

1 Pursuant to Fed. R. Civ. P. 56(b) and Ariz. Local R. 56.1(a), Defendants State of
2 Arizona and the Arizona Secretary of State submit this Separate Statement of Facts in
3 support of their Motion for Partial Summary Judgment, which is filed herewith.

4 1. On November 2, 2004, Arizona voters adopted by ballot initiative
5 Proposition 200 (“Prop 200”). [Decl. of Counsel in Supp. of Mot. For Partial Summary
6 Judgment by Defs. State of Arizona and the Arizona Secretary of State (“Counsel
7 Decl.”) Tab 1 (Letter dated December 9, 2004, from Jessica Funkhouser to Joseph Rich,
8 and exhibits A and B thereto)]

9 2. Sections 3, 4 and 5 of Prop 200 amended Arizona’s voting laws in two
10 substantive ways: (1) applicants to register to vote were required to submit proof of U.S.
11 citizenship; and (2) voters who choose to vote in-person at the polls on election day (as
12 opposed to early voters) would be required to present identification. [Counsel Decl. Tab
13 1 ex. A (Proposition 200 Official Title, An Initiative Measure), at pp. 1-3)]

14 3. On December 9, 2004, the Arizona Attorney General submitted to the U.S.
15 Department of Justice (“DOJ”) a request for preclearance of Sections 3, 4 and 5 of Prop
16 200. [Counsel Decl. Tab 1 (Letter dated December 9, 2004 from Jessica Funkhouser to
17 Joseph Rich)]

18 4. The request for preclearance expressly stated, among other things, that
19 Prop 200’s amendments would “require applicants registering to vote to provide
20 evidence of United States citizenship with the application.” [Counsel Decl. Tab 1
21 (Letter dated December 9, 2004 from Jessica Funkhouser to Joseph Rich at p. 1)]

22 5. The preclearance request letter also included an “Analysis by Legislative
23 Council” of Prop 200’s amendments to Arizona’s voting laws, which analysis expressly
24 stated that the amendments “would require that evidence of United States citizenship be
25 presented by every person to register to vote,” and which set forth the forms of
26 identification specified by Prop 200 that would constitute satisfactory evidence of U.S.
27 citizenship. [Counsel Decl. Tab 1 (Letter dated December 9, 2004 from Jessica
28 Funkhouser to Joseph Rich at p. 2)]

6. The submission package to the DOJ comprised many pages and attached

1 numerous exhibits of information about Prop 200, including copies of the initiative, the
2 laws to be amended by Prop 200, and articles and other public information relating to its
3 passage. [Counsel Decl. Tab 1 (Letter dated December 9, 2004 from Jessica Funkhouser
4 to Joseph Rich, (referencing attached exhibits), and exhibits A and B thereto)]

5 7. The DOJ precleared (*i.e.*, the voting-related amendments) Sections 3, 4
6 and 5 of Prop 200 on January 24, 2005. [Counsel Decl. Tab 2 (Letter dated January 24,
7 2005 from Joseph Rich to Jessica Funkhouser)]

8 8. Since the inception of the National Voter Registration Act in 1995,
9 Arizona has used and accepted for voter registration the Federal Mail Voter Registration
10 Form (Federal Form), which was developed by the U.S. Election Assistance
11 Commission (“EAC”). [Counsel Decl. Tab 3 (Affidavit of Joseph Kanefield dated May
12 31, 2006) (“Kanefield Aff.”) ¶ 2]

13 9. Following the implementation of Prop 200, Arizona has continued to
14 accept both the Federal Form and Arizona’s form for voter registration purposes,
15 although the State requires submission of proof of U.S. citizenship along with whichever
16 application form the registrant submits. [Counsel Decl. Tab 3 (Kanefield Aff.) ¶ 2]

17 10. The Arizona Secretary of State makes the Federal Form available to
18 anyone who requests it, and the form is available for downloading and printing on the
19 EAC’s website. [Counsel Decl. Tab 3 (Kanefield Aff.) ¶ 4]

20 11. Most individuals who are eligible to register to vote already possess a
21 driver’s license or nonoperating identification card, and thus do not require any other
22 identification to vote. [Counsel Decl. Tab 4 (Deposition of Ronald Anthony Sissons
23 dated August 11, 2006), at 77:15-21)]

24 12. Many counties send official election mail and voter registration cards and
25 inform voters that they may use those items as identification at the polls. Those items
26 are free. [Counsel Decl. Tab 5 (County Defendant Responses to Requests for
27 Production); Tab 6 (Deposition of Karen Osborne, dated July 31, 2006), at 60:22-62:6;
28 Tab 7 (Deposition of F. Ann Rodriguez, dated August 2, 2006), at 84:7-12 and 85:25-

1 86:4; Tab 8 (Deposition of Kelly Dastrup, dated August 1, 2006), at 10:7-14 and 11:22-
2 13:1]

3 RESPECTFULLY SUBMITTED this 4th day of June, 2007.

4 TERRY GODDARD
5 Arizona Attorney General

6 s/Barbara A. Bailey
7 Mary O'Grady
8 Solicitor General
9 Carrie J. Brennan
10 Barbara A. Bailey
11 Assistant Attorneys General
12 Attorneys for the State of Arizona and the
13 Arizona Secretary of State
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 4th day of June, 2007, I caused the foregoing
3 document to be electronically transmitted to the Clerk's Office using the CM/ECF
4 System for filing and transmittal of a Notice of Electronic Filing to the following

5 CM/ECF Registrants:

6 David J. Bodney
7 Karen J. Hartman-Tellez
8 Steptoe & Johnson LLP
9 201 East Washington St., Ste. 1600
10 Phoenix, Arizona 85004-2382
11 dbodney@steptoe.com
12 khartman@steptoe.com

13 David B. Rosenbaum (**served electronically and hand-delivered**)
14 Thomas L. Hudson
15 Sara S. Greene
16 Osborn Maledon, P.A.
17 2929 N. Central, 21st Floor
18 Phoenix, Arizona 85012-2793
19 drosenbaum@omlaw.com
20 thudson@omlaw.com
21 sgreene@omlaw.com

22 Jon Greenbaum
23 Benjamin Blustein
24 Lawyers' Committee For
25 Civil Rights Under Law
26 1401 New York Avenue, Ste. 400
27 Washington, D.C. 20005
28 jgreenbaum@lawyerscommittee.org

Neil Bradley
ACLU Southern Regional Office
2600 Marquis One Tower
245 Peachtree Center Avenue
Atlanta, Georgia 30303
nbradley@aclu.org

Elliot M. Mincberg

1 People for the American
2 Way Foundation
3 2600 M Street, NW, Ste. 400
4 Washington, DC 20036
eminberg@pfaw.org

5 Luis Roberto Vera, Jr.
6 League of United Latin
7 American Citizens
8 111 Soledad, Ste. 1325
9 San Antonio, Texas 78205-2260
Irvlaw@sbcglobal.net

10 Daniel B. Kohrman
11 AARP Foundation Litigation
12 601 E Street, N.W., Ste. A4-240
13 Washington, DC 20049
dkohrman@aarp.org

14 Joe P. Sparks
15 Susan B. Montgomery
16 Sparks, Tehan & Ryley PC
17 The Inter Tribal Council of Arizona, Inc.
18 7503 First Street
19 Scottsdale, Arizona 85251
joe-sparks@qwest.net

20 David J. Becker
21 People for the American Way Foundation
22 2000 M Street, NW, Suite 400
23 Washington, D.C. 20036
dbecker@pfaw.org

24 Daniel R. Ortega, Jr.
25 Roush McCracken Guerrero
26 Miller & Ortega
27 650 N. 3rd Avenue
28 Phoenix, Arizona 85003
danny@rmgmoinjurylaw.com

Nina Perales (**served electronically and via FedEx**)
Mexican American Legal Defense and Education Fund

1 110 Broadway, Ste. 300
2 San Antonio, Texas 78205
3 nperales@maldef.org

4 M. Colleen Connor
5 MCAO Division of County Counsel
6 222 N. Central Avenue, Ste. 1100
7 Phoenix, Arizona 85003
8 connorc@mcao.maricopa.gov

9 Dennis I. Wilenchik
10 Kathleen Rapp
11 Wilenchik and Bartness, P.C.
12 2810 N. Third Street
13 Phoenix, Arizona 85004
14 diw@wb-law.com
15 kathleenr@wb-law.com

16 Judith M. Dworkin (**served electronically and hand-delivery**)
17 Marvin S. Cohen
18 Patricia Ferguson-Bohnee
19 SACKS TIERNEY P.A.
20 4250 N. Drinkwater Blvd. 4th
21 Scottsdale, Arizona 85251-3693
22 Judith.Dworkin@sackstierney.com

23 Criss E. Candelaria
24 Bradley Carlyon
25 Apache County Attorneys Office
26 PO Box 637
27 St. Johns, Arizona 86025
28 bcarlyon@apachelaw.net

Melvin R. Bowers, Jr.
Lance B. Payette
Navajo County Attorneys Office
PO Box 668
Holbrook, Arizona 86025
lance.payette@co.navajo.az.us

Brenna L. Clani
Navajo County Department of Justice
PO Box 2010

1 Window Rock, Arizona 86515
2 brennalclani@navajo.org

3 Jean E. Wilcox
4 Coconino County Attorney's Office
5 110 East Cherry Ave.
6 Flagstaff, Arizona 86001
7 jwilcox@coconino.az.gov

8 COPY of the foregoing filed electronically
9 this 4th day of June, 2007.

10 COPY of the foregoing hand-delivered with Notice of
11 Electronic Filing this 4th day of June, 2007 to:

12 The Honorable Roslyn O. Silver
13 United States District Court
14 Sandra Day O'Connor U.S. Courthouse, Suite 624
15 401 West Washington Street, SPC 59
16 Phoenix, AZ 85003-2158

17 _____ /s Elizabeth A. Stark

18 6799

19

20

21

22

23

24

25

26

27

28