clarified,
6 regardless of whether it is critical to the registration of the registrant. The VRAZ-II
7 County Advisory Committee issued a uniform letter that Counties could send to
8 voters to inform them that their registration does not match existing records.
9 [Exhibit 45].

10 **E. The VRAZ System for Verifying Voter Eligibility**

11 275. Voter registration applications are rejected if proper citizenship information
12 is not provided or if the VRAZ system cannot verify citizenship through the
13 centralized matching process. [Exhibit 6]

14 276. VRAZ grandfathered in all existing registered voters and they do not need to
15 provide proof of citizenship. [Exhibit 111]

16 277. All County voter registration data additions, changes and deletions are
17 automatically sent electronically to the Secretary of State on a daily basis. The
18 Secretary of State, using VRAZ, automatically uploads all voter registration
19 records that need identity checking to the Motor Vehicle Division ("MVD") each
20 night. [Exhibit 11]

21 278. All new additions to the voter registration database are matched against the
22 MVD database to check the registrant's name, date of birth, driver's license
23 number and last four digits of the Social Security number. VRAZ then sends the
24 results of the MVD matching back to the Secretary of State. [Exhibit 11, 72, 111,
25 160]

26

1 279. When the MVD computer sufficiently matches the name, date of birth and
2 driver's license number to a voter registration record, the MVD computer also
3 looks at the issue date of the license and the type of license and reports that
4 information to the VRAZ system for use by the Counties. [Exhibit 111]

5 280. If a registrant's driver license (or state identification card) was issued before
6 or after October 1, 1996 this information is reported as a return code in the report
7 made available by the VRAZ system to the Counties. [Exhibits 112, 62]

8 281. The VRAZ system reports to Counties if the type of license is a Type F or
9 Type N. This information is reported as a return code in the report made available
10 by the VRAZ system to the Counties. [Exhibits 14, 112, 62]

11 282. If a driver's license number entered on a voter registration form was issued
12 before October 1, 1996, or is a license type "F" or "N" the report will show the
13 match in the "severe" category. [Exhibit 14]

14 **F. Problems With the VRAZ system**

15 283. An electronic file was created to track the type and severity of 2006 General
16 Election Complaints. [Exhibit 68]

17 284. The VRAZ Development Log tracked implementation issues in various
18 Counties, such as Maricopa County record changes taking longer to process, Pima
19 County record changes being done as adds, and the Secretary of State office
20 needing to be listed as a county in order to view all county records. [Exhibit 38]

21 285. Pima County was concerned about the risk of being sued for improperly
22 disqualifying an eligible voter without legal reason, due to the workload in another
23 county delaying the verification process if there was a "soft match" with a
24 registration in another county. [Exhibit 39].

25 286. Pima County had problems using EZ voter because the MVD sometimes did
26 not capture the digitized signature, rejected the voter registration, and never

1 informed the County Recorder. Pima County also regularly gets forms with the
2 wrong signature. [Exhibit 43].

3 287. Pima County had problems using EZ voter because the system sent them
4 hundreds of forms that they had submitted months earlier, but it did not transmit
5 the forms back to the county until the day before the cutoff date. [Exhibit 43].

6 288. Pima County's believed that a voter who was canceled when she ceased to
7 vote in Pima County, then became an active voter in Maricopa County, and later
8 returned to Pima County would only have to have their Pima status sent as active
9 and send the record to the state as an update. [Exhibit 82]

10 289. A document titled "Changes to Voter Registration and Election Process Due
11 to Proposition 200" was issued noting the new forms that would be needed, the
12 new processes that would have to take place in the EZ voter system, the Secretary
13 of State office, and polling places, as well as the dates for a high level
14 implementation plan. Questions remaining were what changes needed to be made
15 to the existing Procedures Manual and what would happen If a new voter
16 registration form was not ready in time for the March and May elections. [Exhibit
17 154]

18 **G. The EZ Voter System Failed on the Deadline to Register for the**
19 **February 5, 2008 Presidential Preference Election**

20 290. Arizona's online voter registration system suffered a major malfunction on
21 the deadline for voters to register in time participate in the state's 2008 Presidential
22 Preference Election. [Exhibits 9 & 10]

23 291. The online voter system at servicearizona.com did not work during the day
24 on January 7, 2008, the last date to register to vote in the February, 2008
25 presidential preference elections. The Election Office sent out emails at night to
26 voters who had emailed complaining that the system was not working, stating that

1 the system was working again, and the deadline to register was midnight of that
2 day. [Exhibit 129]

3 292. An Arizona voter who wished to register with a party to be able to vote in
4 the February 5, 2008 presidential preference election was unable to do so during
5 the day when the online system was down. [Exhibit 129]

6 293. The State of Arizona Official Canvass of the 2008 Presidential Preference
7 Election reported 51.28% turnout. [Exhibit 131]

8 294. Some Arizona voters emailed the Election Office on January 7, 2008 to
9 inform the office that the system was not working. The voters were very irate and
10 felt that their votes and participation in the election process were not valued.
11 [Exhibits 129, 130]

12 **H. VRAZ County Advisory Committee Guidance to Counties on Voter**
13 **Registration**

14 295. The VRAZ-II County Advisory Committee, which is coordinated by the
15 Secretary of State, is a conduit for the Secretary of State to inform and guide
16 counties in implementing the proof of citizenship requirements of Prop 200 as well
17 as compliance with other rules associated with the statewide voter registration
18 database.

19 296. The VRAZ-II County Advisory Committee issued uniform language that
20 Counties could use to inform registrants that proof of citizenship needed to be
21 submitted before their voter registration would be processed. The Committee also
22 informed each county that they would need to submit their own version of the letter
23 to the Department of Justice for preclearance and translate the letter into Spanish.
24 [Exhibit 48].

25 297. The VRAZ II County Advisory Committee established standard values and
26 codes for common election and registration actions in the state's computer system
for verifying voter registration. [Exhibit 65]

1 298. The VRAZ-II County Advisory Committee acknowledged that County
2 Recorders often get requests for information to determine how many voter
3 registration applications are rejected due to lack of citizenship proof. [Exhibit 49].

4 299. The VRAZ-II County Advisory Committee decided that keeping statistics is
5 optional for the Counties. Members also expressed a strong desire for VRAZ-II to
6 have the ability to keep such statistics. [Exhibit 49].

7 300. The VRAZ-II County Advisory Committee recommended that Counties
8 accept proof of citizenship such as a U.S. birth certificate, naturalization document
9 or U.S. Passport even if the registrants name has changed since the document was
10 issued, as long as the registrant also provides legal documentation of the name
11 change such as a marriage certificate, court name change document, etc. [Exhibit
12 50].

13 301. The VRAZ-II County Advisory Committee also recommended that Counties
14 accept voter registration forms where a U.S. birth certificate is provided and the
15 name on the birth certificate is different from the voter registration if the following
16 five fields match: First Name, Middle Name, Place of Birth, Date of Birth and
17 Parents Name. If not all five fields match, the birth certificate must be
18 accompanied by a legal documentation of the name change. [Exhibit 50].

19 302. The VRAZ-II County Advisory Committee recommended that if a registrant
20 has been registered in one county, and are their registration is legitimately canceled
21 from the voter registration list, when that person re-registers in the same county
22 they must meet all the requirements of a first time registrant. [Exhibit 51].

23 303. The VRAZ-II County Advisory Committee implemented codes so that the
24 VRAZ-II system could determine how registrants registered. [Exhibit 52].

25 304. The VRAZ-II County Advisory Committee instructed Counties to keep
26 canceled voters on file for five years before archiving the records. [Exhibit 53]

- 1 305. The VRAZ County Advisory Committee created a checklist of issues raised
2 by the passage of Proposition 200 to determine if what additional policy changes
3 would need to be made. [Exhibit 54]
- 4 306. The VRAZ County Advisory Committee kept a spreadsheet of the issues
5 addressed by the advisory committee, whether the issues were covered in the
6 manual, and the year they were placed in the manual. [Exhibit 55]
- 7 307. The VRAZ committee has distributed and continues to distribute issue
8 papers and emails to the Counties that clarify certain election and registration
9 issues. [Exhibit 521 (Wayman-Trujillo 1/9/08 37-38)]
- 10 308. The VRAZ committee advised counties that Driver's License types "F" and
11 "N" are issued by MVD to people legally in the country who are not citizens.
12 [Exhibit 14]
- 13 309. The VRAZ Advisory Committee advised Counties that when Counties
14 receive a report of an "F" or "N" driver license number entered on a voter
15 registration form, they first check to be sure the driver license number was entered
16 correctly, then check to see if the registrant is already registered to vote and is just
17 changing information, or has provided other citizenship documents if they are a
18 first time voter. [Exhibit 14]
- 19 310. The VRAZ Advisory Committee advised Counties that when Counties
20 receive a report of an "F" or "N" driver license number entered on a voter
21 registration form, the VRAZ-II County Advisory Committee states that if it is first
22 time registrant in that county, and no other proof of citizenship documents have
23 been provided, that registrant has not satisfactorily proved citizenship. [Exhibit 14]
- 24 311. The VRAZ Advisory Committee advised Counties that until VRAZ-II is
25 implemented, voter registration records without satisfactory proof of citizenship
26

1 should be canceled or deleted in the voter registration system and a correspondence
2 sent to the registrant asking for proof of citizenship. [Exhibit 14]

3 312. The VRAZ Advisory Committee advised Counties that VRAZ-II should
4 automatically generate correspondence when certain actions take place such as,
5 rejection of a voter registration record due to lack of citizenship, an MVD non-
6 match, issuing a voter registration identification card for a new registration,
7 cancellation due to a court notification, cancellation since received notification
8 from a jury questionnaire that voter marked “not a citizen,” ask registrant to present
9 naturalization papers or provide A number, etc. [Exhibit 17]

10 313. On February 24, 2005, the VRAZ Advisory Committee announced that if
11 voter registration records lack key information not relating to citizenship proof, the
12 voter registration record is placed as “pending” in status and allows the registrant
13 between 35 days and 90 days to respond to the request for information before the
14 record is deleted. [Exhibit 19]

15 314. The VRAZ Advisory Committee determined that the registration date is to
16 be backdated to the registration date on the original form for “pending” status
17 records. [Exhibit 19]

18 315. The VRAZ Advisory Committee determined that if a voter registration
19 request is missing proof of citizenship, the voter registration record is marked as
20 “rejected” and registrant is allowed between 35 days and 90 days to respond to
21 request for information before the record is deleted. [Exhibit 19]

22 316. The VRAZ Advisory Committee determined that for citizenship proof cases,
23 requests for information must be accompanied by a blank voter registration form.
24 [Exhibit 19]

25
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1 317. The VRAZ Advisory Committee determined that the registration date for
2 citizenship proof cases will be the new registration date that the registrant enters on
3 the form. [Exhibit 19]

4 318. The VRAZ Advisory Committee determined that the county should file the
5 rejected application by the date received and archive it for two years. [Exhibit 19]

6 319. The VRAZ Advisory Committee determined that they want VRAZ-II to
7 automatically delete records that go beyond any of the periods of time defined in
8 the statute. [Exhibit 19]

9 320. The VRAZ Advisory Committee determined that if a registrant registers in
10 person with proof of citizenship, the County Recorder personnel need only to
11 indicate on the voter registration form that the person provided such proof but does
12 not need to make or retain any copies. [Exhibit 19]

13 321. The VRAZ II County Advisory Committee instituted policies for how to
14 handle situations where the VRAZ-I system reports back that a driver's license
15 number that is a type "F" or "N". If the individual was a first time registrant the
16 Counties are instructed to see if other citizenship documents were provided with
17 the registration application, and if not, until VRAZ-II is implemented the county is
18 to cancel or delete the voter registration record in the voter registration system and
19 send correspondence asking for proper proof of citizenship. The County advisory
20 committee felt that the process may be modified once VRAZ-II is implemented.
21 [Exhibits 61 & 62].

22 322. The VRAZ II County Advisory Committee recommended physically storing
23 the proof of citizenship documents submitted with registration applications.
24 [Exhibit 63].

25 323. The VRAZ II County Advisory Committee recommended accepting proof
26 of citizenship even if the name on the voter registration is different from that on the

1 proof of citizenship as long as the registrant also provides documentation of the
2 name change, or if there is sufficient other matching information. [Exhibit 64].

3 324. Per the VRAZ II County Advisory Committee, two years from the date that
4 the voter's proof of citizenship information is received, the voter's documents may
5 be destroyed. [Exhibit 71]

6 325. Based on the recommendations of the VRAZ II County Advisory
7 Committee, since there is a delay between when a naturalized citizen takes the
8 citizenship oath and when their citizenship number is placed into the SAVE
9 system, the committee recommends that Counties should send the registrant
10 correspondence indicating that further citizenship proof is needed when the alien
11 registration number is not found in the voter registration system. The committee
12 advises that counties explain that the applicants may present their naturalization
13 documents to the recorder. [Exhibit 76]

14 326. Based on the recommendations of the VRAZ II County Advisory
15 Committee, if a naturalized citizen was naturalized within the last two weeks
16 before an election, they should contact the county recorder immediately. [Exhibit
17 76]

18 327. Based on the recommendations of the VRAZ II County Advisory
19 Committee, other Counties should accept in-person voter registration forms which
20 are filled out at swearing in ceremonies. These forms are to be accepted as long as
21 the registrant's A number, initials on the form and date are verified by county
22 personnel. [Exhibit 77]

23 328. The VRAZ-II County Advisory Committee Recommends the following
24 steps when receiving information on the VRAZ report that the driver license
25 number provided is not sufficient proof of citizenship: Step #1: Verify that the
26 DLN was entered correctly, if it was, go to Step #2, if not, correct the DLN,

1 another VRAZ report will be issued based on the corrected information. Step #2: If
2 registrant is changing information on an existing voter registration in the current
3 database, no citizenship proof is needed. [Exhibit 62].

4 **I. The Secretary of State will not Allow Registration Using the NVRA**
5 **Uniform Voter Registration Application**

6 329. Federal voter registration postcard instructions for Arizona, updated on
7 March 1, 2006, do not include the documentary proof of citizenship requirements
8 of Proposition 200. [Exhibit 2]

9 330. The Secretary of State's representative testified that Arizona chose to
10 disregard the Election Assistance Commission's recommendation that Arizona use
11 and accept the federal voter registration form without documentary proof of
12 citizenship. [Kanefield 104:13-105:5]

13 331. The Secretary of State has always made available the federal voter
14 registration form to anyone that has asked for it, and it is available at the Secretary
15 of State's office, but it is not displayed and a voter must ask an employee of the
16 Secretary of state's office to obtain it. [Kanefield 147:2-12; 150]

17 332. The federal voter registration form is not available on the Secretary of
18 State's webpage. [Kanefield at 150]

19 **VII. COUNTY IMPLEMENTATION OF PROOF OF CITIZENSHIP**
20 **PROVISIONS OF PROP 200**

21 **A. County Procedures for Handling Voter Registration Applications That**
22 **are not Accompanied by Proof of Citizenship Required by Prop 200**

23 333. The Counties reject voter registration forms that do not include proper proof
24 of citizenship under Proposition 200. [Exhibit 521 (Wayman-Trujillo 50-51);
25 Exhibit 502 (Altaha Dep. 12:20-13:19, Jan. 14, 2008 ("Altaha"))]

26 334. The Counties require re-registration for a person whose voter registration
form was rejected for failure to include proper proof of citizenship under

1 Proposition 200. [Exhibit 521 (Wayman-Trujillo 51); Exhibit 502 (Altaha 14); *see*,
2 *e.g.*, Exhibits 174-178]

3 335. When a voter registration form is rejected for failing to include proper proof
4 of citizenship under Proposition 200, counties mail a letter to the applicant
5 explaining why the application was rejected and instructing the applicant to submit
6 a new registration form with proper proof of citizenship. [Exhibit 521 (Wayman-
7 Trujillo 51-52); Exhibit 502 (Altaha 13)]

8 336. Maricopa County keeps the rejected registration forms and does not enter
9 information from the forms into VRAZ. [Exhibit 502 (Altaha 13:24-14:6)]

10 337. In Maricopa County, registrants cannot provide proof of citizenship via
11 telephone; the registrant must fill out a new voter registration form and submit the
12 required proof of citizenship. [Exhibit 502 (Altaha 14:15-19, 16:18-23)]

13 338. Yavapai County does not send any follow-up letters to people whose voter
14 registration applications were rejected for failure include proper proof of
15 citizenship under Proposition 200 and who do not reregister. [Exhibit 521
16 (Wayman-Trujillo 68)]

17 339. The counties are unaware of any federally issued identification that contains
18 a person's name, address and photograph. [Exhibit 507 (Hansen 41:1-4)]

19 340. In Maricopa County, if citizenship information is provided after it was left
20 off a registration form, the date of the registration is the date the information is
21 provided, not the date the person submitted the original voter registration form.
22 [Exhibit 513 (Osborne vol. 2 34:20-35:4)]

23 341. In Maricopa County, if the individual provides the wrong driver's license
24 number as proof of citizenship, and the VRAZ system cannot match the license
25 number to the applicant, the record is suspended, but once he or she provides the
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correct number, the date of registration becomes the date the initial registration was turned in.

342. Pima County, pursuant to rules decided upon by VRAZ County Advisory Committee, holds new voter registration records in suspense until citizenship is either proven by using the Motor Vehicles Department check, or by having a user in the County indicate to the system that citizenship was proven by the other qualifying means (birth certificate, passport, etc.). [Exhibit 115]

B. The Counties Always Reject Applicants Who Provide a Certificate of Naturalization Number Instead of an Alien Registration Number

343. The Counties reject voter registration forms that provide the certificate of naturalization number. [Exhibit 517 (Rodriguez vol. 1 at 60:18-22); Exhibit 182 (rejected forms providing naturalization number); Exhibit 507 (Hansen at 29:21-30:5)]

344. The Counties use the “A number” or “Alien registration number” to verify citizenship with the federal government. [Exhibit 517 (Rodriguez vol. 1, 53:12-54:4, 59:21-23, Aug. 8, 2006 (“Rodriguez vol. 1”)); Exhibit 511 (Marin 46:24-47:1); Exhibit 512 (Osborne vol. 1 34:14-24)]

345. The Counties are aware that there are two numbers on the naturalization certificates, but are inconsistent in their treatment of the numbers. [Exhibit 510 (Johnson 23:25-25:17); Exhibit 178 at 5; Exhibit 509 (Justman Dep. 27:4-28:19), Aug. 1, 2006 (“Justman”); Exhibit 521 (Wayman-Trujillo 39-40)]

346. In Yavapai County, the only way for a naturalized citizen to find out that in order to register they must provide their “A number,” rather than their certificate of naturalization number, is by calling or appearing in person at the County Recorder’s office. [Exhibit 521 (Wayman-Trujillo 46)]

1 347. Pima County’s website only asks for the number on the certificate of
2 naturalization for the voter registration form. [Exhibit 517 (Rodriguez vol. 1 59:2-
3 5) & Exhibit 180]

4 348. The Counties do not list the “A number” as an acceptable form of
5 identification on any educational documents they produce for the public. [Apache
6 2d RFP Response, No. 2; Pima 2d RFP Response No. 2; Pinal 2d RFP Response
7 No. 2; Coconino 2d RFP Response No. 15; Santa Cruz 2d RFP Response No. 2;
8 Yavapi 2d RFP Response No. 2] But Maricopa County has requested the “A
9 number” to community groups. [See p.10 from Maricopa Resp. to Q #13] [Exhibit
10 181]

11 349. Some Counties will contact those who provide a certificate of naturalization
12 number and instruct them to provide their alien registration number in order to
13 register to vote. [Exhibit 517 (Rodriguez, vol. 1 65:9-21); Exhibit 507 (Hansen,
14 29:21-30:5); Exhibit 512 (Osborne vol. 1 36:2-16)]

15 350. County officials believe it takes several weeks after a citizen is naturalized
16 before the federal government’s database is updated to reflect that the “A number”
17 belongs to a U.S. citizen. [Exhibit 517 (Rodriguez vol. 1 61:16-62:3); Exhibit 511
18 (Marin at 51:7-9); Exhibit 512 (Osborne vol. 1 99:10-19)]

19 351. If the County Recorder’s staff has seen the registrant’s original
20 naturalization certificate, the certificate number is not confirmed with the federal
21 government. [Exhibit 517 (Rodriguez vol. 1 62:4-62:11); Exhibit 518 (Rodriguez
22 vol. 2, 35:5-12, Jan. 22, 2008 (“Rodriguez vol. 2”)); Exhibit 507 (Hansen 27:13-
23 14); Exhibit 502 (Altaha 21)]

24 352. Some counties accept a photocopy of a naturalization certificate as proof of
25 citizenship, despite Secretary of State guidance that does not accept photocopies of
26 naturalization documents. [Exhibit 517 (Rodriguez vol. 1 63:5-7); Exhibit 505

1 (Dean-Lytle Dep. 53:2-6, Jan. 16, 2008) (“Dean-Lytle”); Exhibit 507 (Hansen
2 27:20-23); Exhibit 509 (Justman at 23:20-23); Exhibit 512 (Osborne vol. 1 39:22-
3 25); Exhibits 183, 184, 185 & 186].

4 353. However, some counties do not inform the public that they will accept
5 photocopies of naturalization certificates. [Apache 2d RFP Response, No. 3; Pima
6 2d RFP Response No. 3; Pinal 2d RFP Response No. 3; Coconino 2d RFP
7 Response No. 16; Yavapai 2d RFP Response No. 3; Santa Cruz 2d RFP Response
8 No. 3; *see also* Exhibits 187-189 (listing photocopies as acceptable for all
9 documents except naturalization papers)].

10 354. Counties do not educate the public about making a photocopy of a
11 naturalization certificate when the certificate itself says it cannot be copied without
12 lawful authority. [Apache 2d RFP Response No. 4; Pima 2d RFP Response, No. 4;
13 Pinal 2d RFP Response No. 4; Coconino 2d RFP Response No. 17; Yavapai 2d
14 RFP Response No. 4; Santa Cruz 2d RFP Response No. 4] [Exhibit190]

15 355. Some county officials know that it is illegal to copy a naturalization
16 certificate without lawful authority. [Exhibit 517 (Rodriguez vol. 1 64:4-8);
17 Exhibit 511 (Marin 44:13–45:6)]

18 356. Pinal County has knowledge that naturalized citizens attempting to register
19 to vote were concerned that their naturalization certificate indicated that they could
20 not duplicate or copy it. [Exhibit191]

21 357. Pinal County notified Joe Kanefield, State Election Director for Arizona,
22 and Craig Stender that registrants who were naturalized U.S. citizens were
23 concerned that the face of their naturalization certificate indicated that they could
24 not copy it. [Exhibit191]

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1 358. The Pima County Recorder’s Office specifically noted in its educational
2 materials that “federal law prohibits making a photocopy of a Naturalization
3 certificate.” [Exhibit107]

4 359. Private and volunteer voter registration organizations no longer go to
5 naturalization ceremonies in Pima County because they have been persuaded by
6 the County Recorder that they cannot satisfy the requirements for Proposition 200.
7 [Exhibit 518 (Rodriguez vol. 2 32:20-33:25)]

8 360. The voter registration form provided on many county websites requires the
9 certificate number, and not the “A number,” as proof of citizenship. [*See, e.g.*,
10 Exhibits 192-197, 185] Likewise, many Counties provide lists of documents to
11 prove citizenship with the same instruction to provide the number of the certificate
12 of naturalization. [*See, e.g.*, Exhibits 177-78, 184-85, 187-88, 198-223]

13 361. The Pima County Recorder’s Office sent letters and posted notices
14 requesting a photocopy of a certificate of naturalization or to provide the “number
15 of certification of naturalization.” This was done even though SAVE could not
16 verify citizenship with the number of the certificate of naturalization. [Exhibits
17 224, 225] The Pima County Recorder’s Office then began to send letters notifying
18 individuals that the office could not process their applications because they were
19 submitted with naturalization certificate numbers. [Exhibit 226]

20 362. Election officials in Arizona continue to make available English and
21 Spanish-language voter registration forms that have a box designated for a
22 “Certificate of Naturalization Number.” [Exhibit 5]

23 **C. The Counties Refuse to Accept the Federal Voter Registration Form**

24 363. Some Counties do not make available the federal voter registration form
25 [Exhibit 517 (Rodriguez vol. 1 83:14-84:6); Exhibit 507 (Hansen 35:17-36:9)], and
26 have rejected registrants who used the federal voter registration form or the federal

1 voter postcard to register. [Exhibit 517 (Rodriguez vol. 2 97:22-25, 103:4-9);
2 Exhibits 231 & 232 (rejected forms); Coconino Suppl. Resp. to 2nd RFP, Attach 1
3 at 37-38 & Attach 2 at 2 (rejected forms); Exhibit 505 (Dean-Lytle 72:8-73:1)]

4 364. Yuma and Maricopa Counties will reject federal voter registration forms
5 that do not show proof of citizenship. [Exhibit 511 (Marin 62:14-22); Exhibit 513
6 (Osborne vol. 2 38:1-6)]

7 **D. Counties had Problems With Cooperation From MVD Local Offices for**
8 **Voter Registration**

9 365. The secretary of the Democratic Association of Havasu emailed the
10 Secretary of State Office to report numerous complaints of Arizona voters who
11 believed they were registered to vote because they had checked the box on their
12 driver license application stating that they would like to register to vote. They were
13 not given the actual voter registration form by the MVD, and did not know that this
14 was required in order to actually register to voter, until arriving at the polls and
15 discovering they were not registered. [Exhibit 134]

16 366. The MVD told the Election Department in Mojave County that they do not
17 really train their clerks to hand out voter registration forms because their job is to
18 give driver licenses, not register people to vote. [Exhibit 134]

19 **VIII. STATE IMPLEMENTATION OF VOTER IDENTIFICATION**
20 **PROVISIONS OF PROP 200**

21 **A. The Development and Purpose of the State's Procedures for Proof of**
22 **Identification**

23 367. Joe Kanefield, the Arizona State Elections Director, stated that the Secretary
24 of State began developing its procedures for proof of ID, in a document entitled
25 "the Procedure For Proof of Identification at the Polls," in December of 2004 in
26 anticipation of Proposition 200 being precleared by the Department of Justice. Mr.
Kanefield also stated that the process for creating his office's ID procedures took
several months. [Kanefield 18:9-12]; [Kanefield 17:6- 10]

1 368. Mr. Kanefield stated that the Procedure For Proof of Identification at the
2 Polls constitutes the primary implementing mechanism for Proposition 200, and
3 that no other procedures exist. [Kanefield 17:15-18]

4 369. The purpose in drafting the Procedure For Proof of Identification at the Polls
5 was to require identification at the polls in order to prevent voter fraud. [Kanefield
6 23:2-24]

7 370. The Secretary of State approved the final version of the Procedure For Proof
8 of Identification at the Polls. [Kanefield 22:19-20]

9 371. The Procedure For Proof of Identification at the Polls creates guidance from
10 the Secretary of State to election officials as to what forms of identification might
11 suffice under Proposition 200. These procedures set forth forms of identification
12 that were in existence at the time it was promulgated and that were deemed
13 acceptable for satisfying the intent of Prop 200. [Kanefield 19:13-20:3]

14 372. The State's procedures for proof of identification allow the county election
15 directors discretion to deem what forms of identification are acceptable under Prop
16 200. According to Mr. Kanefield, counties were given this discretion because the
17 state recognized that the acceptable forms of identification might change as time
18 went on. [Kanefield 19:13-20:3]; [Kanefield 20:10-11]

19 373. The development of the list of acceptable identification enumerated in the
20 Procedure For Proof of Identification at the Polls was a coordinated effort by the
21 Elections Division, Counties, and the public. [Kanefield 21:3-10]

22 374. The Secretary of State did not consider some of the costs associated with at
23 least some of the forms of identification when it promulgated its procedures for
24 proof of identification. [Kanefield 60:19-21]

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1 375. Mr. Kanefield stated the Secretary of State was aware that one out of ten
2 registered voters in Arizona did not possess a driver's license. [Kanefield 91:11-
3 13]

4 376. The Secretary of State did not ascertain whether most persons who lack
5 driver's licenses have a state-issued identification card. [Kanefield 114:4-9]

6 377. Nothing in the the Procedure For Proof of Identification at the Polls requires
7 the Counties to produce forms of non-photo identification to voters. [Kanefield
8 119:18-24]

9 378. Although the Secretary of State concluded that the regular provisional ballot
10 process sufficiently protected against voter fraud because it provided for signature
11 verification, it did not provide guidance for signature verification as an alternative
12 to returning with voter ID. [Kanefield 126:10-16].

13 **B. The State's Procedure for Proof of Identification at the Polls**

14 379. Under the Secretary of State's procedures for proof of identification at the
15 polls, if the voter provides no identification, he is issued a conditional provisional
16 ballot. Further Mr. Kanefield stated that a conditional provisional ballot is the
17 same as a provisional ballot, except that when a conditional provisional ballot is
18 sent back to the County Recorder's office, it is not processed in accordance with
19 the procedures for processing a provisional ballot. Rather, a conditional
20 provisional ballot is held until the voter comes in and provides sufficient
21 identification, at which time it then goes through the normal procedures for
22 processing a provisional ballot. [Kanefield 61:23-62:11]

23 380. The text of Proposition 200 does not require government-issued photo
24 identification. That requirement was added later by the Secretary of State.
25 [Kanefield 108:6-109:11]

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1 381. Although listed in the statute and publicity pamphlets for Proposition 200,
2 out-of-state driver's licenses are not accepted as valid identification at the polls.
3 [Exhibit 508 (Hoyos Dep. 22:21-23, Jan. 16, 2006 ("Hoyos")); Exhibit 230]

4 382. The text of Proposition 200 does not require that the address on the voter's
5 identification match their address on the voter rolls. The Secretary of State added
6 this requirement. [Kanefield 108:12-23]

7 383. In the situation where the address on the voter's identification does not
8 match their address on the voter rolls, State procedures instruct the poll workers to
9 ascertain whether the name is different because of a recent marriage or name
10 change, and if so, to make a note of that and to provide that person a regular
11 provisional ballot. [Kanefield 125:13-21]

12 **C. Provisions of the State Elections Procedure Manual Relating to the**
13 **Procedure for Proof of ID**

14 384. The most recent Secretary of State Elections Procedure Manual is dated
15 October 30th of 2007. It was approved both the Arizona Governor and the Arizona
16 Attorney General. [Kanefield 5]

17 385. One change the Secretary of State made to Elections Procedure Manual
18 concerned the combining of the provisional ballot processing procedure with the
19 identification at the polls procedure. According to Joe Kanefield, these procedures
20 were combined because if an elector is unable to present sufficient identification at
21 the polls, he or she must vote using a provisional ballot. [Kanefield 6]

22 386. According to the Secretary of State, counties must include the voter's
23 residential address as well as the voter's post office box address in the polling place
24 signature rosters if that information has been provided to the County Recorder.
25 [Kanefield 43]
26

1 387. The Arizona Election Procedures Manual requires that every qualified
2 elector is required to show proof of identity at the polling place before receiving a
3 ballot. [Exhibit 160 at 127]

4 388. The Arizona Election Procedures Manual requires that the elector announce
5 his/her name and place of residence to the election official and present one form of
6 identification that bears the name, address, and photograph of the elector or two
7 different forms of identification that bear the name and address of the elector.
8 [Exhibit 160 at 127]

9 389. The Arizona Election Procedures Manual provides that an elector who does
10 not provide one form of identification that bears the name, address, and photograph
11 of the elector or two different forms of identification that bear the name and
12 address of the elector shall not be issued a regular ballot, but shall receive a
13 conditional provisional ballot. [Exhibit 160 at 127-28]

14 390. The Arizona Election Procedures Manual provides that if the elector
15 identifies himself or herself as a Native American, the elector shall be processed
16 under a procedure titled "Identification Requirements for Native American
17 Electors," all others shall be processed under the procedure for Conditional
18 Provisional Ballots. [Exhibit 160 at 128]

19 391. The Arizona Election Procedures Manual provides that acceptable forms of
20 identification with a photograph that include the name and address of the elector
21 include a valid Arizona driver's license, a valid Arizona nonoperating
22 identification license, a tribal enrollment card or other form of tribal identification,
23 or a valid United States federal, state, or local government issued identification.
24 [Exhibit 160 at 128]

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1 392. The Arizona Election Procedures Manual provides that identification is
2 deemed valid unless it can be determined on its face that it has expired. [Exhibit
3 160 at 128]

4 393. The Arizona Election Procedures Manual provides that the two acceptable
5 forms of identification without a photograph that bear the name and address of the
6 Elector include a utility bill of the elector that is dated within 90 days of the date of
7 the election; a bank or credit union statement that is dated within 90 days of the
8 date of the election; a valid Arizona Vehicle Registration; an Indian census card, a
9 property tax statement of the elector's residence; a Tribal enrollment card or other
10 form of tribal identification; a Vehicle insurance card, a Recorder's Certificate; or a
11 valid United States federal, state, or local government issued identification,
12 including a voter registration card issued by the County Recorder. [Exhibit 160 at
13 128]

14 394. The Arizona Election Procedures Manual provides that a utility bill is
15 limited to electric, gas, water, solid waste, sewer, telephone, cellular phone, or
16 cable television. [Exhibit 160 at 128]

17 395. The Arizona Election Procedures Manual provides that if the elector has
18 provided the acceptable form of identification(s), the poll worker shall compare the
19 information on the identification(s) with the information the elector announced. If
20 the name on the identification(s) reasonably appears to be the same as the
21 announced name, the poll worker shall compare the identification to the signature
22 roster, inactive voter list, or add-on list. If the name on the identification(s) does
23 not reasonably appear to be the same as the announced name, the elector shall be
24 provided a conditional provisional ballot. [Exhibit 160 at 129]

25 396. The Arizona Election Procedures Manual provides that if the elector
26 presents one form of identification that bears the name, address, and photograph of

1 the elector and the name and address on the identification and the signature roster,
2 inactive voter list, or add-on list reasonably appear to be the same and the photo
3 reasonably appears to be the elector, then the elector shall be issued a regular
4 ballot. If the name and address on the identification do not reasonably appear to be
5 the same as the name and address on the signature roster or the photo does not
6 reasonably appear to be the elector, then the elector shall not be issued a regular
7 ballot, but instead shall be issued a provisional ballot. [Exhibit 160 at 129]

8 397. The Arizona Election Procedures Manual provides that if the elector
9 presents two forms of identification that bear the name and address of the elector
10 without a photograph of the elector, the poll worker shall compare the name and
11 address on the two pieces of identification with the name and address on the
12 signature roster. If both pieces of identification reasonably appear to be the same as
13 the name and address on the signature roster, inactive voter list or add-on list the
14 elector shall be issued a regular ballot. If the name or address on either piece of
15 provided identification does not reasonably appear to be the same as the name and
16 address on the signature roster then the elector shall not be issued a regular ballot,
17 but shall instead be issued a provisional ballot. [Exhibit 160 at 129]

18 398. The Arizona Election Procedures Manual provides that if the elector
19 presents only one form of identification that bears the name and address of the
20 elector without a photograph of the elector, the elector shall be issued a conditional
21 provisional ballot. [Exhibit 160 at 129]

22 399. The Arizona Election Procedures Manual provides that if the elector has
23 moved within the precinct and, therefore, his or her name is on the register but the
24 address on the identification(s) are not the same as the address on signature roster,
25 the elector shall be issued a provisional ballot. [Exhibit 160 at 130]

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1 400. The Arizona Election Procedures Manual provides that if a person's name is
2 on the inactive voter list, the person shall orally affirm that the voter resides at the
3 address listed on the inactive voter list. The voter's signature shall be entered on
4 the inactive voter signature roster page at the end of the signature roster. [Exhibit
5 160 at 130]

6 401. The Arizona Election Procedures Manual provides that if a poll worker is
7 unable to locate the elector's name on the signature roster, inactive voter list, or
8 add-on list after the elector presents one form of identification that bears the name,
9 address, and photograph of the elector or two different forms of identification that
10 bear the name and address of the elector, the elector shall be permitted to vote
11 using a provisional ballot after the election official has: verified the voter's address
12 on the precinct map to make sure it is within the precinct, and determined whether
13 the voter has recently moved within the county. [Exhibit 160 at 130]

14 402. The Arizona Election Procedures Manual provides that if the elector
15 presents a Recorder's certificate to the poll worker, the poll worker shall treat the
16 Recorder's certificate in the same manner as if the information on the Recorder's
17 certificate appeared in the signature roster and compare the elector's identification
18 to the Recorder's certificate. [Exhibit 160 at 130]

19 403. The Arizona Election Procedures Manual provides that if the elector
20 presents one form of identification that bears the name, address, and photograph of
21 the elector and the name and address on the identification and the Recorder's
22 certificate reasonably appear to be the same and the photo reasonably appears to be
23 the elector, then the elector shall be issued a regular ballot. [Exhibit 160 at 130,
24 131]

25 404. The Arizona Election Procedures Manual provides that if the name or
26 address on the identification do not reasonably appear to be the same as the name

1 or address on the Recorder's certificate or the photo does not reasonably appear to
2 be the elector, then the elector shall not be issued a regular ballot, but shall be
3 issued a provisional ballot. [Exhibit 160 at 131]

4 405. The Arizona Election Procedures Manual provides that if the elector
5 presents two forms of identification, one of which is the Recorder's certificate, that
6 bear the name and address of the elector without a photograph of the elector, the
7 poll worker shall compare the name and address on the two pieces of identification
8 with the name and address on the Recorder's certificate. If both pieces of
9 identification reasonably appear to be the same as the name and address on the
10 Recorder's certificate the elector shall be issued a regular ballot. [Exhibit 160 at
11 131]

12 406. The Arizona Election Procedures Manual provides that if the name or
13 address on either piece of provided identification do not reasonably appear to be
14 the same as the name and address on the Recorder's certificate then the elector
15 shall not be issued a regular ballot, but shall be issued a provisional ballot.
16 [Exhibit 160 at 131]

17 407. The Arizona Election Procedures Manual provides that if the elector has
18 presented sufficient identification to receive a regular ballot, the poll worker shall
19 add the elector's name to the next consecutive sequence number at the end of the
20 signature roster. The poll worker shall then have the elector sign the signature
21 roster and the poll worker shall give the elector a ballot. [Exhibit 160 at 131]

22 408. The Arizona Election Procedures Manual provides that if the elector has
23 moved within the precinct and his or her name is on the Recorder's certificate but
24 the address on the identification(s) is not the same as the Recorder's certificate, the
25 elector shall be issued a provisional ballot. [Exhibit 160 at 131]

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1 409. The Arizona Election Procedures Manual provides that if the elector
2 presents only the Recorder's certificate as one form of identification that bears the
3 name and address of the elector without a photograph of the elector, the elector
4 shall be issued a conditional provisional ballot. [Exhibit 160 at 131]

5 410. The Arizona Election Procedures Manual provides that for voters whose
6 only form of identification shows a post office box or directions to their residence
7 location, poll workers must ask the voter to describe his/her residence location and
8 show where the residence is located on the precinct map. [Exhibit 160 at 132]

9 411. The Arizona Election Procedures Manual provides that if the voter indicates
10 that he or she has moved within the county and the voter presents one form of
11 identification that bears the name, address, and photograph of the elector or two
12 different forms of identification that bear the name and address of the elector, the
13 voter shall be permitted to vote using a provisional ballot. [Exhibit 160 at 132]

14 412. The Arizona Election Procedures Manual provides that a voter who moves
15 from the address at which he/she is registered to another address within the same
16 county and who fails to notify the County Recorder of the change of address before
17 the date of an election shall be permitted to correct the voter registration records at
18 the appropriate polling place for the voter's new address and be permitted to vote
19 using a provisional ballot. [Exhibit 160 at 132]

20 413. The Arizona Election Procedures Manual provides that in areas of the state
21 where residence street addresses are not assigned, the voter shall orally provide
22 their residence location within the voting precinct. [Exhibit 160 at 132]

23 414. The Arizona Election Procedures Manual provides that a person who is
24 dropping off any early ballot at a precinct voting location is not required to show
25 identification. [Exhibit 160 at 133]

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1 415. The Arizona Election Procedures Manual provides that voters who vote
2 using early ballots do not need to vote using a provisional ballot. [Exhibit 160 at
3 133]

4 416. The Arizona Election Procedures Manual provides that if the voter has the
5 early ballot in his or her possession but insists on voting using a provisional ballot
6 issued at the polling place, the voter may vote after providing acceptable
7 identification. [Exhibit 160 at 133]

8 417. The Arizona Election Procedures Manual provides that if the voter has
9 changed his/her name and address, the voter must indicate their new name and their
10 former name on the provisional ballot form. The provisional ballot form will be
11 used by the Recorder to change the voter's name and address on the registration
12 rolls. [Exhibit 160 at 134]

13 418. The Arizona Election Procedures Manual provides that any qualified elector
14 of the county, including poll workers, may orally challenge a voter by stating that
15 the voter is not qualified. [Exhibit 160 at 134]

16 419. The Arizona Election Procedures Manual provides that the official signature
17 rosters for use at the polling places shall include the elector's residence address and
18 the mailing address, if different from the residence address, from the elector's
19 registration form. [Exhibit 160 at 134-135]

20 420. The Arizona Election Procedures Manual provides that identification
21 bearing the mailing address of the elector is sufficient identification if the name
22 and address reasonably appear to be the same as the elector's name and address
23 contained in the signature roster or Recorder's certificate. [Exhibit 160 at 135]

24 421. The Arizona Election Procedures Manual provides that an elector who
25 identifies himself or herself as a member of a federally recognized Native
26 American tribe and who does not provide one form of identification that bears the

1 name, address, and photograph of the elector or two different forms of
2 identification that bear the name and address of the elector shall be issued a
3 provisional ballot upon presenting one form of tribal identification that bears the
4 name of the elector. [Exhibit 160 at 135]

5 422. The Arizona Election Procedures Manual provides that an elector who does
6 not provide 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
8 address of the elector or does not present one form of tribal identification that bears
9 the name of the elector shall be issued a conditional provisional ballot. [Exhibit
10 160 at 135]

11 423. The Arizona Election Procedures Manual provides that if an elector does not
12 provide the required identification, the elector shall be issued a conditional
13 provisional ballot. The conditional provisional ballot shall be placed in a
14 provisional ballot envelope. The provisional ballot envelope shall indicate that the
15 elector did not provide identification. [Exhibit 160 at 135]

16 424. The Arizona Election Procedures Manual provides that the poll worker shall
17 notify the elector that he or she must provide identification to the County Recorder
18 or to an official deemed acceptable by the County Recorder. [Exhibit 160 at 135]

19 425. The Arizona Election Procedures Manual requires that the proof of
20 identification must be received by the County Recorder's office by 5:00 p.m. on
21 the fifth business day after a general election that includes an election for a federal
22 office, or 5:00 p.m. on the third business day after any other election for the
23 provisional ballot to be processed and counted. [Exhibit 160 at 135]

24 426. The Arizona Election Procedures Manual requires that the oath statement on
25 the signature roster include a statement that the poll worker obtained valid proof of
26 identification from every elector, or if identification was not presented, that the

1 provisional ballot envelope was marked appropriately to indicate that the
2 conditional provisional ballot was used because the elector did not present
3 identification. [Exhibit 160 at 135]

4 427. The Arizona Election Procedures Manual requires that a list of acceptable
5 identification be posted in a conspicuous place at each polling location and that a
6 list of acceptable identification be made available to the electors at each polling
7 location. [Exhibit 160 at 136]

8 428. The Arizona Election Procedures Manual requires that notice of the
9 identification at the polls requirement and a list of acceptable forms of
10 identification be included with either the sample ballots mailed to each household
11 with a registered voter or any other notice sent to electors regarding polling place
12 locations. [Exhibit 160 at 136]

13 429. The Arizona Election Procedures Manual requires that notice of the
14 identification at the polls requirement and a list of acceptable forms of
15 identification shall appear in the Secretary of State publicity pamphlet. [Exhibit
16 160 at 136]

17 **D. Provisions of the State Elections Procedure Manual Relating to the**
18 **Procedures for Provisional Voters**

19 430. The Arizona Election Procedures Manual provides that there are seven
20 reasons a voter may vote using a provisional ballot: 1. the voter has not provided
21 sufficient identification at the polling location; 2. the voter's name does not appear
22 on the signature roster or inactive list, and the voter has not moved; 3. the voter has
23 moved within the precinct; 4. voter has moved to a new precinct within the county;
24 5. voter has been issued an early ballot; 6. voter has changed names; or 7. the voter
25 is challenged at the polling place. [Exhibit 160 at 136].

26 431. The Arizona Election Procedures Manual provides that when voting using a
provisional ballot, the voter shall sign an affirmation on the provisional ballot

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envelope stating that the information on the provisional ballot envelope is correct, that he/she resides in the precinct, that he/she is eligible to vote in this election and that he/she has not previously voted in this election. [Exhibit 160 at 136]

432. The Arizona Election Procedures Manual provides at the time a voter votes using a provisional ballot, the voter shall be given a provisional voter receipt by one of the election officials with information on how to contact his/her County Recorder to verify the status of his/her provisional ballot. [Exhibit 160 at 136, 137]

433. The Arizona Election Procedures Manual requires that the voter and the election official sign the provisional ballot form. [Exhibit 160 at 137]

434. The Arizona Election Procedures Manual requires that the election official attach the provisional ballot form to the envelope provided and give the envelope to the provisional voter. [Exhibit 160 at 137]

435. The Arizona Election Procedures Manual requires that the election official verify that the provisional voter's affirmation statement of eligibility to vote in that jurisdiction is on the envelope. [Exhibit 160 at 137]

436. The Arizona Election Procedures Manual requires that the provisional voter return the provisional ballot envelope to the appropriate election official. [Exhibit 160 at 137]

437. The Arizona Election Procedures Manual provides that the signature roster clerk must enter the provisional voter's name and other identifying data as shown on the signature roster on the provisional ballots page at the back of the signature roster or a separate provisional roster. [Exhibit 160 at 137]

438. The Arizona Election Procedures Manual provides that voters completing a provisional ballot are assigned register numbers beginning with V-1 and continuing numerically with V-2, V-3, etc. [Exhibit 160 at 137]

1 439. The Arizona Election Procedures Manual requires that the provisional voter
2 sign the signature block corresponding to the voter's name on the signature roster.
3 [Exhibit 160 at 137]

4 440. The Arizona Election Procedures Manual requires that the poll list clerk fill
5 out the poll list. [Exhibit 160 at 137]

6 441. The Arizona Election Procedures Manual requires that the election official
7 give the provisional ballot envelope and ballot to the provisional voter and direct
8 the voter to a designated voting booth. [Exhibit 160 at 137]

9 442. The Arizona Election Procedures Manual provides that after voting, the
10 provisional voter returns the ballot to the election official at the ballot box along
11 with the provisional ballot envelope. [Exhibit 160 at 137]

12 443. The Arizona Election Procedures Manual provides that the voter place the
13 voted ballot in the provisional ballot envelope and that the voter may seal the
14 envelope. [Exhibit 160 at 137]

15 444. The Arizona Election Procedures Manual requires that the election official
16 ensure the voted ballot is sealed in the provisional ballot envelope. [Exhibit 160 at
17 137]

18 445. The Arizona Election Procedures Manual requires that the election official
19 make sure that all of the information on the provisional ballot envelope has been
20 filled out including signatures of board workers. [Exhibit 160 at 137]

21 446. The Arizona Election Procedures Manual requires that the voter or election
22 official deposit the sealed provisional ballot envelope in the ballot box. [Exhibit
23 160 at 137]

24 **E. State Procedures for Native American Voters Attempt to Reduce the**
25 **Impact of Prop 200 on Native American Voters**

26 447. In the State's identification regulations, special provisions were made for
Native American voters and homeless voters who may not possess identification

1 that matches the information contained in the voter's registration record[Exhibit
2 303 at p. 3; Exhibit 274 at p. 29]

3 448. An elector who identifies himself or herself as a member of a federally
4 recognized Native American tribe, but who does not have one form of
5 identification with the name, address, and photograph of the elector or two of the
6 approved forms of identification with the name and address of the elector, may
7 present one form of tribal identification bearing only the voter's name. The Native
8 American voter will then be allowed to vote using a provisional ballot. [Exhibit
9 300 at 3; 301, 302]; [Exhibit 303 at p. 3; Exhibit 274 at p. 29]

10 449. In other words, that Native American individual would need not come back
11 with any other form of identification within the time period prescribed in the
12 procedure for those that, for example, show up to the polls without any
13 identification. [Kanefield 27:2-28:5]

14 450. Arizona statute allows for either a Bureau of Indian Affairs Card card, tribal
15 treaty card number, or an Indian Census Card to serve as proof of identification for
16 Native American voters at the polls. [Kanefield 34:6-36:17]

17 451. The Secretary of State claims that the provisional ballot procedure for
18 Native Americans adequately protects against voter fraud. [Kanefield 56:17-20]

19 452. The Secretary of State concluded that the signature verification, as it applies
20 to Native American voters, provides sufficient protection against voter fraud.
21 [Kanefield 162]

22 **F. The Secretary of State's Proposed Restrictive Regulations for Voter ID**
23 **and County and Attorney General Objections**

24 453. Counties with high populations of Native American citizens, like Apache
25 County, have expressed concerns about the effect of Proposition 200 on Native
26 American voters. [Exhibit 514 (Pew 9-13); Pew Dep. at Exs. 9 & 11; Exhibits 233
& 234]

1 454. Some of the Counties strongly objected to the Secretary of State's decision
2 not to allow Tribal Enrollment Cards as sufficient identification at the polls.
3 [Exhibit 248]

4 455. Tribal enrollment numbers do not indicate the tribe to which Native
5 Americans apply. [Exhibit 510 (Johnson 21:9-13)]

6 456. Native American voters are more likely to vote at polling places in person
7 than by mail because they require language assistance that they do not get through
8 the mail. [Exhibit 514 (Pew 12-13); Exhibit 304] Ballots are not printed in the
9 Navajo language. [Exhibit 514 (Pew 13); Exhibit 304]

10 457. Although Arizona's procedures provide that one form of acceptable
11 identification is a "form of tribal identification," poll workers are not provided with
12 a list of all federally recognized tribes in the United States. [Exhibit 514 (Pew 15)]

13 458. The Navajo Nation does not issue anything called a Bureau of Indian Affairs
14 Card Number, a Tribal Treaty Card, or a Tribal Enrollment number. [Exhibit 510
15 (Johnson 16:22-17:21); Exhibit 507 (Hansen 24:18-25:3)]

16 459. Coconino County has never seen a Bureau of Indian Affairs Card or a Tribal
17 Treaty Card from any tribe. [Exhibit 507 (Hansen 25:17-26:3); Exhibit 512
18 (Osborne vol. 1 26:2-3)]

19 460. Some Native Americans who possess tribal enrollment cards are not born in
20 the United States, such as some members of the Tohono O'odham tribe who were
21 born in Mexico. [Exhibit 517 (Rodriguez vol. 1 41:19-21)]

22 461. Maricopa County is not aware of any tribal identification cards that include
23 the individual's address. [Exhibit 512 (Osborne vol. 1 49:8-13)]

24 462. Indian Census Cards are only issued to Native American citizens who
25 belong to federally recognized tribes, and as such, they show that the holder is a
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1 U.S. citizen, but they do not contain the holder's address, and accordingly are
2 unacceptable for identification at the polling place. [Exhibit 257]

3 463. In the Counties with high populations of Native American voters, voters
4 may travel over fifty miles to polling places; those without sufficient identification
5 will nevertheless be turned away at the polls. [Exhibit 514 (Pew 11); Exhibit 304]
6 In Apache County, at least one voter returned home four times during an election
7 to try and bring the forms of identification required by Proposition 200, but
8 ultimately was not able to cast a ballot. [Exhibit 514 (Pew 32-33)]

9 464. Some Counties urged the Department of Justice to deny preclearance for the
10 Secretary of State's proposal to use conditional provisional ballots because the
11 procedures would disenfranchise many Native American voters. [Exhibits 304,
12 305 & 306]

13 465. Many Native American communities are very rural and spread out, making
14 it very difficult for a voter who filled out a conditional provisional ballot to return
15 on election day or later with additional identification. The Counties urged the
16 Secretary of State to take these issues into consideration when issuing the polling
17 place procedures, but she refused. [Exhibits 304, 249, 251, 307 & 308]

18 **G. The State Has Received and Compiled Complaints about Voter ID**

19 466. Initially, Arizona was not going to allow any type of ballots for voters who
20 lacked ID. [Exhibit 321]

21 467. Arizona Secretary of State Jan Brewer disagreed with the counsel of
22 Arizona Attorney General Terry Goddard and sought to implement Proposition 200
23 with a requirement that voters without the proper identification not be given a
24 ballot of any kind. [Exhibit 321]

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1 468. The Attorney General's office advised the Secretary of State that such a
2 procedure would constitute a denial of the voters' fundamental right to vote.

3 [Exhibits 244 & 245]

4 469. Specifically, on February 4, 2005, Arizona Secretary of State Jan Brewer
5 wrote to Arizona Attorney General Terry Goddard to seek his approval on a change
6 to the manual for election day procedures which contained revisions made to
7 conform with the requirements of Proposition 200. [Exhibit 322]

8 470. On February 9, 2005 Arizona Attorney General Terry Goddard responded to
9 Secretary of State Jan Brewer's February 4, 2005 letter and stated that he did not
10 believe the proposed identification requirements under Proposition 200 could meet
11 its burden under Section 5 of the Voting Rights Act to show that it did not have a
12 retrogressive effect on minority voters. He explained that many minority voters
13 may not have the necessary documents to receive a ballot under the proposed
14 provisions. He insisted that the State must allow voters who do not have the
15 necessary identification to cast provisional ballots. [Exhibit 322]

16 471. The Counties also strenuously objected to the Secretary of State's original
17 plan because they believed it would disenfranchise voters. [See Exhibits 246, 247,
18 249]. Some Counties objected to the non-photo identification restrictions because
19 some voters, including the elderly and students, would be unlikely to have an
20 approved form of identification even though they were qualified to vote. [Exhibits
21 246, 250, 249 & 251]

22 472. The Counties also felt that the changes were rushed and did not allow
23 sufficient time for the County Recorders to review and comment on the proposals,
24 nor for the County Boards of Supervisors to comply with Arizona's Open Meetings
25 Law to conduct a public session regarding the proposals. [Exhibit 249]

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1 473. Some Counties also objected to the Secretary of State's decisions on the
2 polling place procedures as they related to voter identification because the
3 procedures were an attempt to impose restrictions that were not required by law,
4 and the Secretary of State was thus exceeding her constitutional authority. [Exhibit
5 249]

6 474. The United States Election Assistance Commission staunchly disagreed
7 with Arizona's original position that voters who lacked the requisite identification
8 could not receive a provisional ballot. [Exhibit 252]

9 475. Some Counties objected to any limitation on the types of identification that
10 would be accepted at polling places because the statutory language did not put any
11 such limitations on the identification, and the Counties believed that the Secretary
12 of State should not impose additional restrictions not contemplated by the statute.
13 [Exhibit 253 at p. 4]

14 476. Some of the Counties also believed that the Secretary of State's polling
15 place plan would have a disparate impact on many demographic groups, including
16 Native American and rural voters. [Exhibits 249, 254]

17 477. Some Counties were concerned that the Secretary of State's requirement
18 that an identification card "appear" to match the voter would lead to the partisan
19 disenfranchisement of voters. [Exhibit 255]

20 478. Many of the Counties' concerns were never addressed by the Secretary of
21 State, even though it is the Counties who run the elections and have to implement
22 the procedures. [Exhibits 248-249, 251, 256-257]

23 479. On April 15, 2005, Sheldon Bradshaw, Principal Deputy Assistant Attorney
24 General, wrote to Arizona Secretary of State Janice Brewer in response to her
25 question as to whether it is permissible for a state to mandate that potential voters
26 show identification at the polls prior to receiving a provisional ballot. In his letter

1 the explained that Arizona’s Proposition 200, which required that voters show
2 identification before they receive a provisional ballot, does not violate the Help
3 America Vote Act (HAVA).
4 [http://www.azsos.gov/Releases/2005/pressrelease10/DOJ_Opinion_on_PROP200
5 .pdf].

6 480. In September of 2005, however, Bradley J. Schlozman, Acting Assistant
7 Attorney General, wrote to Secretary Brewer to clarify Bradshaw’s interpretation
8 “in order to ensure an accurate representation of the Justice Department’s views”.
9 In that letter Schlozman corrects Bradshaw and explained that HAVA does in fact
10 require all of the States to allow voters to cast provisional ballots.
11 [http://www.usdoj.gov/crt/voting/hava/az_id.htm].

12 481. The document entitled 2006 General Election ID and Citizenship
13 Complaints is a spreadsheet created by the Election Services Division of the
14 Secretary of State’s office. [Kanefield 23] It was generated from a larger database
15 created by the Election Services Division to log complaints regarding election day.
16 The larger database contains subcategories to categorize election complaints, two
17 of which are identification at the polls complaints and citizenship complaints. The
18 document entitled 2006 General Election ID and Citizenship Complaints represents
19 the complaints pulled from the database from those specific categories. [Kanefield
20 23]

21 482. The 2006 General Election ID and Citizenship Complaints database was
22 created with Microsoft Access, a computer database program that contains a
23 number of fields that can be filled in and navigated by the Secretary of State’s staff.
24 [Kanefield 25]

25 483. The complaints database created by the Secretary of State’s office was
26 designed to provide a mechanism for the Secretary of State’s office to document

1 grievances and complaints quickly on election day, during which a high-volume of
2 all calls are generated. [Kanefield 25]

3 484. According to Joe Kanefield, the 2006 General Election ID and Citizenship
4 Complaints database would not likely contain complaints about proof of citizenship
5 to register to vote, since the database only contains calls and complaints received
6 on election day. [Kanefield 25-26]

7 485. The Secretary of State's office does not log every complaint received into a
8 database, but rather only those received on or around election day. [Kanefield 27]

9 486. The Secretary of State's complaint database does not include any grievances
10 received by any Counties. [Kanefield 28]

11 487. If a county official took action to resolve an election day problem and the
12 Secretary of State's staff knew about the action, then the staff may or may not have
13 documented that action in the complaints database. [Kanefield 28]

14 488. Kris Waite is the Assistant Election Director and supervises the individuals
15 who receive calls and attempt to respond to grievances at the Secretary of State's
16 office. [Kanefield 28]

17 **IX. COUNTY IMPLEMENTATION OF VOTER ID PROVISIONS OF PROP**
18 **200**

19 489. The Counties' implementation of voter ID provisions under Prop 200 is
20 substantially the same as the State's implementation. For example, in order to vote
21 using a regular ballot with only a photo identification, the voter must present an
22 identification issued by Arizona's Motor Vehicle Department. [Exhibit 512
23 (Osborne vol. 1 50:5-12)]

24 490. Similar to State procedures, Voters must provide identification at the polls
25 that match their name and address on the Signature Roster. [Exhibit 258 at p. 23;
26 Exhibit 259 at p. 21; Exhibits 260, 261, 262, 263, 264 & 265] These voters follow

1 the Standard Voting Procedure. [Exhibit 258 at p. 23; Exhibit 259 at p. 21;
2 Exhibits 266 & 267, 517]

3 491. Voter ID clerks determine whether a voter will receive a regular,
4 provisional, or conditional provisional ballot. [Exhibit 508 (Hoyos 20)]

5 492. As is the case under state ID procedures, voters who do not have sufficient
6 voter identification to meet the requirements of Proposition 200 are provided a
7 conditional provisional ballot. [Exhibit 508 (Hoyos 12-14); see Exhibits 268, 269
8 & 270 at p. 27] Voters who have sufficient identification but have another issue
9 with their qualification to vote at the polling place, such as their name not
10 appearing on the Signature Roster or if the voter previously received a vote-by-
11 mail ballot, are provided a “provisional” ballot. [See Exhibit 271]

12 493. However, Yavapai County’s website states that voters without sufficient
13 identification do not receive a ballot at all. [Exhibits 272 & 273]

14 494. As under State Id procedures, voters whose name and/or address on their
15 identification does not match the name and/or address on the Signature Roster must
16 vote using a provisional ballot. [Exhibit 258 at p. 25; Exhibit 259 at pp. 21 & 29;
17 Exhibit 270 at 26; Exhibit 274 at p. 22]

18 495. Similar to State procedures, voters whose names appear on the Signature
19 Roster but who do not have sufficient identification required by Proposition 200
20 must vote a conditional provisional ballot. [Exhibit 258 at p. 25; Exhibit 259 at p.
21 21]

22 496. Voters who fill out a provisional or conditional provisional ballot are to be
23 provided a receipt from the polling place that explains why they had to fill out a
24 provisional ballot, rather than a standard ballot. [Exhibits 275, 276 & 270 at 27]

25 497. When a voter receives a provisional ballot, he must fill out and sign a
26 “Provisional Ballot Envelope” in which he places his completed ballot. [Exhibit

1 269] The Provisional Ballot Envelopes were developed by each county according
2 to the Secretary of State’s guidelines. [Exhibit 277]

3 498. After placing his or her completed ballot in the Provisional Ballot Envelope,
4 the voter places the envelope in the “Emergency Storage Bin.” [Exhibit 269]

5 499. Persons who are not allowed to cast their ballot at the polls, but instead
6 receive conditional provisional ballots because they do not have the identification
7 required by Proposition 200, must return to the County Recorder’s Office or
8 another place designated by the County Recorder to show identification for their
9 ballot to be counted. [Exhibit 514 (Pew 27); SOS Elections Procedures Manual;
10 Exhibit 278]

11 500. Poll workers are supposed to provide voters who fill out a conditional
12 provisional ballot with a list of the locations that will accept his or her
13 identification. [Exhibit 258 at p. 28; Exhibit 259 at p. 29; Exhibit 270 at 27]

14 501. For a primary election, voters who filled out a conditional provisional ballot
15 must return to a designated location to show identification within three days of the
16 election. Therefore, voters who work during the day must take time off from work
17 to bring their identification to another location. Employers are not required under
18 the law to provide employees who filled out conditional provisional ballots with
19 time off to bring their identification to another location. [Exhibit 258 at p. 25;
20 Exhibit 259 at p. 23]

21 502. If a voter returns to a polling place on election day after having previously
22 voted using a conditional provisional ballot because the voter did not originally
23 have sufficient identification, the voter must fill out a Proof of Identification form,
24 which is then placed in the provisional ballot box. The voter may not retrieve their
25 conditional provisional ballot and cast it on election day. [Exhibit 258 at p. 30;
26 Exhibit 259 at p. 31]

1 503. If a voter who filled out a conditional provisional ballot does not return to
2 show sufficient identification, his or her ballot is not counted. [Exhibit 270 at p.
3 28]

4 504. The Counties determine what locations will be used to verify identification
5 for voters who filled out conditional provisional ballots. The Counties also
6 determine who will be allowed to verify the voters' identification and whether
7 political party representatives will be involved. [Exhibit 270 at p. 29; Exhibits 279
8 & 280]

9 505. Some Counties do not perform any background checks of poll workers who
10 are charged with reviewing identification documents at the polls, and therefore do
11 not fully protect voters from identity theft and other potential security risks.
12 [Exhibit 508 (Hoyos 37); Exhibit 521 (Wayman-Trujillo 91); see also Exhibits 256
13 (email regarding need to address identify theft issues in polling place procedures)
14 & 250]

15 506. County election officials have had to inform voters who they know
16 personally that they cannot vote because they lack the identification required by
17 Proposition 200 and have expressed concerns that poll workers will be asked to
18 review identification from voters who they know personally. [Exhibit 508 (Hoyos
19 38); Exhibits 281, 282 & 283]

20 507. For voters who elect to vote early by mail, the Counties use a signature
21 verification process that is sufficient to verify the voter's identification. [Exhibit
22 508 (Hoyos 43); Exhibit 512 (Osborne vol. 1 51:23-52:9); Exhibit 521 (Wayman-
23 Trujillo 110)] No identification is required for those early voters. [Exhibit 284 at
24 5]

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1 508. Voters who receive a vote-by-mail ballot can drop off their completed
2 ballots at any polling place and do not have to show identification at the poll.
3 [Exhibit 258 at p. 26; Exhibit 259 at p. 27]

4 509. For voters who elect to vote early in person, the Counties do not require the
5 voters to present identification, but they do verify the voter’s signature. [Exhibit
6 285 at p. 3]

7 **A. County Efforts to Education the Public on Providing Identification at**
8 **the Polls**

9 510. After the implementation of Proposition 200, some Counties did not have
10 the funding to adequately communicate information about the new identification
11 requirements for voting to the public. [Exhibit 514 (Pew 10)].

12 511. After the implementation of Proposition 200, a few Counties have provided
13 registered voters with documents that the county will accept as a valid form of
14 identification for voting at the polls because there is a concern that some voters will
15 not have the identification documents required by Proposition 200. [Exhibit 508
16 (Hoyos 27-29); Exhibit 514 (Pew 21-22); Exhibit 521 (Wayman-Trujillo 106-107);
17 *see* Exhibit 287 at p. 2; 288, 289 & 290] Pinal County, for example, distributes
18 “sample ballots” prior to every federal, state and county election at a cost of
19 approximately \$70,000 to \$80,000 per distribution. [Exhibit 508 (Hoyos 41-42)];
20 other Counties do not provide voters with official mailers that can be used as a
21 form of identification at the polls. [Exhibit 519 (Exhibit 519 (Stallworth 32))].

22 512. In some instances, the Counties only mailed out educational material about
23 the new voter identification requirements of Proposition 200 to the public one time
24 because the mailings were a costly effort. [Exhibit 508 (Hoyos at 26-27)].

25 513. In some Counties, funds to pay for the cost of producing and distributing
26 mailers and documents such as “sample ballots” and other forms of “official
election” mail that are accepted as one form of identification for voting at the polls

1 have not been budgeted for future elections. [Exhibit 508 (Hoyos 41); Exhibit 521
2 (Wayman-Trujillo 108-109)].

3 514. Maricopa County is considering eliminating mailers for the November 2008
4 elections to address budget issues. [Exhibit 513 (Osborne vol. 2 83:25-84:11)].

5 515. The Counties are not required to send out election mail that can be used as
6 proof of identification at the polls. [Exhibit 514 (Pew 23:4-24:18); Exhibit 507
7 (Hansen 38:3-5), 56:4-9, 57:10-11; Exhibit 508 (Hoyos 54:15-55:23); Exhibit 504
8 (Dastrup 10:7-12); Exhibit 512 (Osborne vol. 1 63:1-3); Exhibit 521 (Wayman-
9 Trujillo 106-107); Exhibits 291 & 292]

10 516. Of the fifteen Counties in Arizona, only a few Counties provide official
11 mailers to registered voters that can constitute one of the two forms of non-photo
12 identification required to vote under Proposition 200. [Exhibit 508 (Hoyos 59)]

13 517. Some “official election mail” from the Counties cannot be used as
14 identification because it is mailed to households, and therefore does not have the
15 voter’s name. [Exhibit 289]

16 518. Some Counties do not have any information posted on their websites about
17 the voter identification requirements of Proposition 200. [Exhibit 508 (Hoyos at
18 33)].

19 519. Some Counties’ websites include information about voting without listing
20 the proof of citizenship requirements. [Exhibit 286].

21 520. Some Counties have not done any outreach in Spanish-language media
22 outlets or other events regarding the voter identification requirements of
23 Proposition 200. [Exhibit 508 (Hoyos 33)].

24 **B. The Counties Vary in Their Approaches to Forms of Identification That**
25 **Are Accepted**

26 521. After and because of the implementation of Proposition 200, some Counties
do not accept valid out-of-state driver’s licenses as sufficient identification for

1 voting at the polls. [Exhibit 508 (Hoyos 22-23); Exhibit 519 (Stallworth 20)].
2 However, Yavapai County does accept valid out-of-state driver's licenses as
3 sufficient identification for voting at the polls and Mohave County would give a
4 conditional provisional ballot to a voter with only an out-of-state driver's license.
5 [Exhibit 521 (Wayman-Trujillo 127-128); Exhibit 293].

6 522. For proof of identification at the polls, Apache County accepts documents
7 that are not listed in the statute as long as the documents have the voter's name and
8 address. [Exhibit 514 (Pew 19:8-22); Exhibit 295at 4]

9 523. Apache County will issue provisional ballots to people with a photo
10 identification that has no address. [Exhibit 514 (Pew 28:20-29:9)]. Coconino
11 County would issue such a voter a conditional provisional ballot. [Exhibit 507
12 (Hansen 84:17-85:1)]. Maricopa County, however, would issue a conditional
13 provisional ballot if the voter had nothing else besides a photo identification with
14 no address on it, but a provisional ballot if he produced a utility bill. [Exhibit 512
15 (Osborne vol. 1 83:10-14)].

16 524. Coconino and Mohave Counties will not accept two utility bills from the
17 same company as acceptable voter identification, but Apache County would call
18 the County Attorney's office for guidance on this issue. [Exhibit 507 (Hansen
19 41:20-24); Exhibit 293; Exhibit 514 (Pew 29:14-25)]. On the contrary, it is the
20 policy of Maricopa County to accept two utility bills from the same company as
21 acceptable voter identification. [Exhibit 512 (Osborne vol. 1 54:21-55:6, 83:15-
22 18)].

23 525. Apache County will issue conditional provisional ballots to someone with
24 two non-photo forms of identification that show a wrong address, but Coconino
25 and Mohave Counties would issue such a voter a provisional ballot. [Exhibit 514
26 (Pew 30:24-31:6); Exhibit 507 (Hansen 85:14-18), Exhibit 293].

1 526. Coconino County will not accept statements from financial institutions other
2 than banks. [Exhibit 507 (Hansen at 42:20-23)] Navajo County would leave it up
3 to the poll worker to determine if the identification were reliable. [Exhibit 504
4 (Dastrup Dep. 19:24-20:8), Aug. 1, 2006 (“Dastrup”)]

5 527. Coconino County does not take credit card bills as proof of identification,
6 Apache County does, and Navajo County does not know. [Exhibit 507 (Hansen
7 81:22); Exhibit 504 (Dastrup 19:19-21); Exhibit 514 (Pew 19:18-22)].

8 528. Apache and Maricopa Counties will take bills from Internet Service
9 Providers and satellite TV companies. [Exhibit 514 (Pew at 19:8-14); Exhibit 512
10 (Osborne vol. 1 at 52:19-53:23)]. Navajo County will take satellite TV bills.
11 [Exhibit 504 (Dastrup 17:19-21)].

12 529. The Counties do not accept passports or military identification cards for
13 identification at the polls. [Exhibit 285 at p. 4 & Exhibit 294].

14 530. Individual poll workers make the decision as to what forms of identification
15 are reliable, leaving the implementation of the provisions to the whims of the
16 workers, which leads to inconsistency across the Counties. [Exhibit 504 (Dastrup
17 18:6-22)]. Maricopa County has “zero level of confidence” that all election
18 boardworkers would come to the same decision regarding when a particular
19 identification was acceptable and when it would require voting a conditional
20 provisional ballot. [Exhibit 512 (Osborne vol. 1 87:11-19)].

21 531. Even though the Counties have discretion to allow additional forms of
22 identification, some Counties have chosen not to exercise that discretion and have
23 limited the identification they accept to those listed in the Secretary of State’s
24 Elections Manual. [Exhibit 296].

25
26

1 **C. Detrimental Effects of Proposition 200 on the Counties**

2 532. Prior to the implementation of Proposition 200, registered voters could enter
3 a polling place run by their county, announce their name, sign in, and proceed to
4 get a ballot. [Exhibit 508 (Hoyos 9-10)].

5 533. After and because of the implementation of Proposition 200, Counties have
6 had to develop methods by which to review the forms of identification in the
7 possession of voters at the polling place in order to determine whether voters are
8 eligible to vote. [Exhibit 508 (Hoyos 9-10)].

9 534. Because Arizona is a covered jurisdiction under the Voting Rights Act, the
10 Counties were required to submit their new polling place procedures to the
11 Department of Justice for preclearance. [Exhibits 297 (Pima County submission)
12 & 298(Cochise County submission)].

13 535. After and because of the implementation of Proposition 200, the Counties
14 have had to reconfigure their polling places to include voter identification stations,
15 where voters have their identifications checked by voter “I.D. clerks” before they
16 are allowed to cast their ballots. [Exhibit 508 (Hoyos 9-11)].

17 536. After and because of the implementation of Proposition 200, the Counties
18 have had to reconfigure their polling places to include provisional ballot stations,
19 where voters who cannot present the forms of identification required by
20 Proposition 200 are referred. [Exhibit 508 (Hoyos 12)].

21 537. The Counties are responsible for hiring the additional poll workers that are
22 required at the polls due to Proposition 200. [Exhibit 508 (Hoyos 10); Exhibit 250]

23 538. Yavapai County has had poll workers quit and had a harder time recruiting
24 poll workers as a result of the enactment of Proposition 200. [Exhibit 521
25 (Wayman-Trujillo 90-91); Exhibit 299].

26

1 539. After and because of the implementation of Proposition 200, voters who
2 have been told that they may only receive a provisional ballot or a conditional
3 provisional ballot have raised objections and have been upset that they cannot cast
4 their ballots. [Exhibit 508 (Hoyos 16-17)].

5 540. Prior to the implementation of Proposition 200, there was no ballot that a
6 voter was offered that would require the voter to return to the polling place with
7 additional documentation to satisfy an identification requirement before he or she
8 could cast his or her vote. [Exhibit 508 (Hoyos 17-18)].

9 **X. AGGREGATE IMPACT OF PROP 200 ON REGISTRANTS AND VOTERS**

10 541. Thousands of voter registration forms were rejected in the wake of Prop 200
11 implementation

12 542. Prop 200 has prompted many people to voice their opposition to its voting
13 and registration requirements. [Pl. Tr. Ex. 679 – 687; 689; 693].

14 543. Since the passage of Proposition 200, over 35,000 voter registration
15 applications have been rejected due to the documentary proof of citizenship
16 requirements. [Exhibits 332 & 332].

17 544. County elections officials believe that U.S. citizens are disenfranchised by
18 Proposition 200's requirements. [Exhibit 514 (Pew 12:1-8); Exhibit 507 (Hansen
19 35:11-16)].

20 545. The Maricopa county manager of Voter Registration reported on October
21 25, 2005, that rejections went down to 35% from 40%. [Exhibit 121].

22 546. From January 24, 2005 to July 13, 2006 the Maricopa County Recorder
23 received 118,209 voter registration forms through the mail or over the counter, and
24 15,090 were rejected for failure to provide proof of citizenship. [Exhibit 512
25 (Osborne vol. 1 21:12-19)].

26

1 547. In Maricopa County in 2005, thirty-five percent of new voter registrations
2 were rejected for insufficient proof of citizenship. That amounts to 11,197
3 potential voters. [Exhibit 333].

4 548. In Maricopa County in 2006, seventeen percent of new voter registrations
5 were rejected for insufficient proof of citizenship. That amounts to 6,686 potential
6 voters. [Exhibit 333].

7 549. In Maricopa County in 2007, twenty-four percent of new voter registrations
8 were rejected for insufficient proof of citizenship. That amounts to 9,044 potential
9 voters. [Exhibit 333].

10 550. In the first week of January 2008, in Maricopa County, eighteen percent of
11 new voter registrations were rejected for insufficient proof of citizenship. That
12 amounts to 108 potential voters. [Exhibit 333].

13 551. Tammy Patrick of Maricopa County acknowledged high rejection rate
14 because of the Prop 200 documentary proof of citizenship requirement to vote. She
15 attempted to reconcile the statute demand for the certification of naturalization
16 number with the fact that the certificate number cannot be verified. [Exhibit 399].

17 552. From January 24, 2005 to mid-2006, Apache County rejected 132 of 3,333
18 voter registration forms for failure to provide proof of citizenship, despite believing
19 that the prospective voters were citizens. [Exhibit 510 (Johnson 13:22-14:16)].

20 553. From January 24, 2005 to mid-2006, Coconino County rejected 494 voter
21 registration forms for failure to provide proof of citizenship. [Exhibit 507 (Hansen
22 15:25-16:8)].

23 554. From December 1, 2007 to February 14, 2008, Coconino County rejected
24 ninety-one people for failing to prove citizenship, sixty-one of which provided the
25 requested partial Social Security number. [Exhibit 324, Attach 1, p. 1; Attach 2, p.
26 1; Attach 3, p. 1].

1 555. From January 24, 2005 to mid-2006, Navajo County rejected 175 of 3,935
2 voter registration forms for failure to provide proof of citizenship. [Exhibit 509
3 (Justman 14:10-17)].

4 556. Most new voter registrants have used a driver's license number or non-
5 operating identification license number to register. [stipulated fact]

6 557. Coconino County reported voter turnout on its Indian reservations at
7 73.04% for the November 2, 2004 General Election; however, 74 out of 82 of the
8 "voter registration forms rejected[,] not because of lack of citizenship", but instead
9 the majority had address problems. Candace Owens, Coconino County Recorder,
10 explained the problem was due to the "observation of the meaning of 'residence' to
11 a Navajo voter is that of their parents' or clan and is the location of their chapter
12 membership, not their mailing or actual current residence. As a result, the voter
13 registration records of their residence are not the same as the documents they
14 present for identification. Therefore, they are unable to present proper
15 identification and cannot vote." In the 2006 Primary Election, she explains another
16 consequence can be illustrated by 38 Tonalea South voters were given the wrong
17 ballot. [Pl. Tr. Ex. 600; 607; 610; 617].

18 558. Tammy Patrick, Federal Compliance Officer for Maricopa County,
19 indicated that since the passage of Proposition 200 Maricopa County has been
20 forced to reject voter registration applications because they lacked the necessary
21 documentary proof of citizenship. The county reported that in 2006, 82 % of voters
22 over 65 who did not have sufficient ID did not return to the polls. She attributes the
23 high rate of rejected voter registration applications to Proposition 200's
24 documentary proof of citizenship. She also had attempted to reconcile,
25 unsuccessfully, the statute's demand for the certificate of naturalization number
26 with the fact that the certificate number cannot be verified. Ms. Patrick has

1 indicated that since Proposition 200 was implemented, 739 conditional provisional
2 ballots were not counted in the county. [Pl. Tr. Ex. 636; 638; 650; 666].

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

5 **A. Many Citizens Possess a Driver's License Issued Before October 1, 1996**

6 560. Coconino County raised the issue to the VRAZ County Advisory
7 Committee that if a voter had a license issued before October 1, 1996, but had
8 changed their address after that date online rather than in person, they would not
9 have a new license dated after October 1, 1996 (whereas they would if they had
10 gone in person and requested a new license with the address change). Thus, people
11 who changed their license address online would have to present proof of
12 citizenship in order to vote, whereas those who had changed their address in person
13 at the MVD and gotten a new license with that address would not have to. It was
14 then pointed out that people do have the option online of purchasing a new driver
15 license that reflects their address change, and that this would help them avoid
16 problems when voting. [Exhibit 150].

17 **B. Documentary Proof of Citizenship is not Universally Held in Arizona**

18 561. In August 2006, the Arizona Department of Motor Vehicles reported that
19 approximately 796,040 people in Arizona had state identification cards or driver's
20 licenses issued before October 1996. [Exhibit 108].

21 562. Thousands of people lack a driver's license dated after October 1, 1996.
22 Letter from Stacey Stanton to Bill Richards providing information about Arizona
23 driver license and identification card statistics. [Exhibit 347].

24 563. William A. Richards, Senior Litigation Counsel of the Attorney General
25 provides the total of Arizona registered voters listed on the database maintained by
26 the Arizona SOS as of July 25, 2006: 2,972,214 compared with 2,597,619 as the

1 total number of registered voters for which the database reflects an identification
2 number from an Arizona driver's license or non-operating Arizona identification
3 card. [Exhibit 423].

4 564. On June 23, 2006, the Georgia Secretary of State issued a press release that
5 explained that, "[d]emographic analysis shows that registered voters lacking a
6 driver's license or state-issued Georgia ID card are disproportionately elderly and
7 minority." [Pl. Tr. Ex. 599].

8 565. There are some individuals who are derivative naturalized citizens, but yet
9 will not be in possession of a certificate of citizenship. Under certain
10 circumstances, a child of a U.S. citizen parent becomes a U.S. citizen automatically
11 without soliciting citizenship. 8 U.S.C. § 1431

12 566. Some Native American tribal members, such as members of the Tohono
13 O'odham Nation, do not have addresses, making it difficult for them to provide
14 identification that includes their address. [Exhibit 517 (Rodriguez vol. 1 70:6-70:8,
15 71:13-15)].

16 567. A number of Native Americans have difficulty meeting Proposition 200
17 identification requirements because they either have no electricity or live in large
18 households where the utility bills come in someone else's name, and they lack
19 photo identification because of the cultural belief that photographs of people are
20 taboo. [Exhibit 510 (Johnson 32:3-33:2); Exhibit 507 (Hansen 59:6-25); Exhibits
21 304, 326 & 305].

22 568. Native Americans living on tribal lands are not assessed property taxes and
23 thus do not have property tax statements they can use as identification. [Exhibit
24 507 (Hansen 46:3-6); Exhibit 304].

25
26

- 1 569. The Hopi and Havasupai tribes do not issue tribal identification that
2 contains a name, address, and photograph. [Exhibit 507 (Hansen 39:21-25, 40:8-
3 12)].
- 4 570. Older Navajos are likely to have been born at home, and thus lack birth
5 certificates and in many cases do not know the actual date of their birth. [Exhibit
6 507 (Hansen 23:8-18); Exhibit 323].
- 7 571. Some Native American tribes, such as the Tohono O’odham, do not issue
8 birth certificates. [Exhibit 517 (Rodriguez vol. 1 41:21-22)].
- 9 572. There are U.S. citizens who cannot satisfy the Proposition 200 requirements.
10 Such individuals include Native Americans and others born in jurisdictions that
11 cannot provide them with a birth certificate (including the mother of Pima County
12 Recorder Ann Rodriguez) [Exhibit 517 (Rodriguez vol. 1 at 89:4-90:20)], and
13 people who were adopted whose original birth certificate is sealed [Exhibit 518
14 (Rodriguez vol. 2 at 121:10-13)], and Native Americans such as Navajos with a
15 cultural belief that photographs are taboo. [Exhibit 510 (Johnson at 32:7-10)].
- 16 573. University students living in university housing on a temporary basis have
17 difficulty meeting Proposition 200 requirements when they maintain their driver’s
18 license at their permanent home address. [Exhibit 517 (Rodriguez vol. 1 97:25-
19 98:10) (discussing U of A); Exhibit 507 (Hansen at 62:1-10 (discussing NAU)); *see*
20 Exhibit 324; Exhibits 325, 326 & 327].
- 21 574. Older voters who do not drive and no longer have bills in their own names
22 have been unable to satisfy Proposition 200 identification requirements. [Exhibit
23 507 (Hansen 65:4-16)] Several Counties were concerned that older voters,
24 particularly those in nursing homes, lacked the necessary identification and would
25 be prevented from voting. [Exhibits 233, 327, 328, 329, 326 & 305].
26

1 575. Major pockets of the Tucson Latino community require bus service because
2 large numbers of people do not have cars, and thus they have a very difficult time
3 obtaining the proof necessary to vote. [Exhibit 517 (Rodriguez vol. 1 108:2-10)
4 (referring to study by Pima County Association of Governments)].

5 576. USCIS Form N-565 is the application an individual would submit in order
6 to request a replacement of their naturalization certificate. The application fee is
7 \$380.00. [Exhibit 330].

8 577. If a person applied for a replacement of his naturalization certificate, the
9 original "A file" needs to be retrieved from the location where the file was retired.
10 [Exhibit 515 (Quinn 46:8-10)].

11 578. Some places take as long as six months to issue a replacement of a
12 naturalization certificate. [Exhibit 515 (Quinn 47:4-11)].

13 579. There are different National Archives locations. The bulk of the files are in
14 Lee's Summit, Missouri, but there are some files in Maryland, Washington, and
15 California. [Exhibit 515 (Quinn 47:16-48:2)].

16 580. Some "A files" cannot be retrieved from their archives because USCIS
17 cannot find them. [Exhibit 515 (Quinn 50:4-7)].

18 581. For persons born abroad with U.S. citizen parents the only way the Central
19 Index System will show one's citizenship will be if a person affirmatively applies
20 for a certificate of citizenship. [Exhibit 515 (Quinn 88:1-8)].

21 **C. Arizona Photo Voter ID Identification Costs Money to Obtain**

22 582. Only persons who own real property will have access to a property tax
23 statement in their name. [stipulated fact]

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

26

1 584. Excerpt from the Arizona Notary Public Reference Manual regarding fees a
2 notary may charge. [Exhibit 416].

3 585. Arizona and other states in the United States charge fees for obtaining a
4 birth certificate. [Exhibits 417; 418; 419].

5 586. The total charge as of August 2006 for obtaining a passport is \$97.00.
6 [Exhibit 420].

7 587. The fees for an Arizona driver's license vary depending upon the age of the
8 applicant. [Exhibit 421].

9 588. There is a \$4.00 charge for obtaining a replacement or duplicate driver
10 license or identification card in Arizona. [Exhibits 421; 422].

11 589. Arizona Department of Transportation requires that a driver's license
12 applicant demonstrate they have authorized presence in the United States.
13 However the fees involved in obtaining such proof can include: fees that vary,
14 depending on age, to obtain an Arizona driver's license, fees Arizona and other
15 states charge to obtain a replacement birth certificate, a \$4.00 fee for a replacement
16 or duplicate Arizona driver's license, to a \$97 fee required to obtain a U.S.
17 Passport, a \$220 fee to obtain a replacement certificate of naturalization or the fee
18 attributed to notarizing a document. [Pl. Tr. Ex. 670; 672-677; 690-692].

19 590. Maricopa County reported that from the time Proposition 200 was
20 implemented and on March 31, 2006, 86% of voters who needed to return to an ID
21 Verification Site after casting a conditional provision ballot did not return and their
22 ballots were not processed. [Pl. Tr. Ex. 642, 652].

23 591. Maricopa County reported a total of 108 Conditional Ballots for its May 16,
24 2006 election. They reported that 55% of those conditional provisional ballots cast
25 went uncounted. On March 15, 2006, they reported that 134 of the 177 conditional
26 provisional ballots cast in its last election were never resolved. The county reports

1 the percentage of unresolved conditional provisional ballots increased from 55% in
2 March of 2006 to 65% in May of that year. [Pl. Tr. Ex. 637; 640-641; 643; 648].

3 592. Maricopa County reported a total of 130 conditional provisional ballots cast
4 in its Spring 2006 elections. For its General Election in 2006, the county reported
5 73% of the unconditional provisional ballots cast were not counted, and for the
6 Primary of that year 57% of the unconditional provisional ballots cast were not
7 counted. [Pl. Tr. Ex. 643; 649].

8 593. On March 13, 2007 the City of Somerton, in Yuma County, reported 2
9 rejected provisional ballots. The city also reported six rejected provisional ballots
10 on May 15, 2007. [Pl. Tr. Ex. 635].

11 **D. Prop 200's Proof of Citizenship Requirement has a Disparate Racial**
12 **Impact on Latinos**

13 1. Dr. Lanier's Analysis

14 594. Dr. Lanier performed analyses on data based on scanned copies of rejected
15 voter registration forms for fourteen of the fifteen Arizona counties. [Lanier
16 Report 4] The forms were provided to Plaintiffs by County Defendants.

17 595. For his study, Dr. Lanier also relied on the Arizona voter rolls electronic
18 dataset, which contains records of voter registrations for a time period ending in
19 August 2007. [Lanier Report 3]

20 596. Dr. Lanier also used for his study an electronic Excel file used by the
21 Census Bureau containing Hispanic surnames, classified by their likelihoods of
22 representing an Hispanic individual. This surname file was merged with the voter
23 rolls dataset by surname. [Lanier Report 3]

24 597. Dr. Lanier considered an individual registrant to be Hispanic if his/her
25 surname is classified as "Heavily Hispanic" or "Generally Hispanic"—the two
26 classifications having the highest likelihood of representing an Hispanic individual.
[Lanier Report 3]

1 598. The rejected voter registration forms were provided in a format that is not
2 useable for statistical analysis. Therefore, a professional data entry firm was
3 contracted to enter these handwritten registration forms into a useable electronic
4 dataset. Given the timing of the production of these forms by defendants, it was
5 impossible to complete the task of manually entering the data prior to the due date
6 for the first report.

7 599. Arizona counties produced only voter registration forms that were rejected
8 due to the provisions of Prop 200. [Fourth Supplemental Report of Dr. Louis R.
9 Lanier 3, May 9, 2008 (“Lanier Fourth Supplemental Report”)]

10 600. Santa Cruz County did not produce rejected voter forms. [Lanier Fourth
11 Supplemental Report 3]

12 601. The rejected voter forms submitted by Yuma County were incomplete, and
13 therefore Dr. Lanier’s analyses only partially reflects the situation in Yuma
14 County. [First Supplemental Report of Dr. Louis R. Lanier 2, March 21, 2008
15 (“Lanier First Supplemental Report”)]. The production of rejected voter forms
16 submitted by Yuma County were incomplete because Yuma County election
17 officials did not produce and subsequently shredded the rejected forms in the
18 summer of 2007. [stipulated fact]

19 602. The total number of rejected forms from the fourteen counties (excluding
20 Santa Cruz) as of the fall 2007 (the end of the data produced by defendants) was
21 38,359. [Lanier Fourth Supplemental Report 2-3]

22 603. Of these, 6,809 were dropped for the purposes of analysis because of:
23 duplicate forms, blank names, missing information or a “No” in the U.S.
24 citizenship field, or a registration date prior to January 1, 2005. Therefore, the total
25 number of rejected voters in Dr. Lanier’s analyses is 31,550. [Lanier Fourth
26 Supplemental Report 3]

1 604. Approximately 79 percent of the rejections occurred after June 1, 2005.
2 [Lanier Fourth Supplemental Report 3]

3 605. According to Dr. Lanier, all fourteen counties for which data are available
4 recorded rejections due to the provisions of Prop 200. [Lanier Fourth
5 Supplemental Report 3]

6 606. Dr. Lanier found that the large majority of rejections were of non-Hispanic
7 registration applicants. [Lanier Fourth Supplemental Report 3]

8 607. According to the results of Dr. Lanier's analyses, among rejected applicants,
9 Hispanics were less likely than non-Hispanics to achieve success in a subsequent
10 attempt to register. [Lanier Fourth Supplemental Report 3]

11 608. In total, Hispanics represented 19.8 percent of rejected applicants who were
12 ultimately unsuccessful, while they represented a lower 11.0 percent of those who
13 were subsequently able to register after initial rejection. [Lanier Fourth
14 Supplemental Report 3]

15 609. According to the results of Dr. Lanier's analyses, in the cases of Hispanics
16 and non-Hispanics among rejected registration applicants who reported a place of
17 birth, a large majority of the rejected applicants in both groups —86.6 percent of
18 Hispanics and 92.9 percent of non-Hispanics—reported that they were U.S.-born.
19 [Lanier Fourth Supplemental Report 3]

20 610. In order to approximate the number of voter registrants who would have
21 successfully registered to vote in Arizona after January 1, 2005 in the absence of
22 Prop 200, Dr. Lanier combined the rejected voter data with voters from the Arizona
23 voter roll data who registered after January 1, 2005. [Lanier Fourth Supplemental
24 Report 3-4]

25
26

1 611. According to Dr. Lanier, the combination of these two datasets creates a
2 universe of individuals who, in the absence of Prop 200, would have been allowed
3 to register. [Lanier Fourth Supplemental Report 4]

4 612. Dr. Lanier used the combination of these datasets to analyze: the numbers of
5 individuals who registered, or attempted to register and were denied due to Prop
6 200, after January 1, 2005, by county; the percent Hispanic, by county, among all
7 registration applicants after January 1, 2005; among all rejected applicants,
8 regardless of the ultimate registration outcome; among those applicants who
9 successfully registered after January 1, 2005; and among those who were
10 ultimately rejected due to Prop 200. [Lanier Fourth Supplemental Report 4]

11 613. Based on his analyses, Dr. Lanier concluded that statewide, Hispanic
12 representation among rejected applicants was 2.8 percent higher than Hispanic
13 representation among all registration applicants, indicating that Hispanics were
14 disproportionately rejected relative to their representation among all applicants.
15 [Lanier Fourth Supplemental Report 4]

16 614. Based on his analyses, Dr. Lanier concluded that the percent Hispanic
17 among those who were rejected and ultimately unsuccessful at registering was 6.1
18 points higher than the percent Hispanic among all successful registrants, indicating
19 that Hispanics were disproportionately unsuccessful at registering relative to their
20 representation among successful registrants. [Lanier Fourth Supplemental Report
21 4]

22 615. Dr. Lanier used demographic and socio-economic Census 2000 data to
23 analyze the addresses of registration applicants with rejected registration forms.
24 [Lanier Fourth Supplemental Report 4-5]

25 616. From his analyses, Dr. Lanier concluded that Hispanic rejected registration
26 applicants come from areas of Arizona where the population is less likely to speak

1 English well, possesses less schooling, and earns a lower household income than
2 the averages for the state. [Lanier Fourth Supplemental Report 5]

3 617. Based on the statistics presented in Dr. Lanier's report, he concluded that of
4 those registration applicants who were rejected due to Prop 200, Hispanics were
5 less likely than non-Hispanics to successfully register after the rejection. [Lanier
6 Fourth Supplemental Report 6]

7 618. Based on the statistics presented in Dr. Lanier's report, he concluded that
8 Hispanics were more likely to have their registration applications rejected relative
9 to their representation among all registration applicants. [Lanier Fourth
10 Supplemental Report 6]

11 619. Based on the statistics presented in Dr. Lanier's report, he concluded that
12 Hispanics were more likely to be ultimately unsuccessful in their attempts to
13 register relative to their representation among successful registrants. [Lanier
14 Fourth Supplemental Report 6]

15 620. Based on the statistics presented in Dr. Lanier's report, he concluded that
16 Hispanic rejected registration applicants come from areas of Arizona where the
17 population is: less likely to speak English well; less educated; poorer; and more
18 highly Hispanic in makeup. [Lanier Fourth Supplemental Report 6]

19 621. Based on the statistics presented in Dr. Lanier's report, he concluded that
20 Hispanic rejected registration applicants are from areas that are more likely to use
21 public transportation and more urban than statewide averages. [Lanier Fourth
22 Supplemental Report 6]

23 2. Dr. Espino's Analysis

24 622. Dr. Rodolfo Espino examined voter registration data across the fifteen
25 Counties of Arizona and assessed effects on Arizona's Hispanic population since
26

1 the implementation of Proposition 200. [Exhibit 561 (Expert Report of Dr.
2 Rodolfo Espino, III 1, January 7, 2008 (“Espino Report”))]

3 623. To conduct his analyses, Dr. Espino used a statewide voter database for
4 Arizona that was merged with a Hispanic surname database in order to code
5 individual voter’s as Hispanic. [Exhibit 561 (Espino Report 2)]

6 624. Utilizing this data, Dr. Espino examined the percentage of voters with
7 Hispanic surnames who were registered from the start of the implementation of
8 Proposition 200 (January 1, 2005) to the end of July 2007 – 941 days. [*Id.*]

9 625. He compared this figure to the percentage of voters with Hispanic surnames
10 who were registered to vote in the 941 days preceding the implementation of
11 Proposition 200 - June 04, 2002 to December 31, 2004. [*Id.*]

12 626. Dr. Espino plotted the percentage of Hispanic voters registered across this
13 62 month time period on a number of time series charts. [*Id.*]

14 627. According to Dr. Espino, normally there are cyclical ups and downs to the
15 total number of voters registered in a jurisdiction - usually an upswing in the early
16 part of an election year and then a down surge following the election date. [*Id.*]

17 628. According to Dr. Espino, if all individuals, irrespective of race, are being
18 registered at the same proportion, the data should fall in a constant line across in
19 time. [*Id.*]

20 629. Dr. Espino noted, however, that data was not constant across time in his
21 analyses. [*Id.*]

22 630. For example, in the late spring and summer of 2004, a modest increase in
23 the Hispanic registration rate can be seen - an increase of about 4 percent heading
24 into the 2004 general election. This increase was followed by a rapid decline
25 following the 2004 general election cycle and into the first half of 2005.

26

1 According to Dr. Espino, this should not occur if Hispanics were continuing to be
2 registered at the same proportion as other voters. [*Id.*]

3 631. Furthermore, the lack of a significant recovery of this registration rate in the
4 ensuing two years demonstrates that Hispanics were continuing to experience
5 registration lower than their share of the total state population and at rates even
6 lower than the previous mid-term general election cycle in 2002. [Exhibit 561 at 2-
7 3]

8 632. Dr. Espino observed an unexpected bump in the Hispanic registration rate in
9 the late spring and early summer of 2007. This spike was unanticipated because
10 2007 was not a general election year. [*Id.*]

11 633. According to Dr. Espino, this spike of registration rates for Hispanics
12 beyond 18 percent for several months pulls the rate of Hispanic registration for the
13 31 months following January 2005 to levels nearly equivalent to the 31 months
14 preceding January 2005. [*Id.*]

15 634. To provide further substantive interpretation the voter registration data Dr.
16 Espino plotted, he provided fitted line values as a function of the slope coefficients
17 and time in weeks for Hispanics and non-Hispanics for the period preceding
18 Proposition 200 and the period following Proposition 200. [Exhibit 562 (Reply of
19 Dr. Rodolfo Espino, III 4, May 22, 2008 (“Espino Reply”))]

20 635. Dr. Espino did so for each of Arizona’s 15 Counties. [Exhibit 562 at 4]

21 636. Dr. Espino notes that any positive values of coefficients for Hispanics or
22 non-Hispanics indicate an increase in the value of the coefficients - in other words,
23 an increase in the rate of that demographic group becoming registered to vote.
24 Conversely, any negative values in the percent change of the coefficients between
25 the two time periods indicate a decline in the rate of that demographic group
26 becoming registered to vote. [*Id.*]

1 637. According to Dr. Espino, making the very conservative assumption that
2 there are no population changes between Hispanics and non-Hispanics across this
3 time period, one would expect that there would be no percent change in the weekly
4 registration rate if Proposition 200 had no differing impact between demographic
5 groups. [*Id.*]

6 638. That was not the result here, however, as Dr. Espino observes variation in
7 the changes across Arizona's Counties. [Exhibit 562 at 5]

8 639. According to Dr. Espino, the reason there is added value in such a county by
9 county analysis is because Arizona's Hispanic population is not uniformly
10 distributed across Arizona's 15 Counties. [*Id.*]

11 640. Two of Arizona's Counties with high populations of Hispanic citizens are
12 Pima and Yuma Counties. [Exhibit 562 at 6]

13 641. Therefore, according to Dr. Espino, the drop in the registration rate of
14 Hispanics following Proposition 200 in some of Arizona's most heavily Hispanic
15 Counties suggests that the effects of Proposition 200 are detrimental to a large
16 number of Hispanic citizens in Arizona. [*Id.*]

17 642. Because Arizona consists of 15 Counties with tremendous variability in
18 population size, Dr. Espino attempted to parse out the registration rates of
19 Hispanics for each of these 15 Counties in the time period under consideration.
20 [Exhibit 562 at 2-3]

21 643. According to Dr. Espino, the registration rates of Hispanics for Maricopa
22 County most closely resemble the overall state trend. [*Id.*]

23 644. Maricopa County is Arizona's largest county, and Dr. Espino notes that it is
24 therefore not unusual that Maricopa County drives the overall state average.
25 [Exhibit 562 at 4]

26

1 645. According to Dr. Espino, his observation of the Hispanic voter registration
2 is justified because it is informed by an understanding of the history of voter
3 disenfranchisement in Arizona and also by the fact that ocular assessments are
4 common place in many scientific fields, particularly when it relates to
5 communicating results to a wider audience. [Exhibit 563 (Second Rebuttal of Dr.
6 Rodolfo Espino, III 6, March 9, 2008 (“Second Espino Rebuttal”))]

7 646. According to Dr. Espino, when performing ocular assessments of time-
8 series data, it is imperative to keep in mind what is being looked at, in this case, the
9 rate of Hispanic voter registration in the state of Arizona. [Exhibit 563 at 1]

10 647. According to Dr. Espino, an understanding of the voter registration data
11 under consideration should inform a knowledgeable scientist what might be
12 expected, particularly in the State of Arizona. [*Id.*]

13 648. According to Dr. Espino, the State of Arizona is covered by many sections
14 of the Voting Rights Act, which was renewed by Congress in 2006. Arizona is
15 under coverage because of its past history in disenfranchising minority populations.
16 [*Id.*]

17 649. According to Dr. Espino, with an understanding of this history in mind, it
18 can be seen that the effect of Proposition 200 continues this legacy of presenting
19 significant barriers to the ability of Arizona’s Hispanic population to register to
20 vote. [*Id.*]

21 650. According to Dr. Espino, myriad scholarship provides well-documented
22 effects of such electoral laws and on the continuing effect it has on minority
23 populations today. [*Id.*]

24 651. According to Dr. Espino, generally rules inhibit participation when they
25 place undue costs on individuals, but these rules affect those with lower levels of
26 education disproportionately. [Exhibit 564 (Espino Reply 1)]

- 1 652. According to Dr. Espino, the factors that affect minorities, and minority
2 participation, result from, at times, seemingly innocuous provisions such as the
3 type of voting equipment used. [Exhibit 564 at 2]
- 4 653. According to Dr. Espino, one study showed that Blacks cast invalid ballots
5 at higher rates than Whites, when punch cards are used, leading the authors to
6 recommend Direct Recording Electronic machines (DREs). [*Id.*]
- 7 654. The factors contributing to this phenomenon are not only lower levels of
8 education, but also less experience with voting devices, as well as less willingness
9 on the part of minorities to seek assistance at the polls where there is racial
10 intimidation or a history of disenfranchisement. [*Id.*]
- 11 655. Another study analyzed the use of Internet Voting for the Democratic
12 Party's primary election in Arizona on March 11, 2000. [*Id.*]
- 13 656. The author concluded that it was the economically well off who benefited
14 from this method, and there was modest evidence that nonwhite populations were
15 disadvantaged. [*Id.*]
- 16 657. According to Dr. Espino, another seemingly innocuous provision is the
17 nonpartisan ballot, which one study showed "disadvantage the poor, the working
18 classes, liberal voters and Democrats." [*Id.*]
- 19 658. Another study showed that election-day registration (EDR), adopted by
20 many states between 1990 and 1994, helps to improve turnout among young
21 persons, and recent movers. [*Id.*]
- 22 659. Another study proposed the idea that electoral laws be assessed not only
23 with regard to pre-existing guidelines, but also with regard to their outcomes, or
24 impact on minority populations. [*Id.*]
- 25 660. According to Dr. Espino, this was in the context of gerrymandering, of
26 course, but it resonates in the context of Proposition 200, because all rules and

1 institutions that translate preferences into electoral outcomes affect representation,
2 especially that of racial and ethnic groups. [*Id.*]

3 661. Another study noted that the practice of purging inactive voters, and mail-in
4 balloting, both of which impact access, were negative and significant as predictors
5 of voting by naturalized Latin American immigrants. [*Id.*]

6 662. According to Dr. Espino, de jure attempts to curtail voting by Blacks in the
7 form of literacy tests, and poll taxes, as well as by the less well known methods of
8 white primaries and “good moral character” clauses are well documented, but just
9 as important was the “uneven application” of them, including the refusal to accept
10 poll tax payments from Blacks, and, potentially more directly related to the present,
11 the registration of whites in spite of not having met requirements. [*Id.*]

12 663. Another study cited by Dr. Espino analyzed exit polls conducted in
13 California, New Mexico and Washington during the 2006 election. [Exhibit 564 at
14 3]

15 664. The authors find that being an ethnic minority in these states (e.g. Latino,
16 Asian or Black) was negatively and significantly related to being unable to provide
17 identification above and beyond a driver’s license, controlling for the independent
18 impact of income, education, sex, time spent in the U.S. and being foreign-born,
19 among others. For the foreign-born, even a Driver’s License was difficult to
20 provide. [*Id.*]

21 665. According to Dr. Espino, nearly every scientific discipline relies on ocular
22 assessments for data collection and estimation. [Exhibit 565 (Rebuttal of Dr.
23 Rodolfo Espino 4, March 7, 2008 (“Espino Rebuttal”))]

24 666. According to Dr. Espino, nearly every scientific discipline relies on such
25 ocular assessments for data collection and estimation. [Exhibit 565 at 1]

26

1 667. According to Dr. Espino, the basis for ocular assessments is premised on
2 scientists' ability to effectively communicate conclusions to a wider audience.

3 [*Id.*]

4 668. According to Dr. Espino, the visual presentation of data serves as an
5 effective and transparent way of communicating findings of patterns in data to a
6 wide array of audiences that can be easily understood, and more importantly,
7 provide an effective way of observing differences in data, particularly differences
8 in data over time that would otherwise be hidden with simple summary measures,
9 such as the mean, or with sophisticated, quantitative regression models. [*Id.*]

10 669. According to Dr. Espino, the drop in the rate of voter registration for
11 Hispanics in Arizona following the implementation of Proposition 200 would be
12 even more pronounced if Maricopa County was excluded from the statewide
13 analysis.

14 670. Dr. Espino plotted the registration rates of Hispanics for each of Arizona's
15 15 Counties, then rescale all the vertical axes to take on the range of the county
16 with the most variability across time (Greenlee County) to improve comparability.
17 [Exhibit 561 at 5]

18 671. Dr. Espino identified Greenlee and Yuma Counties as being Counties with
19 particularly dramatic shifts in the rate of Hispanics being registered before and
20 after the implementation of Proposition 200's identification requirements. [*Id.*]

21 672. According to Dr. Espino, Greenlee County experienced over a 7 percent
22 drop in the percent of Hispanics being registered after January 1, 2005. [Exhibit
23 561 at 6]

24 673. In the 31 months preceding the implementation of Proposition 200's
25 identification requirements, 25.76 percent of the voters registered in Greenlee
26

1 County were of Hispanic origin. In the ensuing 31 months, this figure dropped to
2 18.58 percent. [*Id.*]

3 674. Dr. Espino noted that in Yuma County, the registration of Hispanics
4 dropped by over 5 percent after January 1, 2005. [*Id.*]

5 675. Specifically, 37.18 percent of the voters registered in Yuma County prior to
6 January 1, 2005 were of Hispanic descent. After the implementation of Proposition
7 200's requirements, this figure dropped to 31.67 percent. [*Id.*]

8 676. Dr. Espino concluded that if Proposition 200's registration requirements had
9 neutral effects on the proportion of Hispanics attempting to register to vote over
10 time than we should not expect to see dramatic shifts in the percentage of
11 Hispanics registering to vote over time. [*Id.*]

12 677. Moreover, since Hispanics are registered to vote at rates below the general
13 population, Dr. Espino concluded that dramatic downward shifts in a growing
14 electorate, such as Hispanics should not be expected. [*Id.*]

15 678. In his analyses, Dr. Espino also provided cross tabulations of the number of
16 individuals with Hispanic surnames registered before and after the implementation
17 of Proposition 200. [Exhibit 565 at 5]

18 679. Looking at the whole state of Arizona, Dr. Espino observed an overall drop
19 in the average number of individuals with Hispanic surnames becoming registered
20 to vote. [*Id.*]

21 680. Specifically, before the implementation of Proposition 200, there was an
22 average of approximately 60 individuals with Hispanic surnames becoming
23 registered to vote each week. Following the implementation of Proposition 200,
24 there has been an average of approximately 42 individuals with Hispanic surnames
25 becoming registered to vote each week. This amounts to approximately 18 less
26

1 individuals with Hispanic surnames being registered in Arizona each week since
2 the implementation of Proposition 200. [*Id.*]

3 681. According to Dr. Espino, this difference between the two time periods is
4 statistically significant. [*Id.*]

5 682. Dr. Espino also considered whether individuals with non-Hispanic surnames
6 have also seen a marked decline in registration rates since the implementation of
7 Proposition 200. [Exhibit 565 at 6]

8 683. Dr. Espino performed the same difference-in-means tests for individuals not
9 identified with Hispanic surnames in order to observe whether there has been an
10 equivalent decline in the registration figures for other individuals, which if true,
11 would preclude any claim that the registration requirements imposed by
12 Proposition 200 are unduly burdening Hispanic individuals relative to all other
13 individuals. [*Id.*]

14 684. Dr. Espino's analysis revealed that non-Hispanic surnamed individuals were
15 registered at a rate 30 percent less than before Proposition 200 went into effect. By
16 contrast, Hispanic surnamed individuals were registered at a rate 43 percent less
17 than before the implementation of Proposition 200. [Exhibit 563 at 6, March 9,
18 2008]

19 685. Therefore, following the implementation of Proposition 200, Hispanics
20 experienced a greater percentage drop than non-Hispanics. [Exhibit 565 at 6]

21 686. Dr. Espino also examined variability across Counties in order to identify
22 differences across Arizona's fifteen Counties. [Exhibit 565 at 7]

23 687. In his basic statistical test, Dr. Espino observed that in 10 of Arizona's 15
24 Counties, there was a statistically significant lower registration rate for Hispanics
25 following the implementation of Proposition 200. [*Id.*]

26

1 688. In 7 of these 10 Counties, the percentage decline in the average number of
2 Hispanics registered per week was greater than the percentage decline for non-
3 Hispanic surnamed individuals. [Exhibit 565 at 7]

4 689. Dr. Espino also used regression models to consider whether registration
5 rates between Hispanics and non-Hispanics experienced different rates of change
6 following the implementation of Proposition 200. [Exhibit 565 at 13]

7 690. To do so, he examined the percent of individuals with Hispanic surnames
8 registered to vote each week. [Exhibit 565 at 7]

9 691. This variable served as the dependent variable of interest, and he regressed it
10 on two independent variables: Time (measured in weeks) for the time period
11 preceding implementation of Proposition 200 and Time (measured in weeks) for
12 the time period following implementation of Proposition 200. [Exhibit 563 at 12]

13 692. Using this regression, Dr. Espino first looked at the overall statewide change
14 in Hispanic voter registration rates. [*Id.*]

15 693. To do so, he combined the weekly average Hispanic voter registration rates
16 for all of Arizona's fifteen Counties producing an overall sample size of 268
17 representing the 134 weeks preceding Proposition 200 and the 134 weeks
18 following Proposition 200. [*Id.*]

19 694. According to the results of his regression estimation on these data, Dr.
20 Espino concluded that the rate of Hispanic voter registration has declined in the
21 period following the implementation of Proposition 200. [*Id.*]

22 695. Dr. Espino verified that this claim is statistically significant with a 95
23 percent level of confidence. [*Id.*]

24 696. Dr. Espino used the same regression estimation to determine whether non-
25 Hispanic surnamed individuals experienced a similar drop in the percent of
26 individuals being registered following the implementation of Proposition 200, this

1 time using the percent of non-Hispanic surnamed individuals as the dependent
2 variable. [Exhibit 563 at 13]

3 697. Based on his analysis, Dr. Espino concluded that non-Hispanic surnamed
4 individuals also experienced a decline in the rate at which they were registering to
5 vote, but because the percent change in the coefficients for Hispanic surnamed
6 individuals is greater than the percent change in the coefficients for non-Hispanic
7 surnamed individuals. [*Id.*]

8 698. Specifically, the OLS models show that the percent of Hispanic individuals
9 registered to vote each week in Arizona declined 6.29 percent following the
10 implementation of Proposition 200, while the corresponding decline for non-
11 Hispanic surnamed individuals declined just 5.36 percent. [*Id.*]

12 699. According to Dr. Espino, while a difference of 0.93 percent between
13 Hispanic and non-Hispanic surnamed individuals may seem small on its face, this
14 is a difference in the rate of individuals registering to vote each week in Arizona.
15 Over time and given the increasing size of Arizona's Hispanic population, this can
16 amount to differences in thousands of voters each year. [*Id.*]

17 700. Dr. Espino also considered the influence of Maricopa County in his
18 analyses. [Exhibit 563 at 14]

19 701. Maricopa is the most populated county in Arizona, and according to the
20 2000 United States Census is the fourth most populous county in the entire United
21 States. [*Id.*]

22 702. 59.16 percent of all individuals registered to vote were registered to vote in
23 Maricopa County. [*Id.*]

24 703. According to Dr. Espino, although Proposition 200 is a statewide law, it is
25 administered by 15 different county recorders who are responsible for
26

1 administering not just statewide elections but also local city council elections.
2 [Exhibit 564 at 6]

3 704. According to Dr. Espino, allowing the behavior of a single, large county
4 (i.e., Maricopa County) to dominate the overall statewide analysis would preclude
5 the observation of the effects in Arizona's 14 other Counties [*Id.*]

6 705. Dr. Espino asserts that it would, therefore, be misleading to make
7 conclusions about the condition of voter registration rates for the entire state of
8 Arizona based on the singular behavior of voter registration rates within one
9 county. [Exhibit 563 at 14]

10 706. Dr. Espino therefore re-estimated his models excluding the registration
11 figures from Maricopa County. [*Id.*]

12 707. Dr. Espino's results demonstrate even more forcefully the drop off in the
13 rate of Hispanic voter registration following Proposition 200. [*Id.*]

14 708. Specifically, he found that the percent of Hispanic individuals registered to
15 vote each week in Arizona declined 10.06 percent following the implementation of
16 Proposition 200, while the corresponding decline for non-Hispanic surnamed
17 individuals declined just 4.17 percent. [*Id.*]

18 709. Dr. Espino also considered the question of whether the periods immediately
19 preceding and following the implementation of Proposition 200 are not comparable
20 because these include a presidential cycle. [Exhibit 563 at 16]

21 710. According to Dr. Espino, when considering differences in voter registration
22 between demographic groups, there is no theoretical basis in the extant literature on
23 voting behavior to exclude presidential election cycles. [Exhibit 563 at 18]

24 711. According to Dr. Espino, cutting data in particular ways without strong
25 theoretical justification runs the risk of introducing bias in our ability to estimate
26 the effects of Proposition 200 on the change in voter registration rates. [*Id.*]

1 Therefore, Dr. Espino refrained from arbitrarily removing data from his analyses. .
2 [Exhibit 563 at 18]

3 **E. Aggregate Impact of Prop 200's Voter Identification Requirement**

4 **1. Thousands of Conditional Provisional Ballots Were Never Counted.**

5 712. The voter identification requirements of Proposition 200 resulted in
6 thousands of uncounted conditional provisional ballots throughout Arizona.
7 [Exhibits 333 & 334]

8 713. Because of the identification requirements of Proposition 200, a number of
9 voters received conditional provisional ballots instead of being allowed to vote, and
10 many never provided the identification required by Proposition 200 and thus their
11 votes were not counted. [Exhibit 508 (Hoyos 81)]

12 714. In addition, in some Counties, there is no record of how many qualified
13 voters had to cast a conditional provisional ballot and had to return to show their
14 identification in order to vote because some Counties do not record such events if
15 the voter returned with the required identification on the same day. [Exhibit 508
16 (Hoyos 62-63, 78)].

17 715. In addition, in Pinal County there were forty voters in the 2006 general
18 election who were given conditional provisional ballots and whose ballots were
19 never counted because they did not have the identification required by Proposition
20 200. [Exhibit 508 (Hoyos Dep. at. Ex. 11)].

21 716. In the 2006 primary and general elections, only one in thirty voters required
22 to cast conditional provisional ballots in Pinal County returned with proper
23 identification within the required time period. [Exhibit 508 (Hoyos 47:22-24)] All
24 of the other ballots were never counted.

25
26

1 717. In a cursory analysis of Maricopa County of Conditional Provisional ballots,
2 it was found that 55% of Conditional Provisional Ballots were unresolved and
3 never processed. [Exhibit 384].

4 718. In the 2006 General Election there was a total of 2275 Conditional
5 Provisional Ballots. [Exhibit 393].

6 719. Also in the November 2006 election in Maricopa County, 1,301 of 2,275
7 conditional provisional ballot voters did not return. [Exhibit 513 (Osborne at vol. 2
8 75:9-21)] All of the other ballots were never counted.

9 720. On March 15, 2006 there are total of 177 Conditional Provisional Ballots.
10 [Exhibit 389].

11 721. On May 17, 2006 there was a total of 108 Conditional Ballots. [Exhibit
12 388].

13 722. There were 130 Conditional Provisional Ballots the Spring 2006 in
14 Maricopa County. [Exhibit 398].

15 723. In the March and May 2007 elections in Maricopa County, only thirty-five
16 percent of voters who cast conditional provisional ballots returned with proper
17 identification. [Exhibit 512 (Osborne vol. 1 76:20-22)].

18 724. Maricopa County anticipates 5,000 to 6,000 conditional provisional ballots
19 will be cast in the 2008 general election. [Exhibit 512 (Osborne vol. 1 68:17-22)].

20 725. The number of total unresolved conditional ballots increased from 55% to
21 65% in Maricopa County. [Exhibit 392].

22 726. The number of total unresolved conditional ballots increased from 55% to
23 65% in Maricopa County. [Exhibit 397].

24 727. Voters over 65 who did not have sufficient ID predominately did not return
25 – 82%. [Exhibit 385].

26

1 728. Employers are not required to give employees time off for a trip to a county
2 office to provide verification for their conditional provisional ballot. [Exhibit 512
3 (Osborne vol. 1 73:16-19)].

4 729. In Yuma County, there were forty-five voters in the 2006 general election
5 who were given conditional provisional ballots and whose ballots were never
6 counted because they did not have the identification required by Proposition 200.
7 [Exhibit 519 (Stallworth Dep. at Ex. D)].

8 730. Also, Yuma County reported over fifty-three uncounted conditional
9 provisional ballots in select elections between May 2006 and May 2007. [Exhibits
10 335 & 336].

11 731. There was a total of 25 Accepted Provisional Ballot Statistics and two
12 rejected for the City of Somerton on March 13, 2007. On May 15, 2007, there was
13 20 total accepted Provisional Ballots and six rejected. [Exhibit 382].

14 732. On November 1, 2006, the number of people who were not allowed to vote
15 in Coconino County was 91 due to identification problems. [Exhibits 394-395].

16 733. Candace Owens, Coconino County Recorder and Election Official, explains
17 how a discrepancy was caused when the two Tonalea voting precincts; Tonalea
18 North and Tonalea South were given the wrong ballots. [Exhibit 375; Exhibit 376
19 states: "My observation of the meaning of 'residence' to a Navajo voter is that of
20 their parents' or clan and is the location of their chapter membership, not their
21 mailing or actual current residence. As a result, the voter registration records of
22 their residence are not the same as the documents they present for identification.
23 Therefore, they are unable to present proper identification and cannot vote"].

24 734. Proposition 200 has resulted in scores of uncounted ballots because voters
25 were unable to fulfill the statutes' voter identification requirements. [Pl. Tr. Ex.
26 596; 618; 601 – 606; 608 – 609; 611 – 616; 621 – 627; 631-632].

1 735. For the November 1, 2006 elections, the counties reported 2,044 individuals
2 who left their polling place without casting a ballot. [Pl. Tr. Ex. 589].

3 736. Maricopa County reported that from the time Proposition 200 was
4 implemented and on March 31, 2006, 86% of voters who needed to return to an ID
5 Verification Site after casting a conditional provision ballot did not return and their
6 ballots were not processed. [Pl. Tr. Ex. 642, 652].

7 737. Maricopa County reported a total of 108 Conditional Ballots for its May 16,
8 2006 election. They reported that 55% of those conditional provisional ballots cast
9 went uncounted. On March 15, 2006, they reported that 134 of the 177 conditional
10 provisional ballots cast in its last election were never resolved. The county reports
11 the percentage of unresolved conditional provisional ballots increased from 55% in
12 March of 2006 to 65% in May of that year. [Pl. Tr. Ex. 637; 640-641; 643; 648].

13 738. Maricopa County reported a total of 130 conditional provisional ballots cast
14 in its Spring 2006 elections. For its General Election in 2006, the county reported
15 73% of the unconditional provisional ballots cast were not counted, and for the
16 Primary of that year 57% of the unconditional provisional ballots cast were not
17 counted. [Pl. Tr. Ex. 643; 649].

18 739. On March 13, 2007 the City of Somerton, in Yuma County, reported 2
19 rejected provisional ballots. The city also reported six rejected provisional ballots
20 on May 15, 2007. [Pl. Tr. Ex. 635].

21 740. Stacey Stanton's letter of August 3, 2006 to Bill Richards explained on that
22 date 355,582 people had valid Arizona driver's licenses issued before October
23 2006, and 220,458 had Arizona identification cards issued after October 2006. [Pl.
24 Tr. Ex. 598].

25
26

1 741. Proposition 200 has resulted in scores of uncounted ballots because voters
2 were unable to fulfill the statutes' voter identification requirements. [Pl. Tr. Ex.
3 596; 618; 601 – 606; 608 – 609; 611 – 616; 621 – 627; 631-632].

4 742. For the November 1, 2006 elections, the counties reported 2,044 individuals
5 who left their polling place without casting a ballot. [Pl. Tr. Ex. 589].

6 743. On June 23, 2006, the Georgia Secretary of State issued a press release that
7 explained that, “[d]emographic analysis shows that registered voters lacking a
8 driver’s license or state-issued Georgia ID card are disproportionately elderly and
9 minority.” [Pl. Tr. Ex. 599].

10 744. Ballots not counted for reasons other than lack of citizenship proof show
11 more ballots not being counted for address problems. [Exhibit 377].

12 745. Fourteen percent of all voter registration forms received from the inception
13 of Prop 200 citizenship requirements on January 24, 2005 through March 31, 2006
14 have been rejected for lack of citizenship documentation. [Exhibits 390, 391].

15 746. Tammy Patrick indicated that since the passage of Prop 200 the Maricopa
16 County has been forced to reject voter registration applicants because they fail to
17 produce the necessary documentary proof. [Exhibit 383].

18 747. On June 21, 2005, Amy Putman sent Tammy Patrick a table indicating that
19 46% of new registrants were rejected for insufficient proof of citizenship.
20 [Exhibits 386, 387].

21 748. In April 28, 2005 in Coconino County, there were a total of 131 rejected
22 Voter Registration Forms. [Exhibit 396].

23 749. During the registration period of January 25, 2005 through April 22, 2005,
24 Yavapai County had a total of 821 registered active voters. [Exhibit 380].
25
26

1 750. On August 6, 2005, Judy Allen-Wise from the Registrar of Voter of Yavapai
2 County, wrote to State Senator Bennett and voiced her disapproval of voter ID
3 requirements of Prop 200. [Exhibit 381].

4 751. Some people who were once rejected have since re-registered and are now
5 registered. [Exhibit 378].

6 752. Tammy Patrick, Federal Compliance Officer for Maricopa County,
7 indicated that since the passage of Proposition 200 Maricopa County has been
8 forced to reject voter registration applications because they lacked the necessary
9 documentary proof of citizenship. The county reported that in 2006, 82 % of voters
10 over 65 who did not have sufficient ID did not return to the polls. She attributes the
11 high rate of rejected voter registration applications to Proposition 200's
12 documentary proof of citizenship. She also had attempted to reconcile,
13 unsuccessfully, the statute's demand for the certificate of naturalization number
14 with the fact that the certificate number cannot be verified. Ms. Patrick has
15 indicated that since Proposition 200 was implemented, 739 conditional provisional
16 ballots were not counted in the county. [Pl. Tr. Ex. 636; 638; 650; 666].

17 753. Coconino County reported that voter registration drives were second only to
18 the Department of Motor Vehicles in producing new voter registrations and
19 registration changes for the period of January 24, 2005 – July 17, 2006. [Pl. Tr. Ex.
20 620].

21 754. On June 21, 2005, Amy Putman of the Maricopa County Elections
22 Department sent Tammy Patrick, Federal Compliance Officer for Maricopa
23 County, a table indicating that 46% of new voter registrants are rejected for
24 insufficient proof of citizenship. [Pl. Tr. Ex. 639, 651].

25 755. Coconino County reported voter turnout on its Indian reservations at
26 73.04% for the November 2, 2004 General Election; however, 74 out of 82 of the

1 “voter registration forms rejected[,] not because of lack of citizenship”, but instead
2 the majority had address problems. Candace Owens, Coconino County Recorder,
3 explained the problem was due to the “observation of the meaning of ‘residence’ to
4 a Navajo voter is that of their parents’ or clan and is the location of their chapter
5 membership, not their mailing or actual current residence. As a result, the voter
6 registration records of their residence are not the same as the documents they
7 present for identification. Therefore, they are unable to present proper
8 identification and cannot vote.” In the 2006 Primary Election, she explains another
9 consequence can be illustrated by 38 Tonalea South voters were given the wrong
10 ballot. [Pl. Tr. Ex. 600; 607; 610; 617].

11 756. Registrations received by several sources with a total of 5,763 new
12 registrations through January 24, 2005 – July 17, 2006. [Exhibit 379].

13 **2. Disparate racial impact on Latinos of voter identification provisions**

14 757. Dr. Lanier used demographic and socio-economic Census 2000 data to
15 analyze the addresses of voters who cast uncounted conditional provisional ballots.
16 Like the rejected voter forms, these uncounted ballots represent a group of
17 potential voters who were affected by Prop 200. [Lanier Fourth Supplemental
18 Report 4-5].

19 758. All fifteen Arizona counties produced uncounted ballot envelopes, and 11.0
20 percent of these uncounted ballot envelopes were from Hispanic individuals.
21 [Lanier Fourth Supplemental Report 4-5].

22 759. From his analyses, Dr. Lanier concluded that Hispanic uncounted
23 conditional provisional ballots come from areas of Arizona where the population is
24 less likely to speak English well, possesses less schooling, and earns a lower
25 household income than the averages for the state. [Lanier Fourth Supplemental
26 Report 5].

1 760. Based on the statistics presented in Dr. Lanier's report, he concluded that
2 Hispanic uncounted conditional provisional ballots are from areas that are less
3 likely to use public transportation and more rural than statewide averages. [Lanier
4 Fourth Supplemental Report 6].

5 761. Dr. Lanier compared Hispanic turnout to Hispanic representation among the
6 uncounted conditional provisional ballots from the 2006 general election to observe
7 whether or not the ID requirement of Prop 200 disproportionately and negatively
8 affected Hispanic voters. [Fifth Lanier Report 1].

9 762. Dr. Lanier found that among the uncounted conditional provisional ballots
10 cast in the 2006 general election, 10.3 percent of them were cast by Hispanic
11 voters. [Fifth Lanier Report 2].

12 763. Dr. Lanier noted that in Dr. Engstrom's supplemental report, Dr. Engstrom
13 presented two estimates of Hispanic voter turnout for the 2006 general election—
14 an ER estimate of 8.8 percent turnout and an EI estimate of 14.6 percent turnout.
15 [Fifth Lanier Report 2].

16 764. There were 451,306 Hispanic registered voters as of September 2007. [Fifth
17 Lanier Report 2].

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

23 766. Dr. Lanier compared these two estimates to total voter turnout in the 2006
24 general election in order to determine Hispanic representation as a percentage of all
25 voters in that election. [Fifth Lanier Report 2].

26

1 767. The 2006 general election official canvass, reports that 1,553,032
2 individuals voted in the 2006 general election. [Fifth Lanier Report 2].

3 768. Dr. Lanier found that if the ER and EI predictions of Hispanic voters are
4 represented as a percentage of all voters, then Hispanic representation among all
5 voters in the 2006 general election is predicted to have been between 2.6 percent
6 (39,715 / 1,553,032) and 4.2 percent (65,891 / 1,553,032), according to the ER and
7 EI voter turnout estimates, respectively. [Fifth Lanier Report 2].

8 769. Both of these estimates of Hispanic representation among voters in the 2006
9 general election are lower than the 10.3 percent Hispanic representation among
10 uncounted conditional provisional ballots from that election, suggesting the effect
11 of the Prop 200 ID requirement fell disproportionately on Hispanic voters. [Fifth
12 Lanier Report 2].

13 770. Maricopa County Federal Compliance Office Tammy Patrick reported that
14 Hispanic voters cast seventeen percent of the uncounted conditional provisional
15 ballots in the county's 2008 Presidential Preference Election. [Exhibit 337, Pl. Tr.
16 Ex. 954].

17 **XI. IMPACT OF PROP 200 ON INDIVIDUAL VOTER REGISTRANTS AND**
18 **VOTERS**

19 **A. Negative Impact of Prop 200's Proof of Citizenship Requirement on**
20 **Individuals**

21 **1.** Naturalized Citizens were forced to register more than once even
22 though they correctly filled out the registration form

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

1 772. Maria Magdalena Gonzalez resides at 727 Huron Ct., Somerton, Arizona.
2 She is a resident of Yuma County. Ms. Gonzalez has lived in the United States for
3 over forty years. She currently stays home and cares for her grandchildren. [Maria
4 Magdalena Gonzalez Testimony].

5 773. On August 18, 2005, Maria Magdalena Gonzalez took her oath of U.S.
6 citizenship in a naturalization ceremony held in Yuma, Arizona. This was a very
7 important moment for her. After living in the United States for many decades, she
8 always dreamed of becoming a U.S. citizen. Ms. Gonzalez had a great desire to
9 become a U.S. citizen because, among other reasons, she wanted to register to vote
10 and participate in the political process. She wanted the opportunity to elect people
11 who make important decisions that affect me and her family. She is concerned
12 about issues related to education, healthcare and others issues. She wants to
13 influence those decisions. [Maria Magdalena Gonzalez Testimony].

14 774. After Maria Magdalena Gonzalez became a citizen at the ceremony, she
15 applied to register to vote at a table staffed by volunteers outside of the courthouse.
16 She completed the voter registration application form with the assistance of a
17 volunteer, signed the form and handed it over to the volunteer to deliver to the
18 Yuma County Recorder's Office. [Maria Magdalena Gonzalez Testimony , 449-
19 450].

20 775. Maria Magdalena Gonzalez complied with the directions on the voter
21 registration application. The application form requested her "Certificate of
22 Naturalization number." She asked the volunteer who was assisting me to copy the
23 number from her certificate of naturalization into the space requested. Ms.
24 Gonzalez had the certificate with her since she had just received it during the
25 ceremony. [Maria Magdalena Gonzalez Testimony , 449-450].
26

1 776. After Maria Magdalena Gonzalez submitted her voter registration
2 application, she received a form letter from the Yuma County Recorder's Office
3 enclosing her application that was not accepted by their office. The letter stated:
4 "Your registration form has been rejected for the following reason: First time
5 registration requires proof of citizenship which was not included. Please fill in any
6 missing blanks and return enclosed form with your proof of citizenship." [Maria
7 Magdalena Gonzalez Testimony, Exhibit 451].

8 777. Although Maria Magdalena Gonzalez's voter registration application
9 contained the number of her certificate of naturalization, it was returned back to
10 her; on her original application the certificate of naturalization number was crossed
11 out and someone had written over it "A#." [Maria Magdalena Gonzalez Testimony
12 , Exhibits 449- 451].

13 778. The letter from the Yuma County Recorder's Office further advised Ms.
14 Gonzalez that "satisfactory evidence of citizenship" includes "A **presentation** to
15 the county recorder of the applicants' United States naturalization documents **or**
16 the 'A number' on the certificate of naturalization form." [Maria Magdalena
17 Gonzalez Testimony , Exhibits 450-451].

18 779. Maria Magdalena Gonzalez did not understand why her voter registration
19 application was rejected when she had provided the number of her certificate of
20 naturalization as they instructed her to do on the registration form. [Maria
21 Magdalena Gonzalez Testimony].

22 780. In 2006, Maria Magdalena Gonzalez made another attempt to register to
23 vote and was successful. [Maria Magdalena Gonzalez Testimony , Exhibits 452-
24 454].

25 781. Maria Magdalena Gonzalez is Hispanic/Latino and was born in Mexico.
26 When she was denied the opportunity to register the first time, she felt like she was

1 discriminated against. Ms. Gonzalez did not understand why she was questioned
2 about her citizenship despite the fact that she had already provided her citizenship
3 certificate number and signed a sworn declaration as to her citizenship. [Maria
4 Magdalena Gonzalez Testimony].

5 782. Maria Magdalena Gonzalez has lived in the United States for many decades.
6 She fully understands that Mexicans have a history of discrimination in the U.S.
7 Ms. Gonzalez has heard of many people being treated differently because of their
8 national origin and has experienced discrimination herself. In 2006, she went to
9 apply for a U.S. passport at a local post office. She was told by the postal agent at
10 the counter that she could not apply for the passport because she did not speak
11 English. She was angry and upset that yet again her rights as a U.S. citizen were
12 being called into question by a government official because of her national origin.
13 She had to ask her daughter to call a government official to complain. She was
14 finally able to apply for a passport two months later by going to a different post
15 office. [Maria Magdalena Gonzalez Testimony , 455-456].

16 783. Maria Magdalena Gonzalez hopes that the law that she is challenging in
17 Arizona is recognized as a bad law. Before she was finally able to register, she was
18 rejected after following all the directions given to her. She also lost the
19 opportunity to exercise her right to vote until she registered a second time. She
20 feels that the law affects many naturalized citizens, and will prevent people from
21 exercising their rights. [Maria Magdalena Gonzalez Testimony].

22 784. Jesus Maria Gonzalez is 58 years old and also did not successfully register
23 the first time he attempted to register. [Jesus Maria Gonzalez Testimony].

24 785. Jesus Maria Gonzalez resides at 727 Huron Ct., Somerton, Arizona. He is a
25 resident of Yuma County. He has lived in the United States for 42 years. [Jesus
26 Maria Gonzalez Testimony].

1 786. On August 18, 2005, Mr. Gonzalez took his oath of U.S. citizenship in a
2 naturalization ceremony held at the federal courthouse in Yuma. This moment was
3 a very proud one for him. [Exhibit 532A (Jesus M. Gonzalez Decl. at 2) and
4 Exhibit 235].

5 787. When Jesus Maria Gonzalez came to the United States many years ago, he
6 had always dreamed of becoming a United States citizen. He recognized what the
7 United States stood for- the “American Dream” and the right to live life to its
8 fullest. He also wanted to become a U.S. citizen because, among other reasons, he
9 wanted to register to vote and participate in the political process. [Jesus Maria
10 Gonzalez Testimony].

11 788. After Jesus Maria Gonzalez completed the naturalization ceremony he
12 applied to register to vote at a table staffed by volunteers outside of the ceremony.
13 He completed the voter registration form with the assistance of a volunteer, signed
14 the form and handed it over to the volunteer to deliver to the Yuma County
15 Recorder’s Office. [Jesus Maria Gonzalez Testimony , 449, 457].

16 789. Jesus Maria Gonzalez followed the directions carefully on the voter
17 registration application. In the box where the application form requested his
18 “Certificate of Naturalization number,” he asked the volunteer who was assisting
19 him to copy the number from her certificate of naturalization, which had just been
20 handed to him in his citizenship ceremony. [Jesus Maria Gonzalez Testimony ,
21 449, 457].

22 790. Shortly after Jesus Maria Gonzalez submitted his voter registration
23 application, he received a form letter from the Yuma County Recorder’s Office
24 enclosing his rejected application. The letter stated that “Your registration form
25 has been rejected for the following reason: First time registration requires proof of
26 citizenship which was not included. Please fill in any missing blanks and return

1 enclosed form with your proof of citizenship.” [Jesus Maria Gonzalez Testimony
2 and Exhibit 457].

3 791. Although Jesus Maria Gonzalez’s voter registration application contained
4 the number of her certificate of naturalization, as requested by the application form,
5 on the form that was returned to him the certificate of naturalization number was
6 crossed out and someone had written over it “A#.” [Jesus Maria Gonzalez
7 Testimony , 449, 457].

8 792. The letter from the Yuma County Recorder’s Office further advised Jesus
9 Maria Gonzalez that “satisfactory evidence of citizenship” includes “A
10 **presentation** to the county recorder of the applicants’ United States naturalization
11 documents **or** the ‘A number’ on the certificate of naturalization form.” [Jesus
12 Maria Gonzalez Testimony , Exhibit 457].

13 793. Jesus Maria Gonzalez did not understand why his voter registration
14 application was rejected when he had properly provided the number of his
15 certificate of naturalization as instructed by the registration form. [Jesus Maria
16 Gonzalez Testimony].

17 794. In October, 2006, Jesus Maria Gonzalez made a second attempt to register
18 to vote, this time using the ServiceArizona internet-based voter registration system
19 sponsored by the Arizona Motor Vehicles Department. However, after entering his
20 personal information, including his valid Arizona driver’s license number, the
21 website informed him that it could not accept his voter registration application. As
22 a result, he was unable to register to vote using the ServiceArizona system. [Jesus
23 Maria Gonzalez Testimony and Exhibit 458].

24 795. Jesus Maria Gonzalez’s driver’s license was issued to him before November
25 1, 1996. [Jesus Maria Gonzalez Testimony].
26

1 796. Jesus Maria Gonzalez is Hispanic/Latino and was born in Mexico. He
2 believes that he has been treated differently than other citizens in Arizona because
3 he was born in Mexico and gained citizenship through naturalization. [Jesus Maria
4 Gonzalez Testimony].

5 797. On October 14, 2006, Jesus Maria Gonzalez applied for and received a
6 United States Passport. He paid \$112.95 for his passport. He does not believe that
7 he should have to pay a fee to acquire proof of citizenship for voter registration.
8 He also does not believe he should have to present his naturalization certificate in
9 person to the County Recorder as a condition of voter registration. [Jesus Maria
10 Gonzalez Testimony , Exhibit 459].

11 798. As a Mexican national, Jesus Maria Gonzalez suffered from discrimination
12 while living in the United States. Early on he worked as a farm worker under very
13 difficult conditions while working in the fields. He was treated like a slave. Mr.
14 Gonzalez remembers drinking water from a canal like an animal. He believes he
15 was treated this way by his employer because he was Mexican. Also, he worked in
16 a packaging plant and all the Mexican workers suffered bad working conditions.
17 He recognizes that Mexicans have a history of being discriminated against in this
18 country and in Arizona. [Jesus Maria Gonzalez Testimony].

19 799. When Jesus Maria Gonzalez's application for voter registration was denied,
20 he was angry. After all of his hardship and struggles to finally become a U.S.
21 citizen, he was still treated like a second class citizen of this country. Once again,
22 he felt like he was treated this way because he was Mexican. [Jesus Maria
23 Gonzalez Testimony].

24 800. Jesus Maria Gonzalez feels as U.S. citizens, we should all have the same
25 rights, despite our country of origin. He has paid taxes all his life, and has
26 contributed to this country. [Jesus Maria Gonzalez Testimony].

1 801. Jesus Maria Gonzalez wants to vote. He wants to exercise this right because
2 he feels that it is the best method to improve the lives of people in the United
3 States, particularly Latino people. He believes that we should all have an equal
4 right to elect the people who make the decisions in our country. He wants to have a
5 voice in the United States. [Jesus Maria Gonzalez Testimony].

6 802. Jesus Maria Gonzalez hopes that the law that he is challenging in Arizona
7 will not be in effect in the future. Mr. Gonzalez has faced obstacles trying to
8 register to vote, and to this day remains unregistered. He feels that the law affects
9 many naturalized citizens like him, and it prevents them from exercising their
10 fundamental right to vote. [Jesus Maria Gonzalez Testimony].

11 803. Sylvia Luna also had to register twice because she was rejected after
12 providing her Certificate of Naturalization Number on the voter registration form.
13 [Luna Testimony].

14 804. After Sylvia Luna submitted her application, she received a letter stating
15 that she was denied registration because she needed to provide proof of her
16 citizenship. She was surprised and frustrated she was denied because she provided
17 her naturalization certificate number on the voter registration application as
18 requested. [Luna Testimony].

19 805. In addition, Herta Antoinette Weber, who is a veteran and served for 24
20 years in the United States military, filled out her voter registration application, and
21 complied with the directions on the voter registration application and provided all
22 the information requested by the form. The application form requested her
23 "Certificate of Naturalization number." She copied the number of my certificate of
24 naturalization onto the form as requested. [Weber Testimony].

1 806. After Herta Antoinette Weber submitted her application, she received a
2 letter stating that she was denied registration because she needed to provide proof
3 of her citizenship. [Weber Testimony].

4 807. If Herta Antoinette Weber had not presented her naturalization certificate
5 she would never have been able to provide her alien registration number for the
6 county to verify with immigration officials. Ms. Weber naturalized in 1960 and her
7 naturalization certificate does have an Alien Registration Number on it. She does
8 not know what her Alien Registration Number is or if she ever had one. [Weber
9 Testimony].

10 808. Reyna Valencia by mistake filled in her Alien Registration Number in the
11 place where the application requested her Certificate of Naturalization Number.
12 Her voter registration form was still rejected. [Valencia Testimony].

13 809. Reyna Valencia received a letter from the Maricopa County Recorder's
14 Office informing her that her voter registration form would not be accepted until
15 she provided proof of citizenship. [Valencia Testimony].

16 **b. U.S. Citizens Were Denied the Opportunity to Register For Various**
17 **Other Reasons**

18 810. Many applicants filled out the voter registration forms, which did not ask for
19 additional proof of citizenship, and mailed them to the County Recorder's Office.
20 [Higuera Testimony, Fitzpatrick Testimony].

21 811. In order to successfully register to vote, however, applicants had to present
22 documents to the Maricopa County Recorder's Office in order to establish proof of
23 citizenship. [Higuera Testimony, Fitzpatrick Testimony].

24 812. Ataul Mannan had difficulty registering to vote. Mr. Mannan resides at 3601
25 West Tierra Buena Lane, Apartment 233, Phoenix, Arizona 85053. He is a United
26 States citizen and a registered voter. Mr. Mannan has been employed since the age

1 of 18 and is the Unit Manager of a restaurant corporation. He has lived in Phoenix
2 for approximately three years, but has resided in Arizona since age 1. Born in
3 Pakistan, he lived and grew up in the United States and became a citizen 3 years
4 ago. He is a good, working class citizen, has a home, is married, and has children.
5 [Mannan Testimony].

6 813. Mr. Mannan is a resident of Maricopa County. On June 19, 2006, Mr.
7 Mannan applied to register to vote. [Mannan Testimony].

8 814. Mr. Mannan completed the application available at the Post Office.
9 [Mannan Testimony].

10 815. As a newly naturalized citizen, Mr. Mannan was eager to register to vote in
11 order to take part in the political process. [Mannan Testimony].

12 816. The application was the new version that requires a naturalization number,
13 but the Post Office employee only required that Mr. Mannan present either a
14 driver's license or birth certificate. Mr. Mannan complied with all forms of ID
15 asked for. [Mannan Testimony].

16 817. The employee asked if Mr. Mannan was a United States citizen and he said,
17 "Yes." He completed the registration form and turned it over to the Post Office for
18 delivery to the Maricopa County Recorder's Office. [Mannan Testimony].

19 818. Mr. Mannan followed the directions carefully on the voter registration
20 application. [Mannan Testimony].

21 819. Mr. Mannan did not have his naturalization certificate on his person at the
22 time but the Post Office employee began the registration process and informed him
23 that he would have to mail-in his naturalization number to finish the registration
24 process. [Mannan Testimony].

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1 820. Within two weeks after Mr. Mannan submitted his voter registration
2 application, he received a form letter from the Maricopa County Recorder's Office
3 enclosing his rejected application. [Mannan Testimony].

4 821. The letter stated that, "Your registration form has been rejected for the
5 following reason: First time registration requires proof of citizenship which was
6 not included. Please fill in any missing blanks and return enclosed form with your
7 proof of citizenship." [Mannan Testimony].

8 822. Mr. Mannan sent in an official, certified pink copy of his naturalization
9 certificate from the United States Immigration Office. [Mannan Testimony].

10 823. Mr. Mannan's voter registration card came in the mail a couple of weeks
11 later, but when he attempted to vote for the first time, he was not on the list of
12 voters. His wife, a life-long US citizen, was not on the list either. [Mannan
13 Testimony].

14 824. Mr. Mannan was told he could not vote since he had not picked the
15 Democratic Party. [Mannan Testimony].

16 825. Mr. Mannan then had to provide his name and fill out an affidavit declaring
17 himself as a Democrat and he was then allowed to vote. A month later, however,
18 Mr. Mannan received a pink letter in the mail in a pink envelope stating that his
19 vote had not been counted. [Mannan Testimony].

20 826. Mr. Mannan's wife also had to sign an affidavit declaring herself as a
21 Democrat, but her vote was counted. [Mannan Testimony].

22 827. Mr. Mannan's vote was not counted because he is naturalized unlike his
23 wife who is a US citizen by birth. [Mannan Testimony].

24 828. Mr. Mannan's driver's license was issued before October 1, 1996. It was
25 issued on September 18, 2006. [Mannan Testimony].

26

- 1 829. Mr. Mannan has the following proof of US citizenship: a naturalization
2 certificate and an Arizona driver's license. [Mannan Testimony].
- 3 830. Mr. Mannan was born in Pakistan and is a naturalized United States Citizen.
4 [Mannan Testimony].
- 5 831. Mr. Mannan feels that the new voting requirements are discriminating
6 against naturalized versus born US-born citizens. [Mannan Testimony].
- 7 832. Mr. Mannan is a United States citizen and is supposed to have all the rights
8 of a United States citizen but he is being discriminated against solely because he is
9 a naturalized citizen. The barriers that Arizona has placed on voting and voter
10 registration constitutes yet another disadvantage and hardship of becoming a
11 United States citizen. [Mannan Testimony].
- 12 833. Mr. Mannan's vote still does not count even though he has the legal right to
13 vote. [Mannan Testimony].
- 14 834. It took Mr. Mannan many years to acquire this right, especially after 9/11.
15 His name fell on a list of "suspect" names and it took him from the age of 18 until
16 the age of 31 to get his citizenship. [Mannan Testimony].
- 17 835. Mr. Mannan is a working class citizen and has no criminal history -- not
18 even a parking ticket. [Mannan Testimony].
- 19 836. Mr. Mannan is also a college graduate and cannot exercise his right to do
20 something as basic as voting. [Mannan Testimony].
- 21 837. The most important right a citizen has is the right to vote and that right is
22 being taken away from Mr. Mannan. [Mannan Testimony].
- 23 838. Mr. Mannan is not being treated as an equal United States citizen. [Mannan
24 Testimony].

25
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1 839. Mr. Mannan believes he is being treated differently than other citizens in
2 Arizona because he was born in Pakistan and gained citizenship through
3 naturalization. [Mannan Testimony].

4 840. Mr. Mannan wants to vote. He feels that it is the best method to improve
5 the lives of people in the United States. Voting has been made extremely difficult
6 and Mr. Mannan wants to exercise his right to vote especially with the upcoming
7 Presidential Election. [Mannan Testimony].

8 841. This upcoming election will be Mr. Mannan's first chance to vote as a U.S.
9 citizen. It is extremely discouraging that he is unable to vote. [Mannan
10 Testimony].

11 842. Amy Marie Smith who resides at 3526 W. Frier Dr., Phoenix Arizona
12 85051 also had trouble registering. She was born in Sonora, Mexico, on November
13 2, 1978 but is a citizen of the United States. [Smith Testimony].

14 843. Amy Marie Smith's mother is a United States citizen who was born in
15 Oregon. Her mother was residing in Wilcox, Arizona at the time of her birth.
16 [Smith Testimony].

17 844. Amy Smith's mother lived in Wilcox, Arizona, a border town, and went to a
18 doctor in Mexico during her pregnancy because she could not afford to pay a
19 doctor in Arizona. Smith's mother never lived in Mexico and lived and worked
20 exclusively in the United States prior to and immediately following Smith's birth.
21 [Smith Testimony].

22 845. Amy Smith's mother gave birth to her in a clinic in Mexico and
23 immediately returned to Arizona. Smith believes she is a United States citizen
24 because her mother is a United States citizen who only visited Mexico to give birth
25 to Amy. Therefore, by operation of law, Amy Smith is a U.S. Citizen. [Smith
26 Testimony].

1 846. Amy Smith does not have evidence of her United States citizenship despite
2 the fact that she is a United States citizen. [Smith Testimony].

3 847. Amy Smith does not have a U.S. passport. [Smith Testimony].

4 848. Amy Smith's only birth certificate is from Mexico. [Smith Testimony].

5 849. Amy Smith contacted the U.S. State Department to obtain her U.S.
6 citizenship documents, but it informed her that it had no record of her birth or
7 citizenship. [Smith Testimony].

8 850. Amy Smith is a low income citizen and cannot afford to order certified
9 copies of necessary documents to apply for a Certificate of U.S. Citizenship.
10 [Smith Testimony].

11 851. On November 1, 2004, after moving her family from Wisconsin back to
12 Arizona, Amy Smith went to the Motor Vehicle Division Office in Gila County in
13 order to apply for a replacement Arizona driver's license. [Smith Testimony].

14 852. Before Amy Smith left Arizona, she had maintained an Arizona driver's
15 license since the age of 16. She never showed proof of citizenship to obtain her
16 Arizona driver's license. [Smith Testimony].

17 853. Amy Smith showed the person behind the counter at the Motor Vehicle
18 Division her social security card and was not asked to provide proof of citizenship
19 in order to get her replacement Arizona license. [Smith Testimony]. The person
20 behind the counter at the Motor Vehicle Division asked Amy Smith if she wanted
21 to register to vote and Smith assented. [Smith Testimony].

22 854. Amy Smith completed the voter registration form on her own and returned it
23 to the person behind the counter at the Motor Vehicle Division with her request for
24 an Arizona driver's license. [Smith Testimony].

25 855. Amy Smith was never told by anyone at the Motor Vehicle Division that her
26 registration would be rejected for any reason, and she does not remember getting a

1 letter from the Gila County Recorder informing her that her registration application
2 was rejected. [Smith Testimony].

3 856. Amy Smith was unable to vote in the General Election because she was
4 never informed her voter registration application was rejected. Smith has not made
5 a second attempt to register to vote. [Smith Testimony].

6 857. Amy Smith does not understand why her voter registration application was
7 rejected when she properly completed the application and submitted it to the Motor
8 Vehicle Division. [Smith Testimony].

9 858. Amy Smith wants to vote and wants to exercise this right because she feels
10 that it is important to the future of her child. Amy Smith is extremely frustrated
11 with the voting system as a result of the difficulties she has had in attempting to
12 register. [Smith Testimony].

13 859. Many applicants whose applications are rejected for failure to include proof
14 of citizenship want to vote. They want to exercise this right because they feel that
15 it is the best method to improve the lives of people in the United States.
16 [Fitzpatrick Testimony, Cotto Testimony].

17 860. Many applicants question the integrity and reliability of the United States
18 voting system after having to register to vote twice. [Fitzpatrick Testimony, Davis
19 Testimony].

20 861. Receiving voter registration rejection letters makes Latino residents of
21 Arizona reluctant to re-register. [Higuera Testimony, Valencia Testimony]. .

22 862. Reyna Valencia, a Latina applicant, felt a high degree of discrimination
23 when asked to provide documents to prove legal citizenship and is not motivated to
24 send such proof to complete the registration process. [Valencia Testimony].

25 863. Although she complied with the request, Martha Higuera felt marginalized
26 when asked to provide documents to prove citizenship. [Higuera Testimony].

1 864. Having to provide documents to prove citizenship negatively affects
2 applicants' desire to be civically engaged. [Higuera Testimony, Valencia
3 Testimony].

4 865. Voter registrants who are naturalized citizens believe they are being treated
5 differently because they have to provide proof of citizenship and U.S. born citizens
6 do not. [Higuera Testimony, Valencia Testimony].

7 866. Martha Higuera feels that her Latino name directly contributed to the
8 Recorder's Office's decision to ask for proof of citizenship. . [Higuera
9 Testimony].

10 867. A widespread negative feeling toward Latinos in Arizona has discouraged -
11 Martha Higuera from exercising her right to vote. . [Higuera Testimony].

12 868. Some applicants did not understand why their voter registration applications
13 were rejected when they properly completed the application and submitted it to the
14 County Recorder. [Fitzpatrick Testimony, Luna Testimony, Davis Testimony].

15 869. William Fitzpatrick believes the problem in this country does not lie in
16 attempts by illegal immigrants to register to vote, but in the inability of citizens,
17 such as him, to exercise his right to vote in a simple and straightforward manner.
18 [Fitzpatrick Testimony].

19 870. Cecil Davis, a rejected voter applicant, chemist, and U.S. citizen, took his
20 forms and proof of citizenship to the Secretary of State's office and demanded that
21 the situation be remedied. [Davis Testimony].

22 **c. Applicants Were Rejected Because They Submitted Federal Voter**
23 **Registration Forms**

24 871. There were also applicants who could not register because they submitted
25 federal voter registration forms. [Natale Testimony]. and [Hameed Testimony].
26

1 872. Nicole Elizabeth Carlisle Natale resides at 2304 North Bullmoose Drive,
2 Chandler, Arizona 85224. She is a resident of Maricopa County. Ms. Natale has
3 lived in Arizona since childhood and she and her husband currently live in
4 Chandler. Ms. Natale owns her own production company and works as a freelance
5 writer. Ms. Natale also does work in marketing. [Natale Testimony].

6 873. On September 8, 2006, Ms. Natale applied to register to vote. [Natale
7 Testimony].

8 874. At the time, Ms. Natale and her husband were very interested in the current
9 issues, particularly the Smoke Free Arizona initiative (Proposition 201) on the
10 November 2006 ballot. [Natale Testimony].

11 875. Ms. Natale found the federal voter registration form online and filled it out.
12 Ms. Natale had a current driver's license and passport on hand as she filled out the
13 form. [Natale Testimony].

14 876. Ms. Natale followed the directions carefully on the voter registration
15 application. [Natale Testimony].

16 877. After Ms. Natale submitted her voter registration application, she received a
17 form letter from the Maricopa County Recorder's Office. [Natale Testimony].

18 878. The letter stated that Ms. Natale's registration was being rejected because
19 she had not included proper proof of citizenship. [Natale Testimony].

20 879. It was the understanding of Ms. Natale that she was required to fill out a
21 new voter registration form. [Natale Testimony].

22 880. Ms. Natale did not understand why her voter registration application was
23 rejected when she had properly completed the application and submitted it to the
24 County Recorder. [Natale Testimony].

25 881. Ms. Natale was bitter, angry, and frustrated that her application was rejected
26 and she was unable to vote in the November 2006, election. [Natale Testimony].

1 882. Ms. Natale did not attempt to register again. [Natale Testimony].
2 883. After the election passed, Ms. Natale received a voter card in the mail from
3 the County Recorder. [Natale Testimony].
4 884. Ms. Natale did not do anything to get the card, as she had not filled out a
5 new voter registration form. [Natale Testimony].
6 885. The rejection of her voter registration application affected Ms. Natale's
7 perception on the fairness and accuracy of our country's voting system. [Natale
8 Testimony].
9 886. Ms. Natale and her husband have shared her experience with others and this
10 has influenced their opinions about our country's voting system as well. [Natale
11 Testimony].
12 887. Ms. Natale's driver's license was issued to her after October 1, 1996.
13 [Natale Testimony].
14 888. Ms. Natale also has a U.S. birth certificate and a current U.S. passport.
15 [Natale Testimony].
16 889. Rasheedah Adelih Hameed was a resident of Maricopa County when she
17 tried to register by using a federal registration form. Ms. Hameed recently moved
18 from Arizona to California to live with her sister while she recovers from brain
19 surgery. Prior to her surgery, she resided at 104 North 130th Circle, Chandler,
20 Arizona 85225. She is the mother of two children, and has six grandchildren and
21 six great-grandchildren. She is currently retired, though she worked for seventeen
22 years as an attendant in a medical facility. Since Ms. Hameed has retired, she has
23 actively volunteered in support of several causes, including voter registration
24 drives. [Hameed Testimony].
25
26

1 890. On April 20, 2007, Ms. Hameed applied to register to vote. Ms. Hameed
2 was registering to vote because she had just moved to Arizona. [Hameed
3 Testimony].

4 891. Ms. Hameed has been a consistent voter since she was first able to vote at
5 age 18, so she wanted to continue to exercise her right to vote and participate in the
6 political process. [Hameed Testimony].

7 892. Ms. Hameed received her voter registration form in the mail, filled it out,
8 and mailed the completed form to the Maricopa County Recorder's Office.
9 [Hameed Testimony].

10 893. Ms. Hameed followed the directions carefully on the voter registration
11 application. [Hameed Testimony].

12 894. Ms. Hameed was not aware that she had to provide proof of citizenship with
13 my completed voter registration form, so she did not provide the required proof.
14 [Hameed Testimony].

15 895. Shortly after Ms. Hameed submitted her voter registration application, she
16 received a form letter from the Maricopa County Recorder's Office enclosing her
17 rejected application. [Hameed Testimony].

18 896. The letter stated that, "Your registration form has been rejected for the
19 following reason: First time registration requires proof of citizenship which was
20 not included. Please fill in any missing blanks and return enclosed form with your
21 proof of citizenship." [Hameed Testimony].

22 897. Ms. Hameed called the Maricopa County Recorder's Office and was told
23 that she needed to provide one of several forms of identification along with a new
24 voter registration form. [Hameed Testimony].

25 898. Ms. Hameed sent in a copy of her driver's license with the new form, but
26 this application was also rejected. [Hameed Testimony].

1 899. Ms. Hameed was told by the Maricopa County Recorder's Office that her
2 driver's license was not an acceptable form of identification because it was a
3 California license and was issued prior to 1996. [Hameed Testimony].

4 900. Ms. Hameed contacted the California Department of Motor Vehicles and
5 changed her address on the license to her Arizona address. [Exhibit 535 [Hameed
6 Testimony].

7 901. Ms. Hameed submitted a copy of this updated license and a copy of her U.S.
8 birth certificate along with another voter registration form. [Hameed Testimony].

9 902. This third attempt to register was likewise rejected. [Hameed Testimony].

10 903. Ms. Hameed tried to register at least two more times, and has always
11 followed the instructions that the Maricopa County Recorder's Office gave to her.
12 [Hameed Testimony].

13 904. Each voter registration form Ms. Hameed has submitted has been rejected.
14 [Hameed Testimony].

15 905. Ms. Hameed was never able to successfully register in Arizona. [Hameed
16 Testimony].

17 906. Ms. Hameed still has not figured out why all her voter registration
18 applications were rejected, particularly when she had properly completed the
19 application and submitted it to the County Recorder. [Hameed Testimony].

20 907. Ms. Hameed's driver's license was issued to her before October 1, 1996.
21 [Hameed Testimony].

22 908. Ms. Hameed also has a copy of her U.S. birth certificate. [Hameed
23 Testimony].

24 909. Ms. Hameed is African American and was born in Mississippi. She believes
25 that all citizens, regardless of ethnicity or race, should be able to vote without
26 obstacle. [Hameed Testimony].

1 910. Ms. Hameed wants to vote and wants to exercise this right because she feels
2 that it is the best method to improve the lives of people in the United States.
3 [Hameed Testimony].

4 **d. The Proof of Citizenship Requirements in Order to Register to Vote**
5 **Has Had a Negative Impact on Voters**

6 911. The state document entitled “Voter Registration Processing” identifies the
7 five required elements of the voter registration form under Proposition 200: name,
8 residence address, date of birth, signature and citizenship. If the voter registration
9 form was missing any element, it was to be put in a pending file until the data was
10 acquired. [Pl. Tr. Ex. 17].

11 912. On January 25, 2005, the State Election Director Joseph Kanefield emailed
12 County Recorder and Election Administrators regarding “Proposition 200
13 Implementation” which stated pursuant to Proposition 200, the county recorders
14 must reject any registration received without proof of citizenship. [Pl. Tr. Ex. 10].

15 913. The Maricopa County Elections Director, Karen Osborne, admitted that
16 since Proposition 200’s provisions and requirements went into effect, United States
17 citizens eligible to register to vote and living in Maricopa County have been unable
18 to register because they lack the necessary documents. [Exhibit 512 (Osborne vol.
19 1 43:12-44:9)]. Lindsay Hunter Carrion, an Arizona voter, sent an email to Mary
20 C. Fontes, the Election Office Manager for the Office of the Arizona Secretary of
21 State, on January 7, 2008, to complain that she wanted to vote in the upcoming
22 election but the state’s online voter registration system rejected her three times.
23 Ms. Carrion explained that the system found no record of her driver’s license or
24 social security number, despite the fact that she was able to pay her registration
25 fees on the Service Arizona website. Ms. Carrion wrote that her personal
26 information had not changed in 7 years, and she believed that her registration was

1 rejected in error. Ms. Carrion wrote that she wanted to vote in the upcoming
2 primary and the system had previously rejected her registration after three tries.
3 [Pl. Tr. Ex. 85].

4 914. Karen Osborne, Maricopa County Elections Director, related a story of a
5 woman caught in between the law's requirements who was unable to register to
6 vote at the Maricopa County Recorder's Office. She had just moved and did not
7 have her birth certificate, a passport, or an Arizona driver's license [Exhibit 512
8 (Osborne vol. 1 43:12-44:9)].

9 915. On August 6, 2005, Judy Allen-Wise, Yavapai County Registrar of Voters,
10 wrote to Arizona State Senator Bennett and voiced her disapproval of the voter ID
11 requirements of Proposition 200. [Pl. Tr. Ex. 634].

12 916. Arizona Department of Transportation requires that a driver's license
13 applicant demonstrate they have authorized presence in the United States.
14 However the fees involved in obtaining such proof can include: fees that vary,
15 depending on age, to obtain an Arizona driver's license, fees Arizona and other
16 states charge to obtain a replacement birth certificate, a \$4.00 fee for a replacement
17 or duplicate Arizona driver's license, to a \$97 fee required to obtain a U.S.
18 Passport, a \$220 fee to obtain a replacement certificate of naturalization or the fee
19 attributed to notarizing a document. [Pl. Tr. Ex. 670; 672-677; 690-692].

20 917. Prop 200 has prompted many people to voice their opposition to its voting
21 and registration requirements. [Pl. Tr. Ex. 679 – 687; 689; 693].

22 918. Maria Elena Lopez, an Arizona voter, emailed the Arizona Secretary of
23 State after she was unable to register successfully both in person and online. Her
24 attempt to register online resulted in a message that stated "no record found". Ms.
25 Lopez's email expresses her belief that her record and registration disappeared
26

1 because “her last name is Lopez” which evoked a desire to “resign” her voting
2 rights. [Pl. Tr. Ex. 86].

3 919. On November 2, 2006, James F. and Mary Lee Matthes, husband and wife
4 voters in Arizona, emailed Robert A. Flores, a voter outreach coordinator with the
5 Arizona Secretary of State’s Office, informing him they were denied the right to
6 vote on November 1, 2006 because they filled out a form the previous year while
7 applying for their Arizona Drivers that did not require them to present proof of
8 citizenship, thus rendering it obsolete. In the email, the Matthes explain that on
9 November 16, 2005, eleven months after the passage of Proposition 200 changed
10 the requirements on the Voter Registration Form, they presented their U.S.
11 passports in order to apply and receive their Arizona Drivers License while
12 simultaneously registering to vote. The Matthes were not otherwise notified of any
13 problems with their voters registration form until they attempted and were denied
14 the right to vote on November 1, 2006. The Matthes contacted the Pima County
15 Division of Elections and were told a letter was sent to them requesting proof of
16 citizenship because the form they filled out in November 2005 was obsolete. The
17 letter was returned to Pima County as “undeliverable” because the Matthes were
18 out of town for the Christmas holiday. [Pl. Tr. Ex. 90].

19 920. Even in the absence of Proposition 200, the maintenance and operation of
20 the Arizona elections system presents its own difficulties. [Pl. Tr. Ex. 953, 87, 91
21 and 92.].

22 921. On October 27, 2004, the Arizona Republic reported that Maricopa County
23 printed and distributed to registered voters 8,800 election notification cards that
24 listed the wrong polling place. [Pl. Tr. Ex. 953].

25 922. Esperanza Fernandez-Sotelo, an Arizona voter, emailed the Election Office
26 on January 7, 2008 to inform them that she was registered to vote under two

1 names. Mrs. Fernandez-Sotelo explained in the email that she accidentally
2 registered to vote after she was already registered because the name on her driver
3 license had changed, and the online system would only allow her to enter the
4 information that was found on her current driver license. [Pl. Tr. Ex. 87].

5 923. On October 19, 2006, Michael Lopez, an Arizona overseas military voter,
6 emailed Robert A. Flores, a Voters Outreach Coordinator from the Arizona
7 Secretary of State's Office, about his inability to register to vote online because the
8 address listed on his driver's license did not match the address in the database. On
9 October 20, 2006, in an email from Mr. Flores, Mr. Lopez was instructed to visit a
10 website for military voters in order to remedy the problem. [Pl. Tr. Ex. 91].

11 924. Terri Tobey, an Arizona voter, emailed the Secretary of State's Office on
12 August 8, 2005 to report that she was unable to complete a name change online to
13 update her records now that she has a different last name on her driver license. On
14 August 8, 2005, Robert A. Flores, the Voter Outreach Coordinator responded with
15 instructions for registering online. The voter tried again with the instructions and
16 she was not able to complete the required verification with the Problem Driver
17 Pointer System. [Pl. Tr. Ex. 92].

18 925. Denise Z., an Arizona voter, emailed the Secretary of State Office on
19 August 8, 2006 to request assistance changing her name via the state's voter
20 registration website. She wished to update her voter registration record online, but
21 encountered difficulty in doing so. Robert Flores, the Voter Outreach Coordinator,
22 responded in email, providing a sample page of the webpage entitled "Verify Voter
23 Registration Eligibility" and instructions to answer each question. [Pl. Tr. Ex. 93].

24 **B. Negative Impact of Voter ID on individuals**

25 **a. Voters Who Lack Identification**

26

1 926. Plaintiff Bernie Abeytia possesses a valid Arizona driver's license that was
2 issued after October 1, 1996. [stipulated fact].

3 927. Bernie Abeytia is 57 years old. He lives in Phoenix Arizona and is native
4 born United States citizen. He is registered voter in Maricopa County. [stipulated
5 fact]. However, after the passage of Proposition 200 and until he changed his voter
6 registration, he could not vote like everyone else on Election Day because he did
7 not have the identification documentation that Proposition 200 requires. [Abeytia
8 Testimony].

9 928. Although he had a valid driver's license from 2004 to 2007, he could not
10 use his license to vote at the polls on Election Day because it did not satisfy the
11 voter identification requirements of Proposition 200. [Abeytia Testimony].

12 929. Mr. Abeytia is a Vietnam veteran. He worked for the U.S. Social Security
13 Administration (SSA) for 27 years and retired with the job title of Technical
14 Expert. As part of his work he conducted workshops around the country on identity
15 theft. For this reason, he had always taken safety precautions when it came to
16 providing personal information and advised many of his trainees to do the same.
17 He believed it was safer for a person not to reveal their physical address whenever
18 possible. This is why Mr. Abeytia's driver's license only had his post office box
19 address. He used his post office box address on all bills and bank statements. He
20 felt strongly about protecting his personal information and did not want to risk any
21 form of identity theft. He did not intend to stop using these precautions because he
22 was told that even banks are now recommending that people get post office boxes
23 to prevent identity theft. [Abeytia Testimony].

24 930. As a result of using a post office box for his correspondence and driver's
25 license, he lacked one form of photo identification and two forms of the secondary
26

1 voter identification documents specified by Proposition 200 and could not use
2 these documents to vote at the polls on Election Day. [Abeytia Testimony].

3 931. Proposition 200 harmed him because, until he recently re-registered to vote
4 and listed his post office box address, he could not cast a regular ballot at the polls
5 on election day, including the 2006 General Election. [Abeytia Testimony].

6 932. Mr. Abeytia wants to vote on Election Day because he wants to see his
7 ballot physically cast and wants to be sure that his vote will count. Mr. Abeytia
8 also wants to vote on Election Day because he often does not make a final decision
9 about which candidate to support until he arrives at the poll and considers all
10 information, even information he learns on Election Day. It makes him feel good
11 to be able to say that he voted on that day like everyone else. He wears the “I
12 voted” sticker given to him at the polling place on Election Day because he wants
13 to encourage others to also vote that day. The right to vote at the polls on Election
14 Day is one of the rights he fought for when he served his country in the military.
15 [Abeytia Testimony].

16 933. In 2008, Mr. Abeytia received in the mail a letter from the Maricopa County
17 Elections Department asking him to re-register to vote. He did not request the
18 letter or a voter registration application from Maricopa County. He does not know
19 of anyone else in his neighborhood who received such a request from Maricopa
20 County. He believes that Maricopa County singled him out for the letter because
21 he is a plaintiff in this lawsuit and they wanted to make a special effort to resolve
22 his voter identification problem so that he could not continue to sue them.
23 [Abeytia Testimony].

24 934. Mr. Abeytia did re-register to vote after receiving the Maricopa County
25 letter and listed his post office box address on his new application. Although he
26 voted at the polls in the 2008 Presidential Preference Election, he does not know of

1 any other person who lacked voter identification and whether he was the recipient
2 of special efforts by Maricopa County to ensure that they had the identification
3 required by Proposition 200. He believes many Arizona voters who use post office
4 boxes like him are still unable to provide the identification required by Proposition
5 200 and as a result are unable to vote at the polls on Election Day. [Abeytia
6 Testimony].

7 935. When Mr. Abeytia was denied the opportunity to vote at the polls after
8 Proposition 200, nothing can restore his lost opportunity. After having the
9 experience of being an eligible voter who was denied the opportunity to cast a
10 ballot at the polls, he lost confidence in the electoral system in Arizona. He
11 believes it is not fair that eligible voters are turned away from the polls because of
12 Proposition 200's identification requirements. He believes that this law is not only
13 unfair but that it has negatively affected the election system by preventing eligible
14 voters from casting a ballot. [Abeytia Testimony].

15 936. Georgia Morrison-Flores is 54 years old. [Morrison-Flores Testimony].

16 937. Georgia Morrison-Flores is life-long resident of Yuma, Arizona and
17 currently lives at 510 S. 17th Ave. She is a U.S. citizen and a registered voter.
18 [Morrison-Flores Testimony].

19 938. Georgia Morrison-Flores registered to vote for the first time in September
20 2004 in a community-based voter registration drive. She was a newlywed at the
21 time, so she used her married name to register. [Morrison-Flores Testimony].

22 939. On Election Day, November 7, 2006, Georgia Morrison-Flores attempted to
23 vote at her polling place at the Dr. Martin Luther King Jr. Neighborhood Center,
24 which is approximately four to five blocks from her home on the south side of
25 Yuma, Arizona. The Center is located at 300 W. 13th Ave. She was turned away
26 by the election staff there. [Morrison-Flores Testimony].

1 940. The election workers at the poll told Georgia Morrison-Flores that her valid
2 license did not meet the requirements of Proposition 200. Ms. Morrison-Flores
3 was told that her license was insufficient as voter identification because the name
4 on her license did not match her name on the voter rolls and that she could not
5 vote. [Morrison-Flores Testimony].

6 941. Georgia Morrison-Flores was turned away from voting despite the fact that
7 she personally knew at least two election workers at the polling place. One of the
8 election workers lived across the street from her and knew her from the time she
9 was a child. [Morrison-Flores Testimony].

10 942. The election workers did not offer Georgia Morrison-Flores a provisional
11 ballot or conditional ballot to vote. [Morrison-Flores Testimony].

12 943. On February 8, 2008 Georgia Morrison-Flores again attempted to vote at her
13 designated polling place, the Dr. Martin Luther King, Jr. Neighborhood Center.
14 [Morrison-Flores Testimony].

15 944. Georgia Morrison-Flores' cousin, Pauleen Wilson, also intended to vote that
16 day and drove her to the polling place around 4:30 p.m., which was a convenient
17 time for both of them to go to the polling place together. [Morrison-Flores
18 Testimony].

19 945. After Georgia Morrison-Flores and Pauleen arrived at the Martin Luther
20 King, Jr. Neighborhood Center they waited in line for approximately 15 minutes.
21 [Morrison-Flores Testimony].

22 946. When Ms. Morrison-Flores finally arrived at the table used to accept voters.
23 She recognized the woman working there as Betsy Johnson, a friend of the family
24 whom she had known for over 30 years. [Morrison-Flores Testimony].
25
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1 947. Ms. Johnson and Georgia Morrison-Flores exchanged pleasantries and Ms.
2 Johnson then asked for a “photo I.D.” Ms. Morrison-Flores handed her Arizona
3 driver’s license. [Morrison-Flores Testimony].

4 948. Ms. Johnson took Georgia Morrison-Flores driver’s license and began to
5 look through the documents on her desk. After several minutes of searching Ms.
6 Johnson looked up, handed the license back to her and told her she could not vote.
7 [Morrison-Flores Testimony].

8 949. Ms. Johnson then proceeded to inform another poll worker, Joyce Hassell,
9 whom Georgia Morrison-Flores had also known for many years, that she could not
10 vote. Ms. Hassel came over and told Ms. Morrison-Flores that she would “look
11 into it” and call her if she learned anything that would allow her to vote.
12 [Morrison-Flores Testimony].

13 950. Ms. Hassell wrote down Georgia Morrison-Flores phone number and
14 address information but she did not subsequently contact her regarding her ability
15 to vote. [Morrison-Flores Testimony].

16 951. At no point did Ms. Johnson or Ms. Hassell offer Georgia Morrison-Flores
17 any other means to cast her ballot, such as a provisional ballot. [Morrison-Flores
18 Testimony].

19 952. Georgia Morrison-Flores’ cousin, Pauleen Wilson, was also told by the poll
20 worker that she could not vote even though she presented her driver’s license.
21 [Morrison-Flores Testimony].

22 953. Pauleen Wilson and Georgia Morrison-Flores left the polling place
23 approximately 30 to 45 minutes after they first arrived. [Morrison-Flores
24 Testimony].

25 954. Georgia Morrison-Flores had to pay a fee of approximately \$4 to update her
26 name on her driver’s license in 2007. Ms. Morrison-Flores does not feel that she

1 should have to choose between spending her money on food and other necessities
2 versus a driver's license in order to vote at the polls on Election Day. [Morrison-
3 Flores Testimony].

4 955. Georgia Morrison-Flores has not had a car for over three years. Her annual
5 income for the year of 2007 was \$ 1,822. Ms. Morrison-Flores' home, which her
6 mother left to her when she passed away last year, is currently in foreclosure
7 because she cannot afford the monthly mortgage payments of \$154.20. In order to
8 stop the foreclosure process Ms. Morrison-Flores would have to pay approximately
9 \$1,200 of back pay and resume payments. [Morrison-Flores Testimony].

10 956. Georgia Morrison-Flores stated in her declaration that she felt frustrated
11 after her unsuccessful attempts voting because she felt that as U.S citizen who
12 made the effort to go register to vote she should have not been denied her right to
13 vote. Ms. Morrison-Flores also testified that she felt helpless as her right as a
14 citizen was stripped and her voice was muffled. [Morrison-Flores Testimony].

15 957. Plaintiff Georgia Morrison Flores possesses a valid Arizona driver's license
16 that was issued after October 1, 1996. [stipulated fact].

17 958. The name on plaintiff Georgia Morrison Flores' current Arizona driver's
18 license is Georgia Ann Morrison-Flores. [stipulated fact].

19 959. Plaintiff Georgia Morrison Flores is registered to vote in Yuma County.
20 [stipulated fact].

21 960. Agnes Laughter is an enrolled member of the Navajo Nation. She is a
22 natural-born citizen of the United States of America. Ms. Laughter is 74 years old
23 and is registered to vote in Arizona. [Laughter Testimony].

24 961. Agnes Laughter is a resident of the Navajo Nation. She lives seven miles
25 northeast of the Chilchinbeto Chapter, located in Navajo County on the Navajo
26

1 Nation Reservation. Ms. Laughter has lived in Chilchinbeto since 1932. [Laughter
2 Testimony].

3 962. Ms. Laughter has voted in county, state, and federal election and intends to
4 continue voting in county, state, and federal elections. [Laughter Testimony].

5 963. Ms. Laughter does speak Navajo and does not read or write English.

6 964. Ms. Laughter does not possess any form of identification containing her
7 name, address and photograph. [Laughter Testimony].

8 965. Ms Laughter does not have an Arizona's driver's license or an Arizona non-
9 operators identification card. [Laughter Testimony].

10 966. Ms. Laughter does not have two forms of identification containing her name
11 and current address that she will use on election day. [Laughter Testimony].

12 967. Agnes Laughter misplaced her voter registration card. [Laughter Testimony
13].

14 968. Agnes Laughter lives on the Navajo Reservation and as a result she does not
15 have a property tax statement. [Laughter Testimony].

16 969. Agnes Laughter does not have any utilities in her name. [Laughter
17 Testimony].

18 970. Agnes Laughter does not have transportation, a vehicle registered in the
19 State of Arizona, or a vehicle insurance card. [Laughter Testimony].

20 971. Agnes Laughter does not have a tribal identification card with her name and
21 address. [Laughter Testimony].

22 972. Agnes Laughter does have a bank account in her name but refuses to use her
23 personal banking information in order to vote. [Laughter Testimony].

24 973. The nearest Department of Motor Vehicles location from her home is in
25 Chinle, Arizona, which is approximately 50 miles from Chilchinbeto. [Laughter
26 Testimony].

1 974. Agnes Laughter feels that she has certain circumstances that make her
2 obtaining identification for the purpose of voting burdensome and impractical. The
3 only utility her household receives is the water bill. This water bill is issued in her
4 husband's name. [Laughter Testimony].

5 975. Ms. Laughter was born at home and does not have a birth certificate. Her
6 lack of birth certificate has given Agnes Laughter problems in the past obtaining an
7 Arizona identification card. [Laughter Testimony].

8 976. Agnes Laughter's only reason for obtaining an Arizona non-operators
9 identification card would be to have an identification card for voting purposes.
10 [Laughter Testimony].

11 977. Agnes Laughter would have to expend funds to travel to the Department of
12 Motor Vehicles in order to obtain an Arizona non-operators identification card.
13 [Laughter Testimony].

14 978. Agnes Laughter objects to pay a fee for the right to vote. [Laughter
15 Testimony].

16 979. Agnes Laughter believes that the new Arizona voter identification
17 requirements unduly burden her right to participate in county, state, and federal
18 elections. [Laughter Testimony].

19 980. Agnes Laughter intends on voting in the next scheduled election and is
20 concerned that the election officials will not allow her to vote because she does not
21 have and cannot obtain without substantial inconvenience and expenses the forms
22 an identification which may now be required by Arizona law. [Laughter
23 Testimony].

24 981. If Agnes Laughter fails to bring proper identification to the polls, she feels
25 that it is improbable that she will return to her designated location with proper
26 identification because she does not have transportation. [Laughter Testimony].

1 982. Karen Rene Lewsader is a United States citizen and a registered voter in
2 Maricopa County. Ms. Lewsader is a police officer and has resided in Phoenix for
3 thirty years. [Lewsader Testimony].

4 983. In February of 2008, Ms. Lewsader attempted to vote at her designated
5 polling place, which is approximately two miles from her home. This polling place
6 was a church located at the corner of 15th Avenue and Thomas St. in Mid-Town
7 Phoenix. [Lewsader Testimony].

8 984. Ms. Lewsader received a notice from Maricopa County informing her that
9 this was her designated polling location. [Lewsader Testimony].

10 985. Ms. Lewsader does not recall the notice including any information about the
11 new requirements imposed by Proposition 200. [Lewsader Testimony].

12 986. When Ms. Lewsader arrived at the table used to accept voters the poll
13 worker asked for her name and identification. [Lewsader Testimony].

14 987. Ms. Lewsader proceeded to provide her driver's license and her Police
15 Officer Commission Card. Ms. Lewsader was then asked by the first poll worker
16 to join a different line. [Lewsader Testimony].

17 988. Once Ms. Lewsader joined the second line, she was told by a different poll
18 worker that she did not have proper identification because of the address on her
19 driver's license did not match the address listed on the polling rolls. [Lewsader
20 Testimony].

21 989. Ms. Lewsader changed her address with the Department of Motor Vehicles
22 but had not purchased a new license. [Lewsader Testimony].

23 990. The poll worker advised Ms. Lewsader that she could return to her vehicle
24 and look for a document that had my new address and name. [Lewsader
25 Testimony].

26

1 991. Ms. Lewsader found her vehicle registration that had the correct address.

2 However, she was not able to use the document because it only listed her
3 husband's name on it. [Lewsader Testimony].

4 992. Ms. Lewsader could not locate any document that fulfilled the requirements
5 of Proposition 200. [Lewsader Testimony].

6 993. Ms. Lewsader was told by the same poll worker at the second table to fill
7 out the conditional provisional ballot. [Lewsader Testimony].

8 994. Ms. Lewsader filled out the conditional provisional ballot and left with
9 paper instructions explaining the proper forms of identification and the time frame
10 she had to come back. However, Ms. Lewsader did not go back with proper
11 identification because her job requires frequent travel and did not allow her the
12 time it would have taken. [Lewsader Testimony].

13 995. Ann Michelle Fletchall currently lives at 1703 South Hardy Drive, Tempe,
14 Arizona 85281. Ms. Fletchall is a United States citizen and a registered voter.
15 Ms. Fletchall is a graduate student at Arizona State University and studies
16 Geography. Ms. Fletchall received her undergraduate degree from Gustavus
17 Adolphus College in Minnesota. [Fletchall Testimony].

18 996. On February 5, 2008, Ms. Fletchall attempted to vote at her designated
19 polling place: the Tempe Women's Club located on Mill Avenue and 13th Street.
20 This polling place is located in Tempe, Arizona. [Fletchall Testimony].

21 997. Ms. Fletchall is a registered Democrat and was eligible to vote in the
22 Presidential Preference Election held that day. [Fletchall Testimony].

23 998. Ms. Fletchall had just changed addresses in Tempe from Dorsey Street to
24 her current address on Hardy Street and this was the first time she tried to vote in
25 person because she had always voted through the mail. [Fletchall Testimony].
26

1 999. Ms. Fletchall received a voter registration card in the mail with her current
2 address on South Hardy Street and she mistakenly thought that would suffice to
3 cast her vote. [Fletchall Testimony].

4 1000. Ms. Fletchall carried two forms of ID: her voter registration card and her
5 driver's license, but her driver's license had her old address previous to the Dorsey
6 Street address (2134 Broadway Road, Tempe, Arizona, 85282) and her voter
7 registration card reflected her new address on Hardy Street. Ms. Fletchall did not
8 have any other form of ID on her person at the time. [Fletchall Testimony].

9 1001. The poll worker asked Ms. Fletchall to present two forms of identification.
10 [Fletchall Testimony].

11 1002. Ms. Fletchall produced her voter registration card and her driver's license.
12 [Fletchall Testimony].

13 1003. Ms. Fletchall's ID was then checked to a list. Since the address on the
14 driver's license did not match the address on the list, the poll worker told Ms.
15 Fletchall she had to cast a conditional provisional ballot. [Fletchall Testimony].

16 1004. Ms. Fletchall's name was on the list of voters, but it was not where it should
17 have been on the alphabetical list. It was in the back of the list. [Fletchall
18 Testimony].

19 1005. The poll worker informed Ms. Fletchall that she had to go talk to the person
20 who handled the provisional ballots since her addresses did not match-up.
21 [Fletchall Testimony].

22 1006. The person in charge of the provisional ballots told Ms. Fletchall that she
23 needed to present a piece of mail reflecting her current address in order to vote.
24 [Fletchall Testimony].

25
26

1 1007. The person in charge of the provisional ballots did not specify what type of
2 mail Ms. Fletchall needed to bring or give her any information regarding
3 acceptable forms of mail. [Fletchall Testimony].

4 1008. Later in the afternoon, around 5:00 p.m., she returned with a piece of mail
5 and waited in line approximately thirty minutes. [Fletchall Testimony].

6 1009. The person in charge of the conditional provisional ballots told Ms. Fletchall
7 the piece of mail she brought was not acceptable. [Fletchall Testimony].

8 1010. It was not until that moment that the person in charge of the conditional
9 provisional ballots informed Ms. Fletchall of the specific types of mail accepted as
10 valid verification of her current address. [Fletchall Testimony].

11 1011. At that point, Ms. Fletchall gave up and chose not to cast her vote in the
12 Presidential Preference Election. [Fletchall Testimony].

13 1012. When Ms. Fletchall was sent to speak with the provisional ballot person he
14 did not give good information concerning what type of mail to bring back in order
15 to verify her address. [Fletchall Testimony].

16 1013. Ms. Fletchall does not have any utility bills because all the utilities are under
17 her roommate's name. [Fletchall Testimony].

18 1014. Ms. Fletchall was unable to prove her current address and was unable to
19 vote. [Fletchall Testimony].

20 1015. To cast the conditional provisional ballot Ms. Fletchall filled out a regular
21 voting form completely, using her new address on Hardy Street, signed it, and it
22 was placed in a special box. [Fletchall Testimony].

23 1016. The new voting rules are very inconvenient and do not make sense.
24 [Fletchall Testimony].

25 1017. Now Ms. Fletchall knows that she has to make sure she does everything
26 right to properly prove her identification and address in order for her vote to be

1 counted, despite the fact that she is a registered voter and holds an Arizona driver's
2 license. [Fletcher Testimony].

3 1018. Caleb Ian LaPorte has lived in Arizona since January 2006. Since August of
4 2007 he has been employed as a pump technician throughout Phoenix and
5 Maricopa County for private and public water consumption. [LaPorte Testimony].

6 1019. On November 7, 2006 Mr. LaPorte attempted to vote at his designated
7 polling place, the Alma Schoolhouse, which is approximately one mile from his
8 home. He brought a letter he received from the Maricopa County Recorder and his
9 Arizona driver's license. In the letter from Maricopa County he was told that the
10 voting bureau had received the address change he made with them, and the letter
11 itself would work as the proof of identification needed in order to cast his ballot,
12 since he had not purchased a replacement driver's license.

13 1020. Mr. LaPorte's license does not expire until approximately 2048 and still
14 shows his old address of 2517 Highland Trail Bullhead City Arizona.

15 1021. Mr. LaPorte does not have the time or the money to get a replacement
16 driver's license. [LaPorte Testimony].

17 1022. Mr. LaPorte arrived at the polling place after he got off of work, around
18 6:00 P.M. There were about 30 people in line or voting at the time he arrived.
19 [LaPorte Testimony].

20 1023. Mr. LaPorte waited in line for approximately 20 minutes. Mr. LaPorte was
21 told by a poll worker to have his license ready. [LaPorte Testimony].

22 1024. Mr. LaPorte showed his license and the letter from Maricopa County to the
23 poll worker. The poll worker took his license and compared the information on it
24 to what the poll worker showed on their voter list. The poll worker told Mr.
25 LaPorte his license was insufficient identification. Mr. LaPorte showed the letter
26 he received from the voter bureau in Maricopa County to the poll worker, and

1 showed the poll worker where it said that his address was updated with the Motor
2 Vehicle Division and that the letter may be used as his proof, but the poll worker
3 disregarded this information. [LaPorte Testimony].

4 1025. The poll worker told Mr. LaPorte that he would need to bring any piece of
5 mail that is from any business that showed his name with the same address that is
6 reflected on his voter record, which is 30 W Carter Dr. Apt. 1-205 Tempe AZ
7 85282. [LaPorte Testimony].

8 1026. Mr. LaPorte was residing in his girlfriends' apartment, all of the utility bills
9 are in her name, the only mailing with the 30 W. Carter address in his name was a
10 piece of junk mail. Mr. LaPorte returned to the polling place and showed his piece
11 of mail to the poll worker. [LaPorte Testimony].

12 1027. Mr. LaPorte was told that he would need to fill out a conditional provisional
13 ballot, and his vote would only be counted if he purchased a new license that
14 reflected the 30 W. Carter address. [LaPorte Testimony].

15 1028. A different poll worker handed Mr. LaPorte an envelope to put his ballot in.
16 The poll worker did not explain the process of casting a conditional provisional
17 ballot. [LaPorte Testimony].

18 1029. Mr. LaPorte followed the instructions completely, and handed the envelope
19 to the poll worker. By this time the polling place had become so crowded people
20 were being forced to fill out their provisional ballots anywhere they could. Mr.
21 LaPorte states that anyone could see what was being written, there was no privacy.
22 [LaPorte Testimony].

23 1030. When Mr. LaPorte finished filling out the conditional provisional ballot
24 envelope it was almost 8:00 P.M., approximately two hours after he first arrived.
25 [LaPorte Testimony].

26

1 2. Prop 200 has confused election workers and resulted in undue
2 burden for individuals

3 1031. Steven Frank Fulton is over the age of 18. He currently lives at 3220 West
4 Hanna Road, Eloy, Arizona 85231. He is a United States citizen and a registered
5 voter. Mr. Fulton has lived in Arizona for about forty-five years. He is currently
6 retired. He worked for thirty years in the field of corrections and several of those
7 years were spent working for the Arizona Department of Corrections. Mr. Fulton
8 also spent four years serving his country in the United States Army. [Steven Frank
9 Fulton Testimony].

10 1032. In late 2007, Mr. Fulton moved with his wife from Safford, Arizona, where
11 they were registered voters, to Eloy, Arizona. [Steven Frank Fulton Testimony].

12 1033. In December 2007, Mr. Fulton went to the post office and got a voter
13 registration form. [Steven Frank Fulton Testimony].

14 1034. Mr. Fulton filled out his new address and other information, and mailed the
15 completed voter registration form to the Pinal County Recorder's Office. [Steven
16 Frank Fulton Testimony].

17 1035. Mr. Fulton did not receive a new voter registration card from Pinal County
18 prior to the Presidential Preference primary election, held on February 5, 2008.
19 [Steven Frank Fulton Testimony].

20 1036. Mr. Fulton assumed that his registration form had been received and
21 processed, and he wanted to cast his vote in the primary election, so he proceeded
22 to the local polling place. [Steven Frank Fulton Testimony].

23 1037. On February 5, 2008, Mr. Fulton attempted to vote at the nearest polling
24 place. [Steven Frank Fulton Testimony].

25 1038. When Mr. Fulton arrived at the table used to accept voters, the poll worker
26 could not find his name on the list of registered voters. Mr. Fulton had submitted

1 the voter registration form more than 30 days prior to the election. [Steven Frank
2 Fulton Testimony].

3 1039. The poll worker said that since Mr. Fulton was not registered to vote, he
4 could vote using a provisional ballot. [Steven Frank Fulton Testimony].

5 1040. Mr. Fulton was asked to show identification to prove that he was a citizen,
6 so he provided his driver's license, birth certificate, several utility bills, with his
7 new address on them, and his old voter registration card that he had used when he
8 lived in Safford, Arizona. [Steven Frank Fulton Testimony].

9 1041. The poll worker made copies of Mr. Fulton's various forms of
10 identification. The poll worker was satisfied with Mr. Fulton's identification and
11 allowed him to complete the provisional ballot. [Steven Frank Fulton Testimony].

12 1042. The poll worker never asked Mr. Fulton to return to the County Recorder's
13 Office after the election to provide his identification again. [Steven Frank Fulton
14 Testimony].

15 1043. One month after the election Mr. Fulton received a letter in the mail stating
16 that his provisional ballot was rejected and his vote was not counted. [Steven
17 Frank Fulton Testimony].

18 1044. The letter explained that Mr. Fulton's ballot was rejected because he failed
19 to provide proper proof of citizenship. [Steven Frank Fulton Testimony].

20 1045. Mr. Fulton called the County Registrar's Office and was told that his ballot
21 was rejected because the address on his forms of identification did not match.
22 [Steven Frank Fulton Testimony].

23 1046. Mr. Fulton explained that he had recently moved and that he had sent in his
24 voter registration forms in December 2007. Mr. Fulton was told that the forms
25 must be submitted 90 days prior to the election, not 30 days, and since the forms
26

1 were not received 90 days before the election, he was not registered to vote in time
2 for the election. [Steven Frank Fulton Testimony].

3 1047. Mr. Fulton was very upset that his provisional ballot was not counted when
4 he provided numerous forms of identification, including forms of identification
5 with his new address on them. [Steven Frank Fulton Testimony].

6 1048. Mr. Fulton provided several forms of proof that he is a United States citizen,
7 yet his vote was not counted. [Steven Frank Fulton Testimony].

8 1049. Mr. Fulton has not received his new voter registration card though it has
9 been over five months since he submitted his voter registration form. [Steven
10 Frank Fulton Testimony].

11 1050. Donna Fae Fulton is over the age of 18. She currently lives at 3220 West
12 Hanna Road, Eloy, Arizona 85231. She is a United States citizen and a registered
13 voter. Mrs. Fulton was born in Arizona and has lived in Arizona for most of her
14 life. She currently works for the Immigration and Customs Enforcement Division
15 of the Department of Homeland Security. Prior to this employment Mrs. Fulton
16 worked for the Arizona Department of Corrections for twelve years. [Donna Fae
17 Fulton Testimony].

18 1051. In late 2007, Mrs. Fulton and her husband moved from Safford, Arizona,
19 where they were registered voters, to Eloy, Arizona. [Donna Fae Fulton
20 Testimony].

21 1052. In December 2007, her husband went to the post office and got voter
22 registration forms. [Donna Fae Fulton Testimony].

23 1053. Mrs. Fulton filled out her new address, and other information, and mailed
24 the completed voter registration form to the Pinal County Recorder's Office.
25 [Donna Fae Fulton Testimony].

26

1 1054. Mrs. Fulton did not receive a new voter registration card from Pinal County
2 prior to the Presidential Preference primary election, held on February 5, 2008.
3 [Donna Fae Fulton Testimony].

4 1055. Mrs. Fulton assumed that her registration form had been received and
5 processed and she wanted to cast her vote in the primary election, so she proceeded
6 to the local polling place. [Donna Fae Fulton Testimony].

7 1056. On February 5, 2008, Mrs. Fulton attempted to vote at the nearest polling
8 place. [Donna Fae Fulton Testimony].

9 1057. When Mrs. Fulton arrived at the table used to accept voters, the poll worker
10 could not find her name on the list of registered voters. Mrs. Fulton had submitted
11 the voter registration form more than 30 days prior to the election. [Donna Fae
12 Fulton Testimony].

13 1058. The poll worker said that since Mrs. Fulton was not registered to vote, she
14 could vote using a provisional ballot. [Donna Fae Fulton Testimony].

15 1059. Mrs. Fulton was asked to show identification to prove that she was a citizen,
16 so she provided her driver's license, birth certificate, several utility bills, with her
17 new address on them, and her old voter registration card that she had used when
18 she lived in Safford, Arizona. [Donna Fae Fulton Testimony].

19 1060. The poll worker made copies of Mrs. Fulton's various forms of
20 identification. The poll worker was satisfied with her identification and allowed
21 her to complete the provisional ballot. [Donna Fae Fulton Testimony].

22 1061. The poll worker never asked Mrs. Fulton to return to the County Recorder's
23 Office after the election to provide her identification again. [Donna Fae Fulton
24 Testimony].

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1 1062. One month after the election Mrs. Fulton received a letter in the mail stating
2 that her provisional ballot was rejected and her vote was not counted. [Donna Fae
3 Fulton Testimony].

4 1063. The letter explained that Mrs. Fulton's ballot was rejected because she failed
5 to provide proper proof of citizenship. [Donna Fae Fulton Testimony].

6 1064. Mrs. Fulton's husband called the County Registrar's Office and was told
7 that their ballots were rejected because the address on their forms of identification
8 did not match. [Donna Fae Fulton Testimony].

9 1065. Mrs. Fulton's husband explained that they had recently moved and that they
10 had sent in their voter registration forms in December 2007. He was told that the
11 forms must be submitted 90 days prior to the election, not 30 days, and since the
12 forms were not received 90 days before the election, they were not registered to
13 vote in time for the election. [Donna Fae Fulton Testimony].

14 1066. Mrs. Fulton was very upset that her provisional ballot was not counted when
15 she provided numerous forms of identification, including forms of identification
16 with her new address on them. [Donna Fae Fulton Testimony].

17 1067. Mrs. Fulton provided several forms of proof that she is a United States
18 citizen, yet her vote was not counted. [Donna Fae Fulton Testimony].

19 1068. Mrs. Fulton has not received her new voter registration card though it has
20 been over five months since she submitted her voter registration form. [Donna Fae
21 Fulton Testimony].

22 1069. Kristopher Lee Sorge, a U.S. citizen and a resident of Maricopa County,
23 attempted to cast his ballot during the February 2008 Presidential Preference
24 Election. Mr. Sorge only presented one form of identification with his name and
25 address at the polling place. Mr. Sorge was allowed to cast a provisional ballot.
26 When Mr. Sorge tried to return with a second form of identification, the poll

1 worker would not let Mr. Sorge change his ballot to a regular ballot. Mr. Sorge
2 provisional ballot was ultimately not counted. [Sorge Testimony].

3 1070. Dorothy Terrazas, a U.S. citizen and a resident of Pima County, attempted
4 to cast her ballot during the February 2008 Presidential Preference Election. Ms.
5 Terrazas presented her passport and a piece of election mail. [Terrazas
6 Testimony]. The poll worker stated that neither form of ID brought by Ms.
7 Terrazas was valid. Another poll worker gave Ms. Terrazas a provisional ballot
8 and told her to vote by Friday. Ms. Terrazas filled out the conditional provisional
9 ballot in its entirety, but was unable to return to the polling place due to her work
10 schedule. Deirdre Belle-Oudry is over 18 and competent to make this declaration.
11 [Belle-Oudry Testimony].

12 1071. Ms. Belle-Oudry's current physical address is 8922 East Calle Pasto,
13 Tucson, Arizona 85715. [Belle-Oudry Testimony].

14 1072. Ms. Belle-Oudry voted on February 5, 2008, at the polling place located in
15 the 9000th block of E. Speedway, Tucson, Arizona. [Belle-Oudry Testimony].

16 1073. Ms. Belle-Oudry arrived at the polling place at approximately 6:15 A.M.
17 No poll worker informed her husband that he needed to sign the voter book.
18 [Belle-Oudry Testimony].

19 1074. Ms. Belle-Oudry waited in line approximately 5 minutes. [Belle-Oudry
20 Testimony].

21 1075. Ms. Belle-Oudry showed her Arizona driver's license to the poll worker and
22 told the poll worker that she received an early ballot in the mail but never returned
23 it. Ms. Belle-Oudry was then directed to another table to fill out a conditional
24 provisional ballot envelope. The poll worker then detached a piece of paper from
25 the envelope and told Ms. Belle-Oudry to check online in 10 days to find out if her
26 vote was counted. [Belle-Oudry Testimony].

1 1076. Ms. Belle-Oudry showed two different poll workers her Arizona driver's
2 license which contains the same information as her voting record. [Belle-Oudry
3 Testimony].

4 1077. Ms. Belle-Oudry was not told by the poll worker what was wrong with her
5 identification. [Belle-Oudry Testimony].

6 1078. Ms. Belle-Oudry completed the conditional provisional ballot envelope as
7 directed by the poll worker. [Belle-Oudry Testimony].

8 1079. Ms. Belle-Oudry left the polling place approximately 15 minutes after she
9 had arrived. [Belle-Oudry Testimony. On January 25, 2005, the State Election
10 Director Joseph Kanefield emailed County Recorder and Election Administrators
11 regarding the implementation of Proposition 200 citizenship requirements and
12 polling place procedures. On January 25, 2005, Candy Owens of Coconino County
13 responded by email to Mr. Kanefield and Kris Waite expressing her inability to
14 cast a ballot under the regulations of Proposition 200 because she changed her
15 address online but did not receive a new license as per Motor Vehicle Department
16 "MVD" procedures. In addition, Ms. Owen explained that her license states that it
17 was issued on January 6, 1995 and therefore would have to show proof of
18 citizenship. Ms. Owens' MVD file states that she changed her address on April 13,
19 1998 and therefore would not have to show proof of citizenship if she went to the
20 MVD for a new license. Ms. Owen would have to fill out a provisional ballot even
21 if she went to her designated polling place and her voter ID card had her current
22 correct address. Kris Waite, the Assistant State Election Director responds by
23 stating they anticipated a significant number of voters having this problem and the
24 solution for an easier process at the polling place would be to invest four dollars for
25 a new license. [Pl. Tr. Ex. 8].

26

1 1080. The Maricopa County Elections Director admitted that the system of
2 identification and determining who receives a conditional provisional ballot and
3 who receives a regular provisional ballot is confusing. [Exhibit 512 (Osborne vol.
4 1 81:16; Exhibits 242 & 243)].

5 1081. Some voters who had to fill out conditional provisional ballots were not
6 instructed to return with identification to have their ballot counted and were not
7 told how their ballots would be verified. [Exhibit 527 (Exhibit 527 (Cotto Dec ¶
8 7); Dethloff Dec ¶¶ 13-15; Exhibit 554A (White Dec ¶ 8)]. Some voters who had
9 to fill out conditional provisional ballots feel the poll workers who were supposed
10 to assist them with the conditional provisional ballots seemed unsure of the process
11 for issuing conditional provisional ballots. [Cotto Testimony; Dethloff
12 Testimony].

13 **XII. IMPACT OF PROP 200 ON VOTER REGISTRATION ORGANIZATIONS** 14 **AND VOLUNTEERS**

15 1082. Following the passage of Proposition 200, SB 1219 was introduced by
16 Senator Marilyn Jarrett in the Arizona Legislature in 2005, which would prohibit
17 anyone but a government official from photocopying proof of citizenship
18 documents. Government officials acknowledged that this would impact voting
19 drives, but believed it necessary to prevent identity theft. SB 1219 passed the
20 Senate, but ultimately did not pass, as it failed to get a vote in the House of
21 Representatives. [Exhibit 155; bill history found at
22 <http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/47leg/1r/bills/sb1219o>
23 .asp].

24 1083. Lydia Lydia Camarillo is employed as the Vice President of the Southwest
25 Voter Registration Education Project (SVREP). [Camarillo Testimony].

26 1084. Lydia Camarillo served as Vice President of SVREP since August 2003.
From December 1994 through September 1999 she served as Executive Director of

1 SVREP, and from September 1, 2005 to March, 2006 she was Acting President.
2 During her employment with SVREP, she has been responsible for supervising the
3 registration. [Camarillo Testimony].

4 1085. SVREP is a non-profit and non partisan organization committed to
5 improving the participation of Latino and other minority communities across the
6 United States in the democratic process, through voter registration, voter education
7 and voter participation activities. SVREP was founded in 1974, SVREO has
8 conducted more than 2, 200 voter registration campaigns in 15 states, including
9 Arizona. SVREP conducts its voter registration activities at community-based sites
10 such as school campuses, malls and fairs. Because Proposition 200 has limited the
11 number of person that SVREP can register to vote and impaired the ability of
12 SVREP to conduct voter registration and turnout efforts, SVREP has been injured
13 by Proposition 200. [Camarillo Testimony].

14 1086. SVREP also increases Latino and other minorities' participation in
15 American democratic process by strengthening the capacity, and experience and
16 skills of Latino leaders, networks and organizations through programs that rain,
17 organize, finance, develop, expand and mobilize Latino leasers and voters around
18 an agenda that reflects their values. [Camarillo Testimony].

19 1087. SVREP has stated in an interrogatory that the Voter identification provisions
20 of Proposition 200 require them to educate voters in Arizona on how to
21 successfully cast their ballot. [Camarillo Testimony].

22 1088. SVREP is the nation's largest and oldest non-profit organization focused on
23 increasing Latino voter registration and participation and has registered 2.3 million
24 voters since its founding. [Camarillo Testimony].

25
26

1 1089. SVREP conducts its voter registration and voter mobilization campaigns in
2 a similar fashion across the United States including Arizona. [Camarillo
3 Testimony].

4 1090. SVREP selects a local community, meets with leaders and asks them to
5 provide them with 2-10 names of neighborhood leaders. From this group they
6 organize a steering committee which will determine the goals and objectives of the
7 project. The committee monitors the voter campaign, recruits volunteers, serves as
8 the public voice for the voter campaign, and helps supervise the locally-hired Field
9 Organizers. The Field Organizers in turn supervise the activities of 10-20 Project
10 Coordinators. [Camarillo Testimony].

11 1091. SVREP trains the Field Organizers and Project Coordinators and helps them
12 develop their plan for a non-partisan voter campaign. SVREP also trains the
13 Organizers and Project Coordinators on how to conduct community based voter
14 registration, using clipboards to be more mobile and following the state rules
15 regarding voter registration. [Camarillo Testimony].

16 1092. SVREP campaigns have relied on voter registration forms promulgated by
17 the Secretary of State of the state in which the campaign is occurring as well as the
18 federal mail voter registration application. [Camarillo Testimony].

19 1093. In a non-Presidential cycle, SVREP normally spends the equivalent of \$20
20 per voter to conduct a registration and mobilization campaign. Thus, in order to
21 register and turn out 1,000 voters SVREP can expect to use \$20,000 from its
22 budget. This amount assumes that voter registration is conducted by volunteers
23 under the supervision of project Field Organizers. [Camarillo Testimony].

24 1094. As a non-profit organization, SVREP raises money from private donors.
25 SVREP testifies that their resources are very limited. SVREP stated that if they are
26 required to expend greater resources on one voter campaign, it impairs their ability

1 to conduct additional voter campaigns and fulfill our mission of improving the
2 participation of Latino and other minority communities across the United States in
3 the democratic process. [Camarillo Testimony].

4 1095. SVREP stated that Proposition 200's proof of citizenship requirements for
5 voter registration will severely impair their ability to register voters. [Camarillo
6 Testimony].

7 1096. Because it is more cost effective, SVREP conducted voter registration, in
8 malls, sports games, college campuses, and other places where people congregate.
9 It is less cost-effective for SVREP to conduct voter registration in a door to door
10 campaign. SVREP stated that Proposition 200's proof of citizenship requirements
11 will greatly hinder their voter registration efforts by requiring all canvassers to
12 bring along photocopy machines or scanners and printers to places where voters
13 gather, or to bring such a machine door to door in a neighborhood. SVREP does
14 not have the resources to equip canvassers with portable photocopy machines or
15 scanners and printers in order to conduct voter registration campaigns in Arizona.
16 [Camarillo Testimony].

17 1097. In addition, in a time of heightened fear of identity theft, SVREP stated that
18 even if it were able to equip canvassers with photocopy equipment, few voter
19 registration applicants would be willing to allow a canvasser to copy their
20 citizenship documents, such as birth certificates or passports. [Camarillo
21 Testimony].

22 1098. SVREP has stated that because of Proposition 200's proof of citizenship
23 requirements, the only realistic alternative for SVREP is to discontinue its voter
24 registration activities. SVREP also stated that Secretary of State Brewer's refusal
25 to use and accept the federal mail voter registration application, and her order that
26

1 Arizona county recorders do the same, forecloses the only avenue available to
2 SVREP to register voters for federal elections. [Camarillo Testimony].

3 1099. Debra Sue Lopez is 45 years old. [Lopez Testimony, Exhibit 461)].

4 1100. Ms. Lopez resides at 1001 E. Jefferson at 10th St. in Phoenix Arizona. She is
5 a United States citizen and life-long resident of Arizona. [Lopez Testimony,
6 Exhibits 461-462].

7 1101. For many years now, Ms. Lopez has dedicated a substantial amount of her
8 time to working to improve the condition of the Latino community in Arizona by
9 increasing voter registration and voter turnout. [Lopez Testimony, Exhibits 461,
10 463].

11 1102. As early as February 2003, Ms. Lopez served as State Director for the
12 Latino Vote Project in Arizona. This organization was a non-profit, non-partisan
13 organization that Ms. Lopez founded to empower the Latino community and
14 encourage more Latinos to become involved in the political process. [Lopez
15 Testimony, Exhibits 461, 464].

16 1103. Latino Vote Project's activities focused on voter registration and voter
17 turnout in Arizona. Ms. Lopez feels that the organization was very successful.
18 However, in December 2004 the organization lost funding. Despite this, Ms.
19 Lopez continued to engage in her own personal and political cause by continuing to
20 conduct voter registration. Since the passage of Proposition 200, Ms. Lopez has
21 personally registered voters one by one and has directed broader voter registration
22 and turnout campaigns. [Lopez Testimony, Exhibits 461, 465, 466, 467, 468].

23 1104. Ms. Lopez feels that Proposition 200 has harmed her professional and
24 personal efforts in this regard. Prior to the implementation of Proposition 200, she
25 would register eligible individuals by assisting them with filling out the forms and
26 ensuring that those forms were submitted to the Counties. However, since the

1 implementation of Proposition 200, her ability to register voters has suffered.
2 [Lopez Testimony, Exhibit 461].

3 1105. Ms. Lopez says in her experience many people in the Latino community do
4 not carry around evidence of their United States citizenship such as their birth
5 certificates or naturalization certificates. Thus, even if her or her fellow voter
6 registration workers wanted to help these people register to vote, they could not
7 register unless they were able to provide a valid driver's license dated after 1996.
8 [Lopez Testimony, Exhibit 461].

9 1106. In Ms. Lopez's experience even if voter applicants did carry documentary
10 proof of citizenship, she had no way of duplicating their documents in the field.
11 She began bringing copy machines to voter registration drives for proper
12 registration. As a result, Ms. Lopez feels that today she can register fewer people
13 when compared to number of people she could register with the same resources
14 prior to the passage of Proposition 200. [Exhibit 461].

15 1107. Ms. Lopez stated that Proposition 200 has also required her to spend a
16 significant amount of time navigating problems with the new registration forms. In
17 Ms. Lopez's experience, the Arizona voter registration application requests that
18 eligible registrants who are naturalized citizens provide their naturalization
19 certificate numbers as proof of citizenship. However, the Counties continue to
20 reject those properly completed forms because the Counties cannot verify the
21 naturalization certificate number. In Ms. Lopez's experience, Naturalized voter
22 registrants have no way of knowing this and frequently are forced to attempt to
23 register a second time. [Lopez Testimony, Exhibit 461].

24 1108. Ms. Lopez has spent her own personal money on voter registration after the
25 passage of Proposition 200. Ms. Lopez paid for phone calls to educate eligible
26 registrants about the requirements of Proposition 200 and address other problems

1 that Proposition 200 has created. Ms. Lopez also paid for photocopying original
2 documents and gas in order to drive to prospective registrants' homes to gather the
3 necessary information required by Proposition 200. Ms. Lopez stated that as a
4 result of Proposition 200, she has spent over a thousand dollars of her money for
5 which she has never been reimbursed. [Lopez Testimony, Exhibit 461].

6 1109. Before Proposition 200 was passed, the Latino Vote Project was funded in
7 large part by Project Vote, a non profit organization separate from the Latino Vote
8 Project. After the passage of Proposition 200, the funding for the project was
9 eliminated because the new law's voter registration restrictions resulted in fewer
10 successful voter registrations during registration drives when compared to the
11 number of successful registrations they could achieve using the same resources
12 prior to the passage of Proposition 200. Ms. Lopez feels that Proposition 200
13 ultimately cut short her longstanding professional work with voter registration in
14 Arizona. [Lopez Testimony, Exhibit 461].

15 1110. Monica Sandschafer is the State Head Organizer for Arizona Association of
16 Community Organizations for Reform Now (ACORN). She has held this position
17 since February of 2007. [Sandschafer Testimony].

18 1111. ACORN is a nonpartisan, nonprofit organization with offices in Mesa,
19 Glendale, Tucson, and Phoenix. ACORN is the nation=s largest community
20 organization of low and moderate income families, working together for social
21 justice and stronger communities. [Sandschafer Testimony].

22 1112. Voter registration drives are fundamental to the work of ACORN.
23 Nationally, ACORN has registered over 1.5 million citizens. It is the position of
24 ACORN that registering to vote is central to becoming a full participant in
25 American democracy and influencing change in our community. [Sandschafer
26 Testimony].

1 1113. Through numerous staff persons, ACORN conducts voter registration drives
2 targeting low and moderate-income families in Arizona. ACORN conducts voter
3 registration drives at numerous places in Arizona. ACORN attempts to register
4 voters at grocery stores, laundry mats, libraries, and other high traffic sites.

5 1114. As a result of Proposition 200, ACORN's voter registration activities in
6 Arizona have suffered drastically. [Sandschafer Testimony].

7 1115. For example, in the year 2004 the voter registration campaign of ACORN in
8 Arizona resulted in 77, 000 new registrants. This year, ACORN has only been able
9 to register approximately 12,000 so far. [Sandschafer Testimony].

10 1116. The primary reason ACORN cannot successfully register new voters is
11 because individuals do not possess the proper documentation to complete a voter
12 registration application. For instance, at one point ACORN accounted for over
13 1,000 voter registration applications that could not be completed because the
14 individual lacked proof of citizenship documentation. [Sandschafer Testimony].

15 1117. ACORN'S mission has suffered because of Proposition 200. It has caused a
16 large decrease in registrants and has diminished their funding and resources.
17 ACORN cannot compete with voter registration efforts in other states that do not
18 have the same obstacles they do. For example, ACORN currently registers an
19 average of 11 persons for every 20 persons that organizers in other states register.
20 In addition, they have spent time, funds and human resources in the field in order
21 to determine the impact of Proposition 200 on potential registrants. [Sandschafer
22 Testimony].

23 1118. Arizona ACORN has been prevented from effectively realizing some of our
24 goals as an organization -- creating an impetus for change through civic
25 involvement and empowering the communities we serve through their vote.
26 [Sandschafer Testimony].

1 1119. Michael Slater is employed as the Deputy Director for Project Vote. [Slater
2 Testimony].

3 1120. Project Vote is a nonpartisan, nonprofit organization incorporated in
4 Louisiana with an office in Phoenix. Project Vote in Arizona has helped increase
5 voter registration by registering voters in the community and collaborating with
6 other Arizona-based community groups since 1982. Project Vote also provides
7 professional training, management, evaluation, and technical services for voter
8 engagement and voter participation activities in low and moderate-income
9 communities in Arizona. [Slater Testimony].

10 1121. As a result of Proposition 200, Project Vote has been forced to drastically
11 cut-back on its voter registration activities in Arizona and has had to divert
12 substantial resources in order to comply with the new registration and voting
13 requirements. [Slater Testimony].

14 1122. Project Vote has had to spend valuable time and resources educating the
15 community about the requirements of Proposition 200. In specific, they have
16 spent over \$6000.00 on travel, project costs, and reimbursements. [Slater
17 Testimony].

18 1123. Sal Martinez is the Director of Human Resources for Chicanos Por La
19 Causa (“CPLC”). [Martinez Testimony].

20 1124. CPLC is a statewide community development corporation in Arizona
21 committed to building stronger, healthier communities as a leading advocate,
22 coalition builder, and direct service provider. CPLC promotes positive change and
23 self-sufficiency to enhance the quality of life for the benefit of those it serves.
24 [Martinez Testimony].

25 1125. CPLC provides direct services in the areas of economic development,
26 education, housing, and other areas. In order to fulfill its organizational goals,

1 CPLC encourages its daily clientele to become involved in civic life. As a result,
2 CPLC attempts to register its daily clientele at its different direct service sites. In
3 addition, CPLC conducts voter registration out in the community. [Martinez
4 Testimony].

5 1126. CPLC has also expended funds, time and human resources to provide the
6 community with accurate information regarding the new voter and voter
7 registration requirements imposed by Proposition 200. CPLC initiated a state-wide
8 campaign to register new voters and counteract the new voter registration
9 requirements of Proposition 200. [Martinez Testimony].

10 1127. In that effort CPLC committed staff to create a Voter Registration Project
11 with emphasis on first time voters and those new to Maricopa County. [Martinez
12 Testimony].

13 1128. CPLC has a staff person who is solely dedicated to voter education and
14 voter registration efforts. Through the program called “La Causa Advocacy” the
15 staff person trains their staff to register clientele, coordinates voter registration
16 efforts in the community, and is charged with reviewing and submitting all the
17 voter registration applications obtained through our agency. [Martinez Testimony].

18 1129. Because of Proposition 200, CPLC’s voter registration efforts have suffered.
19 [Martinez Testimony].

20 1130. Latinos who attempt to register to vote in community-based registration
21 campaigns are unlikely to have proof of citizenship with them. [Martinez
22 Testimony].

23 1131. CPLC has found that Latinos often feel dejected and apathetic because they
24 truly want to register but do not possess the proper documents required by
25 Proposition 200. [Martinez Testimony].

26

1 1132. Because Proposition 200 has effectively obstructed an individual's right to
2 vote and participate in civic engagement, CPLC's mission cannot fully be
3 accomplished. [Martinez Testimony].

4 1133. Luz Sarmina is the President & CEO of Valle del Sol. [Sarmina
5 Testimony].

6 1134. Luz Sarmina has served as President & CEO of Valle del Sol since August
7 1, 1995. During Ms. Sarmina's employment with Valle del Sol, she was
8 responsible for supervising the Vice President of Philanthropic and Community
9 Relations, who had oversight on the voter registration, education and voter turnout
10 efforts of Valle del Sol in conjunction with Democracia USA. [Sarmina
11 Testimony].

12 1135. Plaintiff Valle del Sol is a non-profit and community based organization that
13 also operates as a non-partisan organization committed to the delivery of
14 behavioral health, social services and leadership development. Voter registration,
15 voter education and voter participation activities are activities that operate under
16 the Center for Culture & Understanding to promote civic engagement. Since its
17 founding in 1970, Valle del Sol has conducted several voter registration campaigns
18 in Arizona. Valle del Sol has conducted its voter registration activities at
19 community-based sites such as school campuses, leadership institutes, all agency
20 meetings, targeted neighborhoods, malls and fairs. Valle del Sol stated that because
21 the effects of Proposition 200 has limited the number of persons that Valle del Sol
22 can register to vote and impaired the ability of Valle del Sol to conduct voter
23 registration and turnout efforts, they have been injured by Proposition 200.
24 [Sarmina Testimony , 469-471].

25
26

1 1136. Valle del Sol is one of Arizona's largest non-profit organizations focused on
2 services to both the Latino community and community-at-large and has registered
3 voters through the years. [Sarmina Testimony, Exhibit 469].

4 1137. Valle del Sol has conducted non-partisan voter registration and voter
5 mobilization campaigns in a similar fashion across Maricopa County. [Sarmina
6 Testimony , 470-471].

7 1138. One of the ways in which Valle del Sol conducted voter registration and
8 mobilization campaigns is selecting a local community or neighborhood and
9 meeting with leaders and neighbors and asking them to join our efforts in educating
10 their fellow neighbors. From this group of neighbors and volunteers, Valle del Sol
11 organized precinct walks to provide voter information and registration. Depending
12 on the calendar, volunteers may have also provided early ballot request forms.
13 [Sarmina Testimony , 470-477].

14 1139. When Valle del Sol did voter registration drives, Valle del Sol gathered
15 volunteers for precinct walks and provided them a script, walking list, and voter
16 registration forms. Volunteers were additionally provided early ballot forms to
17 make the door-to-door encounter easier for individuals already registered to vote.
18 [Sarmina Testimony, 470-472, 474, 477].

19 1140. Valle del Sol's campaigns have relied on voter registration forms
20 promulgated by the Maricopa County Recorder's Office as well as the early ballot
21 forms and federal mail voter registration application. [Sarmina Testimony].

22 1141. Valle del Sol stated that in order to counteract the effects of Proposition 200
23 they had to expend staff hours on meetings, trainings, strategy sessions, and on the
24 ground outreach to the community. Approximate resources depleted on voter
25 education and registration efforts are displayed in the following increases in time
26 and salaries, President and CEO, 24 hours at \$1,800, Vice President of

1 Philanthropic & Community Relations 64 hours at \$1,400, Vice President of
2 Corporate Relations/Leadership at 64 hours at \$1,400, Manger for Leadership
3 Programs 64 hours at \$1,152, Community Power Manager 64 hours at \$1,280, and
4 Volunteer Program Coordinator 64 hours at \$648. In addition, resources were also
5 spent on supplies such as \$100 on flyers, \$150 on printing, and \$45 dollars on
6 postage. Indirect costs total at \$3,072, thus bringing the total cost at \$11,047.
7 [Sarmina Testimony , 472, 474, 477-491].

8 1142. As a non-profit organization, Valle del Sol, received the assistance of
9 Democracia USA, a national non-profit, non-partisan, organization dedicated to
10 voter registration and education. Democracia USA provided Valle del Sol a
11 Fellow to assist and aid in the area of education and voter registration. With this
12 partnership, Valle del Sol provided space and resources to implement and execute
13 voter education and registration projects. Because Valle del Sol's budget reflects its
14 core services of behavioral health, social services and leadership development, the
15 cost of overhead, occupancy and staff supervision are the only costs the agency
16 incurred. If Valle del Sol determined to expend greater resources on voter
17 registration campaigns, it would affect their ability to conduct our core services in
18 meeting the needs of our consumers. [Sarmina Testimony].

19 1143. Valle del Sol stated that Proposition 200's proof of citizenship requirements
20 for voter registration has severely impaired their ability to register voters. Valle del
21 Sol also stated that some individuals, who may be elderly or from minority
22 populations, do not readily carry documents required by Proposition 200 to register
23 to vote on site. [Sarmina Testimony].

24 1144. Valle del Sol has also stated Voter registration drives conducted were made
25 more challenging and difficult to successfully register voters for elections.
26 [Sarmina Testimony].

1 1145. Because it is more cost effective, Valle del Sol conducted voter registration,
2 in neighborhoods, agency public areas, leadership institutes, and other places
3 where people congregate. It is less cost-effective for Valle del Sol to conduct voter
4 registration in a door to door campaign. Valle del Sol stated that Proposition 200's
5 proof of citizenship requirements will greatly hinder their voter registration efforts
6 by requiring all canvassers to bring along photocopy machines or scanners and
7 printers to places where voters gather, or to bring such a machine door to door in a
8 neighborhood. Valle del Sol does not have the resources to equip canvassers with
9 portable photocopy machines or scanners and printers in order to conduct voter
10 registration campaigns in Arizona. [Sarmina Testimony].

11 1146. In addition, in a time of heightened fear of identity theft, Valle del Sol stated
12 that even if it were able to equip canvassers with photocopy equipment, few voter
13 registration applicants would be willing to allow a canvasser to copy their
14 citizenship documents, such as birth certificates or passports. [Sarmina
15 Testimony].

16 1147. Valle del Sol has stated that because of Proposition 200's proof of
17 citizenship requirements, the only realistic alternative for Valle del Sol is to
18 discontinue its voter registration activities. [Sarmina Testimony].

19 1148. Hector Yturralde is the President of the Arizona Hispanic Community
20 Forum (AHCF). He has served as President for the last three years, and been a
21 member of the organization for the last 13 years. [Yturralde Testimony].

22 1149. The AHCF is an advocacy organization that collaborates with other
23 organizations on civil and human rights issues in Arizona. AHCF's mission is to
24 empower Hispanic communities. AHCF works towards active participation with
25 policy-making bodies at all levels of the public and private sectors; they educate,
26 promote and preserve Hispanic history, language, cultures, customs, and

1 contributions; and they work to increase opportunities and improve the quality of
2 life for Hispanics. [Yturralde Testimony].

3 1150. AHCF conducts voter registration drives to fulfill their organizational goals.
4 [Yturralde Testimony].

5 1151. AHCF has regularly conducted voter registration drives since the formation
6 of their organization. AHCF has stated that as estimate their organization has held
7 a registration drive at least five times a year, and during a busy election year as
8 many as ten. [Yturralde Testimony].

9 1152. AHCF conducts voter registration at community events, concerts, Latino
10 oriented events, and naturalization ceremonies. AHCF was scheduled to have a
11 voter registration drive at the July 4, 2008 naturalization ceremony in their
12 community. [Yturralde Testimony].

13 1153. AHCF has stated that their voter registration efforts have greatly suffered
14 because of Proposition 200. Before Proposition 200, AHCF was able to register
15 and submit a number of voter registration applications. Once Proposition 200 took
16 effect, the number of applications submitted by AHCF decreased. AHFC stated
17 that this is because many hopeful voters did not carry the proper identification or
18 documents necessary to successfully complete the voter registration application.
19 [Yturralde Testimony].

20 1154. AHCF has stated that it was frustrating for their organization because it
21 became very difficult to register voters. AHCF also stated that they witnessed
22 disillusionment and disappointment by individuals who wanted to register but did
23 not have the proper documents. AHCF stated that they encouraged applicants to
24 submit their information later, but they never knew if it was accomplished.
25 [Yturralde Testimony].

26

1 1155. AHCF is a small community- based organization that relies on community
2 donations and community volunteers. AHCF'S resources are very limited. Voter
3 registration drives by AHCF only function because of their volunteer support. At
4 some events, AHCF needs as many as seven or eight people. AHCF stated that
5 because of the new requirements imposed on registrants, it is difficult to recruit
6 volunteers because they recognize the difficulty in successfully registering voters.
7 [Yturralde Testimony].

8 1156. AHCF stated that the mission of their organization has been affected
9 because of the new voter registration requirements imposed by Proposition 200.
10 AHCF also stated that their mission of empowering Hispanic communities,
11 working towards active participation with policy-making bodies, and increasing
12 opportunities for Hispanics cannot be accomplished if they cannot continue to
13 successfully register voters. [Yturralde Testimony].

14 1157. Luis Ibarra is employed as the Chief Executive Officer of Friendly House, a
15 plaintiff in this case. [Ibarra Testimony].

16 1158. Luis Ibarra has served as the Chief Executive Officer of Friendly House
17 since 1992. During his employment with Friendly House, he has been responsible
18 for supervising the voter registration and voter education efforts of Friendly House.
19 [Ibarra Testimony].

20 1159. Friendly House is Arizona's oldest non-profit organization which focuses on
21 political participation and has registered tens of thousands of voters since its
22 founding. [Ibarra Testimony].

23 1160. Plaintiff Friendly House is a non-profit and non-partisan organization
24 committed to fostering excellence in the community through comprehensive family
25 and human services, educational programs such as adult literacy and English
26 classes, naturalization classes, immigration law workshops, workforce

1 development, home ownership programs, home health care for the elderly and
2 disabled, and voter registration, voter education and civic engagement activities.
3 Since its founding in 1920, Friendly House has incorporated voter registration and
4 political participation efforts into its operations. [Ibarra Testimony].

5 1161. Friendly House conducts its voter registration and voter mobilization
6 primarily in Phoenix, Arizona. [Exhibit 537 (Ibarra Decl. at 2)].

7 1162. Friendly House stated that Proposition 200's proof of citizenship
8 requirements for voter registration has severely impaired their ability to register
9 voters. [Ibarra Testimony].

10 1163. Friendly House stated as a result of Proposition 200 they were forced to
11 explain the voter registration and voter identification requirements to its clients as
12 well as the students in their citizenship and civics classes. These efforts required
13 additional staff and take time away from the delivery of direct services, which can
14 limit the number of individuals served during the course of a day. They also
15 stated that it detracted from class instruction and displaced other information in the
16 lesson plan. Friendly House has also stated that they are injured by Proposition
17 200 because it has limited the number of persons that they can register to vote and
18 forced them to curtail or forgo some of its activities. [Ibarra Testimony].

19 1164. As a non-profit organization, Friendly House raises money from private
20 donors. Friendly House resources are very limited. Friendly House stated that if
21 they are required to expend greater resources on one voter campaign, it impairs
22 their ability to conduct additional voter campaigns and fulfill their mission of
23 improving the participation of Latino and other minority communities across the
24 United States in the democratic process. [Ibarra Testimony].

25 1165. Common Cause engages in voter education efforts as part of its
26 organizational mission. Common Cause stated in an interrogatory that as a result of

1 the voter identification requirements of Proposition 200, they will be forced to
2 divert resources to educate the community about these requirements and will be
3 thwarted from fully realizing its organizational goals. [Common Cause Testimony,
4 Exhibit 492].

5 1166. Common Cause is a nonprofit, nonpartisan organization established in 1970.
6 Common Cause's commitment to honest, open and accountable government, and to
7 encouraging citizen participation in democracy are the foundation for the
8 organization's program agenda, which includes Money and Politics, Voting and
9 Elections, Media and Democracy, and Ethics and Transparency in Government.
10 Common Cause has a respected tradition as an effective citizens' lobby working to
11 ensure honest, open, accountable and effective government. [Common Cause
12 Testimony, Exhibit 492].

13 **XIII. PROP 200 AFFECTS INDIVIDUALS IN THE CONTEXT OF RACIALLY**
14 **POLARIZED VOTING AND RAPIDLY GROWING LATINO**
15 **POPULATION IN THE STATE**

16 **A. The Demographic Landscape of Arizona**

17 1167. The demographic data used by Dr. Richard L. Engstrom are based on the
18 2000 Census of Population. [Exhibit 556 (Expert Report of Dr. Richard L.
19 Engstrom at 5, March 28, 2008 ("Second Engstrom Report"))]

20 1168. Using three different methodologies, Ecological Regression analysis (ER),
21 Homogeneous precinct analysis (also known as extreme case analysis) (HP), and
22 Ecological Inference Analysis (EI), Dr. Engstrom analyzed the extent to which the
23 candidate preferences of Latino and other voters in Arizona have differed in recent
24 statewide, congressional, and state senate elections in which the voters have been
25 presented with a choice between or among Latino and non-Latino candidates.
26 [Exhibit 555 & 556 (Engstrom Report at 3; Second Engstrom Report at 5)]

1 1169. Dr. Engstrom reported estimates using HP, ER, and EI, rather than just one
2 method, because none of the procedures is guaranteed to produce estimates closer
3 to the “true values” of the respective group support levels all of the time. [Exhibit
4 557 (Response of Dr. Richard L. Engstrom to Rebuttal Report of Jeffrey S. Zax at
5 4, May 23, 2008 (“Engstrom Response”))]

6 1170. According to Dr. Engstrom, ER analysis and HP analysis are methodologies
7 that were approved for the purpose of analyzing the extent to which the candidate
8 preferences of the Latino voters differed from those of the non-Latino
9 (predominantly white) voters in elections by the United States Supreme Court in
10 *Thornburg v. Gingles*, 478 U.S. 30, 52-53 (1986). [Exhibit 556 (Second Engstrom
11 Report at 4)]

12 1171. According to Dr. Engstrom, the Supreme Court in *Gingles* noted that the
13 district court in that case had identified ER and HP as “standard in the literature for
14 the analysis of racially polarized voting” and relied on the estimates derived from
15 these procedures to conclude that voting in the North Carolina multi-member
16 legislative districts at issue had been racially polarized. [Exhibit 557 (Engstrom
17 Response at 2)]

18 1172. According to Dr. Engstrom, ER is the statistical procedure that relies on all
19 of the precincts in which votes were cast in a particular election. [Exhibit 555 &
20 556 (Engstrom Report at 4; Second Engstrom Report at 4)]

21 1173. According to Dr. Engstrom, ER analysis is a method that has been relied
22 upon by other expert witnesses in assessing the extent to which voting has been
23 racially polarized in Arizona in their election analyses and reports for cases
24 concerning the statewide redistricting plans adopted in Arizona following the 2000
25 census. [Exhibit 555 (Engstrom Report at 4)]

26

1 1174. According to Dr. Engstrom, the Supreme Court in *Gingles* did not state that
2 comparable findings of racially polarized voting evidence would be necessary in
3 future similar cases. [Exhibit 558 (Dr. Richard L. Engstrom 2, March 7, 2008
4 (“Engstrom Rebuttal Report”))]

5 1175. According to Dr. Engstrom, the Supreme Court in *Gingles* adopted the
6 following definition of “racially polarized voting”: “‘a consistent relationship
7 between [the] race of the voter and the way in which the voter votes,’ ... or to put it
8 differently, where ‘black voters and white voters vote differently.’” The Supreme
9 Court also provided a summary statement concerning the definition: “the legal
10 concept of racially polarized voting, as it relates to claims of vote dilution, refers
11 only to the existence of a correlation between the race of voters and the selection of
12 certain candidates,” citing *Gingles* at 2778. [Exhibit 558 (Engstrom Rebuttal
13 Report 2)]

14 1176. According to Dr. Engstrom, the Supreme Court in *Gingles* did not establish
15 a threshold for racially polarized voting. [Exhibit 558 (Engstrom Rebuttal Report
16 2-3)]

17 1177. According to Dr. Engstrom, even if the Supreme Court in *Gingles* did
18 establish a threshold for racially polarized voting, the results of his analysis would
19 still be similar. [Exhibit 558 (Engstrom Rebuttal Report 3)]

20 1178. According to Dr. Engstrom, ER analysis has been the basis for findings of
21 racially polarized voting in numerous cases since *Gingles*. [Exhibit 558 (Engstrom
22 Rebuttal Report 3)]

23 1179. According to Dr. Engstrom, ER analysis has been widely employed by
24 expert witnesses testifying about racially polarized voting in the past and present.
25 [Exhibit 558 (Engstrom Rebuttal Report 4)]
26

1 1180. According to Dr. Engstrom, ER analysis, as used in *Gingles*, refers to
2 “double regression.” [Exhibit 557 (Engstrom Response 2)]

3 1181. According to Dr. Engstrom, regression is a standard methodology used for
4 numerous purposes by social scientists. [Exhibit 557 (Engstrom Response 2)]

5 1182. According to Dr. Engstrom, double regression, which employs data for all
6 of the precincts, combines the results of two regressions, one of which regresses
7 the candidate support measure for a Latino candidate or group of Latino candidates
8 onto the measure of the minority presence in the precincts, and the other of which
9 regresses the support levels for the non-Latino candidate or candidates on the
10 minority presence in the precinct. The first regression provides estimates of both
11 the percentage of the non-Latino VAP and the percentage of the Latino VAP that
12 voted for the Latino candidate or candidates. The other regression provides
13 estimates of the percentage of the non-Latino VAP and Latino VAP voting for the
14 other candidate or candidates. [Exhibit 557 (Engstrom Response 2-3)]

15 1183. According to Dr. Engstrom, by combining the estimates from each
16 regression, one can derive the estimated percentage of Latinos voting in the
17 election that voted for the Latino candidate or candidates, or the other candidate or
18 candidates, and the percentage of non-Latinos voting in the election that did
19 likewise. [Exhibit 557 (Engstrom Response 3)]

20 1184. The reason Dr. Engstrom employed the double regression procedure rather
21 than a single regression, in which the percentage of the votes received by a
22 candidate or group of candidates is regressed onto the percentage Latino within the
23 precincts, was to take into account the possibility that the two groups participated
24 in the election at different rates. [Exhibit 557 (Engstrom Response 3)]

25 1185. According to Dr. Engstrom, HP analysis reports the percentage of the voters
26 supporting a candidate or set of candidates within the precincts in which a

- 1 particular group constitutes over ninety percent of the voting age population.
2 [Exhibit 556 (Second Engstrom Report 4)]
- 3 1186. According to Dr. Engstrom, HP analysis is a straightforward procedure in
4 which precincts identified as being “homogeneous,” meaning predominantly
5 composed of voters from one group or another, are the only precincts examined.
6 [Exhibit 557 (Engstrom Response 2)]
- 7 1187. Dr. Engstrom defines “homogeneous” as greater than ninety percent of the
8 indicator on which the measure is based. [Exhibit 557 (Engstrom Response 2)]
- 9 1188. In Dr. Engstrom’s analyses, “homogenous” is the voting age population
10 (hereinafter VAP) of the precincts. [Exhibit 557 (Engstrom Response 2)]
- 11 1189. In Dr. Engstrom’s analyses, the votes cast for the various candidates are
12 expressed as a percentage of the total votes cast within these precincts for that
13 candidate or set of candidates. [Exhibit 557 (Engstrom Response 2)]
- 14 1190. According to Dr. Engstrom, EI analysis is an estimation procedure that also
15 takes into account all of the precincts in which votes are cast. [Exhibit 555
16 (Second Engstrom Report 4)]
- 17 1191. EI analysis was developed subsequent to *Gingles* by Gary King. [Exhibit
18 556 (Second Engstrom Report 4)]
- 19 1192. According to Dr. Engstrom, the EI procedure does on occasion fail to
20 provide estimates. [Addendum to Report of Dr. Richard L. Engstrom 2, March 21,
21 2008 (“Addendum to Engstrom Report”)]
- 22 1193. According to Dr. Engstrom, EI analysis, like ER, uses data for all precincts
23 when deriving estimates. [Exhibit 557 (Engstrom Response 3)]
- 24 1194. According to Dr. Engstrom, the Supreme Court, has not reviewed a case in
25 which the evidence on the extent to which voting has been racially polarized, if at
26 all, is based *only* on EI estimates. [Exhibit 557 (Engstrom Response 4)]

1 1195. According to Dr. Engstrom, it has been common for expert witnesses to
2 report EI estimates for a number of years, not exclusively, but rather along with
3 those derived through ER and HP. [Exhibit 557 (Engstrom Response 4)]

4 1196. Since *Gingles*, courts have relied on HP and ER, while, more recently,
5 King's EI method has been used increasingly in conjunction with the other two as
6 an additional means for determining the existence of racial bloc voting.

7 1197. Dr. Engstrom's analyses included the following elections: the 2002
8 Democratic primary for Governor; the 2002 Democratic primary for U.S. District
9 7; the 2002 Democratic primary for State Senate District 13; the 2002 Democratic
10 primary for State Senate District 14; the 2004 general election for U.S House
11 District 2; the 2004 general election for U.S. House District 4; the 2004 general
12 election for U.S. House District 7; the 2006 general election for Secretary of State;
13 the 2006 general election for U.S. House District 4; and the 2006 general election
14 for U.S. House District 7. [Exhibits 555 & 556 (Engstrom Report 4; Second
15 Engstrom Report 4)]

16 1198. Dr. Engstrom's analysis relies only on precincts for which there is both
17 election and demographic data, which include almost all of the votes cast in these
18 elections. [Exhibit 555 (Engstrom Report 4)]

19 1199. Dr. Engstrom chose the elections for his analyses based on the size of the
20 election unit involved. They include a statewide election, the portion of a
21 statewide election held within the state's largest county, Maricopa, or elections to
22 single person offices in what constitute the largest election districts in the state,
23 U.S. House districts and state senate districts. [Exhibit 556 (Second Engstrom
24 Report 5)]

25 1200. According to Dr. Engstrom, all of the data files he used in his analyses
26 match the votes cast within precincts in these elections with the demographic data

1 for the precincts. Changes in precinct configurations over time have been
2 incorporated into this matching so that votes cast are matched to the demographics
3 for the precincts in place at the time of the election. [Exhibit 556 (Second
4 Engstrom Report 5)]

5 1201. According to Dr. Engstrom, there are some precincts within which,
6 according to the census data, no one of voting age resides, yet votes are cast within
7 them. [Exhibit 556 (Second Engstrom Report 5)]

8 1202. According to Dr. Engstrom, there are also some precincts in which the
9 census reports at least some people of voting age residing, yet the number of votes
10 cast exceeds the reported voting age population. This later phenomenon occurs
11 more often as the elections are held further from the time of the census. [Exhibit
12 556 (Second Engstrom Report 5-6)]

13 1203. Dr. Engstrom's analyses rely on precincts for which there is both election
14 and demographic data, and in which the number of votes did not exceed the voting
15 age population. These precincts account for almost all of the votes cast in these
16 elections. [Exhibit 556 (Second Engstrom Report 6)]

17 1204. Dr. Engstrom's analyses indicate that Latino voters have been cohesive in
18 their support for Latino candidates. They have had a preference for Latino
19 candidates whether they were incumbents or not. [Exhibits 555 & 556 (Engstrom
20 Report 5; Second Engstrom Report 6)]

21 1205. Dr. Engstrom's analyses indicate that Non-Latinos did not provide any non-
22 incumbent Latino candidate with a majority of their votes in any instance. [Exhibit
23 556 (Second Engstrom Report 6)]

24 1206. Using ER, Dr. Engstrom found that in the 2002 Democratic Primary
25 Election for Governor, Alfredo Gutierrez received an estimated 67.6 percent of the
26

1 votes cast by Latinos, and 12.1 by non-Latinos. [Exhibit 556 (Second Engstrom
2 Report 8)]

3 1207. Using HP, Dr. Engstrom was unable to produce estimates for the percent of
4 votes cast for Alfredo Gutierrez by Latinos in the Democratic Primary Election for
5 Governor. Alfredo Gutierrez received 14.8 percent of the votes cast by non-
6 Latinos. [*Id.* at 8]

7 1208. Using EI, Dr. Engstrom found that in the 2002 Democratic Primary Election
8 for Governor, Alfredo Gutierrez received an estimated 62.4 percent of the votes
9 cast by Latinos, and 13.9 by non-Latinos. [*Id.* at 8]

10 1209. Using ER, Dr. Engstrom found that in the 2002 Democratic Primary
11 Election for U.S. House District 7, all Latino candidates received an estimated 82.5
12 percent of the votes cast by Latinos, and 43.7 by non-Latinos. [*Id.* at 8]

13 1210. Using ER, Dr. Engstrom found that in the 2002 Democratic Primary
14 Election for U.S. House District 7, Raul Grijalva received an estimated 54.2
15 percent of the votes cast by Latinos, and 25.8 by non-Latinos. [*Id.*]

16 1211. Using HP, Dr. Engstrom found that in the 2002 Democratic Primary
17 Election for U.S. House District 7, all Latino candidates received an estimated 75.3
18 percent of the votes cast by Latinos, and 46.6 by non-Latinos. [*Id.*]

19 1212. Using HP, Dr. Engstrom found that in the 2002 Democratic Primary
20 Election for U.S. House District 7, Raul Grijalva received an estimated 43.2
21 percent of the votes cast by Latinos, and 27.8 by non-Latinos. [*Id.*]

22 1213. Using EI, Dr. Engstrom found that in the 2002 Democratic Primary Election
23 for U.S. House District 7, all Latino candidates received an estimated 75.7 percent
24 of the votes cast by Latinos, and 50.3 by non-Latinos. [*Id.*]

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- 1 1214. Using EI, Dr. Engstrom found that in the 2002 Democratic Primary Election
2 for U.S. House District 7, Raul Grijalva received an estimated 48.9 percent of the
3 votes cast by Latinos, and 30.8 by non-Latinos. [*Id.*]
- 4 1215. Using ER, Dr. Engstrom found that in the 2002 Democratic Primary
5 Election for State Senate District 13, Richard Miranda received an estimated 92.0
6 percent of the votes cast by Latinos, and 37.1 by non-Latinos. [*Id.*]
- 7 1216. Using HP and EI, Dr. Engstrom was unable to produce estimates for the
8 percent of votes cast for Richard Miranda by Latinos or non-Latinos in the 2002
9 Democratic Primary Election for State Senate District 13. [*Id.*]
- 10 1217. Using ER, Dr. Engstrom found that in the 2002 Democratic Primary
11 Election for State Senate District 14, Earl Wilcox received an estimated 120.0
12 percent of the votes cast by Latinos, and 26.7 by non-Latinos. [*Id.*]
- 13 1218. Using HP, Dr. Engstrom was unable to produce estimates for the percent of
14 votes cast for Earl Wilcox by Latinos or non-Latinos in the 2002 Democratic
15 Primary Election for State Senate District 14. [*Id.*]
- 16 1219. Using EI, Dr. Engstrom found that in the 2002 Democratic Primary Election
17 for State Senate District 14, Earl Wilcox received an estimated 83.5 percent of the
18 votes cast by Latinos, and 32.2 by non-Latinos. [*Id.*]
- 19 1220. Using ER, Dr. Engstrom was unable to produce estimates for the percent of
20 votes cast for Randy Camacho by Latinos in the 2004 General Election for U.S.
21 House District 2. Randy Camacho received 36.2 percent of the votes cast by non-
22 Latinos. [*Id.* at 9]
- 23 1221. Using HP, Dr. Engstrom was unable to produce estimates for the percent of
24 votes cast for Randy Camacho by Latinos in the 2004 General Election for U.S.
25 House District 2. Randy Camacho received 36.8 percent of the votes cast by non-
26 Latinos. [*Id.*]

- 1 1222. Using EI, Dr. Engstrom found that in the 2004 General Election for U.S.
2 House District 2, Randy Camacho received an estimated 84.6 percent of the votes
3 cast by Latinos, and 36.8 by non-Latinos. [*Id.*]
- 4 1223. Using ER, Dr. Engstrom found that in the 2004 General Election for U.S.
5 House District 4, Ed Pastor received an estimated 146.2 percent of the votes cast by
6 Latinos, and 61.2 by non-Latinos. [*Id.*]
- 7 1224. Using HP, Dr. Engstrom was unable to produce estimates for the percent of
8 votes cast for Ed Pastor by Latinos in the 2004 General Election for U.S. House
9 District 4. Ed Pastor received 61.4 percent of the votes cast by non-Latinos. [*Id.*]
- 10 1225. Using EI, Dr. Engstrom found that in the 2004 General Election for U.S.
11 House District 4, Ed Pastor received an estimated 98.5 percent of the votes cast by
12 Latinos, and 62.8 by non-Latinos. [*Id.*]
- 13 1226. Using ER, Dr. Engstrom found that in the 2004 General Election for U.S.
14 House District 7, Raul Grijalva received an estimated 87.9 percent of the votes cast
15 by Latinos, and 48.4 by non-Latinos. [*Id.*]
- 16 1227. Using HP, Dr. Engstrom found that in the 2004 General Election for U.S.
17 House District 7, Raul Grijalva received an estimated 88.9 percent of the votes cast
18 by Latinos, and 56.4 by non-Latinos. [*Id.*]
- 19 1228. Using EI, Dr. Engstrom found that in the 2004 General Election for U.S.
20 House District 7, Raul Grijalva received an estimated 85.4 percent of the votes cast
21 by Latinos, and 49.4 by non-Latinos. [*Id.*]
- 22 1229. Using ER, Dr. Engstrom found that in the 2006 General Election for
23 Secretary of State, Israel Torres received an estimated 74.6 percent of the votes
24 cast by Latinos, and 37.5 by non-Latinos. [*Id.*]

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- 1 1230. Using HP, Dr. Engstrom found that in the 2006 General Election for
2 Secretary of State, Israel Torres received an estimated 85.9 percent of the votes
3 cast by Latinos, and 37.8 by non-Latinos. [*Id.*]
- 4 1231. Using EI, Dr. Engstrom was unable to produce estimates for the percent of
5 votes cast for Israel Torres by Latinos or non-Latinos in the 2006 general election
6 for Secretary of State. [*Id.*]
- 7 1232. Using ER, Dr. Engstrom found that in the 2006 General Election for U.S.
8 House District 4, Ed Pastor received an estimated 73.9 percent of the votes cast by
9 Latinos, and 72.1 by non-Latinos. [*Id.*]
- 10 1233. Using HP, Dr. Engstrom was unable to produce estimates for the percent of
11 votes cast for Ed Pastor by Latinos in the 2006 General Election for U.S. House
12 District 4. Ed Pastor received 72.0 percent of the votes cast by non-Latinos. [*Id.*]
- 13 1234. Using EI, Dr. Engstrom found that in the 2006 General Election for U.S.
14 House District 4, Ed Pastor received an estimated 74.1 percent of the votes cast by
15 Latinos, and 71.9 by non-Latinos. [*Id.*]
- 16 1235. Dr. Engstrom concluded that Ed Pastor, who serves a majority-Latino
17 district, was the clear choice of non-Latino voters in his district in the 2004 and
18 2006 General Elections. [*Id.*]
- 19 1236. Using ER, Dr. Engstrom found that in the 2006 General Election for U.S.
20 House District 7, Raul Grijalva received an estimated 85.5 percent of the votes cast
21 by Latinos, and 50.3 by non-Latinos. [*Id.*]
- 22 1237. When Dr. Engstrom included non-Latino whites and non-Latino Native
23 Americans separately in his analysis, Raul Grijalva's estimated support levels are
24 80.4 percent among Latinos, 96.1 percent among Native Americans, and 46.0
25 percent among non-Hispanic whites. The estimated rate of turnout for the
26 remaining voters is negative. [Exhibit 559 (Addendum to Engstrom Report at 1)]

1 1238. Using HP, Dr. Engstrom found that in the 2006 General Election for U.S.
2 House District 7, Raul Grijalva received an estimated 86.6 percent of the votes cast
3 by Latinos, and 54.5 by non-Latinos. [Exhibit 556 (Second Engstrom Report 9)]

4 1239. Using EI, Dr. Engstrom found that in the 2006 General Election for U.S.
5 House District 7, Raul Grijalva received an estimated 84.4 percent of the votes cast
6 by Latinos, and 51.3 by non-Latinos. [*Id.*]

7 1240. Although Dr. Engstrom originally concluded that Raul Grijalva received
8 close to or a little over majority support from the non-Latino voters in his district in
9 2006, he is now convinced that Mr. Grijalva actually did not receive a majority of
10 the votes from the non-Latino voters. This is based on data made available to him
11 recently that matches the voting data to a better measure of the Hispanic and non-
12 Hispanic electorate in the precincts. A Spanish surname analysis has been applied
13 to these data, providing estimates of the Latino and non-Latino registered voters
14 with them. These data are based on the state's voter registration data as of
15 September 11, 2007. According to Dr. Engstrom, these data provide a superior
16 measure of the precinct electorates that do the voting age population (VAP) data
17 from the 2000 Census, which reports who lived in the precinct on April 1, 2000, six
18 years before the election. [Exhibit 556 & 557 (Second Engstrom Report 6;
19 Engstrom Response 6)]

20 1241. Through EI using these voter registration data, Mr. Grijalva is estimated to
21 have received 99.3 percent of the votes cast by Latinos and 48.28 percent of those
22 cast by non-Latinos. [Exhibit 557 (Engstrom Response 10)]

23 1242. The ER analysis with these data estimates that Mr. Grijalva received 102.3
24 percent of the votes cast by Latino voters, and 46.7 of those cast by non-Latino
25 voters. [*Id.*]

26

1 1243. The estimates of the vote for Mr. Pastor in the 2006 District 4 election,
2 based on these voter registration data, are 92.6 percent of the Latino vote and 68.7
3 percent of the non-Latino vote based on EI, and 114.4 percent of the Latino vote
4 and 65.7 percent of the non-Latino vote based on ER. [*Id.*]

5 1244. In the two precincts with more than 80 percent in Latino voter registration,
6 Mr. Pastor received 93.9 percent, while in the non-Latino homogeneous precincts
7 his vote was 70.1 percent. [*Id.*]

8 1245. Using the voter registration data, EI continued to fail to produce estimates
9 for the 2006 Secretary of State election. [*Id.*]

10 1246. According to Dr. Engstrom, using the voter registration data, the ER
11 estimate, of the Latino support for Mr. Torres in that election is far from within the
12 bounds of reality, 250.7 percent, while the estimate for his non-Latino support is
13 33.5 percent. [*Id.*]

14 1247. The support for Mr. Torres in the non-Latino homogeneous precincts is 35.5
15 percent. [*Id.*]

16 1248. There were no precincts in which Latinos constituted more than 90 percent
17 of the registered voters, but in the three precincts in which Latinos constituted more
18 than 85 percent, the support for Mr. Torres was 88.9 percent, and in the five
19 precincts in which Latinos constituted more than 80 percent, Mr. Torres' vote was
20 87.6 percent. [*Id.*]

21 1249. The data files using voter registration data for these elections contain
22 complete coverage of the vote in every election. [*Id.*]

23 1250. The State of Arizona Official Canvass of the 2006 General Election reported
24 60.47% turnout. [Exhibit 493]

25 1251. Dr. Engstrom provides additional analyses of group divisions in candidate
26 preferences in five more Counties in the 2002 Democratic gubernatorial Primary

1 Election, in addition to estimates of the voter turnout within the groups in all of the
2 following elections: the 2002 Democratic Primary Election for Governor; the 2002
3 Democratic Primary Election for U.S. District 7; the 2002 Democratic Primary
4 Election for State Senate District 13; the 2002 Democratic Primary Election for
5 State Senate District 14; the 2004 General Election for U.S House District 2; the
6 2004 General Election for U.S. House District 4; the 2004 General Election for
7 U.S. House Dist. 7; the 2006 General Election for Secretary of State; the 2006
8 General Election for U.S. House District 4; and the 2006 General Election for U.S.
9 House District 7. [Exhibit 560 (Supplemental Report of Dr. Richard L. Engstrom
10 1, April 2, 2008 (“Engstrom Supp. Report”))]

11 1252. Dr. Engstrom’s results indicate that Latino voters had a preference for the
12 Latino candidate in four of the five Counties that were analyzed. [Exhibit 560
13 (Engstrom Supp. Report 2)]

14 1253. According to Dr. Engstrom, in Pima County and Yuma County all estimates
15 show the Latino candidate to be the choice of a majority of Latino voters. [*Id.*]

16 1254. According to Dr. Engstrom, in LaPaz County the Latino candidate wins a
17 majority of the Latino votes according to the ER analysis and a plurality according
18 to the EI analysis. [*Id.*]

19 1255. According to Dr. Engstrom, in Pinal County both available estimates
20 identify the Latino candidate as a plurality choice. [*Id.*]

21 1256. According to Dr. Engstrom, in Santa Cruz County, Governor Janet
22 Napolitano was the preferred candidate of the Latino voters. [*Id.*]

23 1257. According to Dr. Engstrom, non-Hispanic support for the Hispanic
24 candidate was very low in all five Counties, regardless of the estimation method
25 employed. [*Id.*]

26

1 1258. Dr. Engstrom concluded that given these differences in candidate support,
2 any voter registration or voting requirement that has a disproportionately negative
3 impact on Latino voting would impede that group's ability to elect representatives
4 of its choice. [*Id.*]

5 1259. According to Dr. Engstrom, voter turnout was very low in the 2002
6 Democratic Primary Elections for the VAP of Latinos and non-Latinos that voted
7 in the election at issue. [*Id.*]

8 1260. According to Dr. Engstrom, there is not a clear tendency for the VAP of
9 Latinos that voted in the elections at issue to turnout at a higher rate than the VAP
10 of non-Latinos that voted in the elections at issue. [*Id.*]

11 1261. According to the results of Dr. Engstrom's analyses, voting has been
12 racially polarized in Arizona elections. [Engstrom Report 6; Second Engstrom
13 Report 6]

14 **i. The Demographic Landscape of Arizona**

15 1262. The U.S. Census Bureau estimates that in 2005 the population of Arizona
16 was 5,939,292. [Exhibit 494]

17 1263. Based on the 2006 population estimates provided by the Bureau of the
18 Census, 29.2 percent of Arizona's population is Latino, 84.3 percent is non-Latino
19 and White and 5.9 percent is Native American. [Exhibit 555 (Expert Report of Dr.
20 Richard L. Engstrom at 3, January 4, 2008 ("Engstrom Report"))]

21 1264. The U.S. Census Bureau's Poverty Threshold measure for Arizona
22 estimated that in 2004 there were over 13,000 two-person households with one
23 related child that were living in poverty. The report continues to detail the poverty
24 threshold by household size and number of related children for Arizona. [Exhibit
25 495]

26

1 1265. According to Dr. Jorge Chapa, Arizona's population grew very rapidly since
2 the year 2000. [Exhibit 566 (Expert Report of Dr. Jorge Chapa 1, January 4, 2008
3 ("Chapa Report"))]

4 1266. Between 2000 and 2006, Arizona's population increased by more than one
5 million people, or by twenty percent. [Exhibit 566 at 1]

6 1267. About half of the total increase was due to the even more rapid growth of
7 Arizona's Hispanic population. [*Id.*]

8 1268. In 2006, about three out of every ten Arizona residents was Hispanic. [*Id.*]

9 1269. According to Dr. Chapa, Mexican-Origin Hispanics are by far the largest
10 group and comprise almost ninety percent of all Hispanics in Arizona. [*Id.*]

11 1270. Migrants are a large part of Arizona's population. [*Id.*]

12 1271. In 2006, a substantial majority of Arizona's residents in 2006 were born in
13 other states than were born in Arizona. [*Id.*]

14 1272. In 2006, 15.1 percent of Arizona's population were foreign-born and 10.6%
15 were not. [*Id.*]

16 1273. In 2006, Mexico was, by far, the leading country of origin for Arizona's
17 foreign-born population. [*Id.*]

18 1274. In 2006 about ninety percent of Arizona's Hispanic population under age
19 eighteen were U.S. citizens. [*Id.*]

20 1275. In 2006, sixty percent of Arizona Hispanics aged eighteen and older were
21 U.S. citizens. [*Id.*]

22 1276. In 2006, almost all of the non-Hispanics in Arizona were U.S. citizens. [*Id.*]

23 1277. In 2006, one of every four voting-age citizens in Arizona was Hispanic.
24 [*Id.*]

25 1278. In 2006, about one-half of all naturalized voting-age citizens in Arizona
26 were Hispanic. [*Id.*]

1 1279. In 2006, seventy percent of Arizona's voting-age Hispanic population were
2 citizens compared to approximately ninety percent of the voting-age non-
3 Hispanics. [Exhibit 566 at 1-2]

4 1280. According to Dr. Chapa, between 2000 and 2006 there was a strong, steady
5 increase in the Hispanic citizen voting-age population (CVAP). [Exhibit 566 at 2]

6 1281. Hispanics are becoming naturalized citizens at an accelerating rate. [*Id.*]

7 1282. From 2004 to 2005, the number of naturalizations for Hispanics increased
8 by 8.3 percent in contrast to the number of naturalizations for immigrants from
9 non-Hispanic countries, which increased by only 1.4 percent. [*Id.*]

10 1283. Arizona Hispanics, including foreign-born Hispanics, have lower levels of
11 education when compared to non-Hispanics. [*Id.*]

12 1284. According to Dr. Chapa, immigrants typically have low levels of education
13 and earnings, and recent immigrants are part of the explanation for the high
14 proportion of Hispanics concentrated in the lower educational levels and relatively
15 few in the higher education categories. [*Id.*]

16 1285. Lower levels of income and education correspond to lower levels of
17 automobile access among Hispanics. [*Id.*]

18 1286. In Arizona, educational disparities persist among third generation Arizona
19 Hispanics, or the U.S.-born children of U.S.-born parents. [*Id.*]

20 1287. In Arizona, the U.S.-born Hispanic children of U.S.-born parents have
21 achieved educational levels that are substantially different and lower than those of
22 third and third-plus generation white non-Hispanics. [*Id.*]

23 1288. Third-generation Hispanics in Arizona have far lower earnings than white
24 non-Hispanics in Arizona. [*Id.*]

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- 1 1289. According to Dr. Chapa, data from the 2000 Census show that a
2 substantially larger proportion of Arizona Hispanics carpool and use public
3 transportation to travel to work than do white non-Hispanics. [Exhibit 566 at 3]
- 4 1290. Differences between the earnings of Hispanics and white non-Hispanics are
5 related to group differences in educational attainment. [*Id.*]
- 6 1291. Hispanics have not achieved parity with Anglos in terms of the commonly
7 used measures of assimilation--that is, educational and economic levels. [*Id.*]
- 8 1292. Hispanic U.S. citizens lag far behind the white non- Hispanic citizens in
9 voter registration and voting. [*Id.*]
- 10 1293. U.S.-born Hispanics in Arizona have not yet overcome the consequences of
11 past discrimination in education, employment and civic participation. [*Id.*]
- 12 1294. According to Dr. Chapa, the income and education disparities that persist
13 among third generation Hispanics are due to discrimination in employment,
14 educational opportunities, housing, the use of public facilities, civic participation,
15 and voting. [Exhibit 567 (Rebuttal of Dr. Jorge Chapa 1, March 6, 2008 (“Chapa
16 Rebuttal”))]
- 17 1295. In almost every year between 2000 and 2006, the Hispanic citizen voting
18 age population (CVAP) grew at a substantially faster rate than the non-Hispanic
19 CVAP. [Exhibit 568 (Rebuttal of Dr. Jorge Chapa 1, May 22,2008 (“Second
20 Chapa Rebuttal”))]
- 21 1296. Arizona population estimates increased from a total of 5,845,250 residents
22 in July 1, 2004 to a total of 6,305,210 residents on the same date in 2006. [Pl. Tr.
23 Ex. 593-594].
- 24 1297. In October 2006, the Federal Highway Administration reported that the
25 population of Arizona was 5,939,292. [Pl. Tr. Ex. 665].
- 26 1298. In 2005, 28 % of Arizona’s population was Hispanic. [Pl. Tr. Ex. 668].

1 1299. The Navajo Nation Reservation and off-reservation land in Arizona had a
2 population of 104,565 in 2000. [Pl. Tr. Ex. 597].

3 1300. According to Dr. Chapa, current statistics involving Arizona's Hispanic
4 population indicate that Hispanic CVAP has and will continue to grow at a faster
5 rate than the white non-Hispanic CVAP. [Exhibit 568 at 2]

6 **B. Historical and Current Race Discrimination Against Latinos in Arizona**

7 1301. According to Dr. F. Arturo Rosales, the history of Mexican origin people in
8 the State of Arizona has been characterized by racial and ethnic repression.
9 [Expert Report of Dr. F. Arturo Rosales 1, March 7, 2008 ("Rosales Report")]

10 1302. Approximately 1,600,000 Hispanics live in the state of Arizona out of a total
11 population of six million-over 90 percent of this Hispanic grouping is of Mexican
12 descent. [Rosales Report 3] The dramatic increase in the Hispanic population
13 reflects the overall growth trend of the state. [Rosales Report 3]

14 1303. Arizona was part of the vast area ceded to the United States by Mexico after
15 that nation lost the Mexican American War. [Rosales Report 3]

16 1304. The Treaty of Guadalupe Hidalgo, signed at the end of the war, granted
17 Mexicans who remained in United States territory the constitutional rights of
18 citizens and ostensibly protected their property, culture and religion, and gave them
19 the right to vote. [Rosales Report 3-4]

20 1305. The territorial acquisition delineated in the Treaty of Guadalupe Hidalgo did
21 not include the area that is now southern Arizona and southwestern New Mexico, a
22 region extending from present-day Yuma along the Gila River to the Mesilla
23 Valley, where Las Cruces, New Mexico is situated. [Rosales Report 4]

24 1306. General Antonio Lopez de Santa Anna sold this region to the United States
25 during his return to power in 1853. The Gadsden Treaty perimeters gave Mexicans
26 in the purchased territory the same rights provided by Treaty of Guadalupe

1 Hidalgo. The majority of Mexicans lived in the section of the agreement which
2 pertains geographically to Arizona in region in the valleys carved out by the Santa
3 Cruz and the San Pedro Rivers. [Rosales Report 4]

4 1307. While the Treaty of Guadalupe Hidalgo granted constitutional rights to
5 Mexicans who remained in the new political jurisdiction of the United States, most
6 of the guarantees were not upheld. [Rosales Report 4]

7 1308. The economic and political fortunes of Southwest Mexicans declined
8 considerably during their experience with United States rule, as a result of rights
9 and guarantees not being upheld. [Rosales Report 4]

10 1309. Provisions in the Treaty of Guadalupe Hidalgo regarding land holdings
11 safeguarded Hispanic properties, but Southwest land values rose as the Anglo
12 population increased and as the area became more economically developed. As a
13 result, developers and Anglo farmers coveted Mexican property and intense land
14 competition followed. [Rosales Report 4]

15 1310. The divestment of property from Mexicans assumed wholesale proportions
16 throughout the 19th century. [Rosales Report 4]

17 1311. Even though all Mexican properties in the Gadsden Purchase were
18 purportedly protected by the same promises made regarding the protection of
19 Mexican properties in the Treaty of Guadalupe Hidalgo, the Gadsden Treaty made
20 it more difficult to confirm titles by stipulating that titles would be valid only if
21 confirming evidence was found in Mexican archives. [Rosales Report 4]

22 1312. By 1878, land speculators and squatters were defrauding Mexican
23 landowners of their property in clear violation of land protection clauses of the
24 Treaty of Guadalupe Hidalgo and the Gadsden Purchase Treaty. [Rosales Report
25 5]

26

1 1313. Between 1854 and 1878, Mexicans in Arizona lost thousands of acres
2 because titles which had been granted during the eras of Spanish or Mexican rule
3 were not honored. [Rosales Report 5]

4 1314. During the depression caused by the Panic of 1873 many Mexican farmers
5 in the Phoenix area lost their land after they were forced to flee when a banking
6 crisis resulted in riots throughout the country and a rash of Mexican lynchings took
7 place. [Rosales Report 5]

8 1315. Between 1870 and 1900 the number of Mexican farmers in Maricopa
9 County declined from seventy-nine to about thirty, even though the Mexican
10 population increased twelve-fold during that time. [Rosales Report 6]

11 1316. An example of Mexican land loss was the take-over of large tracts of
12 irrigated properties in west Tempe by W. Wormser in the 1890s. Wormser, a
13 merchant, obtained a 7,000 acre farm south of the Salt River by foreclosing on a
14 number of Mexican farmers after they could not pay for seed, tools, and other
15 supplies that were advanced at an earlier date. According to Douglas Kupel, the
16 City of Phoenix water historian, Wormser purposely foreclosed so that he could
17 seize the title to Mexican lands. [Rosales Report 6]

18 1317. The federal government was also involved in the usurpation of Mexicans'
19 land. [Rosales Report 5]

20 1318. In 1869, as the federal government prepared to expand the Gila Indian
21 Reservation, it surveyed the properties of homesteaders so they could be
22 compensated if their claims to the land were valid. Twenty farmers and speculators
23 were affected, seventeen of whom were Mexicans. The federal report described
24 many of the Mexicans as interlopers whose bids were not legitimate. The
25 surveyors portrayed the Anglos and Europeans, however, as more deserving. As a
26

1 result most of the Mexican claimants were disqualified from compensation.
2 [Rosales Report 5]

3 1319. Mexicans also experienced a dilution of political and economic power in
4 Arizona as more Anglos moved into an industrializing Arizona. [Rosales Report 6]

5 1320. Tucson became the territorial capital after Arizona separated from New
6 Mexico in 1863. According to Dr. Rosales, Anglos moved the capital to Prescott
7 because of the political power held by Mexicans in southern Arizona. [Rosales
8 Report 6]

9 1321. Arizona legislators adopted constitutional codes that restricted citizenship
10 and electoral eligibility requirements, allowing only white males and white
11 Mexican males, a vast minority, to vote. This measure disqualified American
12 Indians, mestizos, and Mexican Indians from the electoral process. [Rosales
13 Report 6]

14 1322. In 1877, legislators passed additional laws in which non whites were
15 disqualified from voting on the basis of race, and from serving as justices of the
16 peace and from practicing law. [Rosales Report 6-7]

17 1323. Beginning in the 1880s, irrigation projects financed through the Newlands
18 Reclamation Act of 1903 expanded the acreage which could be cultivated. These
19 innovations stimulated the immigration of Mexican laborers. [Rosales Report 7]

20 1324. At the same time, modernization brought in a new influx of Anglos. As a
21 consequence of this demographic change, the antipathy Anglo Americans felt
22 toward Mexicans was exacerbated, increasing the incidence of discrimination and
23 the resistance to provide Mexicans with political influence and opportunity.
24 [Rosales Report 7]

25 1325. In the first Legislative Assembly of Arizona after Arizona became an
26 independent territory from New Mexico, two out of nine council members were

1 Mexican Americans. By 1885, only one Mexican had been elected to the State
2 Legislature. [Rosales Report 7]

3 1326. In the early 20th century the U.S. Congress considered accepting a bid in
4 which both Arizona and New Mexico would enter the Union as one state. Arizona
5 politicians resisted the overture primarily because of the extensive Hispanic
6 influence in New Mexico. One congressman who opposed joint statehood with
7 New Mexico stated: “Can Arizona as a single state control it better by itself, or
8 shall we join the Mexican greasers [of New Mexico] to Arizona and let them
9 control it?” [Rosales Report 8]

10 1327. According to Dr. Rosales, a form of anti-Hispanic sentiment formed in the
11 territory during this period as rumors spread that English would not be permitted in
12 schools or court. [Rosales Report 8]

13 1328. According to Dr. Rosales, after Arizona attained statehood in 1912, Anglos
14 waged an anti-immigrant campaign characterized by increasingly racist rhetoric
15 and a series of proposals restricting Mexican immigrants’ political rights and the
16 right to work in Arizona. [Rosales Report 9]

17 1329. In 1912, the new Arizona constitution restricted non-citizens from working
18 on public projects. [Rosales Report 9]

19 1330. In 1914, the legislature enacted the “eighty per-cent law” which stated that
20 eighty percent of the employees in businesses that had five or more employees had
21 to be “native-born citizens of the United States.” [Rosales Report 9]

22 1331. After a U.S. District Court declared the “eighty per-cent law”
23 unconstitutional, the Arizona legislature passed the Claypool-Kinney bill, which
24 prohibited the employment of non-English speakers in the state’s mining industry.
25 Dr. Rosales stated that this was a deliberate attempt to circumvent the court
26 decision which declared the “eighty per-cent law” unlawful. [Rosales Report 9]

1 1332. During the same time period, a coalition of craft unions, small farmers and
2 merchants, led by Arizona Governor George Hunt, launched legislative proposals
3 that restricted Mexican Americans' access to the ballot and the right to work in
4 Arizona. [Rosales Report 9]

5 1333. In 1909, Arizona voters passed a literacy law that explicitly targeted
6 Mexicans and disqualified non-English speakers from voting in state elections.
7 [Rosales Report 9]

8 1334. To address obstacles to full participation in the political process, Mexican
9 Americans in Arizona began forming community organizations, such as the Latin
10 American Clubs of Arizona, Inc. [Rosales Report 10]

11 1335. Anglos in Arizona, however, tried to block the efforts of Mexican American
12 community organizations. [Rosales Report 10]

13 1336. One attempt to block the efforts of Mexican American community
14 organizations took place in South Tucson in the mid 1930's. The majority of South
15 Tucson residents were Mexican or Mexican American, yet local property-holders
16 and entrepreneurs were mainly non-Mexicans. The latter group led a successful
17 campaign to incorporate South Tucson as an independent municipality to avoid
18 annexation by the City of Tucson. Once South Tucson was incorporated, the Pima
19 County Board of Supervisors appointed five white property-holders to serve as the
20 new town's city council. In response, Mexican residents, with help from the Latin
21 American Club, organized a voter registration campaign with the goal of electing a
22 majority Mexican American city council in South Tucson's first election. Despite
23 these efforts, only one Mexican American was elected to the council. Dr. Rosales
24 contends that the literacy requirement coupled with a local property ownership
25 requirement, excluded many Mexican Americans from voting in the election.
26 [Rosales Report 10]

1 1337. Voting restrictions against Mexican Americans in Arizona continued
2 throughout the 20th century. [Rosales Report 10]

3 1338. As late as 1966, literacy requirements and a sixth grade education were
4 preconditions to voter registration in Arizona, and such laws remained on the
5 books until 1972. [Rosales Report 10]

6 1339. In 1966, elaborate residency requirements for voter registration- such as
7 having to live one year in the state, six months in the same city, and thirty days in
8 the same precinct and county - confused many potential voters, including Mexican
9 Americans. [Rosales Report 10]

10 1340. Potential voters were required to register at the county recorder's office,
11 which was only open during business hours, limiting access for many working
12 people. [Rosales Report 10]

13 1341. Many Arizona voters were prevented from casting ballots to vote because
14 they were purged from the rolls. When a voter failed to cast a ballot in a primary
15 and a general election, or if the voter did not vote in two consecutive elections, the
16 state purged their votes and did not subsequently inform the voter of the purge or
17 of the need to re-register. [Rosales Report 10]

18 1342. According to Dr. Rosales, the practice of purging had a disproportionate
19 effect on Hispanics and Native Americans voters. [Rosales Report 11]

20 1343. In 1964, a national project called Operation "Eagle Eye," was designed in
21 order to challenge the legality of a voter's registration at the polling site. [Rosales
22 Report 11]

23 1344. Under Operation "Eagle Eye," Arizona officials would mail letters to all
24 registered voters in South Phoenix, an area which was predominantly Hispanic and
25 African American, using the addresses from voter registration records. Returned
26 letters were then taken to the corresponding polling place on the date of the

1 election. As voters stood in line waiting to vote they were challenged on the
2 grounds that they did not live at the address listed in the voter rolls. [Rosales
3 Report 11-12]

4 1345. Under Operation “Eagle Eye,” Anglos would also approach Mexican
5 Americans waiting in line to vote, challenging them to read the U.S. Constitution
6 or literacy cards. [Rosales Report 12]

7 1346. The U.S. Commission on Civil Rights noted that in November 1974, south
8 Phoenix polling sites had few, if any, bilingual workers and only one bilingual
9 election for eight heavily Mexican American precincts. The U.S. Commission on
10 Civil Rights also noted that the inability of non-bilingual poll workers to
11 understand Spanish or find Spanish surnames was common in Mexican American
12 precincts and prohibited Mexican Americans from voting. [Rosales Report 12-13]

13 1347. According to Dr. Rosales, Arizona voting practices affecting Mexican
14 Americans were not limited to registration and the polling place. [Rosales Report
15 13]

16 1348. Dr. Rosales states that in the 1960’s, the State Legislature’s reapportionment
17 of districts diluted the Mexican American vote. [Rosales Report 13]

18 1349. Mexicans also faced racial discrimination in the Arizona justice system
19 during the 19th century. [Rosales Report 13]

20 1350. During the 19th century, few Mexicans served on juries, yet they were
21 disproportionately sentenced to jail and given longer sentences than their Anglo
22 counterparts. [Rosales Report 14]

23 1351. During the 19th century, Mexicans were hung by Anglo lynch mobs without
24 the benefit of a trial or representation. [Rosales Report 14]

25 1352. In 1872, Phoenix Sheriff T.C. Warden led local residents in indiscriminately
26 running Mexicans out of the city. [Rosales Report 14]

- 1 1353. According to Dr. Rosales, it was common in Arizona for Anglos not to be
2 subjected to charges of negligence in spite of supporting evidence. [Rosales Report
3 17]
- 4 1354. For example, in 1919 in Phoenix, a local man ran over a Mexican pedestrian
5 with his automobile, killing him. Witnesses stated that the driver was speeding and
6 did not slow down as the pedestrian crossed the road. He was not cited by Phoenix
7 police. [Rosales Report 17]
- 8 1355. According to Dr. Rosales, the discrimination against Latinos in the Arizona
9 judicial system has continued in recent years. [Rosales Report 17]
- 10 1356. In the late 1970's, two brothers and their father, all members of a wealthy
11 Anglo family, were accused of robbing and torturing three Mexican farm workers
12 who had entered the United States illegally. The three men allegedly stripped and
13 tortured the Mexicans with hot pokers, burning cigarettes, knives, and a shotgun
14 filled with bird seed. An all-Anglo jury acquitted the defendants. According to Dr.
15 Rosales, similar cases have occurred along the border in Arizona. [Rosales Report
16 17]
- 17 1357. In 1900, the Arizona states legislature banned the celebration of the
18 Mexican Holiday of "Dia de San Juan." [Rosales Report 15]
- 19 1358. In 1920, the Mexican consul issued a study which stated that between 1910
20 and 1920 at least twelve Mexicans were killed in arrest attempts, noting that most
21 of those police homicides could have been averted. [Rosales Report 15]
- 22 1359. According to Dr. Rosales, in the early 19th century capital punishment was
23 disproportionately applied to Mexicans. [Rosales Report 15]
- 24 1360. According to Dr. Rosales, police often employed questionable and coercive
25 interrogation tactics with Mexican detainees in the early 20th century. [Rosales
26 Report 16]

1 1361. One example occurred in Greaterville, Arizona, in 1915. Pima County
2 deputies visited the Leon family home to interrogate three brothers--Jose Maria,
3 Francisco, and Hilario--whom they suspected had murdered a local woman. The
4 brothers denied the accusations so the deputies attempted to coerce a confession by
5 hanging them. One brother died immediately, and the other two were left in the
6 desert for twenty-one hours. [Rosales Report 16]

7 1362. Dr. Rosales contends that Mexicans were often the victims of civilian mob
8 violence in the early 20th century. [Rosales Report 16]

9 1363. In May of 1912, when Anglo miners invaded a Cinco de Mayo festival
10 about 40 miles from Tucson. They attacked the Mexican workers and destroyed
11 the Mexican flags on display for the holiday. [Rosales Report 16-17]

12 1364. In 1912, a group of Anglos in Phoenix, Arizona Anglos invaded another
13 Cinco de Mayo celebration, which sparked a riot in which both ethnic groups
14 suffered injuries. [Rosales Report 17]

15 1365. On July 4, 1913, Anglos tore down Mexican flags at the consulate offices in
16 Tucson and Douglas, Arizona. [Rosales Report 17]

17 1366. A Mexican government study of American civilian attacks on Mexicans
18 during the 1910s showed that out of 150 reported incidents documented by the
19 Consul, 36 took place in Arizona. [Rosales Report 17]

20 1367. In the 19th century and part of the 20th century, the racial segregation of
21 Mexicans in schools, public facilities, and housing was prevalent in Arizona.
22 [Rosales Report 18]

23 1368. In 1930, Phoenix had acquired the largest contiguous Mexican
24 neighborhood, where 8,000 Mexicans resided, in all of Arizona. [Rosales Report
25 19]

26

- 1 1369. According to a study by the Phoenix Housing Authority, as late as 1941
2 most Mexicans in south Phoenix were living in dire poverty. [Rosales Report 20]
- 3 1370. In 1941, the average income of Mexican families in Phoenix was \$589 a
4 year. [Rosales Report 20]
- 5 1371. According to a study by the Phoenix Housing Authority, 70 percent of the
6 Mexican homes in Phoenix were uninhabitable and lacked inside plumbing,
7 electricity, and adequate doors or windows. [Rosales Report 20]
- 8 1372. After World War II, Phoenix segregated Mexican American veterans in
9 separate housing units located on a former city dump. [Rosales Report 21]
- 10 1373. During the 1930s, Mexican Americans were segregated in federal programs
11 such as the Civilian Conservation Corps (CCC). [Rosales Report 21]
- 12 1374. According to Dr. Rosales, the school segregation of Mexican Americans in
13 Arizona was particularly pervasive in Arizona mining towns during the first decade
14 of the 20th century. [Rosales Report 22]
- 15 1375. In the mining community of Clifton-Morenci, students attended four
16 elementary schools segregated both internally and between schools. [Rosales
17 Report 22]
- 18 1376. Even when low attendance dictated that two Clifton-Morenci schools merge
19 to economize, the district continued to spend extra money to segregate the Mexican
20 and Anglo students. [Rosales Report 22]
- 21 1377. In the mining community of Ray-Sonora, Mexican and Anglo children
22 attended separate schools even though their parents worked for the same mining
23 company. [Rosales Report 22]
- 24 1378. According to a 1916 U.S. Bureau of Education report that surveyed 427
25 rural school districts in Arizona, virtually all of schools in Arizona urban and rural
26 areas segregated Mexican children at some level. [Rosales Report 22]

1 1379. The 1916 U.S. Bureau of Education study recommended that Arizona
2 continue to segregate Mexican school children. [Rosales Report 22]

3 1380. Dr. Rosales contends that Mexican parents who did not want their children
4 to attend segregated schools were faced with strictly enforced truancy laws, which
5 included penalties of fines and jail time. [Rosales Report 23]

6 1381. According to Dr. Rosales, even after Mexican parents began to challenge
7 school segregation successfully in court, most school districts failed to comply with
8 integration rulings, and the state neglected to enforce them. [Rosales Report 24]

9 1382. According to Dr. Rosales, language and pedagogical issues are still a source
10 of concern in the Mexican American community. [Rosales Report 23-24]

11 1383. Until 1972, special educators in Guadalupe, Arizona administered IQ tests
12 written solely in English to Yaqui Indian and Mexican American children who
13 spoke little or no English. [Rosales Report 23-24]

14 1384. After the passage of the Equal Educational Opportunity Act in 1974,
15 Arizona established laws for English Language Learner (ELL) programs almost
16 immediately, but it was not until 1986 that the Arizona State Legislature
17 established ELL teacher qualifications and reporting requirements for school
18 districts and required school districts to provide special instruction for ELLs, and
19 established . [Rosales Report 23-24]

20 1385. According to Dr. Rosales, the increasing number of ELLs coupled with
21 increased student accountability and lack of adequate state funding made it difficult
22 for Arizona school districts to comply with the state requirements. [Rosales
23 Report 25]

24 1386. In January 2000, a federal judge held that Arizona was in violation of the
25 federal Equal Opportunity Act because its funding for ELL programs was arbitrary
26 and capricious. [Rosales Report 25]

- 1 1387. The state has not yet complied with the court’s mandate to provide adequate
2 funding for ELL students. [Rosales Report 26]
- 3 1388. According to Dr. Rosales, before the Second World War, mainstream
4 unions did not accept many Mexican American workers. [Rosales Report 26]
- 5 1389. In the early 1900s Mexicans were recruited to come to Arizona to work in
6 agriculture after the development of the railroad, the Newlands Reclamation Act of
7 1902 and the completion of the Roosevelt Dam in 1912 created an economic boom
8 to the agricultural output of the Valley. [Rosales Report 27]
- 9 1390. According to Dr. Rosales, while employers and legislators fought
10 strenuously for Mexican immigration, they felt that Mexicans should only be
11 tolerated for their physical labor in peripheral agricultural and mining camps and
12 not afforded the rights of citizens. [Rosales Report 27-28]
- 13 1391. According to Dr. Rosales, Mexican agricultural workers were often the
14 victims of workplace abuse, and their employers were not penalized. [Rosales
15 Report 27-28]
- 16 1392. According to Dr. Rosales, in the early 1900s, Mexican Americans in
17 Arizona were also frequently subjected to wage discrimination, often being paid
18 substantially less than their Anglo counterparts. [Rosales Report 29]
- 19 1393. According to Dr. Rosales, there was a clear, multi-tiered, racialized class
20 structure in Arizona’s mines in the early 1900s. [Rosales Report 29]
- 21 1394. In the Clifton Morenci-Metcalf mining district of southeastern Arizona,
22 ninety-four percent of native-born workers who were identified as “white” earned
23 three and a half dollars per hour or more in 1909. Immigrant groups identified by
24 the Immigration Service as “white” -primarily from North America and Northern
25 Europe earned comparable amounts. [Rosales Report 29]

26

- 1 1395. By contrast, ninety-three percent of Mexican mine workers earned between
2 one and a half and two and a half dollars, with less than one per cent earning more
3 than three and half dollars. [Rosales Report 29]
- 4 1396. According to Dr. Rosales, Mexican mine workers were disproportionately
5 subject to diseases such as consumption, or “black lung,” that resulted from
6 substandard working conditions. [Rosales Report 29-30]
- 7 1397. When Mexican mine workers went on strike in 1903 to protest their working
8 conditions, the local police, the Arizona militia, and the Arizona Rangers worked
9 to repress them. Similar incidents occurred in Globe-Miami and Bisbee. [Rosales
10 Report 30].
- 11 1398. According to Dr. Rosales, in 1914 employers and local officials conducted
12 harassment campaigns to intimidate Mexican mine workers who attempted to
13 organize. [Rosales Report 30].
- 14 1399. According to Dr. Rosales, other forms of job discrimination were also
15 common in Arizona throughout the Depression and into the war years. [Rosales
16 Report 31].
- 17 1400. In 1941, the constitution of the Brotherhood of Locomotive Firemen and
18 Enginemen in Tucson explicitly barred the promotion of non-whites to positions
19 such as firemen and brakemen. [Rosales Report 31].
- 20 1401. Employers with Tucson’s Southern Pacific Railway office, telephone
21 companies, and cab dispatchers generally would not hire Mexicans at all. [Rosales
22 Report 30].
- 23 1402. Dr. Rosales contends that employment discrimination has continued to
24 affect Arizona Mexican Americans in recent years. [Rosales Report 31].
- 25 1403. In 1997, a former Scottsdale police officer successfully sued the city,
26 claiming he was fired for exposing racism in the department. [Rosales Report 31].

1 1404. In Tempe, a 35-year Mexican city employee joined a dozen current and
2 former city employees in filing a successful federal lawsuit in which they alleged
3 systematic racial discrimination in Tempe’s Public Works Department. [Rosales
4 Report 31].

5 1405. Dr. Rosales concluded that that Mexican Americans in Arizona have
6 experienced a history of discrimination in voting and registration, in addition to
7 other areas such as property rights, employment and education. [Rosales Report
8 32].

9 1406. Dr. Rosales concluded that the discrimination of Mexican Americans in
10 Arizona has hindered and continues to hinder the ability of Mexican Americans to
11 fully participate in the political process in the state. [Rosales Report 32].

12 1407. Since 1982, Arizona has had eighteen Section 5 objections – over eighty
13 percent of all Section 5 objections since Arizona or its political subdivisions were
14 first covered in 1965. [Exhibit 579 at54]

15 1408. Four of these post-1982 objections have been for statewide redistricting
16 plans, including one in the 1980s, two in the 1990s and one as recently as 2002.
17 [Exhibit 579 at 54]

18 1409. These post-1982 objections have affected seven of Arizona’s 15 Counties,
19 with DOJ finding that these voting changes had the purpose or effect of
20 discriminating against the State’s Latino or American Indian voters. [Exhibit 579
21 at 54]

22 **i. Lay testimony from Elected Officials**

23 1410. Alfredo Gutierrez is president and co-founder of Tequida and Gutierrez
24 LLC. [Exhibit 533 (Declaration of Alfredo Gutierrez (“Gutierrez”), at 2)]

25 1411. Alfredo Gutierrez has an extensive history of campaign work and political
26 activity in Arizona. He is the president and co-founder of Jamieson and Gutierrez

1 Inc, a political and public affairs consulting company in Arizona. He also served in
2 the Arizona Legislature for 14 years and worked in numerous political campaigns
3 since 1970. [Exhibit 533 (Gutierrez at 2-3)]

4 1412. Alfredo Gutierrez was a member of the State Senate, where he was both the
5 majority and minority leader. [Exhibit 533 (Gutierrez at 2)]

6 1413. Alfredo Gutierrez has served on numerous boards and has an extensive
7 history of community service including Chairman of the Procurement Board for
8 Arizona Works and serving on the Policy Committee of the Violence Prevention
9 Initiative program. [Exhibit 533 (Gutierrez at 2)]

10 1414. In 2002, Alfredo Gutierrez declared his candidacy for Arizona Governor and
11 ran unsuccessfully in the Democratic primary. [Exhibit 533 (Gutierrez at 3)]

12 1415. Elizabeth Archuleta serves as the District 2 representative on the Coconino
13 County Board of Supervisors. [Exhibit 524 (Declaration of Elizabeth Archuleta
14 (“Archuleta”), at 3)]

15 1416. Elizabeth Archuleta began her career in public service in 1997 and was the
16 first Hispanic female elected to office in the history of Coconino County. [Exhibit
17 524 (Archuleta at 2)]

18 1417. Over the past 25 years, Archuleta has worked extensively in political
19 campaigns and has served on numerous boards and civic organizations. She has
20 received many awards recognizing her commitment to the city of Flagstaff and the
21 Latino community. [Exhibit 524 (Archuleta-2-3)]

22 1418. The Hispanic Mother-Daughter Program, a higher education outreach
23 program, was founded by Archuleta. Further, she funds and supports two summer
24 teen work programs. [Exhibit 524 (Archuleta at 2)]

25 1419. Prior to her service on the Coconino County Board of Supervisors,
26 Archuleta spent 19 years working in higher education with a focus on multicultural

1 community relations at Northern Arizona University. [Exhibit 524 (Archuleta at
2 3)]

3 1420. Pete Rios has been a legislator for 24 years and is currently serving his
4 second term in the Arizona House of Representatives. Currently, Mr. Rios is a
5 member of the Appropriations, Higher Education, and Sub-Appropriations:
6 Transportation and Criminal Justice standing committees. [Exhibit 545
7 (Declaration of Pete Rios (“Rios”), 2008 at 2)]

8 1421. Pete Rios is a native of Arizona and grew up in the state’s rich copper
9 mining area of Hayden-Winkelman. [Exhibit 545 (Rios at 2)]

10 1422. Pete Rios was first elected to the Arizona State Senate in 1982 and has held
11 the positions of Democratic Whip and Democratic Assistant Leader. In 1991, he
12 was elected President of the Arizona State Senate for the 40th Legislature as the
13 first Latino Senate President in the history of the state. [Exhibit 545 (Rios at 2)]

14 1423. In 1994, Pete Rios was the Democratic nominee for Secretary of State, but
15 lost in the general election. [Exhibit 545 (Rios at 3)]

16 1424. There is clear history of discrimination against Latinos in Arizona and a
17 history of suppressing Latino and other racial minority’s ability to exercise their
18 right to vote and engage in the political process and its effects are still felt today.
19 [Exhibit 524 (Archuleta at 3); Exhibit 533 (Gutierrez at 3); Exhibit 545 (Rios at 3)]

20 1425. Outside of the voting context, there is a long history of discrimination in
21 Arizona especially in the area of education that is still felt today. [Exhibit 533
22 (Gutierrez at 5)] Even after most of the nation had integrated, children in Flagstaff
23 remained segregated into separate schools. [Exhibit 524 (Archuleta at 3)] The
24 designated school for Latinos was South Beaver, the designated school for African
25 Americans was Dunbar School, and the Anglos had their own school. [Exhibit 524

26

1 (Archuleta at 3)] During this time, Mexican Americans attending school were
2 strictly prohibited from speaking Spanish. [Exhibit 545 (Rios at 3)]

3 1426. Flagstaff was historically segregated into Latino and African American
4 neighborhoods that were separated from Anglo neighborhoods. [Exhibit 524
5 (Archuleta at 3)]

6 1427. Latinos in Flagstaff were only allowed to sit in the balcony of the movie
7 theatre and were not allowed to sit on the main floor with the Anglos. [Exhibit 524
8 (Archuleta at 3); Exhibit 545 (Rios at 3)]

9 1428. Mexican Americans were not allowed to swim in the public pool on the
10 Anglo side of town except for once a week; the day before the pool was to be
11 drained. [Exhibit 545 (Rios at 3)]

12 1429. The historical impact of de jure segregation is still apparent today by de
13 facto segregation. [Exhibit 545 (Rios at 3)] There is a clear division between
14 Latino and minority neighborhoods and predominantly Anglo neighborhoods.
15 [Exhibit 524 (Archuleta at 3)]

16 1430. Pete Rios remembers employment discrimination against his dad, who
17 worked at the copper mines and was paid a lower wage because he was Mexican.
18 [Exhibit 545 (Rios at 3)]

19 1431. In Coconino County, predominantly low wage service industries surround
20 traditional Latino and minority neighborhoods and little effort is made to
21 economically revitalize the area. [Exhibit 524 (Archuleta at 3)] The area is
22 marked with vacant buildings and a stigma perpetuated by realtors of being a poor
23 location in which to live or invest. [Exhibit 524 (Archuleta at 3)]

24 1432. Supervisor Archuleta believes the most intimidating election practice has
25 been Proposition 200 itself. [Exhibit 524 (Archuleta at 4)] Proposition 200 has
26 proven to be an intimidating law preventing minorities from voting. [Exhibit 524

1 (Archuleta at 4)] Latinos and Native American citizens not born in hospitals with
2 no birth certificate and lacking other forms of identification have been precluded
3 from voting. [Exhibit 524 (Archuleta at 4); Exhibit 545 (Rios at 5)]

4 1433. Representative Rios believes there is credible evidence to support the
5 assertion that Latinos are less likely to pay for a replacement license when they
6 move to comply with Proposition 200 identification requirements. [Exhibit 545
7 (Rios at 5-6)]

8 1434. Representative Rios believes Latinos are also less likely to cure a
9 conditional provisional ballot because the economic costs involved make it not
10 financially feasible for many Latinos. [Exhibit 545 (Rios at 6)]

11 1435. Representative Rios believes Latinos are less likely to register a second time
12 if they are rejected for lack of proof for citizenship because many Latino citizens
13 are suspect of government bureaucracies and are afraid to attempt a second
14 registration. [Exhibit 545 (Rios at 6)]

15 1436. Some Latino elected officials believe that the intent of Proposition 200 is to
16 reduce the Latino turnout. [Exhibit 545 (Rios at 7)]

17 1437. Registered Latino voters feel intimidated at the polls and often leave before
18 casting their votes. [Exhibit 524 (Archuleta at 4); Exhibit 533 (Gutierrez at 3);
19 Exhibit 545 (Rios at 3)]

20 1438. Latinos are alienated from the voting process because of the identification
21 requirements imposed at the polls that cause poll workers to question identification
22 cards that do not match voter roll addresses. [Exhibit 524 (Archuleta at 4); Exhibit
23 545 (Rios at 3)].

24 1439. There were threats of the literacy tests in Arizona hanging over the heads of
25 Latino voters and specific efforts by certain GOP operatives to target certain
26 communities and precincts and engage in a systematic effort to intimidate and

1 disenfranchise Latino and African American voters through the 1970s, even until
2 the 1980s. [Exhibit 533 (Gutierrez at 3)] Voters were threatened in the polling
3 place that they would have to read the Constitution, or if they could not read they
4 could not vote, which caused Latinos to choose not to vote. [Exhibit 533
5 (Gutierrez at 3); Exhibit 545 (Rios at 5)]

6 1440. It was once commonplace to fail to provide bilingual assistance to voters
7 and today there are many instances in which poll workers refuse to assist Spanish
8 speaking voters. [Exhibit 533 (Gutierrez at 3-4)]

9 1441. Recent efforts to encourage older, non-English speaking Latino voters to
10 participate have centered on absentee voting because voting by mail which is less
11 intimidating than voting in person. [Exhibit 545 (Rios at 3-4)]

12 1442. In some communities the history of disenfranchisement has been prevalent
13 enough that there were no Latino election officials and it remains very difficult to
14 get Spanish speakers to participate as poll workers to this day. [Exhibit 524
15 (Archuleta at 3); Exhibit 533 (Gutierrez at 4)]

16 1443. In the voting context, there are areas of Coconino County, the City of
17 Flagstaff, and the state that exhibit racially polarized voting, utilize racial appeals,
18 and other methods that hinder the ability of Latinos to exercise their voting rights.
19 [Exhibit 524 (Archuleta at 3); Exhibit 533 (Gutierrez at 4); Exhibit 545 (Rios at 4)]

20 1444. Statewide it would be extremely difficult for a Latino to be elected with the
21 current demographics and the extent of racially polarized voting. [Exhibit 524
22 (Archuleta at 3); Gutierrez at 4; Exhibit 545 (Rios at 4)] Anglo voters support
23 Anglo candidates and if a Latino attempted to run for office in a predominantly
24 Anglo district, it would be extremely difficult for a minority candidate to garner the
25 Anglo vote. [Exhibit 524 (Archuleta at 3); Exhibit 533 (Gutierrez at 4); Exhibit
26 545 (Rios at 4)]

1 1445. Alfred Gutierrez believes as the Latino population grows in Arizona, it is
2 unquestionable that there has been a backlash against Hispanic candidates.
3 [Exhibit 533 (Gutierrez at 4)]

4 1446. Historically, slating has been a practice used to exclude minority candidates
5 in Arizona. [Exhibit 533 (Gutierrez at 5)] Presently, there are Hispanic slates, but
6 only in minority communities. [Exhibit 533 (Gutierrez at 5)]

7 1447. Racial appeals are prevalent throughout Arizona, especially in the context of
8 immigration. [Exhibit 524 (Archuleta at 3); Exhibit 533 (Gutierrez at 5); Exhibit
9 545 (Rios at 4)] It was clear statewide that messages that led to the passage of
10 Proposition 200 were aimed at Latinos. [Exhibit 524 (Archuleta at 3)] The
11 materials and messages proposed by the proponents of Proposition 200 created a
12 negative perception of Latinos and a polarization between recent immigrants and
13 U.S. born citizens, especially Anglos. [Exhibit 524 (Archuleta at 3)]

14 1448. In the 1970's and 1980's, volunteers campaigning for a minority candidate
15 received hostile reactions from residents of Anglo neighborhoods. [Exhibit 533
16 (Gutierrez at 5)] This is still largely true today. [Exhibit 533 (Gutierrez at 5)]

17 1449. Latino Elected officials believe the State Legislature has been unresponsive
18 to the needs of the Latino community. [Exhibit 533 (Gutierrez at 6); Exhibit 545
19 (Rios at 5)] The Legislature has refused to fund English Language Learners and as
20 a result there is an increasing trend by schools to segregate English Language
21 Learners, mostly Latinos, from Anglo students. [Exhibit 533 (Gutierrez at 6)]

22 **ii. Voter Suppression in Arizona**

23 1450. Republican challengers went to polling places, particularly in minority-
24 dominated precincts, in Maricopa and Pima Counties in the 1956 election to
25 challenge voters on their ability to read and interpret parts of the Constitution.
26

1 [Exhibit 501 (Gene McLain, "Fight Erupts at South Side Precinct," *Arizona*
2 *Republic*, Nov. 7, 1962, p. 1, 11)]

3 1451. In the November 4, 1958 election, Republican challengers were sent to 90%
4 of the polling places in Maricopa County. Prior to the election, the Republican
5 Party sent campaign material to 18,000 registered Democrats at their addresses of
6 registration. Those for whom the material was returned were added to "challenge
7 lists," which the challengers took with them to the polls. Voters were also
8 challenged on their ability to read the preamble to the Constitution. [Exhibit 501
9 ("Some GOP Vote Challengers Face Criminal Charges for Holding Posts," *Arizona*
10 *Republic*, Nov. 5, 1958, p. 4)]

11 1452. This practice of challenging minority voters continued in the 1962 election,
12 and even caused at least one fight between a Republican challenger and a
13 Democratic Party representative. [Exhibit 501 (Gene McLain, "Fight Erupts at
14 South Side Precinct," *Arizona Republic*, Nov. 7, 1962, p. 1, 11)]

15 1453. Republican vote challengers employed a program called "Operation Eagle
16 Eye" in Arizona in the 1964 general election. This program was a coordinated
17 effort to challenge votes of those on the challenge lists, as well as minority voters,
18 by asking them to read portions of the Constitution or by asking them personal
19 questions. Several witnesses identified Chief Justice Rehnquist as a participant in
20 Operation Eagle Eye, and stated that he used harassment and intimidation to
21 discourage minority voters from exercising their right to vote. [Exhibit 501 (Fred
22 P. Graham, "2 Negroes from Phoenix, Ariz. Say Rehnquist Harassed Blacks at
23 Polls in 1964," *The New York Times*, Nov 16., 1971, p. 32; Fred. P. Graham,
24 "Rehnquist Role in Election Confirmed," *The New York Times*, Nov. 13, 1971, p.
25 37; "Excerpts from Questioning of Rehnquist in the Senate Judiciary Committee,"
26 *The New York Times*, July 31, 1986, A14)

- 1 1454. Proponents of Proposition 200, such as the Federation for American
2 Immigration Reform (FAIR), have ties to white supremacists and have expressed
3 racial animus [Pl. Tr. Ex. 725]
- 4 1455. Federation for American Immigration Reform (FAIR) and other
5 immigration reform organizations was a primary organizer of the signature
6 gathering efforts to place Proposition 200 on the ballot. [Pl. Tr. Ex. 755]
- 7 1456. Veterans for Secure Borders is a organization that makes racist and
8 inflammatory comments about the invasion of the United States by illegal aliens
9 and non-English speakers. [Pl. Tr. Ex 728]
- 10 1457. Glenn Spencer is the founder of American Border Patrol, a vigilante
11 organization that advocates enforcement of immigration laws by private
12 individuals in Sierra Vista, AZ. He believes that the government of Mexico is
13 actively trying to reconquer the American Southwest and that people of color
14 commit vastly more crimes than others. [Pl. Tr. Ex 730, 732, 749]
- 15 1458. Anti-immigrant advocates claim US Senators and the National Council of
16 La Raza, a well-respected Latino rights organization, encouraged Osama Bin
17 Laden to come into the U.S. [Pl. Tr. Ex 734]
- 18 1459. American Patrol claims California has been destroyed by illegal
19 immigration. American Patrol claims California's schools, social and physical
20 infrastructure have all been destroyed due to illegal aliens and an attempt by
21 Mexicans to target White Anglo Saxon Protestants. [Pl. Tr. Ex 739]
- 22 1460. Representative Russell Pearce drew fire for racially insensitive immigration
23 remarks and copying an article from a white separatist group and a link to that
24 group's website. [Pl. Tr. Ex 731, 741]

25
26

1 1461. Representative Pearce has stated he admits feeling uncomfortable with the
2 way society is changing in Arizona and it attributes it to Mexicans and Central
3 Americans way of doing business. [Pl. Tr. Ex 747]

4 1462. Rusty Childress, founder of an anti-immigrant biker gang, stated “Mexico is
5 the problem, they are not the solution.” [Pl. Tr. Ex 751]

6 1463. According to the Southern Poverty Law Center, Russ Dove stood in front of
7 polling places in September 2004 Arizona Primaries and videotaped and
8 photographed anyone who showed up to vote who he suspected might not be a
9 citizen. He was single handedly determined to protect the polls from ineligible
10 voters. [Pl. Tr. Ex 727]

11 1464. An incident of voter intimidation by proponents of Proposition 200 occurred
12 in Tucson, Arizona in the November, 2006 election. [Test. of Kathryn Rodriguez].

13 1465. Kathryn Rodriguez is over 18 years of age and resides at 3306 S. Lloyd
14 Vista, Tucson, Arizona 85713. [Test. of Kathryn Rodriguez].

15 1466. Before the November 7, 2006 election Kathryn Rodriguez was told by
16 community members that two known anti-immigrant activists, Russell Dove and
17 Roy Warden, were going to “patrol” polling places in predominantly
18 Chicano/Latino neighborhoods in Tucson, AZ. [Test. of Kathryn Rodriguez].

19 1467. Russell Dove’s website included a map of planned vigilance at certain
20 polling places to ensure that undocumented immigrants were not voting. Dove and
21 Warden announced that they would demand proof of identification of anyone they
22 suspected of being undocumented. [Test. of Kathryn Rodriguez].

23 1468. Kathryn Rodriguez decided to visit one of the sites on their list, Iglesia
24 Bautista Kairos-Precinct 49, on the morning on November 7th, 2006. [Test. of
25 Kathryn Rodriguez].

26

1 1469. On November 7, 2006 at approximately 10:30 A.M., Kathryn Rodriguez
2 arrived at Iglesia Bautista Kairos- Precinct 49 to find Russell Dove, Roy Warden
3 and a man with a camera present. Dove and Warden were positioned, with
4 clipboards, on the walkway that led to the door of the polling place. [Test. of
5 Kathryn Rodriguez].

6 1470. Kathryn Rodriguez photographed Roy Warden wearing his gun in a holster
7 where it was visible. [Pl. Tr. Ex. 764 M & N].

8 1471. Kathryn Rodriguez later observed Congressman Raul Grijalva arrived to
9 vote. She suspects this was the main reason Iglesia Bautista Kairos- Precinct 49
10 was chosen. Anyone who wanted to vote, including Congressman Grijalva, had to
11 pass Roy Warden, Russell Dove, and the man with the camera in order to enter the
12 polling place. When Congressman Grijalva emerged from the polling place a short
13 while later, one of the men shouted out something like “Hey Vato! Viva Mexico!”
14 [Test. of Kathryn Rodriguez].

15 1472. Kathryn Rodriguez left the polling place to get her digital camera from her
16 office to take pictures of Roy Warden, Russell Dove and the man with a camera.
17 Upon her return, she noticed the activities around the polling place had not
18 changed; however, several people opted to walk in a wide arc to avoid them, rather
19 than take the direct path to their vehicles. [Test. of Kathryn Rodriguez].

20 1473. At one point, Roy Warden, Russell Dove, and the man with a camera
21 approached a man exiting the polling place who appeared to be of Mexican
22 descent. They spoke briefly with the man, who appeared rather uncomfortable,
23 before he left. Kathryn Rodriguez took pictures of this exchange [Test. of Kathryn
24 Rodriguez], [Pl. Tr. Ex. 764 A-V].

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1 1474. While Kathryn Rodriguez was at the polling place, an Univision news crew
2 arrived to take footage and conduct a few interviews about the activities
3 surrounding the polling place. [Pl. Tr. Ex. 765].

4 1475. Later, Kathryn Rodriguez observed Roy Warden and Russell Dove pack up
5 and leave in their vehicles. She was informed the men proceeded to the El Pueblo
6 Neighborhood Center to “monitor” activities there. [Test. of Kathryn Rodriguez].

7 **XIV. PROP 200 IS NOT NARROWLY TAILORED TO ACHIEVE ITS ENDS**

8 **A. The Driver’s License is the Most Widely Used Proof of Citizenship but**
9 **Does not Prove Citizenship**

10 1476. Proposition 200 does not mention Type F licenses. [Kanefield. 39]

11 1477. Due to questions concerning the ability to verify citizenship with a driver’s
12 license around the time Proposition 200 was enacted, Secretary of State Jan Brewer
13 asked the Attorney General for an opinion on the matter. [Kanefield 39]

14 1478. The Attorney General determined that because of the manner in which the
15 statute was drafted a driver’s license issued after October 1996 is satisfactory
16 evidence of United States citizenship. [Kanefield 39]

17 1479. The Secretary of State believes the DMV determines whether or not a
18 person is authorized to be in the country legally. [Kanefield 40]

19 1480. Mr. Kanefield, as a representative of the Secretary of State, cannot say
20 specifically whether the DMV is verifying an individuals U.S. citizenship versus
21 verifying his authorized presence. [Kanefield 42]

22 1481. Mr. Kanefield, as a representative of the Secretary of State, does not know
23 whether Type F licenses were in existence at the time of the passage of Proposition
24 200 in 2004. [Kanefield 43]

25 1482. County Officials Agree That Subjecting Conditional Provisional Ballots to
26 Signature Verification Is Not a Burden to Them

1 1483. The Counties use a signature verification process to verify provisional
2 ballots, which county election officials consider to be adequate to prevent voter
3 fraud. [Exhibit 508 (Hoyos 44); Exhibit 514 (Pew 18-19); Exhibit 521 (Wayman-
4 Trujillo 110, 113)]

5 1484. County election officials do not believe that it would be a significant burden
6 to treat conditional provisional ballots like provisional ballots and verify a voter's
7 signature by comparing it with the voter's signature on the voter rolls. [Exhibit
8 508 (Hoyos 49); Exhibit 521 (Wayman-Trujillo 125)]

9 1485. Some Counties suggested that signature verification be used as another form
10 of identification, but the Secretary of State rejected this suggestion. [Exhibits 328,
11 496-498]

12 **B. There Is No Evidence of Voter Fraud in Arizona**

13 1486. Joseph Kanefield, as a representative of the Secretary of State's office, is not
14 aware of any specific allegations that a non-US citizen registered to vote in
15 Arizona. [Kanefield 29-30]

16 1487. The Secretary of State's office has no knowledge of any incident since
17 January 1, 1996 involving allegations of fraud in military personnel registering to
18 vote using the Federal Post Card Application. [Kanefield 21-22]

19 1488. The Secretary of State's office has no knowledge of any incident since
20 January 1, 1996 involving allegations of fraud in any overseas individuals
21 registering to vote using the Federal Post Card Application in Arizona. [Kanefield
22 22]

23 1489. Joseph Kanefield, as a representative of the Secretary of State's office, is not
24 aware of any specific allegations that a non-US citizen registered to vote in
25 Arizona. [Kanefield 29-30]

26

1 1490. The Secretary of State's office does not believe Proposition 200 addresses
2 voter fraud in the mail or absentee balloting. [Kanefield 106:22-25]

3 1491. The Secretary of State is not in possession of any information relating to any
4 incident since January 1, 1996 involving allegations that a non-U.S. citizen voted
5 in Arizona by early ballot. [Kanefield 33]

6 1492. Since January 1, 1996, the Secretary of State's office has not come into
7 possession of any allegations that a non-U.S. citizen voted in person at a polling
8 place in Arizona. [Kanefield 33]

9 1493. Since January 1, 1996 the Secretary of State's office does not have any
10 specific information involving allegations that an individual has impersonated a
11 registered voter at a polling place. [Kanefield 33-34]

12 1494. Before the passage and implementation of Proposition 200, the Secretary of
13 State believed that the "strong desire to remain in the United States and fear of
14 deportation outweigh [noncitizen's] desire to deliberately register to vote before
15 obtaining citizenship. Those who are in the county illegally are especially fearful
16 of registering their names and addresses with a government agency for fear of
17 detection and deportation." [Exhibit 318]

18 1495. There have been no cases of voter impersonation fraud in Pinal County in
19 the last twenty-five years. [Exhibit 508 (Hoyos 40:3-9)]

20 1496. No non-citizens have registered to vote in Apache, Coconino or Navajo
21 Counties since January 1, 1996. [Exhibit 510 (Johnson 11:10-20); Exhibit 507
22 (Hansen 86:16-21); Exhibit 509 (Justman 11:15-19)]

23 1497. Yavapai County has not had an instance of voter fraud in the ten years that
24 County Recorder Ana Wayman-Trujillo has worked for Yavapai County. [Exhibit
25 521 (Wayman-Trujillo 29)]

26

1 1498. The Counties have had no experience with voter impersonation fraud at the
2 polls. [Exhibit 508 (Hoyos 40)]

3 1499. County election officials believe that signature verification is sufficient to
4 prevent fraud. [Exhibit 517 (Rodriguez vol. 1 75:17-20); Exhibit 518 (Rodriguez
5 vol. 2 151:20-152:1; Exhibit 508 (Hoyos 43:14-21); Exhibit 514 (Pew 19:5-7);
6 Exhibit 507 (Hansen 71:21-24); Exhibit 504 (Dastrup 28:23-29:1); Exhibit 509
7 (Justman 35:10-23)]

8 1500. County election officials acknowledge that not many of the registrations
9 rejected for lack of proof of citizenship were for individuals born outside the
10 United States. [Exhibit 512 (Osborne vol. 1 22:11-24)]

11 1501. The Maricopa County Elections Director testified in her deposition that she
12 recalled only two people who said they had been told they were eligible to vote as
13 non-citizens. [Exhibit 513 (Osborne Vol. 2 15:13-16:10); Exhibit 512 (Osborne
14 Vol. 1 18:23-19:25)]

15 1502. The Maricopa County Elections Director testified in her deposition that
16 some U.S. citizens claim to be non-citizens in order to avoid jury service. [Exhibit
17 513 (Osborne Vol. 2 91:4-9)]

18 1503. The Maricopa County elections Director testified in her deposition that
19 many of these applications were rejected because they had bad addresses and
20 “There is everything that could make a form unacceptable on there.” [Exhibit 513
21 (Osborne Vol. 2 11:9-14)]

22 1504. Counsel for Maricopa County also wrote in 2007 that the registration
23 applications in this drive were rejected “for a range of problems – illegible,
24 incomplete, bad address and no proof of citizenship.” [Exhibit 962]

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26

1 **GONZALEZ PLAINTIFFS’ PROPOSED CONCLUSIONS OF LAW**

2 **I. PROPOSITION 200 VIOLATES SECTION 2 OF THE VOTING RIGHTS**
3 **ACT**

4 1 Section 2 of the Voting Rights Act prohibits official practices that “result in a
5 denial or abridgement of the right of any citizen of the United States to vote on
6 account of race or color . . .” 42 U.S.C. 1973 (a).

7 2 A violation of Section 2 exists when, “based on the totality of circumstances, it is
8 shown that the political processes leading to nomination or election in the State or
9 political subdivision are not equally open to participation by [Latinos] in that its
10 members have less opportunity than other members of the electorate to participate
11 in the political process and to elect representatives of their choice.” 42 U.S.C.
12 1973 (b).

13 3 Plaintiffs’ vote dilution claims turns on a number of factors, including the presence
14 of racially polarized voting, a disparate impact on Latino voters and a
15 demonstration that the challenged practice results in “less opportunity” for Latino
16 voters “based on the totality of circumstances.” 42 U.S.C. 1973 (b).¹ See

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

- 19 1. the history of official voting-related discrimination in the state or political
20 subdivision;
- 21 2. the extent to which voting in the elections of the state or political subdivision is
22 racially polarized;
- 23 3. the extent to which the state of political subdivision has used voting practices or
24 procedures that tend to enhance the opportunity for discrimination against the
25 minority group, such as unusually large election districts, majority-vote
26 requirements, and prohibitions against bullet voting;
4. the exclusion of members of the minority group from candidate slating processes;
5. the extent to which minority group members bear the effects of discrimination in
 areas such as education, employment, and health, which hinder their ability to
 participate effectively in the political process;

1 *Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400 (5th Cir.
2 1991).

3 **A. Arizona Elections are Characterized by Racially Polarized Voting**

4 Elections in Arizona are characterized by racially polarized voting between Latinos
5 and non-Latino voters.

6 Prong two of the *Gingles* test requires plaintiffs to demonstrate that Latinos in
7 Arizona are politically cohesive, while *Gingles* prong three requires plaintiffs to
8 demonstrate that the white majority votes sufficiently as a bloc to enable it, in the
9 absence of special circumstances such as the minority candidate running
10 unopposed, usually to defeat the minority's preferred candidate. *See Gingles*, 478
11 U.S. at 51. In practice, the two inquiries merge.

12 6 Under the *Gingles* approach, political cohesion is to be judged “primarily on the
13 basis of the voting preferences expressed in actual elections.” *Gomez v. City of*
14 *Watsonville*, 863 F.2d 1407, 1415 (9th Cir. 1988). Evidence of racially polarized
15 voting, which looks to the difference between how Latino votes and non-Latino
16 votes are cast, “establishes both cohesiveness of the minority group and the power
17 of white bloc voting to defeat the minority’s candidates.” *Id.* at 1415 (quoting
18 *Collins v. City of Norfolk*, 816 F. 2d 932, 935 (4th Cir. 1987)) (internal quotation
19 marks omitted). Whether Latinos are cohesive is not a question to be determined
20 “prior to and apart from a study of polarized voting.” *Campos v. City of Baytown*,
21 840 F. 2d 1240, 1244 (5th Cir. 1988).

22 6. the use of overt or subtle racial appeals in political campaigns; and

23
24 7. the extent to which members of the minority group have been elected to public
25 office in the jurisdiction.

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

1 7 Because ballots are secret, experts estimate group voting voter behavior using
2 various statistical techniques which compare the votes a candidate or proposition
3 receives in a precinct with the racial composition of the precinct. Ecological
4 Regression and Ecological Inference both are reliable techniques that produce
5 estimates of the percent of Latinos and non-Latinos voting for Latino and non-
6 Latino candidates.

7 8 Regression analysis is “standard in the literature for the analysis of racially
8 polarized voting,” and was expressly relied upon and approved by the Court in
9 *Gingles*. See 478 U.S. at 53 n.20; see also *Garza*, 756 F. Supp. at 1332, 1346
10 (rejecting defendants’ challenge to reliability of bivariate regression analysis and
11 finding polarized voting); *Romero v. City of Pomona*, 883 F.2d 1418, 1423 (9th
12 Cir. 1989) (approving use of “ecological regression . . . to show the existence of
13 polarized voting”); *Sanchez v. State of Colorado*, 97 F.3d 1303, 1321 (10th Cir.
14 1996) (district court committed reversible error in rejecting plaintiffs’ evidence of
15 racial polarization, “even though they used the same statistical method approved in
16 *Gingles* and most of the § 2 case law”); *SCLC of Alabama v. Sessions*, 56 F.3d
17 1281, 1290 (11th Cir. 1995) (“ecological regression and extreme case analysis . . .
18 were approved and utilized by the Supreme Court in *Gingles*”); *Jeffers v. Clinton*,
19 730 F. Supp. 196, 208 (E.D. Ark. 1989); *Carrollton Branch of NAACP v. Stallings*,
20 829 F.2d 1547, 1558 (11th Cir. 1987); *Campos v. Baytown*, 840 F.2d 1240, 1246-
21 48 (5th Cir. 1988); *Citizens for a Better Gretna v. Gretna*, 834 F.2d 496, 500-02
22 (5th Cir. 1987).

23 9 Ecological Inference, also known as the King Method, is also a reliable statistical
24 method to determine the existence of racially polarized voting. See *U.S. v. City of*
25 *Euclid*, 2008 WL 1775282, slip op. at * 9 (N.D. Ohio April 16, 2008) (“evidence of
26 racial bloc voting may be established by three analytical models: homogenous

1 precinct analysis (“HPA”), bivariate ecological regression analysis (“BERA”), and
2 King's ecological inference method (“King's EI method”). Since Gingles, courts
3 have relied on HPA and BERA, while, more recently, King's EI method has been
4 used increasingly in conjunction with the other two as an additional means for
5 determining the existence of racial bloc voting.”). The Ecological Inference
6 technique has been relied upon by a number of courts. *See, e.g. Id.; Bone Shirt v.*
7 *Hazeltine*, 461 F.3d 1011, (8th Cir. 2006); *Cottier v. City of Martin*, 445 F.3d 1113
8 (8th Cir. 2006).

9 10 The conclusions of Dr. Richard Engstrom are reliable and credible. Dr. Engstrom
10 studied recent racially-contested elections across Arizona and concluded that:
11 voting is racially polarized; Latino voters have been cohesive in their support for
12 Latino candidates; and that non-Latinos did not provide any non-incumbent Latino
13 candidate with a majority of their votes in any instance.

14 11 Statistical proof of political cohesion is the most common and persuasive form of
15 evidence, although other evidence may also be introduced to supplement the group
16 voting statistics. *See Carrollton Branch of NAACP*, 829 F.2d at 1558 (plaintiffs
17 established racially polarized voting through regression analysis and the testimony
18 of lay witnesses).

19 12 The court concludes that the following additional evidence is credible and reliable
20 and supports the Court’s conclusion of racially polarized voting,: Homogenous
21 Precinct Analysis, which looks at the level of support for particular candidates in
22 precincts that are “homogenous” in their racial composition, and the testimony of
23 past and present elected officials.

24 13 Furthermore, Defendants have conducted no statistical analysis of racially
25 polarized voting and have presented no facts or study concluding that Arizona
26 elections are not racially polarized.

1 18 The Court also credits the testimony of Dr. Espino who further found that after
2 Proposition 200 was implemented in Arizona, Latino voter registration as a
3 percentage of all registration dropped dramatically. Both Dr. Lanier and Dr.
4 Espino were able to observe the separate effects of Prop 200 on Latinos and non-
5 Latinos and conclude that Latinos were disproportionately negatively affected
6 when compared to non-Latinos.

7 19 The Court concludes that Latinos have experienced a disparate impact as a result of
8 the registration requirements of Prop 200 despite the fact that the raw number of
9 registered voters and Latino voters has increased as the population of the State of
10 Arizona has increased. The question whether total voter registration has increased
11 along with the population of Arizona is not relevant to the Court's inquiry in this
12 case and the numerical increase in registered voters in Arizona after 2005 does not
13 erase the fact that over 37,000 voter registration applications have been rejected
14 pursuant to Proposition 200 during this same period.

15 20 The Court further concludes that the relevant legal test under Section 2 is not
16 limited to an inquiry into whether Latino voter registrants are less likely to possess
17 proof of citizenship. Like the literacy test and poll tax of the past, Proposition
18 200's requirement to produce documents in order to register to vote erects barriers
19 for Latinos whose political participation rates already lag behind those of Anglos in
20 Arizona.

21 21 The disparate impact of Prop 200's registration requirements can also properly
22 flow from the fact that Latino rejected voter applicants are more likely to be low-
23 income and live in urban areas when compared to the state average and that Latinos
24 comprise a greater proportion of naturalized citizens than Anglos and thus are more
25 likely to experience the greater registration burdens on naturalized citizens when
26 compared to native-born citizens.

1 22 The statistical evidence shows that in the face of these additional hurdles imposed
2 by Prop 200, Latinos are less likely to make a second and successful attempt to re-
3 register once they have been rejected. In addition, voter registration
4 organizations, who reached out to unregistered Latinos through community-based
5 efforts have been forced to shut down or limit their voter registration operations as
6 a result of Proposition 200.

7 23 Latinos are more likely to cast uncounted conditional provisional ballots and less
8 likely to “cure” uncounted conditional provisional ballots. The Court finds reliable
9 and credible the testimony of Dr. Richard Engstrom, who calculated Latino and
10 non-Latino voter registration rates for the 2006 General Election for Governor.
11 Those turnout rates, when combined with the State’s information about Latino
12 registration and total ballots cast, reveals that only between 2.6 % and 4.2 % of
13 voters who participated in the 2006 General Election were Latino while by
14 comparison Latinos cast 10.3% of uncounted conditional provisional ballots at a
15 rate much greater than their share of the electorate in the 2006 General Election.

16 24 This conclusion is further supported by studies conducted by Defendant Maricopa
17 County showing that Latinos were more likely to cast uncounted conditional
18 provisional ballots in the 2008 Presidential Primary Election, even though Latinos
19 comprise only 12% of Maricopa County’s registered voters.

20 25 The fact that Latinos are going to the polls and casting a disproportionately high
21 number of uncounted conditional provisional ballots satisfies the requirement of
22 demonstrating the disproportionate negative impact of Proposition 200’s voter
23 identification requirements on Latinos who Dr. Lanier found were from areas of
24 Arizona where the population is: more Latino, less likely to speak English well,
25 possesses less schooling, and earns a lower household income than the averages for
26 the state.

1 26 The Court further concludes that the relevant legal test under Section 2 is not
2 limited to an inquiry into whether Latino voters lack identification in greater
3 numbers than non-Latinos. The disparate impact of Proposition 200’s voter
4 identification requirements on Latinos reflect a combination of factors, including
5 the extent to which Latinos have acceptable identification under Proposition 200,
6 the extent to which lower educational achievement levels affect the ability of
7 Latinos to navigate the complex rules of acceptable identification at the polls, the
8 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 availability of
10 language assistance at the polls, and the ability of Latinos to return to the polls to
11 “cure” their conditional provisional ballots.

12 27 These factors are presented and discussed in Plaintiffs’ evidence and, with proof
13 that Latinos are more likely than non-Latinos to cast uncounted conditional
14 provisional ballots and less likely to “cure” their conditional provisional ballots is
15 sufficient to establish the disparate effects of the identification requirements

16 **C. Under the Totality of Circumstances, Proposition 200’s Requirements**
17 **Deny Latinos an Equal Opportunity to Participate in the Political**
Process and to Elect Representatives of Their Choice

18 28 An examination of the Section 2 “Senate Factors” demonstrates that Proposition
19 200’s registration and voting requirements interact with social, political and
20 historical factors to abridge or deny Latino voting rights.

21 29 In the context of racially polarized voting, any registration or voting requirement
22 that has a disproportionately negative impact on Latinos voting impedes that
23 group’s ability to elect representatives of its choice. Here, in combination with
24 additional Senate Factors, racially polarized voting combines with Prop 200’s
25 voting requirements to result in a lack of Latino equal opportunity to participate in
26 the political process and to elect candidates of their choice.

1 30 In Section 2 cases, courts examine the factors enumerated in the Senate Judiciary
2 Committee Report to Section 2 and adopted by the Supreme Court in *Gingles*, 473
3 U.S. at 36, 37, 44-45, in determining whether the challenged practice or structure
4 results in a lack of Latino equal opportunity to participate in the political process
5 and to elect candidates of their choice.

6 31 The Court examines the Senate factors in the context of the totality of the
7 circumstances. There is no requirement that all seven factors be met or that "any
8 particular number of factors be proved, or that a majority of them point one way or
9 the other." S. Rep. at 29. "The courts ordinarily have not used these factors . . . as
10 a mechanical 'point counting' device Rather, the provision requires the court's
11 overall judgment, based on the totality of circumstances and guided by those
12 relevant factors in the particular case, of whether the voting strength of minority
13 voters is, in the language of *Fortson* and *Burns*, 'minimized or canceled out.'" *Id.*
14 at 29 n. 118.

15 32 The Court in *Gingles* provided that the Senate factors must be applied with an eye
16 toward a "practical evaluation of the 'past and present reality' and on a 'functional'
17 view of the political process." *Gingles*, 478 U.S. at 45, *quoting* S. Rep. at 30 n. 120.
18 Among the seven Senate Factors to analyze, "the existence of racially polarized
19 voting and the extent to which minorities are elected to public office remain the
20 two most important factors considered in the totality-of-circumstances inquiry."
21 *Clark*, 88 F.3d at 1397, citing *Gingles*, 478 U.S. at 48 n.15 and *Westwego Citizens*
22 *for Better Government v. City of Westwego*, 946 F.2d 1109, 1122 (5th Cir. 1991).

23 33 Because "courts have recognized that disproportionate educational, employment,
24 income levels and living conditions arising from past discrimination tend to
25 depress minority political participation, . . . plaintiffs need not prove any further
26 causal nexus between their disparate socio-economic status and the depressed level

1 of political participation.” S. Rep. at 29 n. 114 (citing *White v. Regester*, 412 U.S.
2 at 768 and *Kirksey v. Board of Supervisors*, 528 F.2d 139,145 (5th Cir. 1977); see
3 also *Clark*, 88 F.3d at 1399; and *LULAC v. Clements*, 999 F.2d at 867 (Senate
4 Report does not “insist[] upon a causal nexus between socioeconomic status and
5 depressed participation”).

6 34 Latinos in Arizona have suffered a history of official exclusion from voting
7 including exclusion based on the State’s literacy test. As found above, voting is
8 racially polarized in Arizona. Latinos today still bear the effects of discrimination
9 in areas such as education and employment which reduces their socio-economic
10 status and voter participation rates and hinders their ability to participate
11 effectively in the political process. Latino present and past elected officials explain
12 that Latinos are underrepresented in elective office today and that Arizona Latinos
13 have experienced other discriminatory voting mechanisms including slating and
14 racial appeals. State Defendants concede “that there is evidence of historical
15 discrimination against Latinos in Arizona.”

16 35 The Ninth Circuit’s ruling in *Smith v. Salt River Project Agricultural Improvement*
17 *and Power District*, 109 F.3d 586 (9th Cir. 1997) supports a finding of vote dilution
18 in this case.

19 36 As an initial matter, the political system at issue in *Salt River* was very different
20 from the political system in this case and the unique structure of the District in *Salt*
21 *River* played an important role in the court’s ultimate finding of non-
22 discrimination. The Salt River District operated a federal reclamation project. The
23 association of which it was an arm was formed to represent the landowners who
24 benefit from the Salt River Project and its shareholders were subscribing
25 landowners. *Id* at 588. By statute, the Salt River District had the option of acreage-
26 based voting and its purposes included the reduction of irrigation, drainage and

1 power costs to district landowners through the sale of surplus power. *Id* at 588-89
2 (9th Cir. 1997).

3 37 In the Salt River District, voting was limited to landowners and each landowner
4 cast one vote per acre owned. The 10 electoral districts did not meet one person
5 one vote standards. Finally, Salt River District landowners did not need to live in
6 the District in order to vote their acreage. *Id* at 589.

7 38 Furthermore, the *Salt River* trial court found that the District “has no history of
8 racial politics and its operations do not involve racially-differentiated interests.” *Id*
9 at 590. The district court also found, under the totality of circumstances, that
10 plaintiffs had presented no evidence of racial discrimination in District elections
11 and that District functions were not influenced by racial politics. *Id* at 590-91.

12 39 In this context, the Ninth Circuit affirmed the district court’s ultimate conclusion
13 that plaintiffs had failed to demonstrate a Section 2 violation in their challenge to
14 the District’s land ownership requirement for voting. The Ninth Circuit also
15 deferred to the district court’s finding that the plaintiffs’ evidence showed that
16 differences in the rates of Black and Anglo home ownership were better explained
17 by factors other than race and thus there was no nexus between racial
18 discrimination and the challenged practice. *Id.* at 595.

19 40 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
21 impact combines with the legacy of past discrimination and present day racially
22 polarized voting to discriminate against Latinos under the totality of circumstances.
23 *See Farrakhan v. Washington*, 338 F.3d 1009 (9th Cir. 2003), *reh’g en banc*
24 *denied*, 359 F.3d 1116 (9th Cir.), *cert. denied*, 125 S. Ct. 477 (2004); *Badillo v. City*
25 *of Stockton*, 956 F.2d 884, 890 (9th Cir. 1992). Quite simply, Prop 200’s disparate
26 negative effect on Latinos are *not* “better explained by other factors independent of

1 race” that might “adequately rebu[t] any inference of racial bias that the [disparate
2 impact] statistics might suggest.” *Salt River* at 591.

3 41 The ruling in *Salt River* does not require a showing of discriminatory racial intent
4 in order to create the causal connection between a challenged practice and race.
5 Plaintiffs need not show more than that Proposition 200 interacts with racially
6 polarized voting and additional Senate Factors to result in Latinos being
7 disproportionately less likely to register to vote and less likely to have their ballots
8 counted after satisfying Prop 200’s voter identification requirements.

9 42 Section 2 unequivocally prohibits measures, such as those in Proposition 200, that
10 operate with historical and present day factors to abridge or deny the right to vote.

11 43 For example, Section 2 was enacted in 1965 in the same bill and at the same time
12 that Congress enacted a ban on literacy tests in certain covered jurisdictions.
13 Congress recognized that although literacy tests were facially neutral, because of
14 poverty, lack of educational opportunity and racially polarized voting, literacy tests
15 operated to exclude minorities from voting and were discriminatory. *See* 42 U.S.C.
16 § 1973b.

17 44 Similarly, in 1965 Congress also found that the poll tax:

18 in some areas has the purpose or effect of denying persons the right to vote
19 because of race or color. Upon the basis of these findings, Congress declares
20 that the constitutional right of citizens to vote is denied or abridged in some
21 areas by the requirement of the payment of a poll tax as a precondition to
22 voting.

23 *See* 42 U.S.C. § 1973h (a).

24 45 Thus, Congress has recognized since the passage of Section 2 that certain voting
25 practices, although not explicitly tied to race or facially discriminatory, can interact
26 with social and historical factors to deny or abridge the right to vote. Congress has

1 subsequently continued to recognize and prohibit such measures. *See, e.g.* 42
2 U.S.C. 1973b (f) (finding that in certain jurisdictions the practice of administering
3 English-only elections had an illegal discriminatory impact).

4 46 The Court rejects any interpretation of *Salt River* that would not allow poll taxes,
5 literacy tests or English-only elections to violate Section 2 because there is no
6 direct connection between the challenged practice and racial discrimination.

7 **II. PROP 200’S PROOF OF CITIZENSHIP REQUIREMENT FOR**
8 **REGISTRATION DISCRIMINATES AGAINST NATURALIZED**
9 **CITIZENS AND VIOLATES THE EQUAL PROTECTION CLAUSE OF**
10 **THE 14TH AMENDMENT TO THE CONSTITUTION.**

11 47 The Equal Protection Clause “is essentially a direction that all persons similarly
12 situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr., Inc.*,
13 473 U.S. 432, 439 (1985); *Rolf v. City of San Antonio*, 77 F.3d 823, 828 (5th Cir.
14 1996). When a “challenged government action classifies or distinguishes between
15 two or more relevant groups” courts must conduct an equal protection inquiry to
16 determine the validity of the classifications. *Qutb v. Strauss*, 11 F.3d 488, 491 (5th
17 Cir. 1993).

18 48 Just as in every other context of government action, equal protection principles
19 preclude intentional discrimination in the electoral process and voter registration.
20 *See Hunter v. Underwood*, 471 U.S. 222 (1985); *Miller v. Johnson*, 515 U.S. at
21 911; *Garza v. County of Los Angeles*, 918 F.2d 763, 778 (9th Cir. 1990), *cert.*
22 *denied*, 498 U.S. 1028 (1991); *Boustani v. Blackwell*, No. 1:06CV2065, slip op. at
23 5 (N.D. Ohio Oct. 26, 2006).

24 49 In situations where the distinction involves a suspect class, such as national origin,
25 the challenged law is subject to the “strict scrutiny” standard of review. Similarly,
26 because Proposition 200 implicates a fundamental right strict scrutiny applies. *See,*
e.g., Reynolds v. Sims, 377 U.S. 533, 554 (1964) (“Voting is of the most
fundamental significance under our constitutional structure.”); *Graham v.*

1 *Richardson*, 403 U.S. 365, 372 (1971) (classifications based on national origin are
2 inherently suspect).

3 50 Proposition 200 discriminates with respect to voting on the basis of national origin
4 and cannot survive strict scrutiny.

5 51 Proposition 200 further discriminates between classes of citizens (and against
6 naturalized citizens) and thus violates the Equal Protection Clause of the 14th
7 Amendment. Specifically, Proposition 200 imposes greater burdens on naturalized
8 citizens than on native born citizens.

9 52 Courts have consistently struck down laws that distinguish between native-born
10 and naturalized citizens. *See, e.g., Boustani v. Blackwell*, No. 1:06CV2065, slip
11 op. at 5 (N.D. Ohio Oct. 26, 2006) (finding unconstitutional an Ohio statute that
12 required naturalized citizens, but not native-born citizens, to provide citizenship
13 documentation when their eligibility to vote was challenged at the polling place);
14 *Faruki v. Rogers*, 349 F. Supp. 723, 725 (D.C. Cir. 1972) (portions of Foreign
15 Service Act struck down because of requirement that foreign service officers be
16 U.S. citizens for at least ten years); *Fernandez v. Georgia*, 716 F. Supp. 1475
17 (M.D. Ga. 1989) (striking down Georgia law that prohibited naturalized citizens
18 from becoming state troopers).

19 53 In *Schneider v. Rusk*, 377 U.S. 163 (1964), the Supreme Court found that the
20 Constitution views the naturalized citizen and the native-born alike:

21 ... the rights of citizenship of the native born and of the
22 naturalized person are of the same dignity and are
23 coextensive. The only difference drawn by the
24 Constitution is that only the "natural born" citizen is
25 eligible to be President. Art. II, § 1. While the rights
26 of citizenship of the native born derive from § 1 of the

1 Fourteenth Amendment and the rights of the naturalized
2 citizen derive from satisfying, free of fraud, the
3 requirements set by Congress, the latter, apart from the
4 exception noted, "becomes a member of the society,
5 possessing all the rights of a native citizen and standing,
6 in the view of the Constitution, on footing of a native.

7 377 U.S. 163, 166.

8 54 Thus the Court in *Schneider* struck down a statute that subjected native-born and
9 naturalized citizens to different standards. The Court concluded that the statute
10 created an unconstitutional "second class" status for naturalized citizens by treating
11 naturalized and native-born citizens differently. *Id.* at 169.

12 55 In this case, Proposition 200 discriminates on its face against naturalized citizens
13 by allowing them to prove their citizenship by writing their certificate of
14 naturalization numbers on the voter registration applications but then Prop 200
15 adds that the application cannot be accepted until county officials verify that
16 certificate number with federal immigration authorities and the number is not
17 capable of verification.

18 56 As a result, county officials reject properly completed voter registration
19 applications that list as proof of citizenship the applicant's certificate of
20 naturalization number, forcing naturalized citizens who register in this manner to
21 always be rejected. Many voter registration applicants who are naturalized citizens
22 have listed as proof of citizenship their certificate of naturalization numbers and
23 their voter registration forms were rejected automatically pursuant to Prop 200.

24 57 The State and counties cannot depart from the statute and request information from
25 naturalized citizens that is not described as proof of citizenship. Prop 200 does not
26 authorize state or county officials to request other information, such as an alien

1 registration number, in lieu of the certificate of naturalization number. In addition,
2 not all certificates of naturalization show an alien registration number.

3 58 Prop 200 further discriminates on its face against naturalized citizens by requiring
4 them to present in person their original naturalization certificates to the County
5 Recorder. By contrast, Prop 200 allows an applicant with a U.S. passport or a birth
6 certificate to mail a photocopy to the county recorder.

7 59 The plain language of the statute imposes a vicious cycle of application and
8 rejection for naturalized citizens that is unlike any requirement for native born
9 citizens.

10 60 Prop 200's facial discrimination against naturalized citizens is consistent with the
11 focus in that statute on foreign born persons, the verification of immigration status,
12 the perceived negative effects of immigrants in Arizona and the spectrum of
13 immigrants fraudulently registering to vote. Whether or not they possess the
14 documentary proof of citizenship demanded by Prop 200, foreign born U.S.
15 citizens should not be singled out for discriminatory treatment in the form of forced
16 double applications and in-person registration.

17 **III. THE DOCUMENTARY PROOF OF CITIZENSHIP REQUIREMENT OF**
18 **PROPOSITION 200 IMPOSES AN UNDUE BURDEN ON THE RIGHT TO**
19 **VOTE IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE**
20 **U.S. CONSTITUTION**

21 61 The facial discrimination against naturalized citizens, described above, also creates
22 an undue burden on the right to vote for these naturalized citizens. In addition,
23 each of the documents required to prove citizenship for Proposition 200 costs a fee,
24 including an Arizona Driver's License. Thus, unlike the law challenged in
25 *Crawford v. Marion County Election Board*, *Crawford v. Marion County Election*
26 *Board*, Nos. 07-21, 07-25, 2008 WL 1848103 (April 28, 2008), Prop 200 forces
voter registration applicants who lack citizenship documents to pay to purchase or
replace them before they can register to vote. *See Crawford* at *9 (“[t]he fact that

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most voters already possess a valid driver's license, or some other form of acceptable identification, would not save the statute under our reasoning in *Harper* if the State required voters to pay a tax or a fee to obtain a new photo identification.”).

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

IV. THE VOTER IDENTIFICATION REQUIREMENT OF PROPOSITION IMPOSES AN UNDUE BURDEN ON THE RIGHT TO VOTE IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION

63 Proposition 200 also requires voters who lack satisfactory photo identification to purchase their identification for a fee and thus unduly burdens the right to vote. In addition, the acceptable identification documents that do not show a photo require some financial expenditure or resources to obtain (e.g. bank statement, car insurance receipt, utility bill, etc).

64 Furthermore, Defendants’ implementation of Prop 200’s voter identification requirements have unduly burdened eligible voters who have some form of valid identification but who are told they cannot vote a regular ballot and who may also never be told to return with identification. This includes voters with irregular street addresses, voters whose voter registration addresses don’t match the addresses on their identification and voters whose names have changed as a result of marriage.

1 **V. PROPOSITION 200 VIOLATES TITLE VI OF THE CIVIL RIGHTS ACT**
2 **OF 1964.**

3 65 For the same reasons that Prop 200 violates the Equal Protection Clause by
4 discriminating against naturalized citizens, Prop 200 violates the disparate
5 treatment provision of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

6 66 Title VI provides:

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

11 42 U.S.C. § 2000d.

12 67 Plaintiffs have shown that Defendants are recipients of federal funds under Title VI
13 and that Proposition 200 discriminates on its face against naturalized citizens by
14 imposing more and greater burdens for voter registration. This disparate treatment
15 of foreign born U.S. citizens is sufficient to establish a violation of Title VI. *See*
16 *Alexander v. Sandoval*, 532 U.S. 275 (2001).

17 **VI. PROPOSITION 200 VIOLATES PLAINTIFFS' FIRST AMENDMENT**
18 **RIGHTS.**

19 68 Through their voter registration efforts Plaintiffs exercise expressive and
20 associational rights protected under the First Amendment to the U.S. Constitution.
21 *See Monterey County Democratic Cent. Committee v. United States Postal Service*,
22 812 F.2d 1194, 1196 (9th Cir. 1987).

23 69 "These rights belong to – and may be invoked by – not just the voters seeking to
24 register, but by third parties who encourage participation in the political process
25 through increasing voter registration rolls." *Project Vote v. Blackwell*, 455 F.
26 Supp. 2d 694, 701 (D. Ohio 2006) (citing *Williams v. Rhodes*, 393 U.S. 23, 30
(1968)); *see also League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314 (D. Fla.

1 2006); *Ass'n of Cmty. Orgs. for Reform Now v. Cox*, 2006 U.S. Dist. LEXIS 87080
2 (N.D. Ga. Sept. 28, 2006).

3 70 Proposition 200 violates the First Amendment even though it does not impose a
4 direct restriction on voter registration activities. First Amendment injuries do not
5 have to be permanent. The interference with or loss of First Amendment freedoms,
6 even for a short period of time, constitutes an irreparable injury. *See Elrod v.*
7 *Burns*, 427 U.S. 347, 373 (1976).

8 71 Moreover, where, as here, an individual has asserted a First Amendment right, the
9 Supreme Court has held that such person is entitled to exercise such right in an
10 effective manner. *See Meyer v. Grant*, 486 U.S. 414, 424 (U.S. 1988). In *Meyer*,
11 the Court rejected a state's position that proponents of a state law prohibiting paid
12 petition circulators were not harmed because they could use other means to
13 disseminate their ideas. According to the Court, the opponents of the state law
14 were harmed because the First Amendment protected not only their right to
15 advocate their cause, but also to select what they believed to be the most effective
16 means for so doing. *See id*; *see also Cobb*, 447 F. Supp. 2d at 1334. The Court
17 noted that the fact that the state law left open "more burdensome" avenues to
18 exercise their rights, "[did] not relieve its burden on First Amendment expression."
19 *Id.* (quoting *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986)).

20 72 The Court came to a similar conclusion in *Buckley v. American Constitutional Law*
21 *Foundation, Inc.*, 525 U.S. 182, 195 (1999), when it struck down a state law that
22 required that persons be registered to vote before they could circulate petitions,
23 rejecting the state's argument that the law could withstand constitutional muster
24 because "it is exceptionally easy to register to vote." *Id.* As stated by the Court,
25 "[t]he ease with which qualified voters may register to vote, however, does not lift
26 the burden on speech at petition circulation time." *Id.*

1 73 Accordingly, the First Amendment protects Plaintiffs’ right to engage in what they
2 believe to be the most effective means of registering voters and they have
3 identified important First Amendment freedoms that are at stake and that have been
4 infringed upon – the right to advocate and associate free from the undue burdens of
5 Proposition 200.

6 **VII. THE STATE INTEREST IN PREVENTING VOTER FRAUD CANNOT**
7 **OVERCOME PROPOSITION 200’S LEGAL AND CONSTITUTIONAL**
8 **FLAWS.**

9 74 The State’s interest in election integrity does not automatically overcome the legal
10 or constitutional infirmities of Proposition 200. Even if Arizona has a compelling
11 interest in protecting the integrity and reliability of the election process, that
12 interest is insufficient to support a ruling in Defendants’ favor without a further
13 showing that Proposition 200 is narrowly tailored. *See Gonzalez v. Arizona*, 485
14 F.3d 1041, 1049 (requiring in this case that restrictions supported by a compelling
15 state interest also be narrowly tailored to advance that interest) *See Arizona Life*
16 *Coalition Inc. v. Stanton*, 515 F.3d 956, 968 (9th Cir. 2008) (requiring narrow
17 tailoring in First Amendment context).

18 75 Furthermore, even assuming Proposition 200 serves a compelling state interest,
19 Defendants are not entitled to judgment in their favor on Plaintiffs’ statutory claims
20 unless Proposition 200 also does not discriminate on the basis of race in violation
21 of Section 2 of the Voting Rights Act and Title VI of the Civil Rights Act of 1964.

22 76 Defendants have presented little to no evidence of voter fraud in registration in
23 Arizona. There is no evidence in the record to support Defendants’ claim of a “far-
24 reaching scheme in which legal resident aliens endeavoring to become U.S.
25 citizens have been duped into registering to vote.”

26 77 Much of the remaining allegations of non-citizen fraud advanced by Defendants
are unsupported by the record. For example, Maricopa County claims that a

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number of prospective jurors indicated on their questionnaires that they were not U.S. citizens. However, the Maricopa County Recorder testified in her deposition that some U.S. citizens claim to be non-citizens in order to avoid jury service.

78 Defendants further claim that 14 non-citizens intentionally registered to vote but provides no evidence that they were non-citizens, or that their voter registration was intentional, or that the paperwork offenses to which they plead guilty or were convicted relate in any way to non-citizen voter registration.

79 Similarly, Defendants claim that a voter registration drive in 2007 included non-citizen registrants but provides no evidence in support of this claim. Despite claims to the contrary, Defendants are unable to establish that any of the statistics it presents demonstrate that non-citizens have registered to vote.

80 Similarly, Defendants have provided no evidence of voter impersonation at the polls – because there is no evidence it has ever happened in Arizona or that Proposition 200’s voter identification requirement alleviates any real problem.

81 Defendants’ expressed concerns over other aspects of voter eligibility, such as felony convictions, cannot serve as a justification for the documentary proof of citizenship requirements in Proposition 200.

1 Dated: June 19, 2008

**MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL
FUND**

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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2008, I electronically transmitted the attached documents to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

I hereby certify that on June 19, 2008, I served the attached document via mail on Judge Roslyn O. Silver, United States District Court of Arizona, 401 West Washington Street, Phoenix, Arizona 85003-2118.

s/ Diego Bernal