

No. 12-71

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IN THE  
**Supreme Court of the United States**

THE STATE OF ARIZONA, *et al.*,  
*Petitioners,*

*v.*

THE INTER TRIBAL COUNCIL OF ARIZONA, INC., *et al.*,  
and JESUS M. GONZALEZ, *et al.*,  
*Respondents.*

*On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit*

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**BRIEF FOR AMICI CURIAE  
LATINOJUSTICE PRLDEF, NATIONAL  
ASSOCIATION OF LATINO ELECTED AND  
APPOINTED OFFICIALS EDUCATIONAL  
FUND, ASIAN AMERICAN JUSTICE  
CENTER, ASIAN LAW CAUCUS, ASIAN  
PACIFIC AMERICAN LEGAL CENTER, ET AL.,  
IN SUPPORT OF RESPONDENTS**

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**BRIEF FOR AMICI CURIAE LATINOJUSTICE  
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OFFICIALS EDUCATIONAL FUND, ASIAN  
AMERICAN JUSTICE CENTER, ASIAN &  
PACIFIC ISLANDER AMERICAN VOTE,  
ASIAN AMERICAN BAR ASSOCIATION OF  
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LEADING TOGETHER, AND SOUTH ASIAN  
BAR ASSOCIATION OF NORTHERN  
CALIFORNIA IN SUPPORT OF  
RESPONDENTS**

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## STATEMENT OF INTEREST OF AMICI CURIAE<sup>1</sup>

Amici are national and state nonprofit organizations dedicated to protecting and advancing the rights of Latino and Asian communities in the United States.<sup>2</sup> Because Latinos and Asians make up a large percentage of the nation's naturalized citizens, Amici are particularly concerned by state statutes, like Arizona's Taxpayer and Citizen Protection Act (Proposition 200), that impede the electoral participation of naturalized citizens by making it especially difficult for them to register to vote. Amici therefore urge the Court to affirm the Ninth Circuit's decision invalidating the voter registration provisions of Proposition 200.

## SUMMARY OF ARGUMENT

Our Constitution provides that “a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency.” *Luria v. United States*, 231 U.S. 9, 22 (1913). Arizona's Proposition 200 violates this mandate and is preempted by the National Voter Registration Act (NVRA) because it requires naturalized citizens—predominantly Latinos and Asians—to surmount additional and unique hurdles to exercise their fundamental right to vote. By

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<sup>1</sup> Letters from the parties consenting generally to the filing of briefs by amicus curiae are on file with the Court. Pursuant to this Court's Rule 37.6, we note that no part of this brief was authored by counsel for any party, and no person or entity other than Amici, their members, and their counsel made any monetary contribution to the preparation or submission of the brief.

<sup>2</sup> A description of amici is set forth in the attached Appendix.

imposing additional burdens on naturalized citizens who seek to register to vote, Proposition 200 conflicts with the NVRA's goal of creating a uniform and non-discriminatory voter registration system where applicants can easily register to vote by mail.

Specifically, of the six methods Proposition 200 prescribes for documenting one's citizenship, only three are realistically available to naturalized citizens. Each of these methods is so flawed as to require naturalized citizens to submit multiple applications and to expend significant time and resources:

1. The first available method requires naturalized citizens to *appear in-person* at the county recorder's office during the limited hours it is open to "present" a physical copy of their original naturalization certificate, as federal law prohibits photocopying this document. Naturalized citizens who work from 8:00 a.m. to 5:00 p.m. on weekdays will have to take time off to register to vote and risk a loss of wages. Alternatively, naturalized citizens may attempt to provide the "number of the certificate of naturalization," but Arizona does not have the ability to verify citizenship using this number and, therefore, voter registration applications that provide this number are automatically rejected. Arizona's attempt to cure this systemic flaw by accepting verifiable Alien Registration Numbers instead of the non-verifiable certificate of naturalization numbers has not been generally implemented, contradicts the plain language of Proposition 200 and, in any event, will still result in the rejection of the voter registration applications of newly naturalized citizens because of at least a two-week delay before this information will appear in the

database upon which county recorders rely. Additionally, many naturalized citizens are unable to provide an Alien Registration Number because they are required to return their permanent resident cards (which contain this number) prior to naturalizing, and many certificates of naturalization (especially for those citizens who naturalized before 1975) do not include this number.

2. The second available method, provision of a “driver’s license or nonoperating identification license” number issued after October 1, 1996, is not available to the legion of naturalized citizens who obtained a driver’s license before they naturalized. Unbeknownst to them, their driver’s licenses are associated in the state database with an “F” code (for “Foreign”) that renders such licenses useless to verify citizenship. This code typically remains in the database long after the driver is naturalized, but the code is not apparent on the face of the license. Thus, naturalized citizens are generally unaware of the limitation of their licenses until their voter registration applications are denied.

3. The third available method, mailing photocopies of their United States Passports, will not help most naturalized citizens because they do not have passports, and the application process is expensive and lengthy, with an average four-to-six week processing time. This option likewise requires naturalized citizens to appear in-person at a Passport Application Acceptance Facility or a Regional Passport Center with their original naturalization certificates—posing a hardship to those who cannot take off time from work during regular business hours or who risk losing wages for doing so.



Far from allowing straightforward mail-in registration, these onerous requirements can often be met only through an in-person appearance at a local governmental office to obtain and provide the requisite documentation. Often, naturalized citizens must submit a voter registration application multiple times before they successfully register to vote. Because the NVRA gives all citizens, including naturalized citizens, the right to use a streamlined, federal, mail-in voter registration form, Proposition 200 is preempted.

#### ARGUMENT

***I. PROPOSITION 200 IS PART OF A LEGACY OF LAWS AND VOTER RESTRICTIONS THAT TARGET ARIZONA'S IMMIGRANTS AND ADVERSELY IMPACT ITS LARGE POPULATION OF NATURALIZED CITIZENS, MOST OF WHOM ARE LATINO OR ASIAN.***

On November 2, 2004, Arizona voters approved Proposition 200, a ballot initiative predicated on the finding that “illegal immigrants have been given a safe haven in this state with the aid of identification cards that are issued without verifying immigration status . . . .” (Proposition 200, § 2 (admitted as Trial Ex. 1).) In addition to requiring residents to provide proof of citizenship to register to vote and specified forms of identification at the polls, Proposition 200 contains provisions excluding immigrants from non-federally mandated public benefits.<sup>3</sup> *See* Ariz. Rev. Stat. §§ 16-152; 16-166; 16-579; 46-140.01 (2012).

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<sup>3</sup> The only provision of Proposition 200 currently at issue before this Court is Ariz. Rev. Stat. § 16-166, which governs voter registration requirements.

For the entirety of its almost 150-year history, Arizona has enacted legislation specifically targeting naturalized citizens, immigrants, and minorities in order to make the voting process more cumbersome for these groups.<sup>4</sup> When it separated from New Mexico as a new territory in 1863, for instance, Arizona passed restrictive laws precluding Mexican Americans from electoral eligibility and voting. (Dist. Ct. FOF, at 42 (citing Testimony of Dr. Rosales, Tr. 354; 353-55).) Arizona also maintained literacy and education requirements for voter registration until 1972, a scheme which scholars have concluded was specifically used to intimidate Spanish-speaking and Native American minorities. (*Id.* at 42 (citing testimony of Dr. Rosales, Tr. 354).) And now, through the implementation of Proposition 200, Arizona requires its naturalized citizens to surmount additional and unique hurdles to exercise their right to vote.

Arizona's longstanding history of imposing burdens on immigrants and minority groups is not limited to the voting rights arena. Almost immediately after the Mexican-American War, Mexican property owners—new U.S. Citizens—were divested of their land. (*See id.*) In 1914, just two years after achieving statehood, Arizona passed a statute requiring employers in businesses with five or more employees to ensure that 80% of their workforce

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<sup>4</sup> The District Court found this history of discrimination beyond dispute, relying heavily on the expert testimony of Dr. F. Arturo Rosales, a professor of history at Arizona State University, who focuses his studies on Mexican Americans in Arizona. (Dist. Court Findings of Fact and Conclusions of Law (Dist. Ct. FOF) at 42-44, *Gonzalez v. Arizona*, No. 2:06-cv-001268-ROS, (D. Ariz., Docket No. 1041, Aug. 20, 2008).)

consisted of “native-born citizens of the United States”—a statute found unconstitutional by this Court. *See Truax v. Raich*, 239 U.S. 33 (1915); (*see also* Dist. Ct. FOF at 43 (citing Testimony of Dr. Rosales, Tr. 361-62)). Moreover, racial segregation and discrimination were prevalent in Arizona schools and in the workforce. (Dist. Ct. FOF at 43 (citing Testimony of Dr. Rosales, Tr. 357-59, 362).)

Arizona’s disparate treatment of immigrants and minorities continues to this day and has been the subject of numerous constitutional challenges. Indeed, Proposition 200 was enacted in conjunction with a spate of legislation targeting immigrants, including a statute recently found by this Court to be preempted, in large part, by federal law. *Arizona v. United States*, 132 S. Ct. 2492, 2510 (2012) (invalidating portions of S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010)).<sup>5</sup>

Proposition 200 is part of a long line of legislation targeting Arizona’s population of immigrants and minorities—and, as a consequence, its naturalized citizens, who account for 7.4% of Arizona’s citizen voting-age population. Manual Pastor & Jared

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<sup>5</sup> Arizona is not alone in its attempts to regulate immigration. Numerous other states have likewise passed legislation that conflicts with federal immigration policy. *See, e.g.* H.B. 56, 2011 Reg. Sess. (Ala. 2011); Senate Enrolled Act No. 590, 117th Sess. (Ind. 2011); A. 69, 119th Sess. (S.C. 2011); H.B. 497, 2011 Gen. Sess., (Utah 2011). *See generally* Brennan Center for Justice, *Election 2012: Voting Laws Roundup* at note 2 (Oct. 16, 2012), *available at* [http://www.brennancenter.org/content/resource/2012\\_summary\\_of\\_voting\\_law\\_changes/#\\_edn2](http://www.brennancenter.org/content/resource/2012_summary_of_voting_law_changes/#_edn2) (last visited Jan. 15, 2013) (identifying at least 17 states that have introduced legislation requiring voter registration applicants to provide specified, additional proofs of citizenship to register to vote).

Sanchez, Center for the Study of Immigrant Integration, *Rock the (Naturalized) Vote: the Size and Location of the Recently Naturalized Voting Age Citizen Population* at 13 (Oct. 2012), available at [http://csii.usc.edu/documents/Naturalization\\_and\\_Voting\\_Age\\_Population\\_web.pdf](http://csii.usc.edu/documents/Naturalization_and_Voting_Age_Population_web.pdf). Almost half of this growing segment of Arizona's population was naturalized after the year 2000. *Id.* at 12.<sup>6</sup> In 2011, 12,784 people in Arizona naturalized and became eligible to vote. U.S. Dep't of Homeland Sec., *Profiles on Naturalized Citizens: 2011*, <http://www.dhs.gov/profiles-naturalized-citizens-2011-1> (last visited, Jan. 18, 2013).

Arizona's naturalized citizens are predominantly and increasingly Latino and Asian. Latinos and Asians represent 50.8% and 18.7% of Arizona's naturalized citizens of voting age, respectively. Pastor & Sanchez, *supra*, at 13. These same two groups make up 33.7% of Arizona's general population (Latinos, 30.1%; Asians, 3.6%). U.S. Census Bureau, *American Community Survey*, <http://www.census.gov/acs/www/> (last visited, Jan. 14, 2013).

Latinos and Asians are becoming naturalized citizens at an accelerating rate. (Expert Report of Dr. Jorge Chapa, Ph.D. ("Chapa Report"), Table 5 (Jan. 4, 2008) (admitted as Trial Ex. 862).) From 2004 to 2005, naturalization of Latinos increased by 8.3% in contrast to an increase of only 1.4% for

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<sup>6</sup> Specifically, 46.9% were naturalized in the 2000s; 23.3% were naturalized in the 1990s; 12.2% were naturalized in the 1980s; and 17.7% were naturalized before 1980. Pastor & Sanchez, *supra*, at 12.

individuals from non-Hispanic countries.<sup>7</sup> Chapa Report, *supra*, Table 5. Asian Americans also have high naturalization rates, with 57% of the national foreign-born Asian American community becoming naturalized. Asian American Center for Advancing Justice, *A Community of Contrasts* at 13, [http://www.advancingjustice.org/pdf/Community\\_of\\_Contrast.pdf](http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf) (last visited, Jan. 14, 2013). From 2006 to 2011, the total Asian population of Arizona grew from 2.3% to 2.7% and, within that population, the number of naturalized foreign-born Asian citizens increased from 17.8% of the State's Asian population to 21.3%. U.S. Census Bureau, *American Community Survey*, <http://www.census.gov/acs/www/> (last visited, Jan. 18, 2013).

For these expanding and historically marginalized segments of Arizona's population, Proposition 200 erects significant barriers to participation in the electoral process.

***II. PROPOSITION 200 IMPOSES UNIQUE BURDENS ON ARIZONA'S NATURALIZED CITIZENS IN EXERCISING THEIR FUNDAMENTAL RIGHT TO REGISTER TO VOTE.***

Proposition 200 requires that Arizona's county recorders "reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship," which can be shown by only six statutorily prescribed methods. Ariz. Rev. Stat. § 16-166(F). Of these methods of proof, only three are

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<sup>7</sup> Latinos' representation within the naturalized citizen population makes Arizona's naturalized population one of the most Latino-centric in the country, along with Florida's (51.5%), New Mexico's (63.0%), and Texas's (54.4%). Pastor & Sanchez, *supra*, at 13.

realistically available for Arizona's naturalized citizens: (1) a presentation to the county recorder of the applicant's U.S. naturalization documents or the number of the certificate of naturalization, *id.* § 16-166(F)(4); (2) the number of the applicant's Arizona driver's license or state identification card if issued after October 1, 1996, *id.* § 16-166(F)(1); or (3) a photocopy of the applicant's U.S. Passport, *id.* § 16-666(F)(3).<sup>8</sup>

As more fully explained below, and as recognized by the District Court, naturalized citizens face numerous obstacles in satisfying the requirements

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<sup>8</sup> The statute provides additional options that are not available for naturalized citizens. Naturalized citizens will not possess a U.S. birth certificate to satisfy § 16-166(F)(2). (*See* Arizona Secretary of State, Election Procedures Manual at 43 (Oct. 2007) (admitted as Trial Ex. 4).) Only a small number of naturalized citizens will possess a Bureau of Indian Affairs card number, tribal treaty card number or tribal enrollment number in satisfaction of § 16-166(F)(6).

Section § 16-166(F)(4) allows county recorders to accept out-of-state licenses if the license states "that the person has provided satisfactory proof of United States citizenship." However, this is not a valid option because no state driver's license contains evidence of U.S. citizenship on its face. (*See* Dep. of Karen Osborne, Maricopa County Recorder's Office at 24:15-25:11 (July 31, 2006) (admitted into evidence by stipulation, *Gonzalez v. Arizona*, No. 2:06-cv-001268-ROS (D. Ariz., Docket No. 1009, July 22, 2008)); *see also* Letter from Maricopa County Elections Department to Registrant (Sept. 23, 2005) (admitted as Trial Ex. 210).)

Lastly, although §16-166(F)(5) provides that applicants may present any "[o]ther documents or methods of proof that are established pursuant to the Immigration Reform and Control Act of 1986," this method is likewise not a valid option because that federal statute did not establish any methods of proof of citizenship. Pub. L. No. 99-603, 100 Stat 3359 (Nov. 6, 1986) (codified in scattered sections of Title 8).

of §§ 16-166(F)(1), (3) and (4). (*See* Dist. Ct. FOF at 12, 30 & 36-37 (finding that naturalized citizens may have to apply twice to register to vote, pay a fee to complete the second registration, or register in person at the county recorder's office).) As just one example, an Arizona driver's license will not suffice as proof of citizenship for Arizona residents who obtained their driver's licenses before they became naturalized citizens, while they were legal permanent residents, because a state database code of "F" for "Foreign" is associated with their licenses. In addition, foreign-born individuals who obtain derivative citizenship through, for example, the naturalization of their parents, are not required to apply for a certificate of citizenship. Therefore, their options are even more limited, and they may find themselves without adequate proof of their citizenship under the statute when registering to vote—requiring them to undertake a lengthy and costly process for obtaining the requisite documents to satisfy Proposition 200.

The lead Plaintiffs in this case encountered many of the difficulties that confront naturalized citizens in Arizona when they try to register to vote. For instance, Mr. Jesus Gonzalez is an Arizona resident and naturalized citizen who was repeatedly frustrated in his attempts to register to vote as a result of Proposition 200. Mr. Gonzalez was born in Mexico and has lived in the United States for more than four decades. Immediately after taking an oath of citizenship at a naturalization ceremony, Mr. Gonzalez filled out a voter registration application and provided his certificate of naturalization number as proof of citizenship—as instructed by § 16-166(F)(4) and the voter registration application Mr.

Gonzalez completed. (Dist. Ct. FOF at 17 (citing testimony of Jesus M. Gonzalez, Tr. at 222-223; Deficiency Letter from Krysty Marin, Yuma County Recorder's Office to Jesus Gonzalez (undated) (admitted as Trial Ex. 712)).) But Mr. Gonzalez's application was denied because the State does not have the ability to verify citizenship using that number. (*Id.*) Mr. Gonzalez attempted to register a second time by submitting his Arizona driver's license as proof of citizenship pursuant to § 16-166(F)(1), but this application was also denied as unsatisfactory under Proposition 200. (Dist. Ct. FOF at 18 (citing Testimony of Mr. Gonzalez, Tr. 220-225).)

Unfortunately, Mr. Gonzalez's story is not uncommon. Between January 2005 and September 2007, 11,000 Arizona citizens had to attempt registration under Proposition 200 at least two times before successfully registering to vote. (Dist. Ct. FOF at 14 (citing Testimony of Dr. Louis Lanier, Tr. 329).) All told, more than 31,000 applicants were rejected during this period, (*id.*), and, while 11,000 of them succeeded after repeat attempts, it seems that many, like Mr. Gonzalez, were simply deterred from registering to vote after receiving one or more rejections. Ultimately, 20,000 Arizona residents (approximately 20% of whom are Latinos)<sup>9</sup> were

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<sup>9</sup> Plaintiffs' expert, Dr. Lanier, determined that the effect of voter registration rejections due to Proposition 200 fell disproportionately on Latinos. The representation of Latinos among the rejected applicants under Prop 200 was 2.8% higher than their representation in the total number of registration applicants. (Dist. Ct. FOF at 13 (citing testimony of Dr. Lanier, Ex. 883, Table 2).) Dr. Lanier also concluded that Latinos (like Mr. Gonzalez) were less likely to reregister successfully after



unable to register to vote because of Proposition 200's onerous requirements. The unique obstacles presented by the law effectively relegated this population to second-class citizenship.

*A. Presentation of a Certificate of Naturalization or the "Number of the Certificate of Naturalization" Creates Undue Burdens on Naturalized Citizens.*

A naturalized citizen may satisfy the proof of citizen requirement by making

[a] presentation to the county recorder of the applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States immigration and naturalization service by the county recorder.

Ariz. Rev. Stat. § 16-166(F)(4). Naturalized citizens often face significant hurdles in "presenting" their naturalization documents to the county recorder. And the alternative of presenting the "number of the certificate of naturalization" is futile because the State cannot use that number to verify citizenship – prompting an automatic rejection of the eligible voter's application and the need for (undeterred) naturalized citizens to submit a subsequent voter registration application with additional information, risking their timely registration.

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having their registration forms rejected pursuant to Prop 200. (Testimony of Dr. Lanier, Tr. at 262:10-263:1.)

**1. Proposition 200 Mandates In-Person  
“Presentation” of Naturalization  
Documents for Naturalized Citizens.**

Unlike native-born citizens who are permitted under Proposition 200 to submit a “photocopy” of their birth certificates to the county recorder, Proposition 200 requires naturalized citizens to “present” a physical copy of their certificates of naturalization to the county recorder. Ariz. Rev. Stat. § 16-166(F)(2), (4).

The Office of the Arizona Secretary of State has consistently interpreted § 16-166F(4) to mean that an original naturalization certificate must be presented in person, as opposed to being mailed. (Testimony of Dr. Joseph Kanefield, Tr. at 699:17-25; 765:20-766:8.) The in-person requirement is consistent with not only the plain language of the statute and the Secretary of State’s interpretation, but also federal law—which criminalizes the copying of a naturalization certificate “without lawful authority.” 18 U.S.C. § 1426(h) (2006). In fact, the certificate of naturalization itself prominently states in red ink and capital letters: “IT IS PUNISHABLE BY U.S. LAW TO COPY, PRINT OR PHOTOGRAPH THIS CERTIFICATE, WITHOUT LAWFUL AUTHORITY.” (Photocopy of Naturalization Certificate for Jesus Maria Gonzalez (admitted as Trial Ex. 711).) Thus, to satisfy § 16-166F(4) with a certificate of naturalization, an applicant must appear before the county recorder in person to present proof of citizenship.

This in-person requirement applies only to naturalized citizens and creates significant hardships. For example, it may be impossible for an applicant to go to the county recorder’s office during

the limited hours the office is open.<sup>10</sup> Applicants may have difficulty appearing in the office due to their work schedules and may be unable or unwilling to take time off from work to appear in-person to register (and will lose income if they are hourly wage-earners). Applicants may also experience difficulty travelling to the counties' offices, if, for example, they live in a rural area that is a great distance from the recorder's office and do not have access to a car or an easy means of public transportation.<sup>11</sup>

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<sup>10</sup> Each of Arizona's fifteen county recorder offices keeps different hours. Some maintain regular business hours, 8:00 a.m. – 5:00 p.m. during the week (*e.g.*, Cochise, Greenlee, and Maricopa Counties), while others are closed on certain days (*e.g.*, Apache, Gila, Graham, and La Paz Counties) or maintain satellite offices that are only open for a few hours per week (*e.g.*, Navajo County). *See* Arizona Dep't of State, *County Recorder and Election Offices*, <http://www.azsos.gov/election/county.htm> (last visited Dec. 27, 2012). None of the county recorder offices is open during evening or weekend hours to accommodate the many individuals who work every weekday during the hours of 8:00 a.m. – 5:00 pm. *Id.*

<sup>11</sup> A naturalization certificate is not the type of document that individuals carry with them and have readily available if they happen to be in the vicinity of the county recorder's office. There is no legal requirement for a naturalized citizen to carry documentary proof of naturalization. (Dep. of Gerri Ratliff, Deputy Assoc. Dir. of the Ariz. National Security and Records Verification Directorate at 87:10-15 (April 22, 2008) (admitted by stipulation, *Gonzalez v. Arizona*, No. 2:06-cv-001268-ROS (D. Ariz., Docket No. 1009, July 22, 2008).) And a certificate of naturalization is “not as easily transportable as a wallet-sized driver's license. Rather, it is an eight-and-one-half by eleven-inch document with an original photograph of the naturalized citizen in the bottom left corner. Naturalized citizens are rarely asked to produce the document, and normally do not carry it on

Despite the express language of Proposition 200, the Secretary of State's interpretation, and the warnings on the face of the certificates that photocopying is illegal, five of fifteen counties in Arizona have an informal practice of accepting photocopies of a naturalization certificate as proof of citizenship. This practice exists even though the counties announce on their websites that "presentation" of the naturalization certificate is required, and officials in those counties testified that they were aware that it is illegal to copy a naturalization certificate without lawful authority. (Dist. Ct. FOF at 31 (citing Dep. of Laura Dean-Lytle, Pinal County Recorder at 53 (Jan. 16, 2008); Dep. of Krysty Marin, Voter Registration Coordinator of Yuma County at 112 (Jan. 18, 2008); Dep. of Karen Osborne, Maricopa County Elections Director at 38-39 (July 1, 2006); Dep. of Patty Hansen, Coconino County Elections Administrator at 27 (Aug. 1, 2006); and Dep. of F. Ann Rodriguez, Pima County Recorder at 63-64 (Aug. 2, 2006));<sup>12</sup> *see also* Voter Registration Form from Santa Cruz County Website (admitted as Trial Ex. 216); Voter Registration Form from Pinal County Website (admitted as Trial Ex. 219); Voter Registration Form from Maricopa County Website (admitted as Trial Ex. 221).) Indeed, the warnings on the certificates deterred naturalized citizens from submitting photocopies, as reflected by their communication of

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their person." *Boustani v. Blackwell*, 460 F. Supp. 2d 822, 825 (N.D. Ohio 2006).

<sup>12</sup> All cited depositions were admitted into evidence by stipulation. (*See* Stipulation to Admit Deposition Designations, *Gonzalez v. Arizona*, No. 2:06-cv-001268-ROS, Docket No. 1009 (D. Ariz., Docket No. 1009, July 22, 2008).)

their concerns to county officials about this prohibited (and potentially criminal) practice. (*See* E-mail from Carmen Waite, Assistant Election Director (Mar. 4, 2005) (admitted as Trial Ex. 291).)

The inconsistent treatment of the “presentment” requirement in and of itself creates a barrier to the registration process that was uniquely experienced by naturalized citizens. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225 (1990) (noting that “unbridled discretion in the hands of a government official or agency” is an “evil[] that will not be tolerated”) (quotation and citation omitted).<sup>13</sup>

Moreover, it is significantly more difficult to obtain a duplicate or replacement copy of a certificate of naturalization than is the case for a certified copy of a birth certificate or a driver’s license. According to the United States Citizenship and Immigration Service (“USCIS”), it can take up to a year-and-a-half to receive a duplicate copy of a certificate of naturalization. (Osborne Dep. at 47:6-48:3 (July 31, 2006).) During such a long waiting period, there can be as many as eight elections in Arizona and an applicant may miss the deadline to register in time to participate in federal elections. (*Id.*) Likewise, the cost of ordering a replacement certificate is \$345, which is far higher than any other acceptable proof of citizenship under Proposition 200.<sup>14</sup> U.S. Dep’t of

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<sup>13</sup> *See also Papachristou v. City of Jacksonville*, 405 U.S. 156, 168 (1972) (striking ordinance on vagueness grounds because of state enforcement entity’s “unfettered discretion”); *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958) (striking ordinance that granted government official “uncontrolled discretion” over “freedoms which the Constitution guarantees”).

<sup>14</sup> A replacement certified birth certificate costs \$10.00 in Arizona; a driver’s license costs \$4.00; and a U.S. passport book

Homeland Sec., Form G-1055, Fee Schedule (revised Nov. 23, 2010) (fee associated with Form N-565), *available at* <http://www.uscis.gov/files/form/g-1055.pdf>.

**2. The Alternative of Providing the “Number of the Certificate of Naturalization” Results in the Automatic Rejection of a Voter Registration Application.**

Proposition 200 also provides that naturalized citizens may register to vote by supplying the “number of the certificate of naturalization” on their voter registration forms, subject to the county recorder’s ability to verify the certificate number with the federal government. Ariz. Rev. Stat. § 16-166(F)(4).

Following passage of Proposition 200, the Secretary of State updated the State’s voter registration form to add a new box 20 on the form that requested the “number of the certificate of naturalization.” (Arizona Secretary of State Election Procedures Manual at 47 (Oct. 2007) (admitted as Trial Ex. 4).) However, it is undisputed that the State is, in fact, unable to verify that number. The database the State relies upon to conduct its verification is the USCIS Systematic Alien Verification for Entitlements, or “SAVE” Database, and the SAVE system allows queries only by Alien Registration Numbers, not by a certificate of naturalization number. (*See* Dist. Ct. FOF at 4 (citing testimony of Dr. Kanefield, Tr. at 654); *see also* Ratliff Dep. at 19:16-19, 32:14-19, 43:19-44:4 (Apr. 22, 2008).)

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or card is \$100 and \$45, respectively. (Dist. Ct. FOF at 8-10 (citing Trial Exhibits 672, 675 and 676).)

The certificate of naturalization number and the Alien Registration Number are not interchangeable. The Alien Registration Number is used by non-citizens to provide information to USCIS while they are under the supervision and control of the federal government. After naturalization, USCIS has no further business with an immigrant, and an individual who naturalizes must turn in his or her Alien Registration Card to USCIS. (Ratliff Dep. at 83:4-6, 88:6-12 (Apr. 22, 2008); Dep. of Michael Quinn, Chief of Record Services at 40:9-13, 45:4-12 (Apr. 22, 2008).)

Accordingly, asking applicants to provide the naturalization certificate number created a system under which county recorders automatically rejected the application of every naturalized citizen who attempted to register to vote by complying with this provision of Proposition 200. After automatically rejecting the application, the county recorder then required applicants like Mr. Gonzalez, who had simply followed the voter registration form in the first place, to apply again and provide different citizenship information. This system not only deterred many eligible voters, but also risked the timeliness of their voter registration for purposes of a particular election because they would not be deemed registered until the subsequent application (if filed) was approved.

### **3. The State's Post Hoc Attempt To Cure This Faulty System by Requiring Verifiable Alien Registration Numbers Does Not Lift the Unreasonable Burdens on Naturalized Citizens.**

Two years after implementing Proposition 200 and while defending against this lawsuit, Arizona sought and received permission from the U.S. Department of

Justice to request that naturalized citizens provide a number *other* than that mandated by Proposition 200 in order to register to vote. However, the current Secretary of State's decision to change the Arizona voter registration form to request the "Alien Registration Number"—which, incidentally, naturalized citizens no longer have any other use for—has not cured the difficulties created by this provision of Proposition 200. (Dist. Ct. FOF at 4; F. Ann Rodriguez Dep. at 60:18:22 (August 2, 2006).)

*First*, some county recorders continue to request that applicants provide the number of their certificates of naturalization when registering to vote, as is required by the statute. The registration form posted on certain counties' websites asks for a certificate of naturalization number, as do the circulated paper registration forms. (*See, e.g.*, Voter Registration Form from Santa Cruz County Website (admitted as Trial Ex. 216); Voter Registration Form from Pinal County Website (admitted as Trial Ex. 219); Voter Registration Form from Maricopa County Website (admitted as Trial Ex. 221); Greenlee County Recorder's Office Voter Registration website and Voter Registration Form downloaded from it (admitted as Trial Ex. 223); Jasper Altaha Dep. 39:20-40:12 (Jan. 23, 208) (noting that as of January 2008 all paper voter registration forms in Maricopa County requested the "certificate of naturalization" number).) Applicants who follow this instruction will be rejected automatically and put through the double-registration process reserved only for naturalized citizens. The inconsistent enforcement of Proposition 200—with some county recorders insisting on the number specified in the statute, while other counties request a different number later



specified by the Secretary of State—alone infringes upon the fundamental right to vote by placing “unfettered discretion” regarding registration requirements in the hands of local county officials. *See FW/PBS, Inc.*, 493 U.S. at 225; *Papachristou*, 405 U.S. at 168; *Staub*, 355 U.S. at 322.

*Second*, the plain language of Proposition 200 requires that an applicant provide “the number of the certificate of naturalization,” not the Alien Registration Number or any other number that can be found on the naturalization certificate, such as the applicant’s date of birth or date of naturalization. The statute does not authorize the Secretary of State or county recorders to request an applicant’s Alien Registration Number. As such, no future Secretary of State is bound by the current decision to request the Alien Registration Number.

*Third*, naturalized citizens encounter difficulties registering to vote even if the State relies upon their purportedly verifiable Alien Registration Numbers. Because of delays in the entry of citizenship information into the USCIS database following naturalization ceremonies, county recorders are unable to confirm citizenship of newly naturalized citizens for two weeks or longer, and the county recorders will reject any application that they cannot verify in SAVE. (Email from Craig Stender to Roberta Abney et al. (Sept. 28, 2005) (admitted as Trial Ex. 304); VRAZ-II County Advisory Committee, Issue 0059-Citizenship-Verification of Naturalization through SAVE (undated) (admitted as Trial Ex. 307); Arizona Secretary of State Election Procedures Manual at 47 (Oct. 2007) (admitted as Trial Ex. 4).)

Recognizing that the federal database may not reflect the U.S. citizenship status of recently

naturalized citizens, the State's Elections Procedures Manual instructs county recorders to advise naturalized citizens that they may have to provide *additional* documentary proof of citizenship when they register to vote if the federal database system cannot confirm their citizenship before the registration deadline for an upcoming election. (Arizona Secretary of State Election Procedures Manual at 47 (Oct. 2007) (admitted as Trial Ex. 4); Rodriguez Dep. at, 36:6-37:13 (Jan. 22, 2008); Marin Dep. at 51:7-9 (Jan. 18, 2008); Osborne Dep. at 48:8-22 (Jan. 14, 2008).) Moreover, some naturalization certificates do not have an Alien Registration Number printed on them, and naturalized citizens may have no other means to obtain this number as they are required to turn in their permanent resident cards before taking the oath of U.S. citizenship pursuant to 8 C.F.R. § 338.3. (*See, e.g.*, Certificate of Naturalization for Herta Antoinette Anita Weber (admitted as Trial Ex. 961); Quinn Dep. at 56:11-15 (April 22, 2008).) Citizens who naturalized before 1975 face particular difficulties because Alien Registration Numbers were neither printed on their certificates of naturalization nor used to track them in the federal immigration service's database; rather, "certificate numbers" were used to track these individuals and these numbers would likely not be found in the Central Index System database used today. (Dist. Ct. FOF at 4 (citing Quinn Dep. at 53:13-54:20 (Apr. 22, 2008)); *see also* Quinn Dep. at 56:16-20, 61:21-63:9, 64:9-16 (April 22, 2008).)

*Fourth*, the record demonstrates that naturalized citizens may be confused by a county recorder's request for an Alien Registration Number and consequently deterred from re-applying to register to

vote. For example, the reaction of Mr. Gonzalez's wife, a witness in the case who is also a naturalized citizen, to the county recorder's request for an Alien Registration Number was "[t]hat it couldn't be, because I'm already an American citizen, and they were asking me for a document that was irrelevant." (Testimony of Maria Magdalena Gonzalez, Tr. at 213:17-23.) Naturalized citizens are required to surrender their Alien Registration Cards when they naturalize, and they would have no reason to retain the Alien Registration Number for subsequent use.

***B. Many Naturalized Citizens Carry "Type F" Driver's Licenses, Which Are Rejected under Proposition 200.***

A naturalized citizen may also present "the number of [his or her] driver's license or nonoperating identification license issued after October 1, 1996 by the department of transportation" to satisfy Proposition 200. Ariz. Rev. Stat. § 16-166(F)(1). But this method is not a viable option for Arizona residents who obtained a driver's license before 1996. Nor is it available to naturalized citizens who obtained a license before becoming citizens—which includes a large number of individuals.

Pursuant to an Arizona Motor Vehicle Department (MVD) policy, "noncitizens of the United States that can demonstrate lawful presence in this country are issued a Type F driver license." (Ariz. Office of the Att'y Gen. Op. No. I05-001, Identification Requirements for Voter Registration (Feb. 4, 2005), *available* *at*  
<https://www.azag.gov/sites/default/files/sites/all/docs/Opinions/2005/I05-001.pdf> (admitted as Trial Ex.

138)).<sup>15</sup> Significantly, however, these Type F licenses cannot be used to verify citizenship after the holders of these licenses naturalize and, therefore, Type F licenses cannot satisfy Proposition 200. (*See* Arizona Secretary of State Election Procedures Manual at 47-48 (Oct. 2007) (admitted as Trial Ex. 4) (for Type F licenses, the registrar must confirm citizenship through other means; “if no satisfactory proof of citizenship is provided, the voter registration record should be cancelled and the voter should be contacted within ten business days of receipt of the registration form as provided by A.R.S. § 16-134 with a request to provide proper proof of citizenship.”).)

Because driving is an essential part of daily life in Arizona, many immigrants get their driver’s licenses before obtaining U.S. citizenship.<sup>16</sup> These initial licenses carry an “F” code in the MVD database. This “F” code, however, is not apparent on the face of the driver’s license and does not change even when an individual’s citizenship status changes. Rather, all information related to whether a customer has a Type F license is contained in his or her database record and that record is used for all future transactions with the MVD. (Dep. of Cindy Lou Gage, Driver’s Program Manager, Ariz. Dep’t of Transp. at 17:18-18:6 (Jan. 10, 2008).) The MVD

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<sup>15</sup> *See also* Arizona Dep’t of Transp., *New to Arizona?*, <http://www.azdot.gov/mvd/azwelcome.asp> (last visited Jan. 4, 2013) (describing steps to obtain driver’s license for permanent residents).

<sup>16</sup> More than three-quarters of Arizona’s working population commute by car to their place of employment. *See* Sperling’s Best Places, *Transportation in Arizona*, <http://www.bestplaces.net/transportation/state/arizona> (last visited Jan. 4, 2013).

does not perform routine updates on customer records that would allow it to identify changes in citizenship status. Nor does renewal of a driver's license automatically trigger an update of an individual's citizenship status or removal of the "F" code associated with the driver's license. (Collins Dep. 20:24-21:2 (Jan. 10, 2008); Gage Dep. 94:7-13 (Jan. 10, 2008).)

In fact, the *only* way for a naturalized citizen who carries a Type F license to get the "F" code removed is to visit the MVD in person with proof of citizenship and to ask for the computer record to be updated to reflect his or her current citizenship status. (Dist. Ct. FOF at 12 (citing Dep. of Ann. Yanofsky, East Central Region Manager, Ariz. Motor Vehicle Dep't at 65-66 (Jan. 10, 2008); Gage Dep. at 90 (Jan. 10, 2008)).) Beyond the obvious burdens associated with having to visit the MVD in person to update a driver's license record to reflect a change in citizenship status, this fix is also unlikely given that individuals holding a Type F license receive no indication that their licenses are inadequate for the purpose of voter registration until their applications to register are rejected. (Yanofsky Dep. at 67:9-12 (Jan. 10, 2008); Gage Dep. at 54:15-25, 90:7-22 (Jan. 10, 2008); Dep. of Donna Collins, Customer Service Identity Specialist, Ariz. Motor Vehicle Dep't at 19:24-20.2 (Jan. 10, 2008).) Indeed, many naturalized citizens become aware of the limitations of the Type F license only when they unsuccessfully attempt to register to vote by using their driver's license numbers—requiring undeterred individuals to attempt to register again using a different proof of citizenship or to appear before the MVD and ask for

a non-Type F license to support a subsequent voter registration application.

*C. Most Naturalized Citizens Do Not Hold U.S. Passports, and This Document Is Difficult and Costly To Obtain.*

Like all Arizonans seeking to register to vote, a naturalized citizen may also present “a legible photocopy of pertinent pages of [his or her] United States Passport identifying the applicant and the applicant’s passport number.” Ariz. Rev. Stat. § 16-166(F)(3). As of 2010, however, only 35% of U.S. citizens held U.S. passports. U.S. Dep’t of State, *Passport Statistics*, [http://travel.state.gov/passport/ppi/stats/stats\\_890.html](http://travel.state.gov/passport/ppi/stats/stats_890.html) (last visited, Jan. 14, 2013) (101,797,872 passports in circulation in 2010); U.S. Census Bureau, *The Foreign-Born Population in the United States: 2010*, at Table 1, <http://www.census.gov/prod/2012pubs/acs-19.pdf> (last visited, Jan. 14, 2013) (showing 286,870,000 citizens, including native-born and naturalized citizens).

For naturalized citizens, as for all others, passports are difficult and expensive to obtain. A first-time applicant must appear in person at a Passport Application Acceptance Facility or a Regional Passport Center with an application form, provide proof of citizenship and photo identification, pay a \$135 fee, and submit a passport-sized photograph. *See* U.S. Dep’t of State, *First Time Applicants*, [http://travel.state.gov/passport/get/first/first\\_830.html](http://travel.state.gov/passport/get/first/first_830.html) (last visited, Dec. 28, 2012). Acceptable proof of citizenship for naturalized or derivative citizens includes the in-person presentation of a naturalization certificate or certificate of citizenship. *Id.*

This alternative replicates many of the burdens associated with the other options described above. An in-person appearance is difficult for many new citizens who cannot take off time from work during regular business hours or who risk losing wages for doing so. Moreover, the State Department takes on average 4-6 weeks to process routine passport applications, which may prevent a new citizen from registering in time for an election cycle. *See* U.S. Dep't of State, *Processing Times*, [http://travel.state.gov/passport/processing/processing\\_1740.html](http://travel.state.gov/passport/processing/processing_1740.html) (last visited Dec. 27, 2012). Because most naturalized citizens do not hold a U.S. passport and cannot easily obtain one, this option does not remove the unreasonable obstacles Proposition 200 poses to their voter registration.

***D. Proposition 200 Leaves Derivative Citizens Without Adequate Means To Register To Vote.***

In addition to the burdens imposed on all naturalized citizens, Proposition 200 creates a distinct obstacle for “derivative citizens”—foreign-born minors who become citizens automatically when their parents naturalize or when they are adopted by parents who are American citizens.<sup>17</sup> *See* 8 U.S.C.

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<sup>17</sup> On October 30, 2000, President Clinton signed into law the Child Citizenship Act of 2000, Pub. L. No. 106-396, §§ 101 & 104, which “liberalizes the Immigration and Nationality Act’s conditions for the automatic derivative naturalization of alien children of United States-born or naturalized parents. . . .” *Drakes v. Aschcroft*, 323 F.3d 189, 190 (2d Cir. 2003). The law was intended to ease the process by which foreign-born children become citizens and “eliminated the need in many instances for parents to apply to the Immigration and Naturalization Service for Certificate of Citizenship for their children who are not U.S. citizens at birth.” Statement of President Clinton on the Child

§ 1431 (2006). *See generally* David A. Isaacson, *Correcting Anomalies in the United States Law of Citizenship by Descent*, 47 Ariz. L. Rev. 313, 317 (2005) (describing U.S. law with respect to derivative citizenship, or citizenship *jus sanguinis* (literally, “right of the blood”)). Derivative citizens “may, but are not required to, apply for a certificate of citizenship.” U.S. Dep’t of Homeland Sec., Office of Immigration Statistics, Population Estimates: Estimates of the Legal Permanent Resident Population in 2011, at 2 (July 2012) (“DHS LPR Statistics 2011”), *available at* [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_lpr\\_pe\\_2011.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_lpr_pe_2011.pdf).

By looking at the number of parents who applied for a separate certificate of citizenship on behalf of their minor children, the Department of Homeland Security, Office of Immigration Statistics, estimates that approximately 1.2 million individuals obtained citizenship derivatively between 1980 and 2011, or approximately 40,000 new derivative citizens nationally each year.<sup>18</sup> DHS LPR Statistics 2011, at 3.

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Citizenship Act of 2000, 2000 WL 1618478, at \*1 (Oct. 31, 2000).

<sup>18</sup> Ascertaining exactly how many derivative citizens exist is necessarily complicated because derivative citizens need not take any official action to confirm their citizenship. DHS’s estimate does not account for those derivative citizens whose parents do not file for certificates of citizenship. In addition, the passage of the Child Citizenship Act, *supra* note 17, “caused a substantial increase in the number of children now eligible for derivative citizenship.” Lee J. Terán, *Mexican Children of U.S. Citizens: “Viges Prin” and Other Tales of Challenges to Asserting Acquired U.S. Citizenship*, 14 Scholar 583, 678 (2012).



For this group, obtaining the documentation required by Proposition 200 upon reaching voting age is not a simple matter. The filing fee for an individual seeking a certificate demonstrating derivative citizenship is \$600. U.S. Dep't of Homeland Sec., Form G-1055, Fee Schedule (revised Nov. 23, 2010) (fee associated with form N-600), *available at* <http://www.uscis.gov/files/form/g-1055.pdf>. This prohibitive cost alone will deter many from applying. Even if this obstacle is surmounted, however, it takes on average six months for USCIS to process an application for a new certificate of citizenship. Immigration Direct, *N-600: Processing Time*, <http://kb.immigrationdirect.com/Knowledgebase/N-600-processing-time> (last visited, Jan. 4, 2013). Therefore, a young derivative citizen would have to apply for citizenship papers at or before the age of 17 in order to use these papers to register to vote by age 18. Few teenagers have or should be expected to have such forethought.

***III. PROPOSITION 200 CONFLICTS WITH THE CENTRAL PURPOSE OF THE NVRA, AS DEMONSTRATED BY ITS IMPACT ON NATURALIZED CITIZENS.***

***A. Through the NVRA, Congress Intended to Create a Uniform and Non-Discriminatory Mail-in Voter Registration System.***

In enacting the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg *et seq.* (2006), Congress was reacting to the decades-long history of “restrictive registration laws and administrative procedures” introduced by States “to keep certain groups of citizens from voting.” H.R. Rep. No. 103-9, at 2, *reprinted in* 1993 U.S.C.C.A.N. 105, 106 (Feb. 2,

1993).<sup>19</sup> Arizona was one of the states that maintained restrictive measures intended to keep minorities and immigrants out of the ballot box. *See supra* Point I. Arizona's enactment of these discriminatory policies included maintaining literacy and education requirements for voter registration until 1972. (Dist. Ct. FOF at 42 (citing testimony of Dr. Rosales, Tr. 354).)

Congress found these “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.” 42 U.S.C. § 1973gg(a)(2); *see also* 139 Cong. Rec. S5744-01, S5746 (May 11, 1993) (statement of Sen. Akaka) (“In order to register to vote, individuals must now contend with a variety of local registration laws and procedures that may inhibit voter participation. Enacting uniform national registration procedures is

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<sup>19</sup> These “undesirable” groups included

in the North, the wave of immigrants pouring into the industrial cities; in the South, blacks and the rural poor. The poll tax, literacy tests, residency requirements, selective purges, elaborate administrative procedures and annual reregistration requirements were some of the techniques developed to discourage participation. These restrictions, along with a weakening of political party competition, were so effective that between 1896 and 1924, the voter turnout for Presidential elections dropped from 79 percent to 49 percent. In the South, the turnout went from 57 percent to 19 percent, with the black vote dropping from 44 percent to essentially zero percent.

*Id.* at 106.

the most practical way to register eligible voters. By making voter registration more accessible, we would increase the number of registered voters and expand the most fundamental right of all Americans.”).

In attempting to remedy this problem, Congress acted to increase the number of citizens who register to vote, and to do so in a manner that ensured the integrity of the electoral process. 42 U.S.C. § 1973gg(b)(1) & (3). Thus, Congress set out to create a registration process that was “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” *Id.* § 1973gg-6(b)(1); *see also* H.R. Rep. No. 103-9, at 3, *reprinted in* 1993 U.S.C.C.A.N. at 107 (“The unfinished business of registration reform is to reduce these obstacles to voting to the absolute minimum while maintaining the integrity of the electoral process.”).

One of the three programs created by Congress to fulfill this legislative purpose was a uniform mail-in registration system, which required all states to “accept and use the mail voter registration application form prescribed by the Federal Election Commission . . . for the registration of voters in elections for Federal office.”<sup>20</sup> 42 U.S.C. § 1973gg-4(a)(1). This program was intended “[t]o increase registration of eligible citizens.” S. Rep. No. 103-6, at

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<sup>20</sup> The duties of the “Federal Election Commission” were later transferred to the Election Assistance Commission (EAC), 42 U.S.C. § 15322 (2006). In addition to the mail-in registration program, Congress created what has been popularly referred to as the “motor-voter program,” requiring states to register voters simultaneously at the time they apply for a driver’s license, 42 U.S.C. § 1973gg-3, and an agency registration program, whereby states were required to designate all public assistance and disability assistance agencies to be available for voter registration, *id.* § 1973gg-5.

1-2, *reprinted in* 1993 WL 54278, at \*1 (Feb. 25, 1993).

***B. Proposition 200 Creates a Discriminatory and Non-Uniform Voter Registration System That Places Distinct Burdens on Naturalized Citizens.***

By imposing unique and onerous difficulties on naturalized citizens who seek to register to vote, Proposition 200 conflicts with the express intention of Congress in passing the NVRA. Fundamentally, Arizona has enacted precisely the type of “restrictive registration law” that Congress was explicitly combating in the NVRA. H.R. Rep. No. 103-9, at 2, *reprinted in* 1993 U.S.C.C.A.N. at 106. As one district court has already observed, procedures that discriminate against naturalized citizens stand in direct conflict with the NVRA’s command for voter registration that is “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” *See United States v. Florida*, 870 F. Supp. 2d 1346, 1350, (S.D. Fla. June 28, 2012) (holding Florida’s methods for purging non-citizens from registration rolls in violation of § 1973gg-6 because it “made it likely that the properly registered citizens who would be required to respond and provide documentation would be primarily newly naturalized citizens. The program was likely to have a discriminatory impact on these new citizens. And while the Secretary suggests that having to respond to this kind of inquiry is of little import, that is not so. A state cannot properly impose burdensome demands in a discriminatory manner.”).

In addition, Proposition 200’s effect on naturalized citizens demonstrates its interference with the NVRA’s goal of establishing a uniform mail-in registration system. Congress rejected language

approving states' ability to request proof of citizenship for this precise reason. In approving the version of the NVRA eventually passed, the Conference Committee of the House and Senate rejected a proof-of-citizenship provision, observing:

The conferees agree with the House bill and do not include this provision from the Senate amendment. It is not necessary or consistent with the purposes of this Act. *Furthermore, there is concern that it could be interpreted by States to permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act. . . .* These concerns lead the conferees to conclude that this section should be deleted.

H.R. Conf. Rep. No. 103-66, at 23-24, *reprinted in* 1993 U.S.C.C.A.N. 140, 148-49 (Apr. 28, 1993) (emphasis added). After the Conference Committee issued its report, a group of Representatives in the House sought to recommit the bill because the Committee had deleted the proof-of-citizenship provision. 139 Cong. Rec. H2264-03, H2273 (May 5, 1993). The motion was soundly defeated and the Conference Committee's version of the bill approved. *Id.* at H2275-76.<sup>21</sup>

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<sup>21</sup> See *Gonzalez v. Arizona*, 677 F.3d 383, 441 (9th Cir. 2012) (Kozinski, J., concurring) (“[T]he history here consists of actions taken by legislative bodies, not just words penned by staffers or lobbyists. The Court has recognized that such drafting history *can* offer interpretive insight: ‘Congress’ rejection of the very language that would have achieved the result the Government urges here weighs heavily against the Government’s interpretation.”) (quoting *Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80 (2006)).

Congress was prescient in observing that states might rely on a proof-of-citizenship requirement effectively to eliminate the mail as a means for a naturalized citizen to register. Through Proposition 200, Arizona has done just this. The only way for a naturalized citizen (who doesn't have a U.S. passport) to register successfully in his or her first attempt is to present, *in person*, an original certificate of naturalization. If, instead, a naturalized citizen hazards the use of a mail-in registration form, his or her application is likely to be rejected. In many cases, the numbers such an applicant fills in on the mail-in form simply will not work: certificate of naturalization numbers are not verifiable; Alien Registration Numbers are not authorized under the statute, are not generally accepted, and are not a reliable means of verifying citizenship for newly naturalized citizens or those who were naturalized before 1975; and a driver's license number is not a viable option for a naturalized citizen who obtained the license before 1996 or before becoming a citizen.

The NVRA was enacted to create a uniform mail-in registration system. Because Proposition 200 erects a significant barrier to achieving this goal, it is preempted.

**CONCLUSION**

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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## Appendix

**APPENDIX:****LIST OF AMICI CURIAE**

**Asian & Pacific Islander American Vote (APIAVote)** is a national nonpartisan, nonprofit organization that encourages and promotes civic participation of Asian Pacific Islander Americans in the electoral and public policy processes at the national, state and local levels. APIAVote envisions a society in which all Asian Pacific Islander Americans fully participate in and have access to the democratic process. As such, APIAVote has a long-standing interest in voting rights and protecting the rights of Asian Americans and Pacific Islanders to access the polls. This interest has resulted in APIAVote's Congressional testimony against restrictive proof of citizenship and identification requirements and participation in a number of amicus briefs before the courts on the issue.

The **Asian American Bar Association of the Greater Bay Area (AABA)** represents the interests of Asian Pacific American attorneys in the Greater San Francisco Bay Area. It is one of the largest Asian Pacific American bar associations in the nation and one of the largest minority bar associations in the State of California. From its inception in 1976, AABA has been actively involved in civil rights issues and has advocated on issues regarding minority communities, diversity, and equal protection. Among other things, AABA filed an amicus brief in the *Bakke* affirmative action case in the United States Supreme Court in 1977 and in *In re Marriage Cases* in the California Supreme Court in 2007.

**Asian American Institute (AAI)** is a pan-Asian, non-partisan, not-for-profit organization located in

Chicago, Illinois, whose mission is to empower and advocate for the Asian American community through advocacy, coalition-building, education, and research. AAI is a member of the Asian American Center for Advancing Justice, whose other members include Asian American Justice Center, Asian Law Caucus, and Asian Pacific American Legal Center. AAI's programs include community organizing, leadership development, and legal advocacy. AAI is deeply concerned about the discrimination and other challenges that immigrants face, including laws or policies that disproportionately impact and hinder eligible citizens' ability to exercise their fundamental right to vote. Accordingly, AAI has a strong interest in this case.

**Asian American Justice Center (AAJC)** is a national nonprofit, nonpartisan organization based in Washington, D.C. AAJC is a member of the Asian American Center for Advancing Justice, whose other members are Asian American Institute, Asian Law Caucus, and Asian Pacific American Legal Center. Founded in 1991, AAJC works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. In accomplishing its mission, AAJC strives to promote civic engagement, forge strong and safe communities, and create an inclusive society in communities on a local, regional, and national level. A nationally recognized voice on behalf of Asian Americans, AAJC focuses its expertise on voting rights, anti-Asian violence prevention/race relations, census issues, immigrant rights, language access, and affirmative action. AAJC has maintained a strong interest in the voting rights of Asian Americans and strives to protect Asian Americans'

access to the polls. AAJC has supported efforts to increase access to voter registration, including working on the successful passage of the National Voter Registration Act of 1993. Such long-standing interest has resulted in AAJC's participation in a number of amicus briefs before the courts regarding voting rights and on this particular issue.

The **Asian Law Alliance (ALA)**, founded in 1977, is a nonprofit public interest legal organization with the mission of providing equal access to the justice system to the Asian and Pacific Islander communities in Santa Clara County, California. Through our Voting Rights and Education project, ALA has monitored the implementation of Section 203 of the Voting Rights Act since 1998.

Established in 1972, the **Asian Law Caucus (ALC)** is the country's oldest civil rights and public interest legal organization serving the Asian Pacific American community. ALC is dedicated to the pursuit of equality and justice for all sectors of society. ALC represents primarily low-income, monolingual, or limited English proficient Asian Pacific Americans in the areas of employment/labor, immigration, housing/community development, and civil rights. Through our Voting Rights project, ALC works to ensure the full participation of all eligible voters in the electoral process.

Founded in 1983, the **Asian Pacific American Legal Center of Southern California (APALC)**, a member of the Asian American Center for Advancing Justice, is the nation's largest nonprofit public interest law firm devoted to the Asian American, Native Hawaiian and Pacific Islander community. APALC provides direct legal services to indigent members of our community and uses impact litigation, policy advocacy,

community education and leadership development to obtain, safeguard and improve the civil rights of Asian Americans, Native Hawaiians and Pacific Islanders. APALC's civil rights litigation has covered a broad range of issues such as race and national origin discrimination, access to education, immigration and naturalization, language rights, garment worker rights and other low-wage worker exploitation. APALC has a long history of working to protect the voting rights of historically disenfranchised communities and thus has a strong interest in the outcome of this case.

The **Asian Pacific American Network of Oregon (APANO)** is a statewide, grassroots organization, uniting Asians and Pacific Islanders to achieve social justice. We envision a just and equitable world where Asians and Pacific Islanders are fully engaged in the social, economic and political issues that affect us. APANO has worked for over 15 years engaging Asian and Pacific Islander citizens in the electoral process, providing language access and increasing opportunities for civic participation. Arizona's Proposition 200 is inconsistent with federal requirements, adding additional burdens for citizens in the democratic process and further impacting Asian and Pacific Islander communities who currently experience significant disparities in voter participation.

**Asian Services in Action, Inc. (ASIA)** is a nonprofit health and human services agency in Ohio dedicated to empowering and advocating for Asian Americans/Pacific Islanders (AAPIs) and to providing AAPIs access to quality, culturally, and linguistically appropriate information and services. Incorporated in 1995, ASIA serves over 10,000 individuals

annually, the majority of whom are immigrants and refugees from Asia, through legal assistance, social services, vocational training, and issue advocacy. ASIA believes that Proposition 200 places undue burdens on, and chills civic engagement among, voter registrants and voters who are naturalized citizens. In the course of conducting a nonpartisan, statewide Voter Registration and Education Project in 2012, ASIA and its partners witnessed firsthand how limited English proficiency and unfamiliarity with American civic institutions created high barriers for AAPI naturalized citizens who wished to vote, both during voter registration and at the polls. ASIA staff and volunteers prevented several such citizens from being wrongfully turned away from the polls due to simple misunderstandings on Election Day. Given the negligible national rate of proven voter fraud, ASIA believes that proof of citizenship laws unnecessarily hamper naturalized citizens from participating in our democracy.

**Association of Asian Pacific Community Health Organizations (AAPCHO)** is a national association of community health organizations serving medically underserved Asian Americans, Native Hawaiians, and other Pacific Islanders. AAPCHO is dedicated to promoting advocacy, collaboration, leadership, access, and civic participation to improve the health status of these groups. As a unified voice of its membership, AAPCHO shares its collective knowledge and experiences with policy makers at the national, state, and local levels. In addition, AAPCHO and its member centers seek to improve the integration and engagement of community health centers and their patients in the electoral process.

**Center for Asian Pacific American Women** is a national organization dedicated to building leadership capacity in our communities. The intention of the National Voter Registration Act was to encourage greater access to voter registration for our citizens. The NVRA increased the opportunity for our citizens to engage in our communities. Proposition 200 places yet another obstacle in the expansion of civic participation and leadership.

**Center for Pan Asian Community Services, Inc. (CPACS)** is a private nonprofit located in Atlanta, Georgia. Our mission is to promote self-sufficiency and equity for immigrants, refugees, and the underprivileged through comprehensive health and social services, capacity building, and advocacy. CPACS has sponsored numerous events and provided community services such as voter registration drives, polling site assistance, exit polling, voter education, etc. during the most recent election cycle. CPACS supports the protection and advancement of the voting rights of Asian and Pacific Islander Americans.

**Chinese for Affirmative Action (CAA)** was founded in 1969 to protect the civil and political rights of Chinese Americans and to advance multiracial democracy in the United States. Today, CAA is a progressive voice in and on behalf of the broader Asian and Pacific American community. CAA advocates for systemic change that protects immigrant rights, promotes language diversity, and remedies racial injustice.

Founded in 1972, the **Chinese Progressive Association (CPA)** educates, organizes and empowers the low-income and working class immigrant Chinese community in San Francisco to build

collective power with other oppressed communities to demand better living and working conditions and justice for all people. As part of the CPA's Political Empowerment Campaign, CPA has trained and developed dozens of new grassroots leaders and reached thousands of Chinese immigrant voters.

Founded in 1973, **Filipino Advocates for Justice (FAJ)** is an advocate for immigrant and civil rights for the Filipino community and serves the more vulnerable in our community by helping recent arrivals, youth and low wage workers navigate the challenges and hurdles of life in the US. FAJ seeks to build a strong and empowered Filipino community by organizing constituents, developing leaders, providing services, and advocating for policies that promote social and economic justice and equity for all.

**Hispanic Federation** provides grants to a broad network of Latino nonprofit agencies serving the most vulnerable members of the Hispanic community and advocates nationally with respect to the vital issues of education, health, immigration, economic empowerment, civic engagement, and the environment.

**Hispanic National Bar Association (HNBA)** is a nonprofit, nonpartisan, national professional association that represents the interests of over 100,000 attorneys, judges, law professors, legal assistants, and law students of Hispanic descent in the United States and its territories. The HNBA has thirty-eight affiliated bars in various states across the country. The continuing mission of the HNBA is to improve the study, practice, and administration of justice for all Americans by ensuring the meaningful participation of Hispanics in the legal profession.



Since its inception 40 years ago, the HNBA has served as the national voice for Hispanics in the legal profession and has promoted justice, equity, and opportunity for Hispanics.

**Japanese American Citizens League (JACL)** was founded in 1929. It is the oldest and largest Asian American civil rights organization in the United States. JACL has over 10,000 members and 110 chapters throughout the Nation, including Arizona. The JACL was a leading organization in removing state alien land laws and in securing redress for Japanese Americans imprisoned during World War II. The JACL also has a long history of advocacy in issues relating to immigration, naturalization, and voting rights.

**Labor Council for Latin American Advancement (LCLAA)** is a national organization representing the interests of approximately 2.2 million Latino trade unionists in the United States and Puerto Rico. Founded in 1973, LCLAA builds coalitions between the Latino community and Unions in order to advance the civil, economic and human rights of all Latinos.

**LatinoJustice PRLDEF** (formerly known as the Puerto Rican Legal Defense and Education Fund) was founded in New York City in 1972. Its continuing mission is to protect the civil rights of all Latinos and to promote justice for the pan-Latino community especially across the Eastern United States. It has worked to secure the voting rights and political participation of Latino voters since 1972 when it initiated a series of suits to create bilingual voting systems throughout the United States.

**National Asian Pacific American Bar Association (NAPABA)** is the national association of Asian

Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys and more than 60 local Asian Pacific American bar associations, who work variously in solo practices, large firms, corporations, legal services organizations, nonprofit organizations, law schools, and government agencies. Since its inception in 1988, NAPABA has served as the national voice for Asian Pacific Americans in the legal profession and has promoted justice, equity, and opportunity for Asian Pacific Americans. NAPABA engages in civil rights advocacy on various fronts and has a particular interest in ensuring that all naturalized citizens are afforded the opportunity to vote and therefore opposes restrictive voter registration laws.

**National Asian Pacific American Women's Forum (NAPAWF)** is the only national, multi-issue Asian and Pacific Islander (API) women's organization in the country, with offices in Washington D.C., New York, and Oakland, and eleven chapters throughout the United States. NAPAWF's mission is to build a movement to advance social justice and human rights for API women and girls. Since its founding, NAPAWF has supported and advocated for public policies that advance civil rights, economic opportunity, educational access, health and reproductive justice, immigrant and refugee rights, and efforts to end violence against women and girls. Barriers to voting pose a significant obstacle to the full range of civil rights for API women. NAPAWF strongly supports this effort to ensure that all citizens have a meaningful right to vote.

**National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund** is

the leading nonprofit organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituents include the more than 6,000 Latino elected and appointed officials nationwide who serve on bodies including local and state school boards, municipal councils, state legislatures, and the U.S. Congress. For several decades, the NALEO Educational Fund has worked to mobilize eligible Latinos to register and vote, and to build integrated national and local Latino voter education and participation programs, because our nation's growing Latino electorate must be fully engaged in order to ensure the sustained strength of our democracy. In particular, we advocate voter registration procedures that encourage the broadest possible involvement in elections of new and historically under-represented Americans.

**National Institute for Latino Policy** is a nonpartisan policy center established in 1982 that focuses on Latino policy issues. Among our concerns are the rights of immigrants in the United States and the promotion of full civic participation by the Latino community. The policies of the State of Arizona in placing unique obstacles on immigrants in their ability to vote represents a major act of discrimination that results in the disenfranchisement of a disproportionate number of persons from this class. We oppose such policies.

**National Organization for Mexican American Rights, Inc. (NOMAR, Inc.)**, a national nonprofit organization with the mission to protect the civil rights of Hispanic Americans and to promote equal opportunity for Hispanic Americans in employment and education, supports the respondents in the above

mentioned case before the Supreme Court of the United States. A critical mission of NOMAR, Inc. is to protect the civil rights of Hispanic Americans, which include the fundamental right of all United States citizens to vote. We believe that this right extends to all citizens whether born in the United States, or naturalized after migrating to the United States. We believe that the state of Arizona, through Proposition 200, passed in 2004, has instituted a voter registration process that discriminates against Latino and Asian naturalized citizens by imposing unreasonable and essentially unachievable requirements to prove citizenship that effectively deny them their right to vote. We believe that this law violates the intent of the National Voter Registration Act of 1993 (“NVRA”) and that the voter registration requirements of Proposition 200 directly conflict with the NVRA’s command for voter registration that is uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965. We believe that these requirements are intended to suppress the voting rights of Latinos and Asians, and is based on a xenophobic bias against Latinos and Asians. Therefore, NOMAR, Inc. fully supports the respondents’ position that this law is unconstitutional.

**OneAmerica** was formed directly after September 11, 2001, in response to the hate crimes and discrimination against immigrant communities. Its mission is to advance the fundamental principles of democracy, justice, and human rights at the local, state and national levels. OneAmerica works with community partners to protect and strengthen fundamental American rights for all people, especially immigrants. OneAmerica has become a

leading voice in shaping policies that directly impact Washington State's immigrant communities, including policies and practices that assist immigrants on their path to citizenship and ensure their full civic engagement.

**South Asian Americans Leading Together (SAALT)** is a national nonprofit organization whose mission is to elevate the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. As an organization that is committed to the importance of civic engagement and addressing societal disparities that have historically and currently affected the South Asian community and other immigrant communities, SAALT joins this brief as Proposition 200 disparately impacts naturalized citizens in their fundamental right to register to vote.

The **South Asian Bar Association of Northern California (SABA-NC)** was founded in 1993 to ensure that Bay Area South Asian lawyers were provided an avenue to develop professionally, network among peers and volunteer within the South Asian community. SABA-NC supports and hosts fundraisers for South Asian community support, and social service organizations, and facilitates pro bono legal services to those in need. SABA-NC has supported and participated in voter registration drives and voter protection poll monitoring projects.