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17 **IN THE UNITED STATES DISTRICT COURT**  
18 **DISTRICT OF ARIZONA**

19 MARIA M. GONZALEZ, et al.,

20 Plaintiffs,

21 v.

22 STATE OF ARIZONA, et al.

23 Defendants.

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

**SEPARATE STATEMENT OF  
FACTS IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT  
DIRECTED TO GONZALEZ  
PLAINTIFFS BY DEFENDANTS  
STATE OF ARIZONA AND THE  
ARIZONA SECRETARY OF STATE**

(Assigned to the Honorable  
Roslyn O. Silver)

1 Pursuant to Fed. R. Civ. P. 56(b) and Ariz. Local R. 56.1(a), Defendants State of  
2 Arizona and Arizona Secretary of State submit this Separate Statement of Facts in  
3 support of their Motion for Summary Judgment Directed to plaintiffs Maria Gonzalez,  
4 Jesus Gonzalez, Bernie Abeytia, Debbie Lopez, Georgia Morrison Flores, Southwest  
5 Voter Registration Education Projection, Valle Del Sol, Friendly House, Chicanos Por  
6 La Causa, Inc., Arizona Hispanic Community Forum, Common Cause, Project Vote, and  
7 Association of Community Organizations for Reform Now (collectively, “plaintiffs”), in  
8 Case No. CV 06-1268, which is filed herewith.<sup>1</sup>

9 1. When asked to identify the facts that support plaintiffs’ allegation that  
10 Latinos are less likely to possess proof of citizenship or voting identification to comply  
11 with Prop 200, plaintiffs point to their expert reports and assert that Latinos “have a  
12 lower socio-economic status when compared to non-Latinos or Anglos and comprise a  
13 greater proportion of naturalized citizens when compared to non-Latinos or Anglos in  
14 Arizona.” [Decl. of Counsel in Supp. of Defs.’ Mot. for Summ. J. Directed to the  
15 Gonzalez Plaintiffs (“Counsel Decl. (Gonzalez)”), Tab 1 (AZHCF 2nd Interrog. Resps.,  
16 no. 11; ACORN 2nd Interrog. Resps., no. 11; CPLC 2nd Interrog. Resps., no. 11; CC 2<sup>nd</sup>  
17 Interrog. Resps., no. 11; FH 2nd Interrog. Resps., no. 11; PV 2nd Interrog. Resps., no.  
18 11; SVREP 2nd Interrog. Resps., no. 11, VDS 2nd Interrog. Resps., no. 11); Tab 2  
19 (AZHCF Suppl. Resps. to 2nd Interrogs., no. 11; ACORN Suppl. Resps. to 2nd  
20 Interrogs., no. 11; CPLC Suppl. Resps. to 2nd Interrogs., no. 11; CC Suppl. Resps. to 2<sup>nd</sup>  
21 Interrogs., no. 11; FH Suppl. Resps. to 2nd Interrogs., no. 11; PV Suppl. Resps. to 2nd  
22 Interrogs., no. 11; SVREP Suppl. Resps. to 2nd Interrogs., no. 11, VDS Suppl. Resps. to  
23 2nd Interrogs., no. 11)]

24 2. When asked to identify the facts upon which plaintiffs rely in support of  
25 their claim that the voting identification disparately impacts Latinos, plaintiffs: (1)

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26 <sup>1</sup> Hereafter, plaintiff organizations are abbreviated as follows: Arizona Hispanic  
27 Community Forum (“AZHCF”), Association of Community Organizations for Reform  
28 Now (“ACORN”), Chicanos Por La Causa, Inc. (“CPLC”), Common Cause (“CC”),  
Friendly House (“FH”), Project Vote (“PV”), Southwest Voter Registration Education  
Projection (“SVREP”), and Valle Del Sol (“VDS”).

1 asserted that “Latinos are less likely to be able to satisfy the voter identification  
2 requirement of Proposition 200 because, among other things, they have a lower socio-  
3 economic status when compared to non-Latinos or Anglos”; (2) referred to the  
4 uncounted conditional provisional ballots that the counties were ordered to produce; and  
5 (3) referred to plaintiffs’ expert reports. [Counsel Decl. (Gonzalez), Tab 1 (AZHCF 2nd  
6 Interrog. Resps., no. 2; ACORN 2nd Interrog. Resps., no. 2; CPLC 2nd Interrog. Resps.,  
7 no. 2; CC 2<sup>nd</sup> Interrog. Resps., no. 2; FH 2nd Interrog. Resps., no. 2; PV 2nd Interrog.  
8 Resps., no. 2; SVREP 2nd Interrog. Resps., no. 2, VDS 2nd Interrog. Resps., no. 2); Tab  
9 2 (AZHCF Suppl. Resps. to 2nd Interrog., no. 2; ACORN Suppl. Resps. to 2nd  
10 Interrog., no. 2; CPLC Suppl. Resps. to 2nd Interrog., no. 2; CC Suppl. Resps. to 2<sup>nd</sup>  
11 Interrog., no. 2; FH Suppl. Resps. to 2nd Interrog., no. 2; PV Suppl. Resps. to 2nd  
12 Interrog., no. 2; SVREP Suppl. Resps. to 2nd Interrog., no. 2, VDS Suppl. Resps. to  
13 2nd Interrog., no. 2)]

14 3. Plaintiff expert Dr. Lanier concludes that Latino “uncounted conditional  
15 provisional ballots come from areas of Arizona where the population: is less likely to  
16 speak English well, possesses less schooling, and earns a lower household income than  
17 the averages for the state” and that Latino uncounted ballots are “from areas where the  
18 population is: more highly Hispanic in makeup, more likely to use public transportation  
19 instead of driving a car or truck alone to work, and more urban (less rural) than  
20 statewide averages.” [Counsel Decl. (Gonzalez), Tab 3 (Lanier 3rd Suppl. Rep., p. 5)]

21 4. When asked to identify the facts upon which plaintiffs rely to claim a  
22 disparate impact on Latinos caused by the proof of citizenship requirement, plaintiffs  
23 responded with the following assertions: (1) Latinos have a lower socio-economic status  
24 and comprise a greater proportion of naturalized citizens; (2) Latinos are “less likely” to  
25 cure rejected registration forms; (3) there is a disparate number of Latino rejected voter  
26 registration forms; (4) there is a disparate impact on Latino registration; (5) the  
27 registrations of Jesus and Maria Gonzalez were rejected; (6) Latinos are unlikely to have  
28 proof of citizenship on their person during registration drives; and (7) plaintiffs served  
expert reports. [Counsel Decl. (Gonzalez), Tab 1 (AZHCF 2nd Interrog. Resps., no. 1;

1 ACORN 2nd Interrog. Resps., no. 1; CPLC 2nd Interrog. Resps., no. 1; CC 2<sup>nd</sup> Interrog.  
2 Resps., no. 1; FH 2nd Interrog. Resps., no. 1; PV 2nd Interrog. Resps., no. 1; SVREP  
3 2nd Interrog. Resps., no. 1, VDS 2nd Interrog. Resps., no. 1); Tab 2 (AZHCF Suppl.  
4 Resps. to 2nd Interrogs., no. 1; ACORN Suppl. Resps. to 2nd Interrogs., no. 1; CPLC  
5 Suppl. Resps. to 2nd Interrogs., no. 1; CC Suppl. Resps. to 2<sup>nd</sup> Interrogs., no. 1; FH  
6 Suppl. Resps. to 2nd Interrogs., no. 1; PV Suppl. Resps. to 2nd Interrogs., no. 1; SVREP  
7 Suppl. Resps. to 2nd Interrogs., no. 1, VDS Suppl. Resps. to 2nd Interrogs., no. 1)]

8 5. Dr. Lanier asserts that both Latino and non-Latino voter registrations were  
9 reduced by Prop 200's proof of citizenship requirement and that Latino registrations  
10 were disproportionately reduced by Prop 200. [Decl. of Dr. Jeffrey Zax ("Zax Decl.")  
11 ¶ 4; Counsel Decl. (Gonzalez), Tab 4 (Lanier 1<sup>st</sup> Report, p. 8)]

12 6. Dr. Lanier prepared two charts, which he says show a reduction in voter  
13 registrations caused by Prop 200 on Latinos and non-Latinos, respectively: The solid  
14 line on Chart 1 purports to show the number of Latino registrations in the pre and post  
15 Prop 200 periods; the solid line on Chart 2 purports to show the same information,  
16 except with regard to non-Latino voters, for those same time periods. [Zax Decl. ¶ 5]

17 7. Both charts 1 and 2 include registration data for two presidential elections.  
18 The "pre" and "post" Prop 200 Lanier's charts, however, do not reflect comparable  
19 periods of registration activity before and after Prop 200 because the "pre" Prop 200  
20 period reflects surges in registration activity immediately preceding two presidential  
21 election periods—which are not reflected in the "post" Prop 200 period. [Zax Decl.  
22 ¶¶ 5-6]

23 8. A review of the comparable "pre" and "post" Prop 200 periods of Dr.  
24 Lanier's charts demonstrates that the number of Latino and non-Latino registrations has  
25 increased in the post Prop 200 period. [Zax Decl. ¶¶ 7-9]

26 9. Dr. Lanier's data demonstrate that in the "post" Prop 200 period, the  
27 number of both Latino and non-Latino registrations increased by a very similar  
28 magnitude and, specifically, that the increase in the number of both such registrations at  
a "post" Prop 200 peak in September 2006 was approximately 60% over the number of

1 such respective registrations for September 2002. [Zax Decl. ¶¶ 13-14]

2 10. Dr. Lanier’s conclusion that the post-Prop 200 registrations should be  
3 higher, as indicated by the dashed lines on his charts 1 and 2, improperly relies on the  
4 higher level of pre-Prop 200 registrations that occurred during the two presidential  
5 election cycles for that period. [Zax Decl. ¶ 10]

6 11. In addition, Dr. Lanier’s estimate of the predicted levels of registration is  
7 based on a statistical analysis that does not account for the possibility of variations in  
8 levels of registrations based on time trends. [Zax Decl. ¶¶ 11-12]

9 12. Because Dr. Lanier omitted from his analysis appropriate variables, there  
10 is no statistically reliable basis for his “predicted” numbers of registrations. [Zax Decl.  
11 ¶ 12]

12 13. In his first report, Dr. Espino included a chart that purports to show the  
13 percentage of Latino registrations (among all registrations) for each month in the “pre”  
14 and “post” Prop 200 periods, which chart includes registration data for a presidential  
15 election period in the “pre” Prop 200 period but not for any presidential election in the  
16 “post” Prop 200 period. [Zax Decl. ¶ 16]

17 14. The relevant portions of Dr. Espino’s chart demonstrate that average  
18 monthly Latino registrations increased following the implementation of Prop 200. [Zax  
19 Decl. ¶¶ 17-19]

20 15. In his report, Dr. Espino included a separate chart that purports to set out  
21 in graphical form the monthly average percentage of Latino voter registrations (among  
22 all registrations) for each of Arizona’s fifteen counties. When straight lines are overlaid  
23 on each graph, however, one observes that in fourteen of the fifteen counties (all except  
24 Greenlee) the share of Latinos among new registrations either is the same or higher  
25 following the implementation of Prop 200. [Zax Decl. ¶¶ 20-22]

26 16. Dr. Espino concludes in his 2nd report that there was a 0.93% difference in  
27 percentage declines in weekly Latino versus non-Latino registrations after Prop 200,  
28 with Latino registrations experiencing a greater decline. [Zax Decl. ¶ 23; Counsel Decl.  
(Gonzalez), Tab 5 (Espino Rebuttal Rep., pp. 13-14 (concluding that “the percent of

1 Hispanic individuals registered to vote each week in Arizona declined 6.29 percent  
2 following the implementation of Proposition 200, while the corresponding decline for  
3 non-Hispanic surnamed individuals declined just 5.36 percent”))]

4 17. Dr. Espino’s calculated difference lacks any scientific meaning because he  
5 did not test for statistical significance of his calculated numbers. [Zax Decl. ¶ 24]

6 18. Dr. Espino’s 0.93% estimate does not account for (plaintiff expert) Jorge  
7 Chapa’s data, which demonstrate that Latino citizen voting age population (“CVAP”)  
8 experienced a higher growth rate than non-Latino CVAP before the implementation of  
9 Prop 200, but experienced a smaller growth rate than non-Latino CVAP following the  
10 implementation of Prop 200. [Counsel Decl. (Gonzalez), Tab 6 (Chapa 1<sup>st</sup> Rep., Table  
11 9e); Zax Decl. ¶ 25]

12 19. The two individual plaintiffs (Bernie Abeytia and Georgia Morrison  
13 Flores) who challenge the voting identification requirement each have valid Arizona  
14 driver’s licenses, and one of those plaintiffs has voted since the implementation of Prop  
15 200. [Counsel Decl. (Gonzalez), Tab 7 (Morrison Flores 1<sup>st</sup> Interrog. Resps., no. 3); Tab  
16 8 (Abeytia dep., 16:13-22, 37:2-7)]

17 20. Plaintiffs have not identified any individuals who lack sufficient  
18 identification for voting in person at the polls on Election Day. [Declaration of Counsel  
19 in Support of Defendant’s Motion for Summary Judgment Directed to the Gonzalez  
20 Plaintiffs [Counsel Decl. (Gonzalez), Tab 9 (AZHCF First Interrog. Resps., no. 3;  
21 ACORN First Interrog. Resps., no. 3; CPLC First Interrog. Resps., no. 3; CC First  
22 Interrog. Resps., no. 3; FH First Interrog. Resps., no. 3; PV First Interrog. Resps., no. 3;  
23 SVREP First Interrog. Resps., no. 3, VDS First Interrog. Resps., no. 3)]

24 21. Only two of the plaintiffs, Jesus and Maria Gonzalez, claim in the FAC  
25 that they were unable to register due to the proof of citizenship requirement, but both  
26 admit that they possess proof of citizenship sufficient to comply with Prop 200, and Ms.  
27 Gonzalez has since registered. [Counsel Decl. (Gonzalez), Tab 10 (Maria Gonzalez  
28 First Interrog. Resps., no. 3, 4; Jesus Gonzalez First Interrog. Resps., no. 4)]

22. The plaintiffs who challenge the proof of citizenship requirement could

1 identify no individuals who lack proof of citizenship or who cannot obtain such proof.  
2 [Counsel Dec. (Gonzalez), Tab 9 (AZHCF First Interrog. Resps., no. 4; ACORN First  
3 Interrog. Resps., no. 4; CPLC First Interrog. Resps., no. 4; CC First Interrog. Resps., no.  
4 4; FH First Interrog. Resps., no. 4; PV First Interrog. Resps., no. 4; SVREP First  
5 Interrog. Resps., no. 4, VDS First Interrog. Resps., no. 4)]

6 23. Naturalized citizens may simply provide their alien registration number to  
7 comply with the proof of citizenship requirement. [Counsel Decl. (Gonzalez), Tab 11  
8 (Secretary of State Election Procedures Manual (October 2007), p. 43)]

9 24. Based on the testimony of ITCA plaintiff expert Ronald Sissons, 87.4% of  
10 Arizona's voting eligible citizens possess a valid Arizona driver's license or non-  
11 operating license. [Counsel Decl. (Gonzalez), Tab 12 (Sissons dep., at 77:15-21)]

12  
13 RESPECTFULLY SUBMITTED this 6th day of June, 2008.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 6th day of June, 2008, I electronically transmitted  
3 the attached document to the Clerk’s Office using the ECF System for filing, and  
4 transmittal of a Notice of Electronic Filing to the following ECF registrants:  
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**COPY** also served on the 6th day of June, 2008, via U.S. mail, with Notice of  
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/s Elizabeth Stark

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