Appeal No. 08-17094

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MARIA M. GONZALEZ, et al.,

Plaintiffs-Appellants,

v.

STATE OF ARIZONA, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Arizona
No. 06-cv-01268-PHX-ROS

BRIEF AMICUS CURIAE OF NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS EDUCATIONAL FUND IN SUPPORT OF PLAINTIFF-APPELLANTS MARIA GONZALEZ, *ET AL.* FOR REVERSAL

STEPHEN J. HARBURG
CHARLES E. BORDEN*
ADAM J. COATES
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300
*Counsel of Record

Attorneys for Amicus Curiae
NALEO Educational Fund

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(c) of the Federal Rules of Appellate Procedure, *amicus* states as follows:

The National Association of Latino Elected and Appointed Officials Educational Fund has no parent corporation, and no subsidiary corporation. No publicly held company owns 10% or more of its stock.

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INTERESTS OF *AMICUS*[1]

The National Association of Latino Elected and Appointed Officials Educational Fund ("NALEO Educational Fund") is the nation's leading non-partisan, non-profit organization that facilitates full Latino participation in the American political process, from citizenship to public service. Established in 1981, the NALEO Educational Fund carries out this mission through programs that promote the civic integration of Latinos, provide training and technical assistance to Latinos in public office, and develop policy analysis on issues affecting Latino participation in the political process. The NALEO Educational Fund's constituency includes more than 6,000 Latino elected and appointed officials nationwide.

A key component of the NALEO Educational Fund's efforts is its Civic Engagement program, which seeks to educate, mobilize, and integrate the Latino community into the political decision-making process in order to strengthen American democracy. This effort includes *Voces del Pueblo*, a non-partisan voter engagement and mobilization initiative. Through *Voces del Pueblo*, the NALEO Educational Fund conducts a "Get Out the Vote" program that reaches Latinos who are not yet fully engaged in the electoral process. In addition, *Voces del Pueblo* educates Latino voters through the 1-888-*Ve-y-Vota* ("Go and Vote!")

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[1] All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a).

bilingual information and protection hotline, and a bilingual website. The NALEO Educational Fund also conducts advocacy with election officials and other policymakers to ensure that the voting and registration process is accessible to all voters. As a result of these activities, the NALEO Educational Fund is uniquely suited to provide this Court with insight regarding the effects of longstanding racial discrimination on the participation of minority voters in the electoral process.

ARGUMENT

More than twenty-five years ago, Congress revised Section 2 of the Voting Rights Act of 1965 ("VRA") to prohibit State and local authorities from imposing any "standard, practice, or procedure" that burdens a citizen's right to vote on account of race. Congress took this step to make clear that Section 2 was not intended simply to prohibit intentional discrimination in the political process, but instead was meant to preclude any law which, because of residual or ongoing racial discrimination in the community in which the law applied, resulted in minority voters having a reduced opportunity to participate in the political process and to elect the candidates of their choice. In so doing, Congress recognized the reality that many minority communities, including Latinos and American Indians, have been subject to centuries of discrimination which has left them economically disadvantaged, and that such disadvantage could cause laws that were not the product of discriminatory intent nonetheless to have a discriminatory effect on

account of race. In other words, in amending Section 2, Congress took a pragmatic approach to voting rights, targeting any law that would prevent minority voters from being full participants in the political process because of racial discrimination. And as result of this pragmatic approach to voting rights, minority involvement in political and electoral activity has increased exponentially in the decades since Section 2's revision.

The District Court's decision in this case, however, threatens to undermine future Section 2 gains. The voter registration provisions of Proposition 200 that are at issue in this case are paradigmatic examples of laws which, while not themselves necessarily animated by intentional racial discrimination, nonetheless burden minority voting rights on account of race. Under Proposition 200, individuals cannot register to vote unless they provide certain forms of identification, all of which can only be obtained through, *inter alia*, payment of a fee. The Latino and American Indian populations in Arizona are more economically disadvantaged than the general public as a result of historic racial discrimination – a fact which the court below found to be clearly established – and a law which makes registration effectively more costly and difficult therefore disproportionately impedes the access of unregistered Latinos and American Indians to the political process on account of race. In spite of these discriminatory effects, the District Court erroneously found no Section 2 violation to be present.

Thus, to ensure that Section 2 continues to foster political participation among minority communities, it is vital that this Court reverse the District Court's determination that Proposition 200's documentation requirements for voter registration do not give rise to a Section 2 violation. The NALEO Educational Fund agrees with the arguments articulated by the *Gonzalez* Plaintiffs on how an examination of the totality of the circumstances surrounding Proposition 200's voter registration provisions clearly demonstrates that such provisions result in a political process in which Latino and American Indian voters "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b). The NALEO Educational Fund, however, writes separately to focus on two additional errors in the District Court's analysis, both of which provide further grounds for reversing the District Court's determination that Plaintiffs failed to establish a Section 2 violation.

First, the District Court employed an improper causation standard in assessing Plaintiffs' Section 2 claim. Although the District Court recognized that the Plaintiffs could demonstrate the existence of a Section 2 violation by showing that "Proposition 200 interacts with social and historical conditions to deny Latino voters equal access to the political process and to elect their preferred representatives," the District Court held that Plaintiffs had failed to make such a

showing because they failed to demonstrate that "the observed difference in voter registration and voting rates of Latinos is substantially explained by race, as opposed to factors independent of race." Trial Op. at 46-47 (citing *Smith v. Salt River Project Agricultural Improvement and Power District*, 109 F.3d 586, 591 (9th Cir. 1997) ("*Salt River*")). However, the text and legislative history of Section 2, as well as this Court's post-*Salt River* decisions, clearly establish that such a demonstration is not required to show Section 2 causation; rather, "a causal connection may be shown where the discriminatory impact of a challenged voting practice is attributable to racial discrimination in the surrounding social and historical circumstances." *Farrakhan v. Washington*, 338 F.3d 1009, 1019 (9th Cir. 2003). Simply put, the District Court employed the wrong framework in determining whether Plaintiffs had provided evidence sufficient to show Section 2 causation, and therefore its evaluation of whether Plaintiffs had met their burden with respect to causation was fundamentally flawed.

Second, the District Court did not give sufficient weight in assessing Plaintiffs' Section 2 claim to the nine factors identified in the Senate Committee Report on the 1982 VRA Amendments as being "typical" indicators of Section 2 violations (the "Senate Factors"), which in turn led the District Court to evaluate improperly the plaintiffs' Section 2 evidence. In performing its Section 2 analysis, the District Court noted that courts were permitted to consider the Senate Factors

and reviewed the evidence provided by the Plaintiffs as to several of the factors, *see* Trial Op. at 40-48, but the Senate Factors were ultimately not central to the Court's determination. However, although their existence need not be demonstrated to establish a Section 2 violation, analyzing whether and to what extent there is evidence concerning the Senate Factors is a critical aspect of a Court's Section 2 analysis. As a practical matter, the Senate Factors identify those conditions in which VRA violations frequently arise; accordingly, if a party can show significant evidence concerning the Senate Factors, then the party is very likely to be able to demonstrate a Section 2 violation. Here, while correctly acknowledging Plaintiffs' substantial evidence regarding several key Senate Factors, the District Court did not afford such evidence appropriate weight and as a result its Section 2 analysis was distorted.

For these reasons, as well as those raised by Plaintiffs, this Court should reverse the District Court's conclusion that Proposition 200 does not violate Section 2 of the VRA.

I. THE DISTRICT COURT ERRED IN REQUIRING AN OVERT AND EXPLICIT CAUSAL LINK BETWEEN SOCIAL AND HISTORICAL DISCRIMINATION AND DISPROPORTIONATE IMPACT TO ESTABLISH A SECTION 2 CLAIM.

As an initial matter, the District Court employed the wrong standard in assessing whether Plaintiffs had demonstrated the causation element of their

Section 2 claim, *i.e.*, that the disparities in Latino and American Indian political participation in the political process were "on account of race or color." 42 U.S.C. § 1973. Relying on *Salt River*, the District Court held that Plaintiffs only could satisfy this requirement if they could show that "the observed difference in voter registration and voting rates" among Latinos and American Indians can be "substantially explained by race, as opposed to factors independent of race," and concluded that Plaintiffs had failed to provide evidence showing that to be the case. Trial Op. at 47 (citing *Salt River*, 109 F.3d at 591). The District Court's standard for what a party needs to show to establish Section 2 causation, however, goes well beyond what Section 2 demands; under the District Court's approach, Plaintiffs not only need to demonstrate that racial discrimination caused a disparity in voter registration and voting rates, but they also are required to show that such differences in political activity were not largely the result of "factors independent of race." *Id.*

The District Court's approach represents a fundamental misunderstanding of Section 2. As this Court observed in *Farrakhan*, "Section 2 plainly provides that a voting practice or procedure violates the VRA when a plaintiff is able to show, based on the *totality of the circumstances*, that the challenged voting practice results in discrimination on account of race." 338 F.3d at 1017 (emphasis in original). The nexus requirement between racial discrimination and disparities in

voting power is thus very different from the standard proposed by the District Court, and the Supreme Court in fact has described the "essence of a [Section 2] claim" to be "that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives." *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). Put simply, indirect and multi-factor causation rests at the core of a Section 2 claim, and a party may establish the requisite "causal connection" for a Section 2 claim by showing that "the discriminatory impact of a challenged voting practice is attributable to racial discrimination in the surrounding social and historical circumstances." *Farrakhan*, 338 F.3d at 1019.

Indeed, the District Court's approach to Section 2 causation runs contrary to the basic purpose of the provision. The current version of Section 2 derives from the 1982 amendments to that provision and reflects Congress's desire to overturn the Supreme Court's decision in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), which held that proof of discriminatory intent was a prerequisite to a Section 2 violation. In promulgating the 1982 Section 2 amendments, Congress made it clear that courts should take a pragmatic approach in analyzing Section 2 claims, *Farrakhan*, 338 F.3d at 1019 (noting "the importance of maintaining a practical perspective when evaluating the effects or lawfulness of a challenged voting practice"), and should focus on whether, as a practical matter, a challenged practice

and procedure resulted in the denial or abridgment of the right to vote on account of race. *Gingles*, 478 U.S. at 45 (observing that totality-of-the-circumstances analysis under Section 2 "depends upon a searching practical evaluation of the past and present reality, and on a functional view of the political process") (quotation omitted). In other words, the 1982 amendments were specifically designed to apply to circumstances in which a facially-neutral law combined with external, race-based factors to result in discrimination in the voting process. *Id.* ("[T]he 1982 Amendments and subsequent case law make clear that factors outside the election system can contribute to a particular voting practice's disparate impact when those factors involve racial discrimination.").

Moreover, the District Court's interpretation of *Salt River* reflects a misunderstanding of *Salt River* itself. *Salt River* turned on the fact that the plaintiffs in that proceeding entered into an extraordinary agreement with the defendants in which they ***actually stipulated*** to the "nonexistence of virtually every circumstance which might indicate that [the challenged voting practice] results in racial discrimination." *Salt River*, 109 F.3d at 595; *see also Farrakhan*, 338 F.3d at 1018 (observing that a finding of no Section 2 violation "was dictated by the *Salt River* plaintiffs' admission that there was no evidence of discrimination as measured by the Senate Report factors" and their broad stipulation).

More specifically, in *Salt River*, the plaintiffs brought a Section 2 challenge against a water district that afforded voting rights only to landowners, asserting that such a restriction on the electorate violated the VRA because the community's African-American population had lower home ownership rates than the community's white population. In support of their claim, however, plaintiffs submitted only bare statistical evidence of lower homeownership rates among African-American heads-of-household compared with white heads-of-household, and stipulated that (i) there was no evidence that the land ownership requirement was established or maintained with any discriminatory intent, (ii) there was no history of racial appeals in political campaigns in the district, that there was no history of racially polarized voting, (iii) the water district's election practices did not have the effect of "enhancing opportunity for racial discrimination in voting behavior," and (iv) there was "no known history or incident of racial discrimination in District elections." *Salt River*, 109 F.3d at 588, 595-96, nn.84-91.

In short, the *Salt River* plaintiffs stipulated not only that the challenged law was not enacted with discriminatory intent, but also that there was no history of racial discrimination outside the electoral system that could interact with the law to create a discriminatory result. *Salt River* simply held that without such evidence, plaintiffs could not establish a Section 2 violation. *Salt River* thus does not involve

the imposition of a causation standard other than the totality-of-the-circumstances approach set out the text of Section 2 – rather, it merely stands for the proposition that, even under the traditional test, a Section 2 plaintiff must show that the disparate impact actually resulted in some way from discrimination. *See United States v. Blaine County*, 363 F.3d 897, 912 n.21 (9th Cir. 2004) (observing that "*Salt River* simply held that there must be a causal connection between a voting requirement and a discriminatory result"); *Farrakhan*, 338 F.3d at 1019 (concluding that *Salt River*'s Section 2 analysis merely stands for the proposition that "a bare statistical showing of disproportionate impact on a racial minority does not satisfy the Section 2 'results' inquiry because causation cannot be inferred from impact alone").

By contrast, Plaintiffs in the instant proceeding clearly provided sufficient evidence to satisfy the Section 2 causation standard the law actually requires. As set out in more detail below in Part II, Plaintiffs provided significant evidence of historic, pervasive discrimination on the basis of race against Latinos and American Indians which has left both groups socioeconomically disadvantaged relative to the general Arizona population. As a result, Proposition 200's documentation requirements for voter registration – which require the acquisition of identification that may require, *inter alia*, appearance during work hours at government offices, submission of documents, completion of forms, and payment

of a fee, Trial Op. at 8-12 – impede the ability of unregistered members of both groups to participate effectively in the political process and frustrate their efforts to elect candidates of their choice. Plaintiffs therefore have shown that Proposition 200's documentation requirements for voter registration, because of their interaction with racial discrimination in the surrounding social and historical circumstances, result in the denial of Latinos and American Indians' right to vote on account of race. *See United States v. Village of Port Chester*, No. 06 Civ. 15173 (SCR), 2008 WL 190502, at *29 (S.D.N.Y. Jan. 17, 2008) ("Where [socioeconomic disparities due to past discrimination] are shown, and where the level of [minority] participation in politics is depressed, plaintiffs need not prove any further causal nexus between their disparate socioeconomic status and the depressed level of political participation.") (quotation and citation omitted).

Reversal of the District Court's Section 2 determination thus is warranted.

II. THE DISTRICT COURT ERRED IN FAILING TO GIVE APPROPRIATE WEIGHT TO THE SENATE FACTORS IN CONDUCTING ITS SECTION 2 ANALYSIS.

The District Court also erred in assessing the Plaintiffs' evidence of a Section 2 violation by improperly discounting Plaintiffs' evidence concerning the Senate Factors in performing its Section 2 analysis. A Section 2 analysis does not simply require that a court examine the "totality of the circumstances" surrounding the challenged voting practice; it also mandates how that examination of the

"totality of the circumstances" is conducted and what weight is accorded to different types of evidence. Although the assessment is to be a pragmatic one, with courts capable of finding a violation whenever a "voting practice results in discrimination on account of race," *Farrakhan*, 338 F.3d at 1017, a proper Section 2 analysis should in practice afford significant weight to evidence which demonstrates the existence of the Senate Factors because such evidence typically is probative of the question of whether a Section 2 violation has occurred. In conducting its Section 2 inquiry, however, the District Court did not give such weight to the Plaintiffs' evidence on the Senate Factors and therefore analyzed the "totality of the circumstances" surrounding Proposition 200's voter registration provisions through a distorted lens.

The Senate Factors derive from the Committee Report of the Senate Judiciary Committee which accompanied the 1982 reauthorization of the VRA. In connection with the amendments to Section 2, the Committee Report discussed how a party would go about proving a Section 2 claim and identified nine "typical" factors that plaintiffs could employ to establish a violation:

> 1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
>
> 2) the extent to which voting in the elections of the state or political subdivision is racially polarized;

> 3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
>
> 6) whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7) the extent to which members of the minority group have been elected to public office in the jurisdiction. . . .
>
> [8] Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; [and]
>
> [9] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

S. Rep. No. 97-417, at 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07 ("Senate Report"). The Senate Report went on to observe that these were not the only factors potentially relevant to a Section 2 violation and specifically noted that, in some cases, factors other than the nine Senate Factors would be dispositive. Senate Report at 28-29. But the Report also made clear that the Senate Factors would "often be the most relevant ones" for establishing a Section 2 claim, and

therefore evidence concerning the Senate Factors is particularly important for courts conducting a Section 2 "totality of the circumstances" analysis. *Id.*

In this case, although the District Court recognized that the Senate Factors had a role in the Section 2 analysis and reviewed Plaintiffs' evidence concerning the Factors, it failed to give such evidence the significant weight the law requires. Instead of viewing the Senate Factors as central to the Section 2 inquiry, the District Court focused on the overall standard, noting that "[a] voting practice or procedure violates the VRA when a plaintiff is able to show, based on the totality of the circumstances, that the challenged voting practice results in discrimination on account of race," Trial Op. at 41 (quoting *Farrakhan*, 338 F.3d at 1017), and pointing out that the "list [of Senate Factors] is not exclusive" of the evidence necessary to prove a Section 2 claim, Trial Op. at 41. While both statements are correct as a matter of law, they miss the key point when it comes to the Senate Factors – namely, that the Senate Factors are not a substitute for the general Section 2 standard, but guidance on how a court should decide whether that standard has been satisfied. *See East Jefferson Coal. For Leadership & Dev. v. Parish of Jefferson*, 926 F.2d 487, 491 (5th Cir. 1991) ("In evaluating the totality of the circumstances, the court should consider the factors listed in the Senate Judiciary Committee majority report accompanying the 1982 bill[.]"); *Turner v. Arkansas*, 784 F. Supp. 553, 567 (E.D. Ark. 1991) ("[The Supreme Court]

enumerated several 'objective factors' which a court should consider when analyzing the 'impact' of a challenged state practice. Those factors, listed in the Senate Report to the 1982 amendment, are often called the 'Senate factors'[.]").

Put simply, the fact that the Senate Factors are not exclusive does not imply that they are not critical to the Section 2 analysis. The Senate Factors identify issues which are typically probative of the question whether a particular voting practice denies a class of citizens an equal opportunity to participate in the political process on account of race. Thus, while a party can establish a Section 2 violation without providing evidence as to any of the Senate Factors, *see* Senate Report at 29, such evidence frequently is sufficient to establish a violation. Accordingly, in adjudicating a Section 2 claim, a court should give particular weight to evidence concerning such factors in deciding whether VRA violation has occurred. *See Village of Port Chester*, 2008 WL 190502, at *3 ("The key to [the Section 2 totality-of-the-circumstances] inquiry is an examination of the [] principal factors set forth in the Senate Judiciary Committee Report accompanying the 1982 amendments[.]"); *Magnolia Bar Ass'n, Inc. v. Lee*, 793 F. Supp. 1386, 1400 (S.D. Miss. 1992) ("[T]he 'totality of the circumstances' inquiry requires a court to consider in detail the factors included in the Senate Judiciary Committee Majority Report that accompanied the 1982 amendment to section 2."). The District Court

failed to do so in this proceeding, and therefore it improperly discounted evidence concerning the Senate Factors in assessing Plaintiffs' Section 2 claim.

In contrast, under a proper Section 2 analysis that accorded significant weight to Plaintiffs' evidence relating to the Senate Factors, it is clear that Proposition 200's voter registration provisions violate Section 2. The Plaintiffs provided substantial evidence as to Senate Factor 1, which the District Court credited, regarding the long history of official discrimination against both Latinos and American Indians in Arizona. In fact, the District Court identified numerous specific examples of discrimination against both populations, including the adoption of "restricted electoral eligibility requirements that allowed only white males and white Mexican males" to vote, literacy laws aimed at disqualifying non-English speakers from voting in state elections, and the denial of the right to vote to American Indians until 1948. Trial Op. at 42-43, 47-48. The District Court even found that this history of discrimination against Latinos in Arizona "has historically hindered their ability to fully participate in the political process." *Id.* at 42.

Furthermore, Plaintiffs also provided significant evidence as to Senate Factor 5 – which the District Court also credited – regarding the substantial socioeconomic disparities between the Latino and American Indian populations and the Arizona population as a whole, with both populations having lower levels

of education and lower personal incomes than the general population. *Id.* at 43-44, 48. The District Court specifically concluded that these socioeconomic disparities are hindering both groups' ability to participate effectively in the political process. *Id.* at 44, 48.

All of this evidence regarding the Senate Factors plainly demonstrates that the interaction of Proposition 200's voter registration provisions with the "social and historical conditions" in Arizona is causing Latinos and American Indians to have a reduced opportunity to participate in the political process and to elect the candidates of their choice. As numerous courts have noted, historical circumstances frequently interact with present-day political practices in a manner that renders an already-vulnerable population unable to fully participate in political processes. *See, e.g., Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1211-12 (5th Cir. 1989) (instructing a district court to consider on remand whether "vestiges of discrimination . . . interact with present political structures to perpetuate a historical lack of access to the political system"); *Buckanaga v. Sisseton Indep. Sch. Dist. No. 54-5, S.D.*, 804 F.2d 469, 474 (8th Cir. 1986) ("A history of pervasive, powerful discrimination may provide strong circumstantial evidence . . . that [the] present day ability of minorities to participate on an even footing in the political process has been seriously impaired by the past discrimination . . . .").

Moreover, just last year, the Supreme Court observed in *Crawford v. Marion County Election Board* that requiring parties to provide specific documentation to participate in various stages of the political process can place a "somewhat heavier burden" on "persons who because of economic or other personal limitations may find it difficult either to secure a copy of their birth certificate or to assemble the other required documentation to obtain a state-issued identification." 128 S. Ct. 1610, 1621 (2008). Here, obtaining the documents necessary to comply with Proposition 200's requirements for voter registration cannot be done without the payment of a fee and may require appearance at government offices during work hours, completion of forms, submission of documents, and in some cases, re-registration if the forms or documents are insufficient. Therefore, the burden imposed by those requirements disproportionately will fall on populations of a lower socioeconomic status, including Latinos and American Indians.

In sum, although the District Court considered evidence relating to the Senate Factors in performing its Section 2 analysis, it did not recognize their central role to the analysis or afford evidence concerning the factors sufficiently significant weight. As a result, its examination of the "totality of the circumstances" surrounding Proposition 200's impact on Latino and American Indian political participation was flawed, and it failed to recognize the extent to which Proposition 200's voter registration provisions denied those populations

equal access to the political process on account of race. Accordingly, for this additional reason, the District Court's Section 2 determination should be reversed.

CONCLUSION

For the reasons set out above, and for the reasons set out in the Brief of the Plaintiff-Appellants Maria Gonzalez *et al.*, the judgment of the District Court below should be reversed.

Dated: January 28, 2009

s/ Charles E. Borden

STEPHEN J. HARBURG
CHARLES E. BORDEN*
ADAM J. COATES
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300
*Counsel of Record

Attorneys for Amicus Curiae NALEO Educational Fund

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,535 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2003 in 14-point Times New Roman.

Dated: January 28, 2009

s/ Christopher Klimmek
Christopher Klimmek
Attorney for Amicus Curiae
NALEO Educational Fund

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 28th day of January, 2009, I electronically filed the foregoing Brief Amicus Curiae Of National Association Of Latino Elected And Appointed Officials Educational Fund In Support Of Reversal with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed a copy of the foregoing Brief by Federal Express Overnight Mail, postage prepaid, to the following non-CM/ECF participants:

Andrew P. Thomas
Maricopa County Attorney
M. Colleen Connor
MCAO Division of County Counsel
222 N. Central Avenue, Suite 1100
Phoenix, AZ 85003

Dennis I. Wilenchik
Kathleen Rapp
Wilenchik and Bartness, P.C.
The Wilenchik & Bartness Building
2810 N. Third Street
Phoenix, AZ 85004

Attorneys for Apache, Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Santa Cruz, Yavapai, and Yuma County Defendants/Appellees

Terence C. Hance
Coconino County Attorney
Jean E. Wilcox
Deputy County Attorney
110 East Cherry Avenue
Flagstaff, AZ 86001

Attorney for Coconino County Defendants/Appellees

James P. Walsh
Pinal County Attorney
Chris M. Roll
Nicole Weber
30 North Florence Street, Bldg. D
Florence, AZ 85232

Attorneys for Pinal County Defendants/Appellees

Dated: January 28, 2009

s/ Christopher Klimmek
Christopher Klimmek
Attorney for Amicus Curiae
NALEO Educational Fund