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

13 **MARIA M. GONZALEZ; JESUS M.  
14 GONZALES; BERNIE ABEYTIA;  
LUCIANO VALENCIA; DEBBIE  
15 LOPEZ, SOUTHWEST VOTER  
REGISTRATION EDUCATION  
16 PROJECT; VALLE DEL SOL;  
FRIENDLY HOUSE; CHICANOS POR  
17 LA CAUSA, INC.; and ARIZONA  
HISPANIC FORUM,**

18 **Plaintiffs,**

19 **v.**

20 **STATE OF ARIZONA, JAN BREWER,  
in her official capacity as the Secretary of  
21 State of the State of Arizona, et al.,**

22 **Defendants.**

**No. CV06-1268-PHX ROS (Lead)  
No. CV06-1362-PCT-JAT  
No. CV06-1575-PHX-EHC**

**TWELVE COUNTY  
DEFENDANTS' JOINDER TO  
STATE'S REPLY AND REPLY IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

**(Assigned to the  
Honorable Roslyn O. Silver)**

1           Defendants Maricopa County Recorder Helen Purcell and Maricopa County  
2 Elections Director Karen Osborne; Apache County Recorder LeNora Johnson and  
3 Apache County Elections Director Penny L. Pew; Cochise County Recorder Christine  
4 Rhodes and Cochise County Elections Director Thomas Schelling; Gila County  
5 Recorder Linda Haught Ortega and Gila County Elections Director Dixie Mundy;  
6 Graham County Recorder Wendy John and Graham County Elections Director Judy  
7 Dickerson; Greenlee County Recorder Berta Manuz and Greenlee County Elections  
8 Director Yvonne Pearson; La Paz County Recorder Shelly Baker and La Paz County  
9 Elections Director Donna Hale; Mohave County Recorder Joan McCall and Mohave  
10 County Elections Director Allen Tempert; Pima County Recorder F. Ann Rodriguez and  
11 Pima County Elections Director Brad R. Nelson; Pinal County Recorder Laura Dean-  
12 Lytle and Pinal County Elections Director Gilberto Hoyos; Santa Cruz County Recorder  
13 Suzie Sainz and Santa Cruz County Elections Director Melinda Meek; Yavapai County  
14 Recorder Ana Wayman-Trujillo and Yavapai County Elections Director Lynn A.  
15 Constabile; and Yuma County Recorder Susan Hightower Marler and Yuma County  
16 Elections Director Patti Madrill (collectively “County Defendants”), by and through  
17 undersigned counsel, hereby Reply in Support of their Motion for Summary Judgment.  
18 County Defendants further join in the State Defendants’ well-pleaded Reply in Support  
19 of their Motion for Summary Judgment.

20           The County Defendants have received and reviewed the June 20, 2008 Reply in  
21 Support of the State’s Motion for Summary Judgment filed by Defendants the State of  
22 Arizona and Secretary of State (“State Defendants”) in this matter. The Reply correctly  
sets forth the applicable law governing this case, and legal arguments as to why  
Plaintiffs’ multiple claims should be summarily decided in favor of Defendants.

1 Accordingly, the County Defendants join in the well-stated legal arguments presented in the  
2 Reply of the State Defendants incorporates them in their entirety herein by this reference so as to  
3 not repeat them.<sup>1</sup> This Motion is accompanied by the Memorandum of Points and Authorities,  
4 filed herewith and incorporated fully by this reference.<sup>2</sup>

5 **RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of June, 2007.

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1 Despite Gonzalez Plaintiffs' unfounded attempt to discredit the County Defendants' Motion  
19 for Summary Judgment by alleging a lack of legal analysis, the County Defendants properly  
20 joined in the State's Motion for Summary Judgment and adopted its legal analysis. It would be  
21 improper and wasteful to reiterate the well-pleaded arguments of the State, since they apply to  
the County Defendants as well. As such, County Defendants will again not waste the Court's  
time by restating the legal arguments made by the State and instead they join the State's Reply  
and offer this additional Reply only on matters unique to the County Defendants.

22 2 In addition, County Defendants' response to Plaintiffs' Statement of Facts is encompassed by  
the Motion to Strike filed on June 20, 2008. County Defendants incorporate said Motion by this  
reference.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Preliminary Statement**

A Statement of Facts accompanied Gonzalez Plaintiffs’ Response to Motion for Summary Judgment, listing 1600(+) numbered paragraphs purporting to contain additional “facts” needed for the resolution of Defendants’ Motions for Summary Judgment. Of those purported material “facts” approximately 800 of them were never cited in Plaintiffs’ Response, another 300(+) propositions were unsupported by the references cited, and still others contained more inflammatory statements than facts, which are wholly unsupported by any evidence in this case.<sup>3</sup> Furthermore, Plaintiffs failed to serve (and presumably file) numerous exhibits, which supposedly support their plethora of “facts” and many of the exhibits that were filed were inadmissible evidence for a Motion for Summary Judgment.<sup>4</sup> In summary, there are no “material” or “genuine” facts presented by Plaintiffs to defeat summary judgment as a matter of law. Despite Gonzalez Plaintiffs’ unfounded attacks on Maricopa County’s Motion for Summary Judgment, the requirements of Proposition 200 advance compelling state interests that are most uniquely understood and felt by the County Defendants. It is for this reason that the Twelve County Defendants provided supplemental information unique to them, in addition to joining in the well-pleaded arguments of the State as to the applicable law.

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3 For instance, Paragraph No. 1433 states, “Proponents of Proposition 200 have ties to white supremacists and have expressed racial animus.” The citation is to Exhibit 501, which is a news release regarding the Maricopa County Board of Supervisors, titled “Supervisors Approve ’08-’09 Tentative Budget.” There is nothing in the record to support Plaintiffs’ appalling statement.  
4 Defendants’ objections to Gonzalez Plaintiffs’ exhibits are more fully laid out in the State’s Motion to Strike, which the County Defendants join in.

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**II. Proposition 200 is Narrowly Tailored and Does Not Discriminate.**

As briefed fully in the State’s Motion and Reply, which the County Defendants have joined, while Proposition 200 is narrowly tailored to advance a compelling state interest, that is not the appropriate standard under which the Court must review this law. The Supreme Court has determined that laws that effect voter’s rights need not always be subject to strict scrutiny. *See Burdick v. Takushi*, 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). Only “severe” restrictions “must survive the strict scrutiny test of being “narrowly drawn to advance a state interest of compelling importance.” *Id.* at 434, 112 S.Ct. 2059. Laws imposing “reasonable, nondiscriminatory restrictions ... [on] the rights of voters” must only be advancing “important regulatory interest[s].” *Id.*; *see also Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

The Ninth Circuit has upheld as “‘not severe’ restrictions that are generally applicable, even-handed, politically neutral, and which protect the reliability and integrity of the election process.” *Gonzalez v. Arizona*, 485 F.3d 1041, 1049 (C.A.9 (Ariz.), 2007) (quoting *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1014 (9th Cir.2002)). Proposition 200 is a facially neutral law, applied evenly to all Arizona voter registration applicants and polling place voters, to advance the compelling interests of preventing election fraud, ensuring that only eligible voters are registered to vote, and maintaining public confidence in the electoral system which should properly be for citizens of the United States. As such, as fully set forth herein and in the State’s Motion, County Defendants respectfully request that the Court grant Summary Judgment on their behalf.

1           **III. Voter Fraud in Arizona**

2           One of the compelling interests being advanced by the changes implemented by  
3 Proposition 200 is maintaining public confidence in the electoral system by preventing  
4 voter fraud. There is no disputing the fact that concerns of voter fraud are widespread  
5 throughout the United States. “[F]lagrant examples of such fraud in other parts of the  
6 country ... documented throughout this Nation's history by respected historians and  
7 journalists ... demonstrate that not only is the risk of voter fraud real but that it could  
8 affect the outcome of a close election.” *Crawford v. Marion County Election Bd.*, 128  
9 S.Ct. 1610, 1619 (U.S., 2008). The *Crawford* Court further recognized that there “is no  
10 question about the legitimacy or importance of the State's interest in counting only the  
11 votes of eligible voters.” *Id.* at 1619.

12           The “electoral system cannot inspire public confidence if no safeguards exist to  
13 deter or detect fraud or to confirm the identity of voters.” *Id.* at 1620 (quoting  
14 Commission on Federal Election Reform, Report, Building Confidence in U.S.  
15 Elections § 2.5 (Sept.2005), App. 136-137 (Carter-Baker Report)). While a State need  
16 not show evidence of recent or imminent fraud in order to take anti-fraud steps, the  
17 reality of voter fraud in Arizona makes it all the more important that Proposition 200’s  
18 changes be implemented fairly and evenly in order to preserve public confidence in the  
19 electoral system. *See Crawford* at 1619; *Federal Election Commission v. National*  
20 *Right to Work Committee*, 459 U.S. 197, 210 (1982). Gonzalez Plaintiffs wrongfully  
21 claim, without any support, that the instances of voter fraud in the areas of convicted  
22 felons and forged or fabricated voter registrations are irrelevant to the case at hand.  
More unbelievably, Plaintiffs attempt to ignore the real problems that Arizona has had  
with multiple instances of documented non-citizen voting simply because there has not

1 been a proven instance of an undocumented alien voting. Because voter fraud, in all of  
2 its forms, goes to support the compelling state interest advanced by Arizona, all of the  
3 evidence of voter fraud is relevant to the case at hand. Further, it is important to  
4 understanding why the changes made by Proposition 200 are necessary to protect the  
5 integrity of the voting system of Arizona and are not unduly intrusive or targeted at any  
6 particular group.

7 *a. Felon and fabricated voter registrations*

8 There is no doubt that there has been voter fraud in Arizona. Regardless of the  
9 preeminent source of the fraud, the State has a compelling interest in deterring and  
10 detecting voter fraud in all areas. *Crawford* at 1619; Carter-Baker Report. Not only  
11 does the reality of voter fraud make it important to eliminate fraudulent registrations of  
12 all types to promote confidence in the electoral system, but it also makes polling-place  
13 identification requirements even more necessary. Prior to the passage of Proposition  
14 200 there was no system in place to ensure that a fabricated registration was not entered  
15 into the voter roles. County SOF ¶¶ 13-14. The implementation of Proposition 200  
16 gave election officials two new important mechanisms with which to battle voter fraud.

17 By creating a proof of citizenship requirement, the law now automatically tests  
18 for fabricated voter registration forms. It is easy to see that a fabricated “applicant” will  
19 not have proof of citizenship and thus will not be added to the voter roles. Just as  
20 importantly, even real people, who are not themselves filling out the voter registration  
21 forms, are unlikely to be added to the voter roles – since a forger is unlikely to have  
22 enough personal information to prove citizenship. This prong of Proposition 200,  
therefore, combats the very real threat of voter fraud by testing each voter registration  
form for accuracy before the voter is placed on the voter rolls.

1           Gonzalez Plaintiffs wrongly claim that Maricopa County has argued that all  
2 37,000 voter registration forms were rejected because the applicant was not eligible to  
3 register.<sup>5</sup> As Defendants have consistently argued, the vast majority of those rejected  
4 registration forms were rejected while Arizona was waiting for its new registration form  
5 to be pre-cleared by the Department of Justice. It is unknown how many applicants  
6 successfully re-registered once they were informed that proof of citizenship was  
7 required. Maricopa County simply and truthfully stated that there was a direct  
8 relationship between the number of rejected voter registration forms and the number of  
9 fraudulent voter registrations being submitted to the County Recorder. Simply stated  
10 this means that as the number of fraudulent registrations rise, so do the number of  
11 rejections. This is supported by Karen Osborne’s testimony about the increase seen in  
12 rejected voter registration forms when paid circulators are submitting high numbers of  
suspicious registration forms. County SOF ¶14.

13           The identification at the polls requirement also assists in detecting and deterring  
14 voter fraud. Since prior to Proposition 200 voter registration forms could only be  
15 rejected for incomplete information or clear forgery, there are likely fraudulent  
16 registrations that were added to the voter roles prior to the implementation of any system  
17 that could test the accuracy of the registration. The identification at the polls  
18 requirement deters would-be frauds from utilizing the names of non-existent registrants  
19 to cast votes in an election. Gonzalez Plaintiffs have argued that there can be no  
20 justification for the identification at the polls requirement because Arizona has not  
21 documented an instance where a voter was impersonated at the polls. This argument  
22 overlooks two key factors, however: (1) actual fraud is not required for the State to

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<sup>5</sup> It should also be noted that Plaintiffs wrongly claim that Arizona does not accept the national voter registration form.

1 implement prophylactic measures; and (2) prior to the enactment of the voting  
2 identification provisions, Arizona had no adequate detection method for in-person fraud  
3 at the polls. *Federal Election Commission*, 459 U.S. 197. In the decades prior to  
4 Proposition 200, Arizona essentially relied on an honor system, under which a voter  
5 simply announced his name at the poll and signed the voter rolls. This is clearly not a  
6 fool-proof method to advance the compelling State interests of deterring and detecting  
7 voter fraud. Thus, it is entirely unknown whether fraudulent votes were cast by imposter  
8 voters. Regardless, Arizona is entitled to enact preemptive measures by which to detect  
9 and deter voter fraud.

9 *b. Non-citizen Registration and Voting*

10 Plaintiffs further argue that Maricopa County has misrepresented the evidence  
11 disclosed regarding non-citizen voting. Wrong. Gonzalez Plaintiffs actually also seem to  
12 believe that this evidence should not be considered because there is no indication that  
13 these non-citizen voters were undocumented. Gonzalez Response at 30. It should be  
14 beyond question that non-citizens do not have the right to vote, whether they are  
15 documented or undocumented. There is also “no question about the legitimacy or  
16 importance of the State's interest in counting only the votes of eligible voters.”  
17 *Crawford* at 1619. Even though Arizona is more attuned to non-citizen voting because  
18 of known and wide spread illegal immigration in the state, this does not mean the state  
19 has less of an interest in preventing non-citizens, whether documented or  
20 undocumented, from voting.

20 Gonzalez Plaintiffs claim that Maricopa County has been unable to establish that  
21 non-citizens have voted. Maricopa County need not show this. In any event, this thinly-  
22 veiled argument is exposed by merely a cursory review of the records kept by Maricopa

1 County. County SOF ¶¶ 3-5, 7. The charging documents of those who have been  
2 accused of non-citizen voter fraud reveal that investigations found them to be non-  
3 citizens. Furthermore, the individuals who have contacted Maricopa County for  
4 registration and voting histories have been in the process of becoming naturalized  
5 citizens, according to Karen Osborne's sworn statements. SOF ¶ 7. Thus, those with a  
6 voting record had, by definition, voted as non-citizens. Finally, those individuals  
7 removed from the voter rolls due to the jury commissioner's notifications have, by their  
8 own signed admissions, stated that they were not citizens.<sup>6</sup>

9 In light of national and state-wide concerns about voting fraud, and Arizona's real  
10 experiences with non-citizen voting, the restrictions put in place here are reasonable,  
11 non-discriminatory means to advance the compelling state interest of deterring and  
12 detecting voter fraud and of promoting public confidence in the electoral system  
13 reserved for citizens. Certainly there are always going to be limited instances of burden  
14 identified under any system adopted, but this is not the equivalent of a systemic or wide  
15 spread deficiency in the system itself.

#### 14 **IV. Conclusion**

15 States are given wide latitude to regulate the order and security of the election  
16 process. Arizona's proof of citizenship requirement for voter registration and voter  
17 identification laws is an essential element in protecting the integrity and reliability of the  
18 electoral process itself and is not an unreasonable requirement or unduly burdensome in  
19 a modern society. The State unquestionably has a strong interest in preventing  
20 fraudulent voter registration and voter fraud at the polls to increase public confidence in

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21 <sup>6</sup> While it is possible that some of these people committed perjury in order to avoid jury duty,  
22 this is a far leap for Plaintiffs to make in order to claim that there is no evidence of a non-citizen  
voting in Arizona.

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the election process. As such, Maricopa County respectfully requests that the Court grant its Motion for Summary Judgment as no material or genuine issue of fact in dispute exists and the matter should be resolved as a matter of law.

**RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of June, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 2008, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

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5 this 20th day of June, 2008 to:

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      /s Tonya Mills