

# EXHIBIT A

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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MARIA M. GONZALEZ, et al.,	)	
	)	
Plaintiffs,	)	CV 06-1268 PHX-ROS
	)	CV 06-1362 PHS-ROS
vs.	)	CV 06-1575 PHX-ROS
	)	
STATE OF ARIZONA, et al.,	)	Phoenix, Arizona
	)	August 30, 2006
Defendant.	)	9:25 a.m.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
**(Preliminary Injunction Hearing - Day One)**  
BEFORE THE HONORABLE ROSLYN O. SILVER

Court Reporter: David M. Lee, CSR 9543, RMR, CRR  
Sandra Day O'Connor U.S. Courthouse  
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Transcript prepared by computer-aided transcription

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I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Leonard Gorman	42	64, 70	89	
Candace Owens	95	104, 105 106	111	
Bonnie Saunders	115	124	130	
R. Anthony Sissons	133			

1 or executive or governmental settings? 02:34:13

2 A. It is. 02:34:16

3 Q. All right. You were retained by my clients in this 02:34:17

4 matter; correct? 02:34:24

5 A. Yes. 02:34:25

6 Q. What were you asked to do? 02:34:26

7 A. I was asked to make an estimate of the numbers of 02:34:30

8 people affected by the voting and voter registration 02:34:33

9 provisions of proposition 200. 02:34:42

10 Q. The two aspects, the registration requirement 02:34:48

11 aspect, and the polling place ID requirement? 02:34:52

12 A. Yes. 02:34:55

13 Q. Let me ask you at this point just about the 02:34:55

14 registration citizenship requirements of Prop 200. Would 02:34:59

15 you summarize for us the conclusions that you drew about 02:35:07

16 the number of people adversely affected by the registration 02:35:11

17 requirements of Proposition 200? 02:35:15

18 A. Yes. From my calculations, I determined that -- or 02:35:18

19 estimated, I should say, only the Census Bureau with its 02:35:25

20 county methods could actually determine to the person, so 02:35:30

21 I -- every -- all the work I do has to be characterized as 02:35:34

22 estimates. They are good ones, though. 02:35:39

23 The -- by my estimate, at least 28,500 persons 02:35:41

24 would not be able to prove citizenship using the documents 02:35:49

25 that are specified in Proposition 200. That figure is 02:35:55

1 about two percent of the figure that I calculated as being 02:35:59  
2 all eligible potential residents. 02:36:04

3 Q. And -- 02:36:08

4 A. I'm sorry, registrants. 02:36:08

5 Q. And that is found in the summary of findings around 02:36:10  
6 line 17 of page 2 of that report? 02:36:16

7 A. Yes, it is. 02:36:20

8 Q. Am I correct in understanding that your opinion is 02:36:21  
9 that's not the number, but rather an estimate of a -- of a 02:36:36  
10 minimum? 02:36:42

11 A. That is my estimate of -- of -- yes, the minimum 02:36:43  
12 number. I characterize it here as a conservative estimate, 02:36:49  
13 so yes, it would be, in my view, the minimum number of 02:36:56  
14 people who would be affected by this provision. 02:37:00

15 Q. And what causes you to characterize that estimate as 02:37:03  
16 conservative? What assumptions or factors lead you to 02:37:08  
17 characterize it as such? 02:37:14

18 A. Well, what I did in making this estimate was to 02:37:15  
19 first estimate the percentage of people lacking each of the 02:37:19  
20 five identification -- or citizenship verification 02:37:24  
21 documents. Once I determined the percentage lacking each 02:37:30  
22 of those five, then I applied those percentages or those 02:37:38  
23 proportions in a compound, nonoverlapping mathematical way, 02:37:42  
24 and that -- the result of that calculation was -- was -- 02:37:50  
25 was two percent. Then, of course, as I said, two percent 02:37:56

1 of the eligible but not registered would be 28,500 people, 02:38:00  
2 approximately. 02:38:06

3           The reason I considered that conservative is that 02:38:08  
4 using that compound, non-overlapping mathematics, that -- 02:38:12  
5 that sort of analytical thinking assumes that if a person 02:38:18  
6 lacks one document, that they are as equally likely as the 02:38:30  
7 general population to lack any other of the specified 02:38:36  
8 documents, and, you know, I think it's probably clear that 02:38:40  
9 if people, for instance, lack a driver's license, you know, 02:38:49  
10 they are -- they are possibly less likely -- you know, if 02:38:57  
11 they can't afford a car, they are probably less likely to 02:39:01  
12 have a passport. 02:39:05

13           So because -- because we want to measure the 02:39:09  
14 inter-relatedness of -- well, I mean another example would 02:39:14  
15 be that to get a driver's -- to get a passport, for 02:39:18  
16 instance, one would need a birth certificate. So if 02:39:21  
17 somebody didn't have a birth certificate, they would have 02:39:25  
18 difficulty obtaining a passport. If they didn't -- if 02:39:29  
19 they -- if they couldn't afford a car, they're probably not 02:39:34  
20 likely to be international travelers and need a passport, 02:39:39  
21 so there is an inter-relatedness to all of these -- to 02:39:42  
22 some of these documents. 02:39:46

23           Because -- you know, I have no way of measuring 02:39:49  
24 that inter-relatedness, I really just have to simply assume 02:39:54  
25 that the percentage lacking each document is -- is sort of 02:39:57

1 flat or applied evenly to everybody. There is another 02:40:05  
2 factor that I think enters into the -- into the 02:40:13  
3 conservative nature of the calculation, and that's that as 02:40:18  
4 I will -- you know, as my report describes in subsequent 02:40:22  
5 pages, there are people moving to the state all the time, 02:40:27  
6 both people moving from county to county having to 02:40:32  
7 re-register, but also moving, obviously, from out of state, 02:40:35  
8 adding about 425 people per month who will lack -- who, you 02:40:40  
9 know, will lack the necessary documents at that same sort 02:40:48  
10 of two percent level. 02:40:53

11 One other factor is that of the -- of the people 02:40:55  
12 who are moving from county to county and having to 02:41:01  
13 re-register, about 12 percent of those people would not be 02:41:04  
14 able to use their driver's license for re-registration, 02:41:10  
15 because they would have a driver's license that was issued 02:41:19  
16 before October of 1996. 02:41:21

17 Q. And with respect to the people moving from another 02:41:22  
18 state, they wouldn't have any form of Arizona driver's 02:41:25  
19 license; is that what you meant when you talked about the 02:41:28  
20 movement into the State? 02:41:32

21 A. Yes, indeed. 02:41:33

22 Q. All right. And if I understand what you're saying 02:41:34  
23 with respect to the conservative nature of your estimate, 02:41:36  
24 you didn't increase your numbers on account of those other 02:41:42  
25 factors? You simply assumed that the population that you 02:41:44

1 have calculated had equal inability to obtain every form of 02:41:50  
2 ID? 02:41:56

3 A. Yes. That is true. 02:41:56

4 Q. And let me -- let me ask you in particular about the 02:41:57  
5 number of licenses issued before 1996, because you just 02:42:04  
6 referenced that. Do you have Exhibit 59 in front of you? 02:42:08

7 A. Yes, I do. 02:42:13

8 Q. Correct me if I'm wrong, but this was a document 02:42:27  
9 that you did not rely upon, did not have at the time you 02:42:29  
10 completed your report; is that right? 02:42:35

11 A. That's correct. I first saw this document about 02:42:36  
12 three days ago. 02:42:39

13 Q. Okay. And does this document have anything to do 02:42:40  
14 with the testimony you just provided about the number of 02:42:47  
15 licenses issued prior to October of 1996? 02:42:50

16 A. Well, this document does inform my -- my last 02:42:55  
17 comment about those people who are moving from county to 02:42:59  
18 county and having to re-register, that about 12 percent of 02:43:02  
19 those people are likely to have driver's licenses or 02:43:08  
20 Arizona ID cards that were issued before October of 1996. 02:43:14

21 Q. How do you derive the 12 percent from Exhibit 59, 02:43:21  
22 which, for the record, is an August 3, 2006 letter from 02:43:27  
23 Stacey Stanton at the Arizona Department of Transportation 02:43:31  
24 to Bill Richards at the office of the Arizona Attorney 02:43:34  
25 General? 02:43:38

1 A. And the answer to that is that I totalled the 02:43:40  
2 number -- well, this figure gives -- this letter gives the 02:43:44  
3 total number of driver's licenses issued and the number of 02:43:47  
4 current or valid Arizona identification cards issued. I 02:43:54  
5 added those two together, being, you know, a figure of 02:44:00  
6 driver's licenses and ID card. The letter also gives, for 02:44:06  
7 the same two categories, the numbers issued before October 02:44:10  
8 1996 in both cases, and the second two figures are a part 02:44:16  
9 of first two figures, and so I calculated what part that 02:44:25  
10 is, and that is 12 percent. 02:44:28  
11 Q. Okay. And am I correct that under the Prop 200 02:44:29  
12 regime, those licenses issued prior to October 1996 could 02:44:35  
13 not be used as a form of identification to register to 02:44:40  
14 vote? 02:44:43  
15 A. That's correct. 02:44:43  
16 Q. All right. And again, your two percent calculation 02:44:44  
17 with respect to new registrants, or those moving from 02:44:49  
18 county to county, assumed that every driver's license was 02:44:56  
19 issued after October 1996? 02:45:01  
20 A. That is true. 02:45:03  
21 Q. All right. 02:45:04  
22 A. Yes. 02:45:04  
23 Q. And just so it's clear and concise, with respect to 02:45:05  
24 non-overlapping compound, let's look at your percentages if 02:45:14  
25 you would. 02:45:21

1 A. Sure. 02:45:21

2 Q. Are they on page 2 of your report, starting at 02:45:21

3 around line 13? 02:45:24

4 A. Yes, they are. 02:45:25

5 Q. You have a percentage of persons likely to lack 02:45:26

6 driver's licenses or non-operator licenses. You have a 02:45:30

7 percentage who do not have U.S. passports, as two examples 02:45:33

8 there; correct? 02:45:41

9 A. Yes. 02:45:41

10 Q. And am I correct that what you're saying is that of 02:45:42

11 the 12.6 percent who lack driver's licenses, you assumed 02:45:47

12 that they were just as likely to have a U.S. passport as 02:45:54

13 those individuals who have driver's licenses? 02:45:59

14 A. That was my assumption, yes. 02:46:03

15 Q. All right. Thank you. 02:46:04

16 Now, let me ask you sort of the starting point of 02:46:07

17 how you arrived at your estimate of something over 28,000 02:46:17

18 individuals qualified to vote, or to register, but who 02:46:21

19 would be impacted, what was your starting point? How did 02:46:30

20 you know -- how did you calculate the number of 02:46:33

21 unregistered voters who would be qualified to register, but 02:46:38

22 for the ID requirements? 02:46:44

23 A. Yes, and that's essentially covered on basically the 02:46:46

24 first -- the top two-thirds of page 3 of my report. 02:46:49

25 It was necessary for me to first identify the 02:46:56

1 size of the -- sort of the universe of Arizonans who would 02:47:00  
2 be eligible to be voters. One I had determined that, then 02:47:06  
3 I could subtract from that the number of people who are 02:47:11  
4 already registered, and then the balance or the difference 02:47:15  
5 would be the people who are eligible to be registered, but 02:47:23  
6 are not yet registered. 02:47:25

7 Q. There is a figure 1 on the top of page 3 that shows 02:47:29  
8 a calculation. What does your calculation depict there? 02:47:31  
9 What are you computing? 02:47:36

10 A. In the first -- do you want me to go through it, or 02:47:41  
11 are you asking me -- 02:47:43

12 Q. Before you go through it, what's the answer? What 02:47:44  
13 are you solving for? 02:47:49

14 A. Right. At the bottom of that table is my answer, is 02:47:50  
15 an estimate of persons eligible to be voters in 2005 -- 02:47:53

16 Q. Okay. Not -- not 2006. Your starting point is 02:47:57  
17 2005? 02:48:02

18 A. And the only reason I would have liked to do it to 02:48:03  
19 2006, except that in this calculation I had to use the 02:48:06  
20 official state population estimate for the state, and the 02:48:09  
21 most recent adopted estimate was for July of 2005. 02:48:18

22 Q. All right. And can you then take us through the 02:48:25  
23 details in terms of your calculating the population 02:48:29  
24 eligible to vote in 2005, how you arrived at the 3.8 02:48:32  
25 million dollar figure? 02:48:36

1 A. Yes. 02:48:39

2 Q. Not million dollars, person. I said this wasn't a 02:48:40  
3 damages case, and now I'm talking about dollars. The 3.8 02:48:43  
4 million person figure. 02:48:47

5 A. Sorry, I thought you were talking about my fee. 02:48:48

6 The first line is the -- is in here as the total 02:48:52  
7 population from census 2000, and it's there principally 02:48:56  
8 because I need that as the first figure for a percentage 02:49:02  
9 increase calculation that I do later. But the first sort 02:49:07  
10 of meaningful figure is the voting age population from the 02:49:10  
11 census at 3,763,000 approximately. From that voting age 02:49:14  
12 population, I subtracted census data on the number of 02:49:23  
13 voting-age non-U.S. citizens, and also I subtracted voting 02:49:30  
14 age probationers, parolees and ex-felons, because they are 02:49:38  
15 not permitted to vote, and likewise, voting age 02:49:45  
16 correctional facility inmates. That reduced -- that 02:49:50  
17 equalled -- that resulted, then, in the number of persons 02:49:52  
18 eligible to be voters in 2000, in the year 2000. 02:49:55

19 Then the line after that actually gives the 02:50:01  
20 official state estimate of total population in 2005, which 02:50:05  
21 is 6.044 million. So I then did a calculation of the 02:50:11  
22 percentage increase between the census count in 2000 and 02:50:16  
23 the 2005 official state estimate of population, and then 02:50:19  
24 applied that percentage increase to the persons eligible to 02:50:24  
25 be voters in 2000. In order, the 3,261,000 was grown by 02:50:31

1 that factor to 3,842,000. 02:50:38

2 Q. All right. So let me see if I understand what you 02:50:43

3 were doing. You had subcategories of data available for 02:50:46

4 the 2000 population, so you knew what to subtract to 02:50:49

5 determine the voting-eligible population, but you didn't 02:50:52

6 have those subcategories in 2005? 02:50:56

7 A. That is correct. You're right. 02:50:59

8 Q. All right. So you then increased your 02:51:01

9 subcalculation, your net number from 2000, based on the 02:51:03

10 increase in population reflected in the state estimate for 02:51:06

11 2005? 02:51:08

12 A. Yes. 02:51:09

13 Q. Okay. All right. What was the next step in the 02:51:10

14 process? We're trying to find out how many voters are 02:51:18

15 eligible that haven't registered. You have now determined 02:51:23

16 for 2005 how many eligible voters, registered and not. 02:51:26

17 A. And so the remaining task was to add a year to my 02:51:30

18 figure. To add the number of people who would join with 02:51:33

19 these 3,842,000. I did that really in two ways, but both 02:51:37

20 of them used a census report known as the county to county 02:51:47

21 migration patterns report. In essence, what I was doing 02:51:54

22 there was seeing how many people had moved to Arizona 02:52:02

23 within -- within a one-year period, between July 2005 and 02:52:08

24 July 2006, and of course would have had to register to 02:52:15

25 vote, so they would all join the category of people who 02:52:23

1 were eligible, but not yet -- 02:52:26

2 Q. That's figure 2; right? 02:52:29

3 A. Yes. 02:52:30

4 Q. Before we get there, let me ask you, at the bottom 02:52:30

5 of page 3, am I right that you take the July 2005 voter 02:52:34

6 registration numbers from the state and subtract them from 02:52:38

7 your 3.8 million figure, to give us the number of eligible 02:52:43

8 but unregistered voters in July '05? 02:52:47

9 A. That's very true, yes. 02:52:52

10 Q. What number is that? 02:52:54

11 A. That's 1,172,000. 02:52:54

12 Q. Okay. So when you say you needed to bring that 02:52:57

13 number up a year, it's that net number? 02:53:00

14 A. Yes, it is. 02:53:01

15 Q. All right. 02:53:02

16 A. Thank you. 02:53:03

17 Q. So is it appropriate, then, to turn to table 2, what 02:53:04

18 you added to that? 02:53:10

19 A. In fact, I was describing things a little bit 02:53:11

20 backwards. I was talking about the people moving into 02:53:13

21 Arizona, which is actually table -- is figure 3. Figure 2 02:53:16

22 is my estimate of people moving between Arizona counties in 02:53:21

23 one year. So the results of both of those calculations 02:53:32

24 then get added to the 1.1 million. 02:53:34

25 Q. Is that because when you move from one county to 02:53:37

1 another, you need to re-register and meet the Prop 200 02:53:39  
2 requirements? 02:53:42

3 A. Yes. 02:53:43

4 Q. All right. So tell us, first of all, what did you 02:53:43  
5 add at number -- after your computations to the 1,172,000 02:53:46  
6 from July of 2005? 02:53:57

7 A. Okay. Well, I added 52 -- yeah, 52,000 people who 02:53:58  
8 had moved from one county to another, and had to 02:54:06  
9 re-register. Then I added 202,000 people who had moved to 02:54:10  
10 Arizona during the year and would have to be registering 02:54:17  
11 for the first time in Arizona. 02:54:21

12 Q. The latter, the movement into state from out of 02:54:22  
13 state was figure 3? 02:54:27

14 A. It was, yes. 02:54:28

15 Q. And so when you -- when you add to your initial 02:54:29  
16 calculation from July of 2005 the 52,000 of county to 02:54:34  
17 county movements in the one-year period, and you add the 02:54:42  
18 200,000 movements into state in the one-year period -- 02:54:48

19 A. Right. 02:54:52

20 Q. -- what is the number you derive? 02:54:53

21 A. The sum of those three numbers is 1,427,000 people. 02:54:55  
22 I must point out that those are voting-age citizen people. 02:55:05

23 Q. And that 1,427,000 persons figure is the figure that 02:55:12  
24 is back on the summary of your findings on page 2; correct? 02:55:20

25 A. I believe that's the case. That is the 02:55:25

1 number -- yes. 02:55:35

2 Q. All right. 02:55:38

3 A. Yes, it is. 02:55:39

4 Q. All right. So put differently, what is -- what's 02:55:40

5 your computation of the number of individuals through July 02:55:42

6 2006 eligible to vote because of age, not convicted of a 02:55:46

7 felony, or any other disqualification, but who have not yet 02:55:51

8 registered to vote? 02:55:54

9 A. That figure is 28,540 people. 02:55:55

10 Q. No, I meant -- 02:56:00

11 A. Did I miss something? 02:56:03

12 Q. -- before subtracting for failure to meet the ID 02:56:04

13 requirements, is the 1.4 million, the gross number of 02:56:09

14 persons eligible to vote, not yet registered to vote? 02:56:13

15 A. That is correct, yes. 02:56:16

16 Q. All right. Mr. Skolnik, in his opening, levied some 02:56:17

17 criticism, because some of those individuals may not be 02:56:24

18 motivated to register. 02:56:29

19 Do you agree with that? 02:56:31

20 A. Well -- 02:56:32

21 Q. I don't mean the criticism, but do you agree with 02:56:34

22 the factual premise that some of those would not be 02:56:40

23 eligible to vote -- I mean would not be motivated to vote? 02:56:42

24 A. Right. 02:56:47

25 Q. All right. But let me ask you a different question. 02:56:47

1 mathematical result of applying a compound, non-overlapping 03:00:14  
2 percentage of those populations. 03:00:23

3 Q. But if you take form and you're left with the subset 03:00:25  
4 of the starting population, and then you take the subset 03:00:27  
5 and reduce it by the individuals who wouldn't have the next 03:00:30  
6 form of ID, so forth and so on, until you've exhausted all 03:00:32  
7 five forms of ID? 03:00:37

8 A. That's correct. 03:00:38

9 Q. And that leaves you with your two percent minimum 03:00:39  
10 calculation? 03:00:42

11 A. Yes. 03:00:42

12 Q. All right. Let's talk about the first component of 03:00:44  
13 that calculation, the 12.6 percent lacking driver's license 03:00:46  
14 or non-operating licenses. What did you do to determine 03:00:54  
15 that number? 03:00:57

16 A. That is a bit of a convoluted path. It started with 03:00:58  
17 me gathering census data on people's ages and, in fact, I 03:01:06  
18 was even doing this at the level of the counties, as well 03:01:13  
19 as statewide. Census data, data from the Motor Vehicles 03:01:16  
20 Division, voter registration data, and trying to analyze 03:01:23  
21 all of those data sets in conjunction, hoping -- hoping, 03:01:31  
22 really, that some sort of understanding, you know, would 03:01:37  
23 emerge from the analysis of those combined data sets. 03:01:44  
24 Really, nothing was -- nothing was coalescing, and I then 03:01:52  
25 examined the possibility of doing a process of matching 03:02:00

1 data records from the Motor Vehicles Division with the 03:02:08  
2 Secretary of State's voter registration files, if those 03:02:14  
3 would be available, as a way of at least determining what 03:02:19  
4 the relationship was, how many people who were registered 03:02:21  
5 were also drivers, and I asked the lawyers who -- who were 03:02:26  
6 employing me if that data set could be made available to 03:02:34  
7 me. 03:02:39

8 I guess about a week later, the answer came back 03:02:40  
9 that that -- that data set was not available, or would not 03:02:44  
10 be made available, but apparently the Attorney General's 03:02:48  
11 Office, in a letter, mentioned that the Secretary of 03:02:56  
12 State's office had done that kind of matching, and would 03:02:59  
13 make the results of that process available. 03:03:02

14 Q. Okay. If you would turn to Exhibit 52, is that the 03:03:07  
15 letter to which you just referred? A letter dated July 27, 03:03:11  
16 2006, from Bill Richards at the Attorney General's Office 03:03:20  
17 to me? 03:03:25

18 A. That is correct. 03:03:26

19 Q. Okay. Let me make sure I understand what you just 03:03:31  
20 said. 03:03:34

21 Your initial request of the lawyers was to get 03:03:34  
22 you the underlying data, so that you could do your own 03:03:38  
23 matching of the secretary -- of the Secretary of State's 03:03:43  
24 registration record against the Motor Vehicle Department's 03:03:48  
25 record. 03:03:53

1 A. Yes. 03:03:53

2 Q. All right. And you were informed, we asked, but 03:03:54

3 they wouldn't give it to us; right? 03:04:00

4 A. Right. 03:04:03

5 Q. But instead, they were willing to provide us the 03:04:04

6 results of their own analysis; right? 03:04:06

7 A. Yes. 03:04:09

8 Q. And that's Exhibit 52? 03:04:09

9 A. Yes. 03:04:11

10 Q. All right. Does that letter -- well, is that letter 03:04:11

11 something that at the end of your work on this topic of 03:04:18

12 your assignment, a basis for the 12.6 percent that is a 03:04:22

13 part of your calculation? 03:04:30

14 A. Yes, it is. 03:04:31

15 Q. All right. And where -- I don't know if you can 03:04:31

16 find it in a second, or maybe I can find it for you, but 03:04:35

17 where is that in Exhibit 52, this three-page letter from 03:04:39

18 Mr. Richards? 03:04:44

19 A. Well, it's really the -- the first large number on 03:04:53

20 this page is the total number of registered voters in the 03:04:56

21 database maintained by the Secretary of State. The second 03:05:01

22 large number is the number of registered voters appearing 03:05:05

23 in that database for which the database reflects an ID -- 03:05:11

24 an identification number from a driver's license or an 03:05:16

25 Arizona non-operating identification card. 03:05:23

1           So the number of people who -- the number of           03:05:26  
2 registered voters for whom the driver's license or           03:05:32  
3 nonoperator ID card was known turned out to be -- I wrote           03:05:36  
4 this down somewhere. It's the compliment of the 12.6. It           03:05:43  
5 would be 87.4 percent.           03:05:47  
6 Q.       Comparing 2,597,619 to 2,972,214?           03:05:52  
7 A.       Correct.           03:06:00  
8 Q.       All right. Would you agree with me in that the           03:06:01  
9 letter describes the methodology used for the matching           03:06:07  
10 process that resulted in that 12.6 percent?           03:06:10  
11 A.       Yes, it does.           03:06:14  
12 Q.       Did you make any determination or examination of the           03:06:14  
13 reasonableness and reliability of that methodology?           03:06:21  
14 A.       Yes, I -- I examined what -- they did that, and I           03:06:24  
15 concur with them and can't think of a better method.           03:06:34  
16 Q.       In fact, you would have used a similar method?           03:06:37  
17 A.       I would have indeed.           03:06:39  
18 Q.       Let me draw your attention to the sentence at the           03:06:41  
19 bottom of page 2 of Mr. Richards' letter. He stated,           03:06:47  
20 "Moreover, the secretary's office believes that a further           03:06:58  
21 comparison by anyone else would not likely result in a more           03:07:00  
22 reliable number than calculated here."           03:07:03  
23           Did you agree with that statement?           03:07:08  
24 A.       Well, to the extent that that statement states the           03:07:09  
25 secretary's belief, I mean I have no problem           03:07:21

1 with -- with -- with that assessment by the secretary's 03:07:27  
2 office. 03:07:34

3 Q. The letter describes the possibility that there may 03:07:35  
4 be more matches than the matching process was able to find; 03:07:42  
5 is that correct? 03:07:49

6 A. That is true, yes. 03:07:49

7 Q. You agree with that? 03:07:50

8 A. Yes. 03:07:51

9 Q. All right. But can you identify any better method, 03:07:51  
10 particularly in the time frame before this preliminary 03:07:59  
11 injunction hearing, without access to the underlying data, 03:08:01  
12 to derive a number? 03:08:10

13 A. No. 03:08:12

14 Q. All right. So let me ask you, then, about the 03:08:12  
15 second component of your calculation in the summary of 03:08:19  
16 findings, which is 70.1 percent lacking a U.S. passport. 03:08:26

17 A. Yes. 03:08:31

18 Q. Can you tell us how you came up with that 03:08:32  
19 percentage? 03:08:34

20 A. Well, I did an awful lot of searching on the 03:08:35  
21 internet to come up with some source of data on the 03:08:42  
22 percentage of people in the United States who have a U.S. 03:08:45  
23 passport. Initially I was looking for people in Arizona 03:08:49  
24 who have a passport, or do not have a passport. 03:08:52  
25 Passport ownership is not something that is 03:08:57

1 widely administered. The State Department's website simply 03:09:02  
2 lists the -- the U.S. State Department simply lists the 03:09:06  
3 number of passports issued each year. Passports have a 03:09:13  
4 10-year life span, and so I made a calculation based on if 03:09:18  
5 every passport issued in the pass 10 years is still valid, 03:09:27  
6 then by the end of fiscal year 2005, around 72.6 million 03:09:31  
7 Americans would have them. Then I compared that with 03:09:39  
8 the -- with the census estimate, population estimate for 03:09:43  
9 the nation for June of 2005, and on that basis determined 03:09:51  
10 that about 24.55 percent of the population would hold a 03:09:56  
11 U.S. passport. 03:10:01

12           The thing that bothered me about that was that 03:10:01  
13 the calculation was on the basis of people of all ages, and 03:10:04  
14 I was really looking for a population of voting age. A 03:10:07  
15 website that I would almost have to characterize as a blog 03:10:17  
16 -- and I think everybody these days knows what a blog is, 03:10:21  
17 it's kind of an unofficial viewpoint of people's -- well, 03:10:25  
18 expounding on different subjects, but a particular blog led 03:10:30  
19 me to a very reputable study done by the conference board 03:10:36  
20 of Canada, and that study did include persons of the age of 03:10:51  
21 18 or older. It was a study of American and Canadian 03:10:55  
22 households. Their conclusion was the voting age of 03:11:01  
23 Americans holding a US passport was given as 34 percent. 03:11:06

24           So as it happens, at that point I have two 03:11:10  
25 figures that are about 10 percent apart, and well, knowing 03:11:13

1 the amount of time I spent looking for these figures and 03:11:21  
2 knowing the clock was running, the best thing I decided to 03:11:24  
3 do was pick a point approximately in the middle, and that's 03:11:28  
4 where I came up with 70 percent -- 30 percent 03:11:30  
5 approximately, having a passport, and 70 percent not having 03:11:34  
6 one. 03:11:37

7 THE COURT: Mr. Rosenbaum, we'll recommence 03:11:40  
8 tomorrow. We'll start at 11:00, and Mr. Sissons, we'll see 03:11:43  
9 you back tomorrow. 03:11:50

10 Counsel, we are in recess until 11:00 o'clock 03:11:50  
11 tomorrow. 03:11:53

12 THE CLERK: All rise. 03:11:54

13 (The proceedings adjourned at 3:11 p.m.) 03:11:55  
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**CERTIFICATE**

9

10 I, David M. Lee, CSR 9543, RMR, CRR, Official  
11 Court Reporter, hereby certify that pursuant to Section  
12 733, Title 28, United States Code, that the foregoing is a  
13 true and correct transcript of the stenographically  
14 recorded proceedings in the above matter.

15

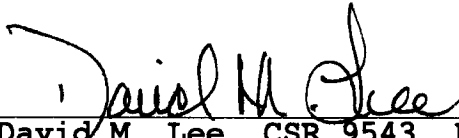
16

Signed this 13th day of September, 2006.

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David M. Lee, CSR 9543, RMR, CRR  
Official Court Reporter

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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MARIA M. GONZALEZ, et al.,	)	
	)	
Plaintiffs,	)	CV 06-1268 PHX-ROS
	)	CV 06-1362 PHS-ROS
vs.	)	CV 06-1575 PHX-ROS
	)	
STATE OF ARIZONA, et al.,	)	Phoenix, Arizona
	)	August 31, 2006
Defendant.	)	10:30 a.m.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
**(Preliminary Injunction Hearing - Day Two)**  
BEFORE THE HONORABLE ROSLYN O. SILVER

Court Reporter: David M. Lee, CSR 9543, RMR, CRR  
Sandra Day O'Connor U.S. Courthouse  
401 W. Washington Street  
Phoenix, Arizona 85003  
(602) 322-7245

Proceedings taken by stenographic court reporter  
Transcript prepared by computer-aided transcription

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I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
R. Anthony Sissons	6	29	92	
John Lewis	104	134		

1 Q. All right. 11:14:33

2 A. -- that the -- simply the total issuance count is 11:14:36

3 the only thing available on the Department of State 11:14:40

4 website, you know, moving to those other issues, I would 11:14:45

5 not know how. 11:14:47

6 Q. All right. So without reducing that ten-year total, 11:14:48

7 your calculation assumes that all of those individuals 11:14:53

8 would have the ID necessary to prove citizenship to vote? 11:14:56

9 A. Yes. 11:15:05

10 Q. All right. Let's go on to the third category in 11:15:06

11 your calculation, which was 94.8 percent will lack 11:15:11

12 naturalization certificates. How did you determine that 11:15:19

13 number? 11:15:21

14 A. Okay. 11:15:21

15 Q. And actually, where is that in your report, so we 11:15:24

16 can all follow with you? 11:15:26

17 A. Right. That's on page 6, starting around line 16. 11:15:27

18 Q. All right. 11:15:35

19 A. And from the 2000 census, one of the tables there 11:15:37

20 tells me that there were 193,900 naturalized citizens 11:15:41

21 living in Arizona on census day, and that calculated to be 11:15:46

22 3.78 percent of total population. But since -- to obtain a 11:15:51

23 naturalization certificate one has to be -- has to be 18 11:16:01

24 years old, that allowed me to take that number of 11:16:04

25 naturalized persons and express that as a percentage of the 11:16:09

1 voting age population, in which case I came up with about 11:16:14  
2 5.2 percent. 11:16:20

3 Q. Okay. And then how does the 5.2 percent -- 11:16:22

4 A. Okay. 11:16:26

5 Q. -- translate -- it's just the difference between 11:16:31  
6 that and 100? 11:16:36

7 A. Yes. 11:16:39

8 Q. It's the 94.8 that lack the certificate? 11:16:39

9 A. Yes. 11:16:43

10 Q. Let's then go to the fourth component in your 11:16:44  
11 formula to the percentage of population that would lack a 11:16:45  
12 tribal identification document. That's on page 7. That 11:16:48  
13 calculation is on page 7 of your report? 11:16:56

14 A. Yes, it is. 11:17:01

15 Q. Would you describe for us how you came up with that 11:17:01  
16 figure? 11:17:03

17 A. Well, essentially the proof of citizenship 11:17:12  
18 requirement of the Proposition would affect about 11:17:15  
19 1600 -- I'm sorry, 16,000 reservation tribal members 11:17:19  
20 throughout the state, and about 30.5 percent of 11:17:23  
21 off-reservation Native Americans. So I came up with a 11:17:29  
22 total there of about 45,000 unregistered Native Americans 11:17:33  
23 who would be able to use tribal identification documents if 11:17:47  
24 they had them, if the tribe or nation issued them. 11:17:50

25 Q. Now, why did you distinguish in your work between 11:17:52

1 the on-reservation versus the off0reservation Native 11:17:55  
2 Americans in making your determination of how many 11:18:02  
3 unregistered voters would lack the ID? 11:18:04

4 A. Well, where possible, I try to incorporate kind of 11:18:07  
5 real world values, and from -- as opposed to kind of 11:18:15  
6 statistical values. Having looked at Native American 11:18:21  
7 registration in the -- in voting precincts in the 2004 11:18:26  
8 general election, I was aware that about 89, almost 90 11:18:33  
9 percent of Native Americans living in -- on reservation 11:18:40  
10 voting precincts were registered to vote. So it seemed 11:18:49  
11 fair to do a separate calculation of the unregistered 11:18:55  
12 component of that group, separate and apart from the 11:18:58  
13 off-reservation Indian population. 11:19:04

14 Q. All right. So we've got four percentages that you 11:19:07  
15 have calculated for the four forms of ID necessary to 11:19:18  
16 establish citizenship to register. 11:19:21

17 The fifth category of document is birth 11:19:25  
18 certificate. Could you tell us what you tried to do to 11:19:27  
19 determine an estimate of how many unregistered, but 11:19:30  
20 eligible voters were likely to lack access to a birth 11:19:37  
21 certificate? 11:19:42

22 A. First, I consulted my friend Google, and actually, 11:19:44  
23 doing searches on the internet for -- for this matter, 11:19:51  
24 there is an awful lot of information on the internet about 11:19:56  
25 birth certificates and who might own them and who might not 11:20:03

1           In one county, Coconino County, the county           11:24:30  
2 elections officials did tell us that after rejecting 505           11:24:37  
3 applications, 193 of them, or 38 percent, were subsequently           11:24:44  
4 able to come back and prove citizenship. So I mean that           11:24:51  
5 struck me that maybe it would be unfair to use the full           11:24:58  
6 20,000 figure as -- as people who had been -- whose           11:25:02  
7 applications had been rejected, and so essentially I -- I           11:25:07  
8 have no reason to believe that other county rejection and           11:25:13  
9 then cure rates would be any different than Maricopa           11:25:18  
10 County, so I applied the 38 percent to the -- or actually           11:25:29  
11 the compliment figure, in other words, 61.8 percent, to           11:25:33  
12 come up with 12,800 people who probably have not been able           11:25:37  
13 to cure their lack of citizenship document.           11:25:43  
14 Q.       How does that net figure of 12,800 relate to the two           11:25:48  
15 percent?           11:25:53  
16 A.       Well, that's two percent of the applications that           11:25:54  
17 have been submitted since the enactment of Proposition 200.           11:25:56  
18 Q.       All right. Let me see if I can help simplify what           11:26:00  
19 you've just described.           11:26:06  
20           MS. STEWART: Your Honor, objection. There has           11:26:08  
21 been quite a bit of leeway. Apparently Mr. Rosenbaum would           11:26:09  
22 rather testify to this.           11:26:13  
23           THE COURT: Well, sustained.           11:26:14  
24 Q.       BY MR. ROSENBAUM: Let me see if I understood what           11:26:21  
25 you said about reliance on the Coconino County reject           11:26:23

1 about in whose name a telephone bill would be posted? 11:38:51

2 A. No, it doesn't. 11:38:59

3 Q. All right. So for example, in a group-housing 11:39:00

4 situation, you wouldn't know whether individual residents 11:39:04

5 received a bill, versus someone else? 11:39:09

6 A. No, I wouldn't. 11:39:11

7 Q. It wouldn't tell you whether the parents of a 11:39:12

8 student had the bill in their name for telephone? 11:39:15

9 A. No. 11:39:18

10 Q. All right. And again, with respect to married 11:39:19

11 couples, this information, does it help you answer that 11:39:23

12 question? 11:39:26

13 A. It does not. 11:39:26

14 Q. All right. Am I correct in that you also did an 11:39:27

15 analysis of banking information, the availability of bank 11:39:41

16 statements and credit union statements to -- and the impact 11:39:47

17 on various populations? 11:39:52

18 A. Yes. 11:39:54

19 Q. Could you describe your analysis there? 11:39:54

20 A. Again, in my internet searching I came upon a report 11:39:56

21 from the Government Accounting Office that was a national 11:40:05

22 report looking at -- well, apparently the Social Security 11:40:08

23 Administration had asked that a report be created -- well, 11:40:19

24 huh. 11:40:25

25 Okay. In noticing that mail theft was a growing 11:40:25

1 problem throughout the country, federal agencies that made 11:40:31  
2 direct deposits to beneficiary -- beneficiaries were seeing 11:40:35  
3 direct deposit as a solution to the theft matter. 11:40:41  
4 Unfortunately, according to the GAO report, there is a 11:40:47  
5 large number of people in different socioeconomic 11:40:51  
6 categories who don't have a bank or credit union bank 11:40:55  
7 account. So directly from that report, as mentioned on the 11:41:00  
8 top of page 10, for instance, it tells us that about 18 11:41:10  
9 percent of married people lack bank accounts, as opposed to 11:41:15  
10 41 percent of unmarried persons. 11:41:22  
11           Persons aged 18 to 13, 39 don't have bank 11:41:28  
12 accounts; age 65 or older, only 21 percent don't have them. 11:41:34  
13           We can see here that low income folks are much 11:41:42  
14 likely -- much more likely not to have accounts, bank 11:41:46  
15 accounts. People with less than a high school diploma, 11:41:49  
16 more than half of them don't have bank accounts, according 11:41:57  
17 to this study. 11:42:01  
18 Q.       What about race and ethnicity? What information 11:42:04  
19 were you able to determine? 11:42:09  
20 A.       Well, essentially the Anglo population, which is 11:42:10  
21 basically non-Hispanic white in census terms, about 20 11:42:14  
22 percent are unbanked, which is the GAO term for this, 11:42:25  
23 unbanked. The black population is about 52 percent 11:42:33  
24 unbanked, and the Hispanic population about 50 percent 11:42:37  
25 unbanked. 11:42:40

1 Q. Since your report is in evidence, in the interests 11:42:47  
2 of time, I'm going to skip over your discussion of vehicle 11:42:49  
3 registration, vehicle insurance card, property tax 11:42:53  
4 statements. I think it's self-explanatory, but obviously 11:42:57  
5 if defendants disagree, I'm sure they'll cross you on it. 11:43:01  
6 Likewise, I'm going to skip over the tribal enrollment card 11:43:08  
7 discussion as well. 11:43:11  
8 I want to ask you about the specific analysis you 11:43:12  
9 did, focusing on Native Americans. Where does that begin 11:43:16  
10 in your report? 11:43:21  
11 A. Well, there are -- there are two areas where I 11:43:22  
12 analyze the situation for Native Americans vis-a-vis 11:43:25  
13 non-Native Americans. One was related to the differential 11:43:31  
14 in the use of mail-in voting. The second part is -- starts 11:43:37  
15 on page 12 of my report, and that's really just kind of 11:43:44  
16 some tables to illustrate the difference in living 11:43:49  
17 conditions between on-reservation populations and urban 11:43:57  
18 populations. 11:44:01  
19 Q. And that's the table we were looking at on page 12? 11:44:03  
20 A. Yes. 11:44:06  
21 Q. And again, the source of all that information was 11:44:06  
22 what? 11:44:10  
23 A. Was the U.S. census. 11:44:10  
24 Q. Did you also analyze home addressing and mail 11:44:12  
25 delivery issues with respect to Native Americans? 11:44:18

1 A. Yes, I did. 11:44:21

2 Q. Where is that on your report? 11:44:21

3 A. That's on page -- the top of page 13. 11:44:23

4 Q. And describe your analysis there and your 11:44:28

5 conclusions. 11:44:30

6 A. Right. I have a -- I get a file on a monthly basis 11:44:31

7 from the postal service that tells how many deliveries of 11:44:36

8 various kinds take place in carrier routes within zip codes 11:44:43

9 within communities. From that information, just focusing 11:44:51

10 on the residential postal deliveries, I determined that 11:44:56

11 about 16 percent of the approximately 51,900 housing units 11:45:05

12 on reservations throughout the state, about 16 percent 11:45:13

13 receive their mail actually at their home. The remaining 11:45:18

14 population, the other 83 percent, receive their mail at PO 11:45:24

15 Boxes located in 48 post offices that are all on 11:45:32

16 reservation. 11:45:37

17 Q. All right. Thank you. 11:45:40

18 Let me take you to the other analysis that you 11:45:41

19 mentioned you did with respect to Native Americans, and 11:45:44

20 that was regarding early voting patterns. Is that the 11:45:50

21 discussion in paragraph number 1 on page 8 of your report? 11:45:55

22 A. Yes, it is. 11:45:59

23 MR. ROSENBAUM: Your Honor, I apologize. I don't 11:46:08

24 mean to lead anybody, but my copy of this, I happen to have 11:46:10

25 highlighted. 11:46:13

1 THE COURT: That's not a problem. Go ahead. 11:46:14

2 MR. ROSENBAUM: All right. Thank you, your 11:46:16

3 Honor. 11:46:17

4 Q. Would you describe the analysis you did, 11:46:18

5 Mr. Sissons, with respect to early voting patterns? 11:46:20

6 A. Yes. Let's see. 11:46:24

7 Initially this was an analysis that I had 11:46:32

8 performed in November that looked at the difference in the 11:46:35

9 use of mail-in ballots between voters in -- between -- 11:46:40

10 well, let me say it properly. 11:46:47

11 In precincts that had 95 percent or greater Anglo 11:46:49

12 voters, the finding was that about 52 percent, almost 53 11:47:01

13 percent of the ballots cast from voters in those precincts 11:47:10

14 were cast by mail. That zoomed to about 136 voting 11:47:15

15 precincts throughout the state that had 95 percent or more 11:47:22

16 Anglo voters. 11:47:32

17 When I looked at precincts where minorities made 11:47:33

18 up 95 percent or more of the voting age population, about 11:47:37

19 15 percent were cast by mail. I think elsewhere -- well, 11:47:41

20 immediately following that, I expressed that in a slightly 11:47:44

21 different way to say that Anglo voters are about three and 11:47:48

22 a half times more likely than minority voters to vote by 11:47:53

23 mail. 11:47:59

24 Because of this litigation, I reexamined that 11:48:06

25 statement from the database, which was actually from the 11:48:12

1 general election in 2004, and looked at the 122 voting 11:48:15  
2 precincts in nine counties that serve Indian reservations, 11:48:18  
3 and of those precincts, of the 45,000 ballots cast, about 11:48:24  
4 12 percent of them were cast by mail. 11:48:30

5 Q. Did the 122 precincts that you looked at that serve 11:48:37  
6 Indian reservations, did any of those precincts also serve 11:48:40  
7 non-Indians, do you know? 11:48:47

8 A. The answer is yes, they did. 11:48:53

9 Q. So you're not saying that all the 12.23 percent were 11:48:54  
10 Native Americans? Some may have been non-Native Americans 11:48:57  
11 as well? 11:49:03

12 A. That is true. 11:49:03

13 Q. All right. Now you're aware, are you not, that 11:49:04  
14 under current procedures, the various counties are sending 11:49:17  
15 election mail to voters? 11:49:25

16 A. Yes, I am aware. 11:49:27

17 Q. And that if the mail is -- is addressed individually 11:49:29  
18 to a voter, rather than to a household that in most 11:49:36  
19 counties, if not all, that would be acceptable as a polling 11:49:43  
20 place form of ID? 11:49:46

21 A. Yes. Yes. 11:49:49

22 Q. All right. Did you make any effort to analyze how 11:49:49  
23 many voters would actually receive the mail if it was sent 11:49:55  
24 to them? 11:50:00

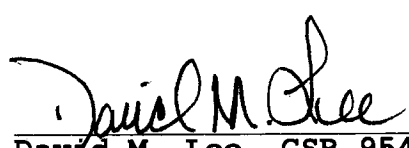
25 A. No, I didn't. I didn't do that analysis. 11:50:00

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**CERTIFICATE**

I, David M. Lee, CSR 9543, RMR, CRR, Official Court Reporter, hereby certify that pursuant to Section 733, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically recorded proceedings in the above matter.

Signed this 14th day of September, 2006.

  
\_\_\_\_\_  
David M. Lee, CSR 9543, RMR, CRR  
Official Court Reporter