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13  
14 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

15 Maria M. Gonzalez, et al.,

16 Plaintiffs,

17 v.

18 State of Arizona, et al.,

19 Defendants.  
20

NO. CV06-1268-PHX-ROS (LEAD)  
NO. CV06-1362-PCT-JAT  
NO. CV06-1575-PHX-ROS  
(Consolidated)

**SEPARATE STATEMENT OF  
FACTS IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT BY DEFENDANT  
MARICOPA COUNTY**

(Assigned to the Honorable  
Roslyn O. Silver)

1 Pursuant to Fed. R. Civ. P. 56(b) and Ariz. Local R. 56.1(a), Defendants  
2 Maricopa County Recorder and Maricopa County Elections Director, submit this  
3 Separate Statement of Facts in support of their Motion for Summary Judgment  
to which is filed herewith.

4 1. Arizona has a history of close elections thereby triggering an  
5 automatic recount votes. In 1992, Richard Kyle and John Gaylord (now Judge  
6 Gaylord) tied after the initial tabulation in the Republican Primary for the Arizona  
7 House of Representatives in District 6. A tie still resulted after the recount and  
8 the race was decided by a game of chance. Kyle and Gaylord agreed to play a  
hand of poker and Kyle won with a pair of sevens.

<http://www.azsos.gov/election/1992/Info/ElectionInformation.htm>

9 In 1994 during the Democratic primary for United States Senate, Sam  
10 Coppersmith led Dick Mahoney by 99 votes (81,762 to 81,663) after the initial  
11 count. After the recount was complete, Sam Coppersmith ended up winning by  
12 59 votes. In 1994, a recount took place in the District 27 Republican Primary  
13 Election for the Arizona House of Representatives between Mike Gardner and  
14 John MacDonald. Mike Gardner kept his 32-vote lead over MacDonald. In 1996,  
15 Sue Gerard led Jerry Harris by 32 votes after the initial tabulation in the  
Republican Party primary. Gerard won by 33 votes after the recount.

<http://www.azsos.gov/election/1994/Info/ElectionInformation.htm>

16 2. The most recent recount of a legislative race occurred in 2004, in  
17 the Republican Party Primary Election for the House of Representatives in  
18 District 20. A recount was triggered in that race when the initial count yielded a  
19 four-vote margin between Anton Orlich and John McComish. Orlich finished  
20 second with 5,533 votes and McComish finished a close third with 5,529 votes.  
After the recount, McComish overtook Orlich to win by 13 votes. The final

recount was McComish: 5,633, Orlich: 5,620.

<http://www.azsos.gov/results/2004/primaryrecount/REP-3220.htm>

1 Serious questions were raised by the press and the candidates following the  
2 recount, which led to the Secretary of State to issue the following report,  
3 [http://www.azsos.gov/election/Brewer\\_Voting\\_Action\\_Plan/Election\\_Law\\_Advisory\\_Committee/Committee\\_Report\\_12-30-2005.pdf](http://www.azsos.gov/election/Brewer_Voting_Action_Plan/Election_Law_Advisory_Committee/Committee_Report_12-30-2005.pdf)

4 3. Since 2004, fourteen (14) Maricopa County voters were charged  
5 with election crimes after they were found not be United States citizens.  
6 Maricopa County requests this Court take judicial notice of the following  
7 Maricopa County Superior Court documents. Twelve (12) of the individuals  
8 have been convicted, one (1) case dismissed, and one (1) case is pending. *Id.*  
9 The cases are as follows:

10 (a) Tevita Maliu was charged with one (1) count of presentment  
11 of false instrument for filing, a Class 6 Felony. On May 17, 2002, Tevita Maliu  
12 completed and filed with the Maricopa County Recorder, a Voter Registration  
13 Application, an instrument he knew to be false or forged, in violation of A.R.S. §§  
14 39-161, 13-701, 13-702, 13-702.01, and 13-801. On August 29, 2006, Tevita  
15 Maliu pled guilty to Count 1, amended, of Presentment of False Instrument for  
16 Filing, a Class 1 Misdemeanor. Maricopa County Superior Court, CR2005-  
17 011815-001DT. *Id.* at subsection (a).

18 (b) Maria De Los Angeles Torres Mendoza was charged with one  
19 (1) count of presentment of false instrument for filing, a Class 6 Felony. On  
20 December 13, 1999, Maria De Los Angeles Torres Mendoza completed and  
21 filed with the Maricopa County Recorder, a Voter Registration Application, an  
22 instrument she knew to be false or forged, in violation of A.R.S. §§ 39-161, 13-  
701, 13-702, 13-702.01, and 13-801. On September 15, 2005, Maria De Los  
Angeles Torres Mendoza pled guilty to Count 1, amended, of Presentment of  
False Instrument for Filing, a Class 1 Misdemeanor. Maricopa County Superior  
Court, CR2005-011816-001DT. *Id.* at subsection (b).

(c) On October 7, 2002, David Michael Grant submitted a State  
of Arizona Voter Registration Form with the Maricopa County Recorder in

1 violation of A.R.S. §§ 39-161, 13-701, 13-702, 13-702.01, and 13-801. On  
2 January 7, 2008, David Michael Grant was found guilty of Count 2, amended, of  
3 Present of False Instrument for Filing, a Class 1 Misdemeanor; and Count 1  
4 regarding illegal voting in the 2004 General Election was dismissed. Maricopa  
County Superior Court, CR2007-008627-001DT. *Id.* at subsection (c).

5 (d) Mohammad Nabeel Akhtar was charged with the following  
6 two counts: (1) On November 2, 2004, Mohammad Nabeel Akhtar, not being  
7 entitled to vote, voted in the 2004 General Election in violation of A.R.S. §§ 16-  
8 1016, 16-101, 13-701, 13-702, 13-702.01, and 13-801; and (2) on May 26, 2004,  
9 Mohammad Nabeel Akhtar submitted a State of Arizona Voter Registration Form  
10 with the Maricopa County Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-  
11 702, 13-702.01, and 13-801. On December 20, 2007, Mohammad Nabeel  
12 Akhtar pled guilty to Count 2, amended, of Presentation of False Instrument for  
Filing, a Class 1 Misdemeanor, and Count 1 regarding illegal voting, was  
dismissed. Maricopa County Superior Court , CR2007-008309-001DT. *Id.* at  
subsection (d).

13 (e) Desmond Deze Nowak was charged with the following two  
14 counts: (1) On November 5, 2002, Desmond Deze Nowak, not being entitled to  
15 vote, voted in the 2002 General Election in violation of A.R.S. §§ 16-1016, 16-  
16 101, 13-701, 13-702, 13-702.01, and 13-801; and (2) on May 19, 1990,  
17 Desmond Deze Nowak submitted a State of Arizona Voter Registration Form  
18 with the Maricopa County Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-  
19 702, and 13-801. On December 11, 2007, Desmond Deze Nowak pled guilty to  
20 Count 2, amended, of Presentation of False Instrument for Filing, a Class 1  
Misdemeanor, and Count 1 regarding illegal voting, was dismissed. Maricopa  
County Superior Court, CR2007-008626-001DT. *Id.* at subsection (e).

21 (f) Nieves Cameron, a/k/a Nieves Bannister, was charged with  
22 the following three counts: (1) On May 24, 1992, Nieves Cameron, a/k/a Nieves  
Bannister, submitted a State of Arizona Voter Registration Form with the

1 Maricopa County Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-702, and  
2 13-801; (2) on November 7, 2000, Nieves Cameron, a/k/a Nieves Bannister, not  
3 being entitled to vote, voted in the 2000 General Election in violation of A.R.S.  
4 §§ 16-1016, 16-101, 13-701, 13-702, 13-702.01, and 13-801; and (3) on  
5 November 7, 2004, Nieves Cameron, a/k/a Nieves Bannister, not being entitled  
6 to vote, voted in the 2004 General Election in violation of A.R.S. §§ 16-1016, 16-  
7 101, 13-701, 13-702, 13-702.01, and 13-801. On May 28, 2008, the Maricopa  
8 County Superior Court issued a Bench Warrant for the arrest of Nieves  
9 Cameron, a/k/a Nieves Bannister, for failing to appear. Maricopa County  
10 Superior Court, CR2008-122465-001DT. *Id.* at subsection (f).

9 (g) William Gary Cowling was charged with the following two  
10 counts: (1) On November 2, 2004, William Gary Cowling, not being entitled to  
11 vote, voted in the 2004 General Election in violation of A.R.S. §§ 16-1016, 16-  
12 101, 13-701, 13-702, 13-702.01, and 13-801; and (2) on June 29, 2004, William  
13 Gary Cowling submitted a State of Arizona Voter Registration Form with the  
14 Maricopa County Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-702, and  
15 13-801. On April 23, 2008, William Gary Cowling was found guilty of Count 2,  
16 amended, of Criminal Impersonation, a Class 1 Misdemeanor; and Count 1  
17 regarding illegal voting in the 2004 General Election was dismissed. Maricopa  
18 County Superior Court, CR2007-008628-001DT. *Id.* at subsection (g).

16 (h) Eugene Frederick Woltz was charged with the following two  
17 counts: (1) On November 2, 2004, Eugene Frederick Woltz, not being entitled to  
18 vote, voted in the 2004 General Election in violation of A.R.S. §§ 16-1016, 16-  
19 101, 13-701, 13-702, 13-702.01, and 13-801; and (2) on March 1, 1997, Eugene  
20 Frederick Woltz submitted a State of Arizona Voter Registration Form with the  
21 Maricopa County Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-702, 13-  
22 702.01, and 13-801. On November 19, 2007, Eugene Frederick Woltz pled  
guilty to Count 2, amended, of Presentation of False Instrument for Filing, a  
Class 1 Misdemeanor, and Count 1 regarding illegal voting, was dismissed.

1 Maricopa County Superior Court, CR2007-008629-001DT. *Id.* at subsection (h).

2 (i) Romelina Fisher was charged with the following two counts:  
3 (1) On November 2, 2004, Romelina Fisher, not being entitled to vote, voted in  
4 the 2004 General Election in violation of A.R.S. §§ 16-1016, 16-101, 13-701, 13-  
5 702, 13-702.01, and 13-801; and (2) on June 25, 2004, Romelina Fisher  
6 submitted a State of Arizona Voter Registration Form with the Maricopa County  
7 Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-702, 13-702.01, and 13-  
8 801. On November 20, 2007, Romelina Fisher pled guilty to Count 2, amended,  
9 of Presentation of False Instrument for Filing, a Class 1 Misdemeanor, and  
10 Count 1 regarding illegal voting, was dismissed. Maricopa County Superior  
11 Court , CR2007-008625-001DT. *Id.* at subsection (i).

12 (j) Javier Bastidas Garcia was charged with the following two  
13 counts: (1) On November 2, 2004, Javier Bastidas Garcia, not being entitled to  
14 vote, voted in the 2004 General Election in violation of A.R.S. §§ 16-1016, 16-  
15 101, 13-701, 13-702, 13-702.01, and 13-801; and (2) on October 3, 2004, Javier  
16 Bastidas Garcia submitted a State of Arizona Voter Registration Form with the  
17 Maricopa County Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-702, 13-  
18 702.01 and 13-801. On December 4, 2007, Javier Bastidas Garcia was found  
19 guilty of Count 2, amended, of Presentment of False Instrument, a Class 1  
20 Misdemeanor; and Count 1 regarding illegal voting in the 2004 General Election  
21 was dismissed. Maricopa County Superior Court, CR2007-008633-001DT. *Id.*  
22 at subsection (j).

(k) Andre Gysberts was charged with the following two counts:  
(1) On November 5, 2002, Andre Gysberts, not being entitled to vote, voted in  
the 2002 General Election in violation of A.R.S. §§ 16-1016, 16-101, 13-701, 13-  
702, 13-702.01, and 13-801; and (2) on March 29, 1996, Andre Gysberts  
submitted a State of Arizona Voter Registration Form with the Maricopa County  
Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-702, 13-702.01, and 13-  
801. On December 12, 2007, a copy of Andre Gysberts' Death Certificate was

1 provided the Court, and all charges were dismissed in this matter. Maricopa  
2 County Superior Court, CR2007-008631-001DT. *Id.* at subsection (k).

(l) Armando Lagunas was charged with the following two counts:

3 (1) On November 2, 2004, Armando Lagunas, not being entitled to vote, voted in  
4 the 2004 General Election in violation of A.R.S. §§ 16-1016, 16-101, 13-701, 13-  
5 702, 13-702.01, and 13-801; and (2) on December 9, 2003, Armando Lagunas  
6 submitted a State of Arizona Voter Registration Form with the Maricopa County  
7 Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-702, 13-702.01, and 13-  
8 801. On March 11, 2008, Armando Lagunas was found guilty of Count 1,  
9 amended, of Criminal Impersonation, a Class 1 Misdemeanor; and Count 2  
10 regarding illegal voting in the 2004 General Election was dismissed. Maricopa  
11 County Superior Court, CR2007-009336-001DT. *Id.* at subsection (l).

(m) Manoa Rene Neal was charged with the following two counts:

11 (1) On November 2, 2004, Manoa Rene Neal, not being entitled to vote, voted in  
12 the 2004 General Election in violation of A.R.S. §§ 16-1016, 16-101, 13-701, 13-  
13 702, 13-702.01, and 13-801; and (2) on June 28, 2004, Manoa Rene Neal  
14 submitted a State of Arizona Voter Registration Form with the Maricopa County  
15 Recorder in violation of A.R.S. §§ 39-161, 13-701, 13-702, 13-702.01 and 13-  
16 801. On May 13, 2008, Manoa Rene Neal was found guilty of Count 2,  
17 amended, of Unsworn Falsification, a Class 1 Misdemeanor; and Count 1  
18 regarding illegal voting in the 2004 General Election was dismissed. Maricopa  
19 County Superior Court, CR2007-008630-001DT. *Id.* at subsection (m).

(n) Esequiel Longoria Morales was charged with the following

18 two counts: (1) On November 7, 2000, Esequiel Longoria Morales, not being  
19 entitled to vote, voted in the 2000 General Election in violation of A.R.S. §§ 16-  
20 1016, 16-101, 13-701, 13-702, 13-702.01, and 13-801; and (2) on October 7,  
21 1995, Esequiel Longoria Morales submitted a State of Arizona Voter  
22 Registration Form with the Maricopa County Recorder in violation of A.R.S. §§  
39-161, 13-701, 13-702, 13-702.01 and 13-801. On January 31, 2008, Esequiel

1 Longoria Morales was found guilty of Count 2, amended, of Presentment of  
2 False Instrument for Filing, a Class 1 Misdemeanor. On April 10, 2008, Esequiel  
3 Longoria Morales entered a plea of guilty of Count 2, amended, of Unsworn  
4 Falsification, and Count 1 regarding illegal voting in the 2000 General Election  
5 was dismissed. Maricopa County Superior Court, CR2007-008630-001DT. *Id.*  
6 at subsection (n).

7 4. The Maricopa County jury commissioner promptly notifies the  
8 Maricopa County Recorder of juror questionnaires that indicate the individuals  
9 are not United States citizens. A.R.S. §§16-101 & 16-165(A). In 2007 the  
10 Maricopa County Elections Department documented the names of the  
11 individuals whose voter registrations were cancelled upon receiving the  
12 commissioner's notifications. The lists of those individuals dated 2/22/07,  
13 3/30/07, 8/31/07, and 12/07/07 are attached hereto as Exhibit B to Karen  
14 Osborne's Affidavit, attached hereto as **Exhibit 2** and incorporated herein by  
15 this reference.

16 5. There were 168 registrations cancelled because the registrants  
17 were non-citizens. *Id.* Among those individuals that attested that they were  
18 U.S. citizens, their voting history was as follows:

- 19 ○ 6 voted in the 2002 Primary Election
- 20 ○ 19 voted in the 2002 General Election
- 21 ○ 7 voted in the 2004 Primary Election
- 22 ○ 33 voted in the 2004 General Election
- 5 voted in the 2006 Primary Election
- 19 voted in the 2006 General Election

23 6. The Maricopa County jury commissioner promptly notifies the  
24 Maricopa County Recorder of juror questionnaires that indicate the individuals  
25 are convicted felons. A.R.S. § 16-165(A)(4). In 2007 the Maricopa County  
26 Elections Department documented the names of the individuals whose voter  
27 registrations were cancelled upon notification by the jury commissioner. The

1 lists dated 5/01/07, 9/25/07, and 10/10/07 are attached hereto as **Exhibit 2** at  
2 Exhibit C.

3 7. Since August 2003 the U.S. Citizenship and Immigration Services  
4 (USCIS) has requested information from the County regarding voter registration  
5 and voting history of individuals that has applied to become naturalized citizens.  
6 The Maricopa County Elections Department has kept a record of the USCIS  
7 requests for this information. There have been 100 requests. Of those 100  
8 individuals, 74 of the individuals were registered to vote and 25 had voted in an  
9 election. **Exhibit 2** at Exhibit A. Ms. Osborne estimated that approximately 24  
10 individuals who contacted the Elections Department about being induced to  
11 register to vote although they were not citizens.

12 8. The Arizona Taxpayer and Citizen Protection Act is attached hereto  
13 as **Exhibit 1** and incorporated herein by this reference. The ballot measure's  
14 Findings and Declaration provide as follows: "This state further finds that illegal  
15 immigrants have been given a safe haven in this state with the aid of [voter]  
16 identification cards that are issued without verifying immigration status, and that  
17 this conduct contradicts federal immigration policy, undermines the security of  
18 our borders and demeans the value of citizenship." *Id.*

19 9. The Maricopa County Recorder has the duty to maintain a current  
20 and accurate voter registration registry. In doing so, the Elections Department  
21 must constantly update the registry for such circumstances as voters moving  
22 without updating their voter registration, a voter's death, or a voter becoming  
ineligible to vote based on a criminal conviction. **Exhibit 2** at ¶ 8.

10 10. Maricopa County documents the number of voter registration forms  
11 submitted by voter registration organizations. **Exhibit 2** at ¶6, Exhibit D. For  
12 Petition Partners, the Department documented the number of voter registration  
13 forms submitted by Petition Partners and rate of acceptability from September  
14 2005 through September 2007. **Exhibit 2** at Exhibit D. In that two year period  
15 Petition Partners submitted 27,745 voter registration forms, of which only 6,706

1 or 24% were added to the voter registration rolls.

2 11. Due to the activities of Petition Partners and other paid circulators,  
3 Maricopa County receives large batches of voter registration forms that are  
4 either not filled out by the person supposedly registering or filled out for a person  
5 who does not exist. Excerpts of 01-14-08 J. Altaha deposition, attached hereto  
6 as **Exhibit 3** and incorporated herein by reference, at 40:13-41:23. These  
7 registration submissions alerted County officials to the possibility of fraud. *Id.* at  
8 42:4-10. The matching required by the Prop 200 Proof of Citizenship  
9 requirements prevented fraudulent registrations from being entered into the  
10 voter rolls. *Id.* at 42: 25- 43:8.

11 12. There are voter registration organizations that have registered legal  
12 residents, who were not yet U.S. citizens. Excerpts of 01-14-08 K.Osborne  
13 deposition, attached hereto as **Exhibit 4** and incorporated herein by reference,  
14 at 26: 9-28:5; 28: 9-30: 1.

15 13. Prior to the passage of Proposition 200, there were occasions of  
16 non-citizen registering to vote because the registrant was not required to prove  
17 citizenship. **Exhibit 2** at ¶ 2.

18 14. A voter registration organization that in 2004 submitted completed  
19 voter registrations forms that Karen Osborne described as “garbage.” **Exhibit 4**  
20 at 28: 9-30: 1. Following the passage of Proposition 200, the rate of rejection of  
21 voter registrations was high at first, then declined in 2006, but went back up in  
22 2007. *Id.* at 69: 6-70:24. Ms. Osborne attributed the spike of voter registration  
rejection in 2007 to another large voter registration organization that pays its  
circulator a set dollar amount per completed form. *Id.* Ms. Osborne explained  
that voter registration forms rejected prior to passage of Proposition 200 could  
only be rejected based on the face of the registration, such as detecting forgery  
or clear fabrication. *Id.* With the implementation of the proof of citizenship  
requirement, the registrant must prove that he or she is the person completing  
the form, rather than a forger, and the registrant must be a person that actually

1 exists. *Id.*

2 15. By enacting the voter identification law, the State is able to ensure  
3 that a person may not vote using the name of a non-existent voter that may  
4 have been added to the voter registration database prior to the proof of  
5 citizenship requirement. **Exhibit 2** at ¶9. Thus, the voter identification  
6 requirement allows the State and its citizens to be assured that the person  
7 voting is in fact the same eligible person who is registered on the voter rolls. *Id.*

8 RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of June 2008.

9  
10 ANDREW P. THOMAS  
MARICOPA COUNTY ATTORNEY

11 BY: /s/Colleen Connor  
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14 -and-

15 DENNIS I. WILENCHIK, ESQ.  
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17 *Attorneys for County Defendants*

18 ORIGINAL of the foregoing E-FILED  
19 and copies MAILED this 6<sup>th</sup> day of  
June 2008, to:

20 Honorable Roslyn O. Silver  
UNITED STATES DISTRICT COURT  
21 Sandra Day O'Connor U.S. Courthouse  
401 West Washington Street, Suite 624, SPC 59  
22 Phoenix, Arizona 85003

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CERTIFICATE OF SERVICE

I hereby certify that on the 6<sup>th</sup> 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 CM/ECF registrants.

/s/Colleen Connor