

1 MARK BRNOVICH
 2 Attorney General
 3 Firm Bar No. 14000
 4 James Driscoll-MacEachron (027828)
 5 Kara Karlson (029407)
 6 Karen J. Hartman-Tellez (021121)
 7 Assistant Attorneys General
 8 1275 W. Washington Street
 9 Phoenix, AZ 85007
 10 Telephone (602) 542-4951
 11 Facsimile (602) 542-4385
 12 james.driscoll-maceachron@azag.gov
 13 kara.karlson@azag.gov
 14 karen.hartman@azag.gov
 15 *Attorneys for State Defendants*

11
 12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF ARIZONA**

14
 15 Leslie Feldman, et al.,

16 Plaintiffs,

17 v.

18 Arizona Secretary of State’s Office, et al.,

19 Defendants.

)
) Case No. CV-16-01065-PHX-DLR
)

) **SECRETARY OF STATE MICHELE**
) **REAGAN’S RESPONSE TO**
) **PLAINTIFFS’ MOTION FOR**
) **PRELIMINARY INJUNCTION OF**
) **POLLING PLACE ALLOCATION AND**
) **PROVISIONAL BALLOT CLAIMS**
)

1 For more than forty years, Arizona has followed the well-recognized rule that
2 votes cast out-of-precinct (“OOP”) are not counted. Plaintiffs seek to enjoin that practice
3 with only months remaining before the general election, arguing that Arizona must adopt
4 a new rule for counting OOP votes.¹ As will be shown below, Plaintiffs do not offer any
5 kind of compelling justification for such a radical change in the law. And Plaintiffs fall
6 far below the threshold necessary to justify a mandatory injunction requiring this Court to
7 create a new procedure for processing OOP votes. The Secretary therefore requests that
8 this Court deny Plaintiffs’ motion for preliminary injunction.²

9 I. Background

10 A. Out of Precinct Voting

11 States have long required voters to cast their ballots in their assigned precincts.
12 *Sandusky Cty. Democratic Party v. Blackwell*, 387 F.3d 565, 567 (6th Cir. 2004) (“[I]n
13 almost every state [] voters are required to vote in a particular precinct.”). And at least
14 two dozen states enforce the precinct-based system by counting only those ballots cast in
15 the correct precincts. *See* Ex. 1;³ *see also Sandusky*, 387 F.3d at 567 (“[I]n at least 27 of
16 the states using a precinct voting system, including Ohio, a voter’s ballot will only be
17 counted as a valid ballot if it is cast in the correct precinct.”).

18 Arizona has followed this common rule since at least 1970. A.R.S. §§ 16-122,
19 -135, -584; Ex. 19. As Plaintiffs’ expert acknowledged, this precinct-based system is
20 necessary because of the many different overlapping jurisdictions involved in elections
21 and because the offices and issues for which a person is entitled to vote are tied to his or
22 her residential address. Ex. 14 at 40:7-25; *see also* Ex. 3, ¶¶ 7-8. Accordingly, to have

24 ¹ Plaintiffs also challenge Maricopa County’s allocation of polling places. The Secretary
25 joins the County Defendants’ response on that claim.

26 ² Attorney General Mark Brnovich is not named as a Defendant in any of the claims
27 included in this motion for preliminary injunctive relief. *See* Dkt. No. 12, at 41-48. To
the extent that a claim against the Attorney General is implied, he joins this response.

28 ³ All references to numbered exhibits are to the exhibits attached to the Second
Declaration of Karen J. Hartman-Tellez, submitted herewith.

1 the opportunity to vote for the offices and issues associated with a voter’s residential
2 address—and none that are not associated with that address—the voter must receive the
3 correct ballot. Ex. 3, ¶¶ 41-42.

4 In 2002, Congress passed the Help America Vote Act (“HAVA”), which required
5 states to accept provisional ballots. 52 U.S.C. § 21082. Earlier, unenacted versions of
6 HAVA would have required states to accept OOP—and out of county—votes. *Colo.*
7 *Common Cause v. Davidson*, 04CV7709, 2004 WL 2360485, at *11 (Colo. Dist. Ct. Oct.
8 18, 2004) (citing H.R. 3295, § 502(3) (adopted December 12, 2002)). But the Senate
9 rejected that version, *id.*; as one Senator observed, HAVA was “in no way intended to
10 require any State or locality to allow voters to vote from any place other than the polling
11 site where the voter is registered.” *Sandusky*, 387 F.3d at 575 (quoting 148 Cong. Rec.
12 S10488, S10493 (daily ed. Oct. 16, 2002)). HAVA also created the Election Assistance
13 Commission (“EAC”), which collects data on provisional votes. *See* 52 U.S.C. §§ 20921,
14 20926. EAC data shows that the national rate of rejection for provisional ballots is higher
15 than it is in Arizona. *See* Ex. 6, ¶¶ 33, 35. While the EAC also reports the reasons States
16 rejected provisional ballots, the differences in the reported reason for rejection between
17 particular States may well be due to differences in state reporting practices. *Id.*
18 Moreover, comparing like elections, the percentage of provisional ballots rejected in
19 Arizona has declined since 2008. *Id.*, ¶¶ 32-33.

20 Arizona and its counties make every effort to provide voters information on their
21 polling places. The Secretary’s Office provides three websites with polling place
22 information, responds to questions from voters, and mails a publicity pamphlet to voters
23 with information on how to locate the correct polling place for General Elections. Ex. 2,
24 ¶¶ 3-7. Counties send sample ballots with polling place information to voter households
25 with at least one voter who has not requested an early ballot. Ex. 4, ¶ 4. They also
26 provide online polling place locators. Ex. 2, ¶ 4; Ex. 3, ¶ 31(a); Ex. 4, ¶ 7. County
27 Recorders also provide information to voters on polling places through social media and
28 reach out to local English- and Spanish-language media to spread information about

1 finding polling place locations. *See* Ex. 3, ¶ 31(e)-(f); Ex. 4, ¶¶ 7-9. Finally, poll
2 workers are trained to tell voters if they are at the wrong polling place and to provide
3 information on the voter’s correct polling place. *See* Ex. 4, ¶ 16; *see also* Ex. 5.

4 **B. Vote Centers**

5 Beginning in 2003, jurisdictions around the country began experimenting with
6 vote centers, which allow voters to “cast their ballots on Election Day at any vote center
7 in the jurisdiction, regardless of their residential address.” Ex. 7. As of October 2015,
8 “[e]leven states now either permit jurisdictions to replace precincts with vote centers, or
9 have authorized vote center pilot projects in selected jurisdictions.” *Id.* No state requires
10 vote centers to be used in all of its jurisdictions. *See id.* In 2011, the Legislature
11 amended A.R.S. § 16-411(B) to allow counties to use vote centers. Ex. 8. The
12 amendment received broad bipartisan support. Ex. 9. It passed the Senate unanimously
13 and the House by a vote of 59-1. *Id.*

14 Yavapai County was one of the first counties in Arizona to use vote centers. Ex.
15 10, ¶ 8. It chose to do so because of precipitous declines in in-person voting and based
16 on the county’s geography, population, and ability to obtain the proper technology. *Id.* ¶
17 7. In order to operate a vote center, a county must be able to supply at least two e-poll
18 books to each vote center as well as technology that allows the voter to vote on the
19 appropriate ballot for his or her precinct. *Id.* ¶¶ 7-10; *see also* Ex. 7. Compared to
20 precinct-based polling places, it can be difficult for counties to predict the number of
21 voters at each vote center. *See* Ex. 10, ¶ 13. Before the 2016 Presidential Preference
22 Election, the only counties to use vote centers for countywide elections were Graham,
23 Yavapai, and Yuma—with approximately 18,000, 130,000, and 77,000 active registered
24 voters, respectively. Ex. 11, ¶¶ 3-6; Ex. 12.

25 **II. Legal Standard**

26 The standard that Plaintiffs must meet to receive a preliminary injunction is set
27 forth in the State Defendants’ previous response. Dkt. No. 153 at 3. To meet that
28 standard, Plaintiffs must make a “clear showing” that they are entitled to the

1 “extraordinary remedy.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

2 With regard to OOP voting, Plaintiffs must meet an even higher standard. Plaintiffs seek
3 a mandatory injunction to change the way that Arizona counties have counted ballots for
4 decades. Where “a party seeks mandatory preliminary relief that goes well beyond
5 maintaining the status quo pendente lite, courts should be extremely cautious about
6 issuing a preliminary injunction.” *Martin v. Int’l Olympic Comm.*, 740 F.2d 670, 675
7 (9th Cir. 1984); *see also Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319-20 (9th Cir.
8 1994).

9 **III. Plaintiffs Have Not Shown a Likelihood of Success on the Merits.**

10 **A. Plaintiffs Have Not Carried the Burden on Their Section 2 Claim.**

11 Section 2 requires the Plaintiffs to demonstrate the “denial or abridgement of the
12 right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. §
13 10301(a). As articulated in the State Defendants’ previous response, Dkt. No. 153, at 4-
14 5, Plaintiffs must therefore show (1) a discriminatory impact and (2) a causal connection
15 to discrimination. *Id.* Plaintiffs fail on both counts. Plaintiffs have not identified a
16 single voter who will be unable to vote in the correct polling place in the upcoming
17 election, and the expert report they rely on does not show a statistically significant impact
18 on minority voters statewide. Plaintiffs also cannot show that any impact from OOP
19 voting occurs on account of race or color. Plaintiffs therefore have not met their burden
20 to show a likelihood of success on their Section 2 claim.⁴

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24 ⁴ Plaintiffs again have failed to name the correct defendants. Arizona charges its counties
25 with the processing and counting of ballots generally, A.R.S. §§ 16-531, -604, and with
26 the counting of provisional votes specifically, A.R.S. § 16-584(E). Indeed, Plaintiffs’
27 Amended Complaint notes that the county recorder “is responsible for . . . determining
28 whether provisional ballots are acceptable.” Dkt. No. 12, ¶ 36. The Plaintiffs have
named only one county as a Defendant here, and thus have not named defendants
necessary to obtain their proposed relief.

1 **1. Plaintiffs Have Not Shown a Racially Discriminatory Impact from**
2 **OOP Voting.**

3 The crux of a Section 2 claim is the effect of the challenged voting practice on the
4 ability of minority voters to elect representatives of their choice. *See Badillo v. City of*
5 *Stockton*, 956 F.2d 884, 890 (9th Cir. 1992). Here, Plaintiffs have not established that the
6 challenged law resulted in minority voters “having less opportunity to elect legislators of
7 their choice.” *Id.* at 891; *see also Chisom v. Roemer*, 501 U.S. 380, 397-98 (1991). And
8 Plaintiffs have not shown “a statistically significant disparate impact” on minority voters.
9 Ex. 13, at 42.

10 Plaintiffs argue that Arizona’s treatment of OOP votes disproportionately impacts
11 Hispanic, African-American, and Native American voters. Dkt. No. 73, at 7. But
12 Plaintiffs use an unreliable analysis of the race of the affected voters and artificially
13 inflated numbers to prove this alleged impact. Moreover, Plaintiffs have not identified a
14 voter who was unable to vote in his assigned precinct because of Defendants’ practices.⁵

15 Plaintiffs rely on their expert, Dr. Rodden, to show a statewide disparate impact,
16 but Dr. Rodden analyzed only (1) the 2012 general election in Maricopa County, (2) the
17 2010, 2012, and 2014 general elections in Pima County, and (3) the historically low-
18 turnout 2014 general election in Coconino County. Dkt. No. 73, at 6; Dkt. No. 177-1, at
19 43-44. Arizona has treated OOP votes consistently for decades, but Dr. Rodden analyzed
20 only parts of three elections. Even assuming Dr. Rodden could limit his analysis to those
21 elections, he did not conduct similar analyses for the remaining 12 Arizona counties,
22 including Apache and Navajo Counties, which have large Native American populations,
23 or Cochise, Graham, Pinal, Santa Cruz, or Yuma Counties, which have large Hispanic
24 populations. Ex. 6, Table 1. Dr. Rodden’s focus on this extraordinarily limited data set

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26 ⁵ Dr. Rodden asserted that elections officials “falsely disenfranchised” voters who voted
27 OOP, even though their registration showed that their residential addresses were within
28 the precinct where they voted. *See* Dkt. 177-1, at 3. In fact, those voters had moved, and
their current addresses were not within the precinct where they voted. Ex. 6, ¶¶ 52-54.

1 renders his conclusions unreliable. *Johnson v. Mortham*, 926 F. Supp. 1460, 1475 (N.D.
2 Fla. 1996) (criticizing plaintiffs’ expert who “disregarded a number of congressional
3 elections that are highly relevant”); *see also Sanchez v. Bond*, 875 F.2d 1488, 1496 (10th
4 Cir. 1989) (noting that “the limited number of elections underlying the plaintiffs’ claim”
5 supported the “trial court’s finding that plaintiffs failed to meet their burden of proof”).

6 Dr. Rodden also did not reliably assign race to the voters in the elections he
7 analyzed. Dr. Rodden used an algorithm to assign race to each OOP voter based on the
8 voter’s surname and race statistics for the voter’s census block group. Ex. 6, ¶ 39. But
9 Dr. Rodden appears to have been unable to match voters’ surnames to eleven percent of
10 the OOP votes in the study, and he provides no explanation for how he treated those
11 voters. *Id.* Further, when his estimates for each ethnicity are combined, it accounts for
12 only 6,731 of the 7,525 rejected OOP ballots—and miscalculates the total ballots cast at
13 the polling place by approximately eight percent.⁶ *Id.*, ¶ 51. “[W]ith such a large
14 undercount of ballots, it is possible that the conclusions drawn by Dr. Rodden would be
15 greatly reduced or eliminated if the race and ethnicity coding were more accurate.” *Id.*

16 In addition to using an unreliable algorithm to assign race to OOP voters, Dr.
17 Rodden conducted additional, similarly unreliable, analyses of the concentration of OOP
18 votes in Maricopa County and their relation to the racial makeup of census block groups.
19 *Id.*, ¶¶ 42-49. These analyses do not include all of the census block groups in the County
20 because any census block that had no OOP votes dropped from his analysis. *Id.*, ¶ 44.
21 He also used the voting age population instead of the citizen voting age population,
22 which leads to an overestimate of the effect on Hispanic voters. *Id.*, ¶ 45. Indeed, none
23 of the characteristics that Dr. Rodden analyzed explains an increase in OOP votes. *Id.*, ¶¶
24 46-49, Table 10 (showing that 95-99% of the variation in the share of OOP votes is not

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26 ⁶ Further proof of the unreliability of Dr. Rodden’s analysis comes from the ethnicity
27 estimates he assigns to 2,088 registered Republicans in his sample. Dr. Rodden assigns a
28 significantly higher probability that the voter is African-American to those voters than is
supported by data on partisan affiliation in Arizona. Ex. 6, ¶ 41.

1 explained by any of the factors that Dr. Rodden analyzed).

2 Even assuming *arguendo* that Dr. Rodden had reliably assigned race to OOP
3 voters, Plaintiffs still have not identified a statistically significant impact. Dr. Rodden
4 inflates the impact of OOP voting on minority voters by comparing OOP ballots only to
5 ballots cast in person. As early, mail-in ballots have increased, the number of voters
6 going to a polling place on Election Day has decreased, skewing the percentages cited by
7 Plaintiffs. In the 2012 general election, rejected provisional ballots were only 1.4 % of
8 ballots that Arizonans cast, and those rejected for being cast in the wrong precinct were
9 only 0.5 %. *Id.*, Tables 6, 9. Based on Dr. Rodden’s assignment of race to OOP voters,
10 White voters cast more than half of those OOP ballots, accounting for 0.30% of the votes
11 cast. *Id.*, ¶ 40. Hispanic OOP votes, meanwhile, accounted for only 0.13% of the votes
12 cast. *Id.* African-American voters cast less than a quarter as many OOP ballots as White
13 voters, accounting for 0.07% of the votes cast.⁷ *Id.* Moreover, since the EAC began
14 compiling and reporting data regarding provisional ballots in 2008, the percentage of
15 provisional ballots and OOP provisional ballots has steadily decreased. *Id.*, Table 6.
16 Thus, even assuming that Dr. Rodden correctly identified OOP ballots cast by minority
17 voters, those votes are such a small portion of all ballots cast that the effect on their
18 ability to elect representatives of their choice is negligible. *See* Ex. 13, at 41-42.

19 In fact, Dr. Rodden’s analysis of OOP ballots cast in Maricopa County in the 2012
20 general election demonstrates that minority voters in Maricopa County have not been
21 denied the opportunity to elect representatives of their choice by the prohibition on
22 counting OOP ballots. The “hottest” parts of Dr. Rodden’s heat map—*i.e.*, the parts of
23 the County with the highest concentration of OOP ballots—cover areas in Congressional

24
25 ⁷ Dr. Rodden also looked at OOP votes in Pima County in 2010, 2012, and 2014. Dkt.
26 No. 177-1, at 43. While he asserted that the rates of OOP voting for African-American
27 and Hispanic voters were “significantly higher” than for White voters in 2010 and 2012,
28 he did not provide the percentage of OOP voters by race or data sufficient to verify his
conclusions. *Id.* Based on the data provided, it is impossible to determine what
percentage of ballots cast were OOP ballots cast by minority voters. *See also* Ex. 6, ¶ 58.

1 Districts 3, 6, 7, and 9 and State Legislative Districts 4, 20, 24, 26, 27, 28, 29, and 30.
2 Ex. 15. Among those filling the Congressional seats are three Democrats, two of whom
3 are Hispanic, including declarant Ruben Gallego. Ex. 16. The Legislative seats for those
4 districts are filled by nineteen Democrats, nine of whom are Hispanic and one of whom is
5 African-American, and five Republicans. *Id.* These legislators include declarants Ken
6 Clark, Charlene Fernandez, and Martín Quezada. *Id.* Declarant Steve Gallardo’s County
7 Supervisorial district 5 also includes some of the “hot” areas identified by Dr. Rodden.
8 Ex. 15. Consequently, even with a higher concentration of OOP ballots, minority
9 communities have been able to elect the representatives of their choice.

10 **2. Plaintiffs Have Not Shown a Causal Connection.**

11 Even if Plaintiffs had shown a discriminatory impact, they must still show a causal
12 connection. To show causation, the Plaintiffs must connect the specific challenged
13 practice to the alleged discriminatory impact. *Smith v. Salt River Agric. Improvement &*
14 *Power Dist.*, 109 F.3d 586, 595 (9th Cir. 1997) (holding that plaintiffs “must establish
15 [the challenged practice] results in discrimination on account of race or color”) (internal
16 quotation marks omitted). Indeed, “proof of causal connection between the challenged
17 voting practice and a prohibited discriminatory result is crucial.” *Gonzalez v. Arizona*,
18 677 F.3d 383, 405 (9th Cir. 2012) (en banc) (internal quotation marks omitted). Plaintiffs
19 have not shown causation here.

20 Plaintiffs here made the same errors in causation as the plaintiffs in *Gonzalez*. In
21 *Gonzalez*, “[p]laintiffs had not adduced any evidence that the observed difference in voter
22 registration and voting rates of Latinos is substantially explained by race, as opposed to
23 factors independent of race.” Ex. 13, at 47. The Ninth Circuit affirmed, noting that, even
24 with the presence of some Senate Factors, the district court had not erred in holding that
25 the plaintiffs had not proven causation. *Gonzalez*, 677 F.3d at 407. Plaintiffs here
26 similarly cite to alleged statistical disparities without demonstrating a causal link to race.
27 They attempt to do so by noting that OOP votes are most common in “corridors with
28 more renters, and less common in areas with high rates of home ownership,” and then

1 asserting that “[m]inorities, *as a result of Arizona’s discriminatory history*, are far more
2 likely to rent than own a home.” Dkt. No. 73, at 17 (emphasis added). But Plaintiffs
3 have not shown a discriminatory history in housing or a statistically significant
4 relationship between renting and casting OOP votes, and Plaintiffs’ expert on the Senate
5 Factors conceded that he had not identified any discriminatory policy in housing in
6 Arizona.⁸ Ex. 6, ¶¶ 47-49, Table 10; Ex. 17, at 214:4-21. Plaintiffs therefore have not
7 shown that race explains the alleged disparity in OOP votes.

8 The Senate Factors do not fill the gap in Plaintiff’s analysis of causation. Just as
9 the Plaintiffs did not connect the alleged impact to race, Plaintiffs have not sufficiently
10 linked the Senate Factors to Arizona’s treatment of OOP votes. *See Farrakhan v.*
11 *Washington*, 338 F.3d 1009, 1018 (9th Cir. 2003) (requiring evidence that “a challenged
12 voting practice interacts with surrounding racial discrimination in a meaningful way”);
13 *see also Ortiz v. Phila. Office of City Comm’rs Voter Registration Div.*, 28 F.3d 306, 316
14 (3d Cir. 1994) (rejecting claim where “the record reveals no link between the societal
15 conditions and factors . . . and the electoral practice”). And, as articulated in the State
16 Defendants’ and Intervenor-Defendants’ responses, Plaintiffs’ analysis of those factors is
17 replete with errors.⁹ Dkt. No 152, at 7-9; Dkt. No. 153, at 7-10.

18 Plaintiffs make additional arguments on two Senate Factors: Senate Factor 5
19 (social and economic disparities) and Senate Factor 9 (tenuousness). But Plaintiffs fail to
20 make a sufficient showing under either factor. With regard to social and economic
21 disparities, Plaintiffs assert that health disparities affect the ability of minority voters to
22 visit the correct polling place, but they ignore that Arizona permits voters to vote by mail
23 or, if ill or disabled, with a special election board. *See* Dkt. No. 153 at 2-3. Plaintiffs
24 also speculate that voters who rely on public transit cannot get to the correct polling
25

26 ⁸ Plaintiff’s expert on Arizona’s history was similarly silent on housing. *See generally*
27 Dkt. No. 101-1.

28 ⁹ The Secretary incorporates the earlier responses here by reference.

1 place, but they offer no evidence that transit access causes OOP voting.¹⁰ Finally, they
2 speculate that educational and linguistic differences may make it difficult to determine
3 the correct polling place, but they do not show that the many ways that counties inform
4 voters of their polling places, in English and in Spanish, are undermined by these alleged
5 disparities. Ex. 2, ¶¶ 3-7; Ex. 3, ¶¶ 17-21; Ex. 4, ¶¶ 3-10.

6 Plaintiffs' showing of "tenuousness," is even more flawed. Plaintiffs assert that
7 Arizona law does not require counties to reject OOP votes. But A.R.S. § 16-122 clearly
8 states that, subject to certain exceptions, "[n]o person shall be permitted to vote unless
9 such person's name appears as a qualified elector in both the general county register and
10 in the precinct register." *See also* A.R.S. §§ 16-135(B) (limiting voter to precinct for the
11 "new residence address"), -584(A) (allowing a qualified voter to vote with a recorder's
12 certificate "showing that the elector is entitled by law to vote in the precinct"), -584(B)
13 (allowing address correction at the polling place only where "[t]he residence address [is]
14 within the precinct in which the voter is attempting to vote"), -584(E) (providing for
15 counting a provisional vote after verifying registration based on, among other things, "a
16 sworn or attested statement of the elector that the elector resides in the precinct").

17 Plaintiffs ignore all of these provisions and rely only on A.R.S. § 16-584(B),
18 which states that a voter may cast a provisional ballot after "signing an affirmation that
19 states that the elector is a registered voter in that jurisdiction and is eligible to vote in that
20 jurisdiction." This language is required by—and essentially mirrors—HAVA. *See* 52
21 U.S.C. § 21082(A)(2). The language in HAVA, however, refers to the ability to cast a
22 ballot; it does not require states to count OOP votes. *Sandusky*, 387 F.3d at 578; *see also*
23 *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1170–71 (11th Cir. 2008).
24 Arizona's treatment of OOP votes clearly follows state law, and, as discussed more fully
25 below, Arizona's interests in those laws are compelling and well recognized.

26
27 ¹⁰ Dr. Rodden's report discusses reliance on public transit only in conjunction with the 60
28 vote centers that Maricopa County used in the 2016 PPE, not with respect to a precinct-
based election with over 600 polling places in the County. *See* Dkt. No. 177-1, at 65-67.

3. Plaintiffs Have Not Shown a Cumulative Impact.

1 Plaintiffs also incorrectly assert that the combination of the polling place
2 allocation in the March Presidential Preference Election and OOP voting violates Section
3 2. Plaintiffs have made no showing of a disparate impact from the combination of these
4 practices, and the claim should fail on that basis alone.

5
6 Even ignoring that fundamental flaw, Plaintiffs attempt to combine apples and
7 oranges: their polling place claim is specific to Maricopa County, while their OOP claim
8 is statewide. Unless Plaintiffs seek to enjoin Arizona's longstanding practice for OOP
9 votes in Maricopa County only, Plaintiffs have not articulated a claim with a cognizable
10 cumulative impact. Plaintiffs also argue that a Phoenix election will cause confusion
11 because it will use different polling places on Election Day. Dkt. No. 73, at 24. Not only
12 have Plaintiffs not challenged municipal polling place allocation, the relevant Phoenix
13 election will use Maricopa County polling places. Ex. 3, ¶ 35. Plaintiffs next argue that
14 changing from PPE vote centers to general election polling places will cause confusion—
15 but Plaintiffs ignore the August 30 primary, which will use precinct-based polling places.
16 *Id.*, ¶ 27. Plaintiffs also disregard Arizona's long history of not counting OOP votes and
17 assert that voters will be confused by this practice. Dkt. No. 73, at 24. But Plaintiffs
18 have not identified any voter who considers the voting system when identifying a polling
19 place, and, should a voter go to the wrong location, poll workers will instruct the voter to
20 go to the correct polling place. Ex. 4, ¶ 17; Ex. 5. Finally, Plaintiffs do not articulate a
21 causal connection between the alleged impact of these practices and race.¹¹

22 Thus, taken separately or together, Plaintiffs failed to show a disparate impact, and
23 they failed to show that any impact occurred on account of race. Given these
24 deficiencies, Plaintiffs have not shown a likelihood of success on their Section 2 claim.

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26
27 ¹¹ Plaintiffs briefly assert that HB 2023 should be considered in a cumulative analysis,
28 but they again fail to show either a disparate impact or a causal connection when the
practices are viewed as a whole.

1 **B. Plaintiffs Are Not Likely to Succeed on the Merits of Their**
2 **Constitutional Claims.**

3 Plaintiffs assert that Arizona, one of many states that does not count OOP votes, is
4 violating the Constitution. First, they argue that not counting OOP votes burdens the
5 right to vote. Dkt. No. 73, at 26-27. Second, they argue that the Equal Protection Clause
6 bars counties from choosing between a precinct-based system and a voting-center system.
7 *Id.* at 27-28. Plaintiffs fail to show a likelihood of success on either claim.

8 **1. Plaintiffs Have Not Shown a Violation of the Right to Vote.**

9 Plaintiffs acknowledge that the *Anderson/Burdick* framework applies, but they do
10 not carry their burden under that framework. *See* Dkt. No. 73, at 24-27. As set out in the
11 State Defendants' earlier response, the *Anderson/Burdick* framework is clear: "Common
12 sense, as well as constitutional law, compels the conclusion that government must play an
13 active role in structuring elections." *Burdick v. Takushi*, 504 U.S. 428, 433(1992). The
14 burden on the Plaintiffs' rights determines the level of scrutiny. The Ninth Circuit
15 applies strict scrutiny if an election law "imposes a severe burden." *Nader v. Brewer*,
16 531 F.3d 1028, 1035 (9th Cir. 2008). But rational basis review applies when there is only
17 a de minimis burden. *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 732 (9th Cir.
18 2015). And the Plaintiffs must offer specific evidence to demonstrate the severity of the
19 burden.¹² *Id.* at 731. Where rational basis review applies, the Plaintiffs also must show
20 that there is no rational basis for the challenged law. *Id.* at 732. Courts "may look to any
21 conceivable interest promoted by the challenged procedures, whether or not the state
22 cited that interest in its briefs." *Libertarian Party of Wash. v. Munro*, 31 F.3d 759, 763
(9th Cir. 1994).

23 Plaintiffs have not shown a severe burden on the right to vote. Plaintiffs argue that
24 _____

25 ¹² In assessing a claim under this framework, the Court may also look to practices in
26 other states. *See, e.g., Green Party of Ark. v. Martin*, 649 F.3d 675, 685 (8th Cir. 2011)
27 ("[W]e note that Arkansas's ballot access scheme, while unique in its particulars, is
28 common in its approach"); *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 589
(6th Cir. 2006) (comparing state practice to that in other states).

1 the fact that OOP votes are not counted by itself is a severe burden, but Plaintiffs' theory
2 "absolves voters of all responsibility for voting in the correct precinct or correct polling
3 place by assessing voter burden solely on the basis of the outcome—*i.e.*, the state's ballot
4 validity determination." *SEIU v. Husted*, 698 F.3d 341, 344 (6th Cir. 2012). Instead, the
5 burden must be determined based on the voter's ability to take the steps necessary to
6 vote. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198 (2008) (holding that
7 the steps necessary to get a voter ID did not constitute a severe burden). And the Sixth
8 Circuit held that "a voter who fails to utilize these tools [for locating the correct polling
9 place] and arrives at the wrong polling location cannot be said to be blameless." *SEIU*,
10 698 F.3d at 344; *see also Colo. Common Cause v. Davidson*, 04CV7709, 2004 WL
11 2360485, at **14 (Colo. Dist. Ct. Oct. 18, 2004) ("[I]t does not seem to be much of an
12 intrusion into the right to vote to expect citizens, whose judgment we trust to elect our
13 government leaders, to be able to figure out their polling place."). Arizona provides
14 voters with a variety of ways to obtain correct polling place information.¹³ Ex. 2, ¶¶ 3-7;
15 Ex. 3, ¶ 31; Ex. 4, ¶¶ 3-7, 17. Arizona also provides for voting by mail and in-person
16 early voting for those voters who may be concerned about the proper polling place. Dkt.
17 No. 153, at 2-3. The Plaintiffs thus have shown no more than a *de minimis* burden.

18 Plaintiffs must therefore show there is no rational basis for rejecting OOP ballots.
19 *See Ariz. Libertarian Party*, 798 F.3d at 732. Even if a more rigorous level of scrutiny
20 applies, the Plaintiffs offer only the conclusory statement that that "there is no legitimate
21 justification" for following A.R.S. § 16-122. Dkt. No. 73, at 27. But Plaintiffs ignore the
22 well-recognized state interests behind this practice. Arizona's treatment of OOP voting is
23 directly related to precinct-based voting. *See, e.g.*, Ex. 3, ¶¶ 7-8. Plaintiffs do not—and
24 cannot—seriously challenge the state interests behind precinct-based voting:

25 The advantages of the precinct system are significant and numerous: it caps the
26 number of voters attempting to vote in the same place on election day; it allows

27 ¹³ The Plaintiffs themselves also engage in voter education on appropriate voting practices
28 that should mitigate any risk of voter confusion. *See, e.g.*, Ex. 18, at 98:25-99:2.

1 each precinct ballot to list all of the votes a citizen may cast for all pertinent
2 federal, state, and local elections, referenda, initiatives, and levies; it allows each
3 precinct ballot to list only those votes a citizen may cast, making ballots less
4 confusing; it makes it easier for election officials to monitor votes and prevent
5 election fraud, and it generally puts polling places in closer proximity to voter
6 residences.

7 *Sandusky*, 387 F.3d at 569. Based on these interests, more than two dozen states do not
8 count ballots cast out of precinct. Ex. 1.

9 Allowing OOP voting in a precinct-based system also “partially disenfranchises
10 voters” because voters would be “permitted to vote in state-wide races, [but] not
11 permitted to vote in precinct-specific contests for which they would otherwise have been
12 eligible had they only appeared at their assigned precinct.” *N.C. State Conf. of the*
13 *NAACP v. McCrory*, 2016 WL 1650774, at *113 (M.D.N.C. Apr. 25, 2016) *rev’d on*
14 *other grounds*, 2016 WL 4053033 (4th Cir. July 29, 2016). At least one other state has
15 seen “political organizations intentionally transport[] voters to the wrong precinct” when
16 the ban on OOP votes was removed. *Id.*

17 Arizona therefore has compelling interests in not counting OOP votes: it
18 preserves precinct-based election administration, it avoids the partial disenfranchisement
19 of voters, and it minimizes the incentive for misdirection from third parties. The
20 Plaintiffs do not address any of these interests, much less demonstrate the absence of a
21 rational basis. They thus have not shown a likelihood of success on this claim.

22 **2. The Plaintiffs Have Not Shown a Likelihood of Success on Their** 23 **Equal Protection Claim.**

24 Plaintiffs rely on *Bush v. Gore*, 531 U.S. 98 (2000), to argue that the Equal
25 Protection Clause bars states from allowing counties to choose a precinct-based model or
26 vote-center model for elections. *Bush* cannot be stretched that far, and Plaintiffs have not
27 shown they can succeed on their Equal Protection claim.

28 First, the Plaintiffs err by relying solely on *Bush*. Not only did the Supreme Court
famously limit its decision to the circumstances then before the Court, *id.* at 109, the
Court expressly declined to extend its reasoning to situations where “local entities, in the

1 exercise of their expertise, [] develop different systems for implementing elections.” *Id.*
2 The en banc Ninth Circuit relied upon that language as it held that a district court did not
3 abuse its discretion in denying a preliminary injunction against a law that allowed
4 counties to select voting technologies from an approved list. *Sw. Voter Registration*
5 *Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (en banc).

6 Even if *Bush* did apply, Plaintiffs have not shown that the discretion given to
7 counties is arbitrary. *See Bush*, 531 U.S. at 105 (holding state recount procedures
8 unconstitutional because they did not “satisfy the minimum requirement for nonarbitrary
9 treatment of voters”). Section 16-411(B)(4) is not arbitrary; instead, it allows counties to
10 choose a system that fits their specific characteristics. “[I]t is the job of democratically-
11 elected representatives to weigh the pros and cons of various balloting systems. So long
12 as their choice is reasonable and neutral, it is free from judicial second-guessing.” *Weber*
13 *v. Shelley*, 347 F.3d 1101, 1107 (9th Cir. 2003). The Ninth Circuit thus held that
14 “California made a reasonable, politically neutral and non-discriminatory choice to
15 certify touchscreen systems as an alternative to paper ballots. Likewise, Riverside
16 County in deciding to use such a system. Nothing in the Constitution forbids this
17 choice.” *Id.* Plaintiffs similarly have not shown the discretion given to counties here is
18 arbitrary.

19 Plaintiffs’ claim also fails under the *Anderson/Burdick* framework. *See Dudum v.*
20 *Arntz*, 640 F.3d 1098, 1105-09 (9th Cir. 2011) (applying framework to equal protection
21 claim). As demonstrated above, the Plaintiffs have not shown a severe burden. The
22 alleged burden occurs only where the voter (1) ignores mail identifying the proper polling
23 location, (2) does not look up the polling place on the Secretary’s or county recorder’s
24 website or call the county for polling place information, and (3) ignores the directions to
25 the proper polling location provided by poll workers. And, to the extent that Plaintiffs
26 again argue that the number of OOP votes not counted constitutes a burden, only 0.5% of
27 voters in Maricopa County had their votes rejected for voting OOP. Ex. 6, Table 9. This
28 is simply not enough to demonstrate a severe burden. *See SEIU*, 698 F.3d at 344.

1 Plaintiffs also have not shown the lack of a rational basis for this law. There are
2 advantages and disadvantages to vote centers, Ex. 7, and Arizona allows its counties to
3 choose between the two. Based on factors including cost, population, voting behavior,
4 and technology, the counties have made those choices. Ex. 10, ¶ 7. Section 16-411(B)(4)
5 serves Arizona’s legitimate interest in its counties choosing the most effective voting
6 system—and in encouraging innovation in voting systems. *See Weber*, 347 F.3d at 1107.

7 **IV. Plaintiffs Have Not Shown Irreparable Harm.**

8 Because Plaintiffs have not demonstrated a likelihood of success, they have not
9 shown an irreparable harm. *Hale v. Dep’t of Energy*, 806 F.2d 910, 918 (9th Cir. 1986).
10 Plaintiffs’ delay also counsels against finding an irreparable harm. *See, e.g., Oakland*
11 *Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1377 (9th Cir. 1985)
12 (“Plaintiff’s long delay before seeking a preliminary injunction implies a lack of urgency
13 and irreparable harm.”). Arizona’s law on OOP votes has been consistent for decades,
14 and Plaintiffs do not appear to have challenged these practices before. Similarly, the
15 amendment to § 16-411 in 2011 passed with only a single nay vote, some of Plaintiffs’
16 declarants voted in favor of that bill, and Plaintiffs have never before challenged its
17 constitutionality. *See Ex. 9.*

18 Arizona provides its voters with multiple avenues to obtain information about the
19 correct polling place, and poll workers direct voters to the correct polling place on
20 Election Day. Plaintiffs have not shown these methods of communicating polling place
21 information to voters are insufficient or that allowing Arizona to continue to process
22 OOP votes as it has for more than forty years is an irreparable harm.

23 **V. The Balance of the Equities and the Public Interest Do Not Favor a 24 Preliminary Injunction.**

25 In a claim against the government, the public interest merges with the balance of
26 the equities. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The balance of the equities and
27 the public interest do not support Plaintiffs’ last-minute attempt to enjoin an election law
28 that has been in effect for more than forty years. “[A]ny time a State is enjoined by a

1 court from effectuating statutes enacted by representatives of its people, it suffers a form
2 of irreparable injury.” *Maryland v. King*, 133 S.Ct. 1, 3 (2012) (internal quotation marks
3 and citation omitted). That harm is particularly acute here because the “State
4 indisputably has a compelling interest in preserving the integrity of its election process.”
5 *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). The Ninth Circuit has therefore held that the
6 “law recognizes that election cases are different from ordinary injunction cases,” because
7 “hardship falls not only upon the putative defendant, the [Arizona] Secretary of State, but
8 on all the citizens of [Arizona].” *Sw. Voter Registration Educ.*, 344 F.3d at 919.

9 The Court should also consider the Plaintiffs’ delay under this factor. *See W.*
10 *Watersheds Project v. Salazar*, 692 F.3d 921, 923 (9th Cir. 2012). Arizona has not
11 counted OOP ballots for more than forty years, and the number of OOP ballots has been
12 steadily declining. Ex. 6, Table 6. The Plaintiffs nonetheless waited until April of a
13 presidential election year to bring this lawsuit. Dkt. No. 1.

14 Plaintiffs’ delay causes unquestionable harm. Most Arizona counties will have to
15 scramble to develop procedures to implement Plaintiffs’ relief, and they will have to do
16 so without the time or money necessary to acquire additional election technology. *See*
17 Ex. 2, ¶¶ 11-13. Instead, counties would likely need to use a manual approach similar to
18 that used for damaged ballots. And it could then take fifteen minutes to count each OOP
19 ballot. Ex. 4, ¶¶ 24-28. Not only will this significantly burden election officials, it will
20 delay election results and inject uncertainty into the process. Ex. 2, ¶¶ 9-11. Finally, as
21 other courts have noted, Plaintiffs’ relief opens the door to the intentional
22 disenfranchisement of voters. *McCrary*, 2016 WL 1650774, at *113 (stating that groups
23 intentionally steered voters to the wrong districts); *SEIU*, 698 F.3d at 345 (same). The
24 Court should therefore find that these factors also cut against the Plaintiff’s request for a
25 preliminary injunction.

26 **VI. Conclusion**

27 For the foregoing reasons, Plaintiffs’ Motion should be denied.
28

1 RESPECTFULLY SUBMITTED this 22nd day of August, 2016.
2

3 MARK BRNOVICH
4 Attorney General

5 By: s/ James Driscoll-MacEachron
6 James Driscoll-MacEachron
7 Kara Karlson
8 Karen J. Hartman-Tellez
9 Assistant Attorneys General
10 1275 West Washington Street
11 Phoenix, Arizona 85007
12 *Attorneys for State Defendants*
13
14
15
16
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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2016, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a notice of electronic filing to the EM/ECF registrants.

s/ Maureen Riordan

#5272931 v 5

1 MARK BRNOVICH
 2 Attorney General
 3 Firm Bar No. 14000
 4 James Driscoll-MacEachron (027828)
 5 Kara Karlson (029407)
 6 Karen J. Hartman-Tellez (021121)
 7 Assistant Attorney General
 8 1275 W. Washington Street
 9 Phoenix, AZ 85007
 10 Telephone (602) 542-4951
 Facsimile (602) 542-4385
 james.driscoll-maceachron@azag.gov
 kara.karlson@azag.gov
 karen.hartman@azag.gov
Attorneys for State Defendants

11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF ARIZONA**

13	Leslie Feldman, et al.,	)	Case No. CV-16-01065-PHX-DLR
14)	
15	Plaintiffs,)	
16	v.	)	SECOND DECLARATION OF
17		)	KAREN J. HARTMAN-TELLEZ
18	Arizona Secretary of State’s Office, et al.,)	
19)	
20	Defendants.)	
21)	
22)	

23 I, Karen J. Hartman-Tellez, declare:

24 1. I am an attorney employed by the Office of the Arizona Attorney General
 25 as an Assistant Attorney General and I represent the Arizona Secretary of State’s Office,
 26 Arizona Secretary of State Michele Reagan, and Arizona Attorney General Mark
 27 Brnovich (collectively, the “State Defendants”) in this matter. I am a member in good
 28

1 standing of the State Bar of Arizona. I make this Declaration in support of the Secretary
2 of State's Response to Plaintiffs' Motion for Preliminary Injunction of Polling Place
3 Allocation and Provisional Ballot Claims. I have personal knowledge of the facts stated
4 herein and if called upon, could testify competently to them.

5 2. Attached hereto as Exhibit 1 is a true and correct copy of the National
6 Conference of State Legislatures' report on Provisional Ballots, dated June 19, 2015,
7 available at [http://www.ncsl.org/research/elections-and-campaigns/provisional-
9 ballots.aspx](http://www.ncsl.org/research/elections-and-campaigns/provisional-
8 ballots.aspx) (last accessed Aug. 20, 2016).

10 3. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of
11 Eric Spencer, Arizona State Elections Director.

12 4. Attached hereto as Exhibit 3 is a true and correct copy of the Declaration of
13 Karen Osborne, Maricopa County Elections Director, but excludes the exhibits thereto.

14 5. Attached hereto as Exhibit 4 is a true and correct copy of the Declaration of
15 Brad Nelson, Pima County Elections Director.

16 6. Attached hereto as Exhibit 5 is a true and correct copy of (a) excerpts of the
17 2016 August 30, 2016 primary election worker manual for Maricopa County, available
18 at: <http://recorder.maricopa.gov/pdf/BWTrainingManual.pdf> (last accessed Aug. 21,
19 2016); (b) excerpts of the 2016 election worker manual for Pima County, available at:
20 [http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/elections/pdfs/Poll
22 %20Workers/Clerks%20and%20Marshals%20Handbook.pdf](http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/elections/pdfs/Poll
21 %20Workers/Clerks%20and%20Marshals%20Handbook.pdf) (last accessed Aug. 21,
23 2016); and (c) excerpts of the 2016 election worker manual for Gila County, available at:
24 [http://www.gilacountyaz.gov/government/elections/docs/POLL%20Worker%20Manual
26 %20Final.pdf](http://www.gilacountyaz.gov/government/elections/docs/POLL%20Worker%20Manual
25 %20Final.pdf) (last accessed Aug. 21, 2016).

27 7. Attached hereto as Exhibit 6 is a true and correct copy of the Rebuttal
28 Report of Janet R. Thornton, Ph.D.

8. Attached hereto as Exhibit 7 is a true and correct copy of the National
Conference of State Legislatures' report on Vote Centers, updated October 2015,

1 available at <http://www.ncsl.org/research/elections-and-campaigns/vote-centers.aspx> (last
2 accessed Aug. 20, 2016).

3 9. Attached hereto as Exhibit 8 is a true and correct copy of 2011 Ariz. Sess.
4 Laws, ch. 331.

5 10. Attached hereto as Exhibit 9 is a true and correct copy of the Bill Status
6 Overview for HB 2303, 50th Leg., 1st Reg. Sess. (Ariz. 2011).

7 11. Attached hereto as Exhibit 10 is a true and correct copy of the Declaration
8 of Lynn Constabile, Yavapai County Elections Director.

9 12. Attached hereto as Exhibit 11 is a true and correct copy of the Declaration
10 of Alysia Cronise.

11 13. Attached hereto as Exhibit 12 is a true and correct copy of the State of
12 Arizona Registration Report as of May 13, 2016, available at
13 <http://apps.azsos.gov/election/voterreg/2016-05-17.pdf> (last accessed Aug. 20, 2016).

14 14. Attached hereto as Exhibit 13 is a true and correct copy of the Arizona
15 District Court's Findings of Fact and Conclusions of Law in *Gonzalez v. Arizona*, No.
16 CV06-01268-PHX-ROS, Order (D. Ariz. Aug. 20, 2008).

17 15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts of the
18 Deposition of Jonathan Rodden, Ph.D. (Aug. 11, 2016).

19 16. Attached hereto as Exhibit 15 is a true and correct copy of the following
20 maps: (a) Dr. Rodden's "heat map" showing the concentration of out-of-precinct ballots
21 in the 2012 general election, which was the first page of Exhibit 10 to Dr. Rodden's
22 deposition; (b) the Maricopa County portion of the map of Arizona's congressional
23 districts, available at: [http://azredistricting.org/Maps/Final-](http://azredistricting.org/Maps/Final-Maps/Congressional/Maps/Final%20Congressional%20Districts%20-%20Maricopa%208x11.pdf)
24 [Maps/Congressional/Maps/Final%20Congressional%20Districts%20-](http://azredistricting.org/Maps/Final-Maps/Congressional/Maps/Final%20Congressional%20Districts%20-%20Maricopa%208x11.pdf)
25 [%20Maricopa%208x11.pdf](http://azredistricting.org/Maps/Final-Maps/Congressional/Maps/Final%20Congressional%20Districts%20-%20Maricopa%208x11.pdf); (c) the Maricopa County portion of the map of Arizona's
26 legislative districts, available at: [http://azredistricting.org/Maps/Final-](http://azredistricting.org/Maps/Final-Maps/Legislative/Maps/Final%20Legislative%20Districts%20-%20Maricopa%208x11.pdf)
27 [Maps/Legislative/Maps/Final%20Legislative%20Districts%20-](http://azredistricting.org/Maps/Final-Maps/Legislative/Maps/Final%20Legislative%20Districts%20-%20Maricopa%208x11.pdf)
28 [%20Maricopa%208x11.pdf](http://azredistricting.org/Maps/Final-Maps/Legislative/Maps/Final%20Legislative%20Districts%20-%20Maricopa%208x11.pdf); and (d) a map of Maricopa County supervisorial district 5,

1 available at
2 <http://recorder.maricopa.gov/reviewer/default.htm?DistrictType=U&DistrictCode=005>.

3 17. Attached hereto as Exhibit 16 is a true and correct copy of (a) the member
4 roster showing the Arizona delegation for the United States House of Representatives,
5 available at http://www.house.gov/representatives/#state_sc (last accessed August 21,
6 2016); (b) the member roster for the Arizona Senate, available at
7 <http://www.azleg.gov/MemberRoster.asp?Body=S> (last accessed August 21, 2016); and
8 (c) the member roster for the Arizona House of Representatives, available at
9 <http://www.azleg.gov/MemberRoster.asp?Body=H> (last accessed August 21, 2016).

10 18. Attached hereto as Exhibit 17 is a true and correct copy of excerpts of the
11 Deposition of Dr. Allan Lichtman, Ph.D.

12 19. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of the
13 Deposition of Sheila Healy.

14 20. Attached hereto as Exhibit 19 is a true and correct copy of (a) 1970 Ariz.
15 Sess. Laws, ch. 151, § 64 (amending A.R.S. § 16-895) and (b) A.R.S. § 16-102 (West
16 Supp. 1974).

17
18 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of
19 the United States that the foregoing is true and correct.

20
21 EXECUTED this 22nd day of August, 2016 in Phoenix, Arizona.

22
23 s/ Karen J. Hartman-Tellez
24 Karen J. Hartman-Tellez

EXHIBIT 1



NATIONAL CONFERENCE *of* STATE LEGISLATURES

Provisional Ballots

6/19/2015

Introduction

Provisional ballots ensure that voters are not excluded from the voting process due to an administrative error. They provide a fail-safe mechanism for voters who arrive at the polls on Election Day and whose eligibility to vote is uncer



Also referred to as “challenge ballots” or “affidavit ballots” in some states, they are require the federal [Help America Vote Act of 2002](#) (HAVA). When there is uncertainty about a vot eligibility—the potential voter’s name is not on the voter rolls, a required identification document isn’t available or other issues—the election official is required to offer the voter provisional ballot instead of a regular ballot.

In nearly all of the states, after being cast, the provisional ballot is kept separate from oth ballots until after the election. A determination is then made as to whether the voter was eligible to vote, and therefore whether the ballot is to be counted. Generally, a board of elections or local election officials will investigate the provisional ballots within days of the election. Since this is an additional administrative step, a large number of provisional ball can increase costs for jurisdictions.

States vary greatly in how provisional ballots are handled and in the number that are issu and rejected, and both the processes and the data are tracked by the [U.S. Election Assistance Commission \(EAC\)](#). States can have as few as 100 provisional ballots cast statewide, or as many as 100,000.

Often standards for handling provisional ballots are determined by state law.

This Web page provides a general overview of state provisional ballot laws and practices. The information was gathe from several sources, including the [EAC’s 2014 Statutory Summary](#), state election manuals, state statutes and regulations, and through consultation with state election administrators.

NOTE: Idaho, Minnesota and New Hampshire do not issue provisional ballots, therefore, we do not provide informati regarding those states in any of the material below. For explanation of why they do not issue provisional ballots see [states do not use provisional ballots, and why?](#)

Because state laws vary so greatly we recommend consulting your state’s laws and regulations if you have specific questions.

This Web page answers the following questions:

- [What does federal law require regarding provisional ballots?](#)
- [Why are provisional ballots used?](#)
- [What is the legislative role regarding provisional ballots?](#)
- [How is a provisional ballot investigated?](#)
- [Is any part of a provisional ballot counted if it is cast in the wrong precinct?](#)
- [What are the reasons for rejecting a provisional ballot?](#)
- [How does a voter find out if his or her provisional ballot was counted?](#)
- [What time is allotted to determine the status of provisional ballots?](#)
- [Which states do not use provisional ballots, and why?](#)

- Methodology

What Does Federal Law Require Regarding Provisional Ballots?

Provisional ballots are mandated by section 15482 of the [Help America Vote Act of 2002](#) (HAVA), but even before HAVA some states offered “provisional,” “challenge” or “affidavit” ballots to ensure that no eligible voters were turned away. HAVA [exempts](#) only a few states: Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming ([see below](#)).

The law states: “If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual not eligible to vote, such individual shall be permitted to cast a provisional ballot...”

HAVA sets out what actions are required of voters and of election officials:

Voters: To use a provisional ballot, each voter whose eligibility to vote is uncertain must provide a written affirmation signed in front of an election official at the polling place, stating that he or she is a registered voter and is eligible to vote in the election.

Election officials: Election officials and poll workers must notify potential voters that they have a right to use a provisional ballot, provide the ballot, witness the affirmation, and receive the ballot for later processing. Additionally, election officials must provide information to the voter on [how the process works](#) and how to find out if his or her ballot was cast—and if not, why not.

Why Are Provisional Ballots Issued?

For a voter to cast a provisional ballot, there must be some question as to his or her eligibility to vote. These questions vary across states. The most common reasons, as identified by the EAC, are:

- The voter’s name is not on the poll or registration list
- The voter’s eligibility cannot be otherwise established
- The voter’s identity and/or eligibility to vote has been challenged by a poll-worker or election official
- The voter does not have identification as required by that state
- The voter requested an absentee ballot but claims he or she either didn’t receive it or didn’t cast it
- The voter’s address or name has changed but their voter registration information does not reflect the change
- For primaries, the voter registration reflects an error in party listing

Most states have additional reasons specific to those states. In addition, HAVA requires all states to issue provisional ballots if the polling place hours are extended by court order.

Below is a chart of the most common reasons voters may need to cast a provisional ballot and the states that will allow a voter to cast a provisional ballot in those instances.

COMMON REASONS VOTERS MAY NEED TO CAST A PROVISIONAL BALLOT

Reason	States
Voter eligibility cannot be immediately established – i.e., name is not on registration list	46 States + DC: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming

Reason	States
The voter's eligibility is challenged by a poll watcher	27 States +DC: Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Montana, Nevada, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, West Virginia, Wyoming
Voter did not present ID as required by the state	36 States + DC: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin
Voter requested an absentee ballot and has not cast it	16 States +DC: Alabama, Arizona, Arkansas, California, District of Columbia, Illinois, Kansas, Maryland, Montana, Nebraska, Nevada, New Jersey, Ohio, Rhode Island, Texas, Virginia, Washington
Registration reflects an error in party listing (primary election only)	9 States + DC: District of Columbia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, West Virginia
Address and/or name has changed	9 States + DC: Alaska, Arizona, California, District of Columbia, Florida, Maryland, Mississippi, New Jersey, Ohio, Texas

What Is the Legislative Role Regarding Provisional Ballots?

Because it takes longer to process provisional ballots than regular ballots, legislators and administrators may be motivated to reduce the use of provisional ballots. While the availability of provisional ballots is mandated by federal law—the Help America Vote Act of 2002—state laws determine how and why provisional ballots are used. They may want to make procedures for the use of provisional ballots uniform throughout their state. Here are issues relating to provisional ballots that legislators may address:

- **Same Day Registration.** In some states that [offer same day registration](#), they may implement it by requiring the use of provisional ballots for Election Day registrants. In these cases, voters can indeed register and vote at the same time, but if they cannot immediately provide the required identification and proof of residency, their ballots are not counted until their eligibility is determined. (Other states may provide same day registration through other mechanisms). Montana uses provisional ballots for this purpose and [OK S 314](#), from 2015, would have created same day registration through the use of provisional ballots.
- **Voter ID.** Many states who have strict [voter ID requirements](#) ask voters who do not provide the appropriate ID at the time of voting to cast a provisional ballot. Voters have the opportunity to show ID within a few days of the election, and if not, the provisional ballot is not counted.
- **Voted the Wrong Ballot.** In states where several precincts may be housed in one polling place, it is not uncommon for a voter to get in the wrong line. In this case the voter is offered the opportunity to either get in the right line for the correct ballot, or be issued a provisional ballot that would be partially counted. This is called the “right church, wrong pew” situation. In Ohio, in 2014 [SB 216](#) was enacted to set procedures for these cases that allow a portion of the ballot to be counted.
- **Issued an Absentee Ballot.** In many states, voters who have been issued an absentee ballot are not able to vote on Election Day even if they haven’t cast the absentee ballot. States can permit voters who say this is the case to vote on Election Day on a provisional ballot; that way, if the original absentee ballot does get submitted, the provisional ballot will not be counted. For instance, [RI S 639](#), from 2015, would permit voters to vote on a provisional ballot even if they had requested an absentee ballot.

- **Name Not on the Voter List.** One of the most common reasons provisional ballots are issued is that the voter name does not appear on the voter list, even if the voter says he or she has registered. In 2015, [TX H 2987](#), v failed, proposed giving each new registrant a receipt saying they had applied to register. If the name is not on voter list, the receipt could be attached to a provisional ballot, thus proving the voter had done their part by registering.
- **Voting Outside One's Precinct.** In some states, provisional ballots can be used by voters who are voting out their own jurisdiction. State law governs whether these ballots will be rejected, or whether the portion of the ballot the voters were eligible to vote will be counted. In 2013, [Illinois](#) and [Utah](#) passed legislation to count partial ballots. Also in 2013, [North Carolina](#) enacted HB 589, which clarified that provisional ballots cast in the wrong precinct not be counted.
- **Uniform Time Frames.** States can create uniform time periods for handling provisional ballots. Illinois' HB 24 enacted in 2013, requires election officials to transmit information about provisional ballots cast to the state board within two calendar days of the election, and increases from two to seven days the time period during which a provisional voter may submit additional information to election authorities. Also in 2013, [Texas](#) established a time frame for counting provisional ballots.
- **Uniform Procedures:** States can also establish statewide procedures for counting provisional ballots. In 2011, Virginia addressed two procedural issues. With [HB 63](#), it established who can be present when provisional ballots are counted, and with [HB 2143](#), the state now requires that provisional ballots be "promptly" put in the ballot box.

How Is a Provisional Ballot Investigated?

Once a provisional ballot is cast, it is stored separately from other ballots and investigated by local election officials. Generally, this process entails verifying the voter's identity and eligibility to vote, and may require the voter to provide further information. If the identity of the voter and the voter's eligibility can be established through reviewing the voter's identification or verifying a signature, all or a portion of the ballot will be counted ([see below](#)). If their eligibility cannot be established, the ballot will not be counted.

In some states, the voter may be asked to take action after Election Day to have his or her provisional ballot. In these cases, the voter may be required to return to an election office following the election to verify his or her identity and/or eligibility to vote. In most cases, these voters were issued a provisional ballot because they did not present voter identification as required by that state. In Alabama, Arizona, Georgia, Indiana, Kansas, Ohio, South Carolina, Tennessee, Texas, Virginia and Wisconsin voters have a few days after Election Day to show required identification (see [NCSL's Voter ID Requirements](#) page.)

Occasionally a voter may be asked to return to provide proof of residence, such as a utility bill, or other eligibility verifications depending on the reason for the issuance of the provisional ballot. These states are likely to be those that offer Election Day registration.

Is Any Part of a Provisional Ballot Counted If it Is Cast in the Wrong Precinct?

States vary in how they handle provisional ballots cast in the wrong precinct. This most commonly happens when a voter goes to the wrong precinct because he or she can't get to the home precinct, and therefore votes on a provisional ballot. (As part of get-out-the-vote efforts toward the end of Election Day, candidates, campaigns and advocacy groups may encourage this choice.)

Some states count a portion of the provisional ballot if it is cast in the wrong precinct or jurisdiction. Generally they will count the votes for races that the voter would have been eligible to vote in, if they did so in the correct precinct or jurisdiction. This may include just votes for federal offices, as in Rhode Island, or for state or local races that would be shared among precincts.

In other states, the entire ballot will be rejected.

Exceptions may exist. For example, in Maine, the full ballot is counted first. If the number of provisional ballots cast v change the outcome of the election, and only then is the validity of the provisional ballots investigated.

In Ohio there may be certain polling places holding elections for more than one precinct. In that situation, if the voter the right polling place but the wrong precinct, they will first be directed to the correct precinct. If they chose not to get back in line they can choose to vote a provisional ballot in the wrong precinct ([Ohio Code § 3505.183](#))

STATE HANDLING OF PROVISIONAL BALLOTS CAST IN THE WRONG PRECINCT.

Full Count	Maine**
Partial Count	Alaska, Arizona, Arkansas, California, Colorado District of Columbia, Georgia, Kansas, Louisiana*, Maryland, Massachusetts, New Jersey, New Mexico, New York, Ohio***, Oregon, Rhode Island*, Utah, Washington, West Virginia
Does Not Count	Alabama, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virgi Wisconsin, Wyoming

*Only Federal races

** Validity is only reviewed if the number of provisional ballots cast is a large enough number to affect the results of t election

*** See [Ohio Code § 3505.183](#)

What Are the Reasons for Rejecting/Accepting a Provisional Ballot?

Once the provisional ballot has been investigated, the election officials will either accept the ballot and count all or p it, or reject the ballot and not count it.

[According to the EAC](#) the most common reasons for rejection of a provisional ballot are: (1) the voter was not registe (2) the voter cast a provisional ballot in the wrong jurisdiction; (3) the vote was cast in the wrong precinct; (4) the vote lacked required ID or did not provide the proper ID within the allotted time after Election Day as described above; (5) provisional ballot was incomplete, or the ballot or envelope was illegible; (6) the voter had already voted in that electi or (7) there was no signature on the provisional ballot or the ballot envelope.

Some states provide lists of the reasons for rejecting provisional ballots. The chart below includes 50-state informati regarding how states have defined the reasons for rejecting or accepting provisional ballots. When possible the lang listed is directly from state sources.

REASONS FOR REJECTING PROVISIONAL BALLOTS

Alabama

Information provided by a
state election official

A provisional ballot is *rejected* when:

- The provisional ballot voter is not registered to vote
- The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside
- The provisional ballot voter is determined to be ineligible to vote based on a challenge
- The provisional ballot voter fails to provide proper photo ID
- It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot

Alaska

[Alaska Stat. §15.15.198](#)

A person whose registration is inactive under AS 15.07.130(b) and who votes a questioned or absentee ballot *shall have the ballot counted* if:

- The person was registered to vote in the last four calendar years
- The person signs a statement to that effect; and
- The earlier registration is verified by the director

Arizona

[Ariz. Rev. Stat. §16-584\(E\)](#)

A provisional ballot is *rejected* when:

- Not registered
- No ballot in envelope
- Registered after 29-day cut-off
- No signature
- Insufficient/illegible information
- Signature does not match
- Wrong party
- Outside jurisdiction ballot
- Voter challenge upheld
- Voted in wrong precinct
- Voted and returned an early ballot
- Proper identification not provided by deadline
- Administrative error
- Not eligible

Arkansas

[Rules on Poll Watchers,
Vote Challenges, and
Provisional Voting](#)

A provisional ballot is *counted* when:

- It is cast by a registered voter and is the correct ballot for the precinct of the vote residence
- It is cast by a registered voter who presents proof of identity or an affidavit of indigence or religious objection to having his or her photograph made to the county clerk or the county board no later than the first Monday following the election; or
- It is an absentee ballot and the county board determines that the voter is eligible to vote in the precinct.

California

[Election Officer's Digest,
2014](#)

A provisional ballot is *rejected* when:

- Signature doesn't match voter registration signature
- NOT for failure to cast a ballot in correct precinct

<p>Alabama</p> <p><i>Information provided by a state election official</i></p> <p>Elections Observation Rights and Responsibilities, 2014</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The provisional ballot voter is not registered to vote ■ The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside ■ The provisional ballot voter is determined to be ineligible to vote based on a challenge ■ The provisional ballot voter fails to provide proper photo ID ■ It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot
<p>Colorado</p> <p>Provisional Ballot FAQ, SOS Website</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Choosing to vote a provisional ballot than vote in correct county ■ If the elector's registration cannot be verified, the ballot shall not be counted
<p>Connecticut</p> <p>Conn. Gen. Stat. §9-232n</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Not registered in proper precinct at time of casting ballot
<p>Delaware</p> <p>Del. Code tit. 15, §4948</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Incomplete provisional ballot affidavit that does not include all of the following information: full name, complete address, political party affiliation (primary election only), and date of birth ■ No suitable identification ■ Not registered to vote in the state or are not registered to vote in the election district in which they were cast
<p>District of Columbia</p> <p>D.C. Mun. Regs. Tit. 3, §807.3</p>	<p>A provisional ballot (aka special ballot) is <i>counted when</i>:</p> <ul style="list-style-type: none"> ■ The voter registered to vote at the polls or an early voting center, the voter cast Special Ballot at the precinct in which the voter maintains residence or at an early voting center designated by the Board; ■ The voter is a qualified elector of the District of Columbia; and ■ The voter did not otherwise vote in the same election.
<p>Florida</p> <p>Fla. Stat. §101.048</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Not registered ■ Not entitled to vote at the precinct where the person cast a vote
<p>Georgia</p> <p>Ga. Code §21-2-419 (c)(3)</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ No registered ■ Not otherwise eligible

<p>Alabama</p> <p><i>Information provided by a state election official</i></p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The provisional ballot voter is not registered to vote ■ The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside ■ The provisional ballot voter is determined to be ineligible to vote based on a challenge ■ The provisional ballot voter fails to provide proper photo ID ■ It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot ■ Registrars unable to determine within three days following the election whether voter was registered or eligible to vote
<p>Hawaii</p> <p>Haw. Admin. Rules § 3-172-140</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Any part of the provisional ballot application form or affirmation statement is incomplete, not executed, or altered, the provisional ballot shall not be counted ■ The county clerk determines the individual is eligible under state law to vote in the precinct the individual wishes to vote in, the individual's provisional ballot shall be counted in accordance with state law ■ The county clerk determines the individual is not eligible to vote in the precinct where the provisional ballot was cast, the provisional ballot shall not be counted
<p>Idaho</p>	<p>N/A</p>
<p>Illinois</p> <p>10 ILCS 5/18A-15</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Information available to the election authority from five specifically-identified sources opposes registration status. If a conflict exists among the information available, the election authority shall make a determination by a totality of the circumstances ■ The affidavit executed by the voter fails to contain the voter's first and last name, house number and street name and signature or mark ■ The voter is determined to have voted by mail in the election concerned; or ■ The voter does not provide the election authority with the necessary registration documentation (ID) within 7 days of the election
<p>Indiana</p> <p>2015 Election Administrator's Manual</p> <p>Ind. Code § 3-11.7-5-5</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The provisional voter affidavit has not been properly executed ■ The provisional voter is not a qualified voter of the precinct ■ The provisional voter failed to provide photo ID, if required ■ The provisional voter did not register to vote at a registration agency on a date within the registration period; or ■ Ballot does not contain the initials of the poll clerks
<p>Iowa</p> <p>Election Administrator's Handbook</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Voter did not provide ID and was required to do so ■ Voter was not registered in the precinct on election day ■ Voter already returned an absentee ballot that was counted ■ Voter is not qualified to vote; or

<p>Alabama</p> <p><i>Information provided by a state election official</i></p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The provisional ballot voter is not registered to vote ■ The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside ■ The provisional ballot voter is determined to be ineligible to vote based on a challenge ■ The provisional ballot voter fails to provide proper photo ID ■ It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot ■ Voter is inactive/pending and has not provided ID as required by the time the board meets to consider provisional and challenged absentee ballots
<p>Kansas</p> <p>Kan. Admin. Regs. § 7-36-7</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The voter did not provide additional information, an updated signature, or an additional photocopy upon request by the county election officer or if the information, signature, or photocopy is inconsistent with the information on the voter registration list
<p>Kentucky</p> <p>Ky. Admin. Regs. tit. 31, § 6:020</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The county board of elections determines the individual is ineligible to vote in the precinct in the election
<p>Louisiana</p> <p><i>Information provided by a state election official</i></p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The voter is not a registered voter or ■ Fails to vote in the precinct where he is eligible to vote in the federal election
<p>Maine</p> <p>Me. Rev. Stat. tit. 21-A §673</p>	<p>All challenged ballots are initially counted in the same manner as regular ballots. No further determination is made on the challenge unless a recount occurs and it is determined that the challenged ballot could affect the outcome of the election. If there are enough challenged ballots to affect the outcome of an election, then the challenged ballots in that district will be segregated, and the basis for each challenge may be determined by the appropriate authority designated by statute or by state or federal constitution.</p>
<p>Maryland</p> <p>Md. Election Law §11-303</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Voter is determined not to be qualified ■ The voter failed to sign the oath on the provisional ballot application ■ The individual cast more than one ballot for the same election ■ The local board determines that a provisional ballot is intentionally marked with an identifying mark that is clearly evident and placed on the ballot for the purpose of identifying the ballot; or ■ If the intent of the voter with respect to a particular contest is not clearly demonstrated, the local board shall reject only the vote for that contest
<p>Massachusetts</p>	<p>A provisional ballot is <i>rejected</i> when:</p>

<p>Alabama</p> <p><i>Information provided by a state election official</i></p> <p>Mass. Gen. Laws. ch. 54, §76C</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The provisional ballot voter is not registered to vote ■ The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside ■ The provisional ballot voter is determined to be ineligible to vote based on a challenge ■ The provisional ballot voter fails to provide proper photo ID ■ It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot <p>■ The city or town clerk determines that the individual is ineligible to vote in the precinct in the election under the law of the commonwealth</p>
<p>Michigan</p> <p>Mich. Comp. Laws Ann. § 168.813</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The voter is not registered ■ The voter did not show a proper ID or verification of residence
<p>Minnesota</p>	<p>N/A</p>
<p>Mississippi</p> <p><i>Information provided by a state election official</i></p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The voter is not a registered voter ■ The voter is registered, but in wrong precinct ■ The voter failed to return to the circuit clerk's office to present an acceptable form photo ID within 5 business days of the election ■ The voter failed to sign an affidavit of religious objection to being photographed the circuit clerks' office within 5 business days of the election
<p>Missouri</p> <p>Mo. Rev. Stat. §115.430</p> <p>Rules of Elected Officials</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Not registered ■ Not eligible ■ Voted in wrong polling place
<p>Montana</p> <p>Mont. Code § 13-15-107</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Officials cannot verify the voter's identity or eligibility
<p>Nebraska</p> <p>Neb. Rev. Stat. §32-1002 (5)</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The voter is not registered ■ Already voted in county or elsewhere ■ The voter failed to complete and sign a registration application ■ Residence on registration is in a different county or in a different precinct ■ Party affiliation on the registration application completed prior to voting the provisional ballot is different than the party affiliation that appears on the voter's voter registration record ■ Failed to complete and sign the certification on the envelope or attached form
<p>Nevada</p>	<p>A provisional ballot is <i>rejected</i> when:</p>

<p>Alabama</p> <p><i>Information provided by a state election official</i></p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The provisional ballot voter is not registered to vote ■ The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside ■ The provisional ballot voter is determined to be ineligible to vote based on a challenge ■ The provisional ballot voter fails to provide proper photo ID ■ It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot
<p>Nev. Rev. Stat. §293.3085</p>	<ul style="list-style-type: none"> ■ Person who cast the provisional ballot cast the wrong ballot for the address at which the person resides
<p>New Hampshire</p>	<p>N/A</p>
<p>New Jersey</p> <p>N.J. Stat. Ann. §19:53C-17</p> <p>N.J. Stat. Ann. §19:53C-13</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ If the voter already cast a provisional ballot ■ If the name, signature, or address does not match the voter registration record and cannot be verified. <p>If a provisional ballot voter votes a ballot in a district other than the one in which the voter is qualified to vote, the votes for those offices and questions for which the voter would otherwise be qualified to vote are counted. All other votes are not counted.</p>
<p>New Mexico</p> <p>2013 Election Handbook</p> <p>NM ADC 1.10.22</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ No signature ■ Not registered ■ Voter is registered to vote in another county in the state ■ If they already cast an absentee ballot
<p>New York</p> <p>N.Y. Election Law § 5-403</p> <p>N.Y. Election Law § 9-209</p>	<p>A provisional ballot is <i>rejected</i> or <i>accepted</i> when:</p> <ul style="list-style-type: none"> ■ If research at the county board supports the claim the voter makes in their oath or ballot envelope, the ballot will be counted. If research proves otherwise, the ballot will not be counted. Provisional ballots cast by voters who were in the correct poll site but at the wrong voter sign-in table, will be counted, however only those contests and questions which the two different districts had in common will be counted.
<p>North Carolina</p> <p>N.C. Gen. Stat. Ann. § 163-182.2</p>	<p>A provisional ballot is <i>rejected</i> when the voter:</p> <ul style="list-style-type: none"> ■ Did not vote in the proper precinct under G.S. 163-55 and G.S. 163-57 ■ Is not registered in the county as provided in G.S. 163-82.1, or ■ Is otherwise not eligible to vote
<p>North Dakota</p> <p>NDCC § 16.1-13-34</p>	<p>North Dakota does not require voters to register and only uses provisional ballots if a county order has extended the polling hours. If this happens, the secretary of state would prescribe procedures.</p>
<p>Ohio</p>	<p>A provisional ballot is <i>rejected</i> when::</p>

Alabama

Information provided by a
state election official

A provisional ballot is *rejected* when:

- The provisional ballot voter is not registered to vote
- The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside
- The provisional ballot voter is determined to be ineligible to vote based on a challenge
- The provisional ballot voter fails to provide proper photo ID
- It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot

[Ohio Rev. Stat. §3505.183](#)

- The voter is not registered
- The voter is not eligible to cast a ballot in that precinct or for that election
- The voter did not provide the required information
- The voter already voted
- The voter did not provide any additional information required within 7 days of the election
- The voter did not provide a current and valid identification
- The voter's information does not match the information in the voter registration database
- The voter's date of birth is different

Oklahoma

Information provided by a
state election official

A provisional ballot is *rejected* when:

- Voter is not registered to vote in the county or the voter's residence address is located in another precinct
- Voter's change of party affiliation was not timely received or voter's residence address is not located within the boundaries of the school district or municipality which the provisional ballot was cast
- Voter's identity cannot be verified as required by state law based upon the information provided on the Provisional Ballot Affidavit
- The US/OV voter does not provide an address of residence within the county or address provided is located in another precinct

Oregon

[Or. Rev. Stat. §254.408](#)

A provisional ballot is *counted* when:

- The elector is validly registered to vote and the vote was properly cast
- The county clerk determines the registration of the elector is considered active or inactive
- The elector is qualified to vote for the particular office or on the measure

Pennsylvania

[Provisional Balloting
Procedures](#)

A provisional ballot is *rejected or accepted* when:

- If the board of elections determines that the elector has knowingly voted in an improper election district, the board of elections may declare the ballot to be invalid. However, absent a determination of willfulness by the elector, the board should dispose of the provisional ballot as a ballot cast in the proper county but at an improper election district and count the ballot as to those offices for which, and questions on which, the elector was qualified to vote.

Rhode Island

A provisional ballot is *rejected* when:

<p>Alabama</p> <p><i>Information provided by a state election official</i></p> <p>Rules and Regulations for Provisional Voting</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The provisional ballot voter is not registered to vote ■ The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside ■ The provisional ballot voter is determined to be ineligible to vote based on a challenge ■ The provisional ballot voter fails to provide proper photo ID ■ It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot <ul style="list-style-type: none"> ■ Voter not registered or in the wrong congressional district ■ Signature on latest voter reg. form on record does not match signature on provisional ballot application ■ Signature on latest voter reg. form on record does not match signature on provisional ballot application and voter has not submitted valid ID by 4 p.m. day following election ■ The individual has cast a mail ballot, emergency ballot or military ballot in the same election
<p>South Carolina</p> <p>S.C. Code § 7-7-910</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Case in wrong precinct
<p>South Dakota</p> <p>S.D. Codified Laws § 12-20-5.1</p>	<p>A provisional ballot is rejected when:</p> <ul style="list-style-type: none"> ■ Not registered
<p>Tennessee</p> <p>Tenn. Code Ann. §2-7-112</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The voter is not properly registered in that precinct ■ The voter already voted in a different precinct
<p>Texas</p> <p>Tex. Elec. Code §65.054</p>	<p>A provisional ballot is <i>counted</i> when:</p> <ul style="list-style-type: none"> ■ The person is eligible to vote in the election and has not previously voted in that election; or ■ The person: <ul style="list-style-type: none"> ◦ meets the identification requirements ◦ the voter executes an affidavit under penalty of perjury that states the voter has a religious objection to being photographed and the voter has consistently refused to be photographed for any governmental purpose from the time the voter has held this belief; or ◦ executes an affidavit under penalty of perjury that states the voter does not have any identification as a result of a natural disaster that was declared by president of the United States or the governor, occurred not earlier than 45 days before the date the ballot was cast; and ■ The voter has not been challenged for any reason other than lack of identification
<p>Utah</p>	<p>A provisional ballot is <i>counted</i> when:</p>

<p>Alabama</p> <p><i>Information provided by a state election official</i></p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ The provisional ballot voter is not registered to vote ■ The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside ■ The provisional ballot voter is determined to be ineligible to vote based on a challenge ■ The provisional ballot voter fails to provide proper photo ID ■ It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot
<p>Utah Code § 20A-4-107</p>	<ul style="list-style-type: none"> ■ The person provides valid voter identification to the county clerk or an election officer who is administering the election by the close of normal office hours on Monday after the date of the election
<p>Vermont</p> <p>Vt. Stat. Ann. Title 17 § 2555</p> <p>Vt. Stat. Ann. Title 17 § 2557</p> <p>Vt. Stat. Ann. Title 17 § 2121</p>	<p>If a voter chooses to vote by provisional ballot, the clerk reviews the application and determine eligibility after the close of the polls. The following eligibility conditions must met:</p> <ul style="list-style-type: none"> ■ a citizen of the United States; ■ a resident of the state of Vermont; ■ has taken the voter's oath; and ■ 18 years of age or more. ■ Any person meeting the requirements of subdivisions (a)(1)-(3) of this section will be 18 years of age on or before the date of a general election may register a vote in the primary election immediately preceding that general election.
<p>Virginia</p> <p>Va. Code § 24.2-653</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Not eligible to vote in precinct ■ Unable to determine right to vote ■ No proper ID
<p>Washington</p> <p>Wash. Admin. Code § 434-262-032</p>	<p>A provisional ballot is <i>rejected</i> when:</p> <ul style="list-style-type: none"> ■ Not registered ■ Already voted a regular ballot ■ Signature on provisional ballot envelope does not match the voter registration record and/or they do not present a proper ID
<p>West Virginia</p> <p>W. Va. Code § 3-1-41</p>	<p>A provisional ballot is <i>rejected</i> or <i>counted</i> when:</p> <p>Provisional ballots may not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election. The county commission, as the board of canvassers shall protect the privacy of each provisional ballot cast. The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained the challenged voter was entitled to vote.</p>

Alabama

Information provided by a state election official

A provisional ballot is *rejected* when:

- The provisional ballot voter is not registered to vote
- The provisional ballot voter cast the provisional ballot in a precinct where he/she does not reside
- The provisional ballot voter is determined to be ineligible to vote based on a challenge
- The provisional ballot voter fails to provide proper photo ID
- It is determined that the provisional ballot voter requested and voted an absentee ballot despite the claim that the provisional ballot voter did not vote his/her absentee ballot

Note: Guidance on deciding whether or not to count provisional ballots is provided in the Secretary of State’s manual [2014 Best Practices Guide for Canvass and Recount](#).

Wisconsin

[Wis. Stat. § 7.52](#)

A provisional ballot is *rejected* when:

- If voter does not provide the proper documentation to prove eligibility to vote (ID proof of residency) by 4 p.m. the Friday after the election.

Wyoming

[Wyo. Stat. § 22-15-105](#)

A provisional ballot is *rejected* when:

- The voter is not on the registration rolls and is registering for the first time on Election Day but did not present documentation at the polls or by close of business on the following day.

How Does a Voter Find Out if a Provisional Vote Was Counted?

HAVA requires the state or local election official to give the person casting a provisional ballot information on how he/she can find out whether the vote was counted, and, if not, the reason why not. The law says this may be “a toll-free telephone number or an Internet website” established for that purpose.

This requirement often is reflected in state statute, rule, or in the election manual. In 2012, [20 states offered an online tool](#) for voters to find out if their provisional ballot was counted, according to the Election Performance Index from [The Pew Charitable Trusts](#).

What Time Is Allotted to Determine the Status of Provisional Ballots?

Each state establishes when provisional ballots are processed. For example, some states base this timeframe on how long the voter has to prove eligibility as detailed above, or they use the same timeframe as the official election canvass.

TIME ALLOTTED TO DETERMINE THE STATUS OF PROVISIONAL BALLOTS

State	When Provisional Ballots Are Counted
Alabama Provisional Voting in Alabama	By noon, seven days after the election

State	When Provisional Ballots Are Counted
Alaska Alaska Stat. §15.20.205	15 days
Arizona Elections Procedures Manual, 2014	10 business days following the general federal election and 5 days for other elections
Arkansas Rules on Poll Watchers, Vote Challenges, and Provisional Voting	48 hours – 15 days after the election
California Cal. Elec. Code § 14310	The canvass shall commence no later than the Thursday following the election, shall be open to the public, and, for state or statewide election shall result in a report of results to the Secretary of State. The canvass shall be continued daily, Saturdays, Sundays, and holidays excepted, not less than six hours each day until completed.
Colorado Colo. Rev. Stat. § 1-8.5-105 (5)	10 days after a primary or 14 days after a general election
Connecticut Conn. Gen. Stat. § 9-232n	Not later than six days after the election or primary
Delaware Del. Code tit. 15, § 4948	The day following an election in which provisional ballots were used, the Department shall meet to examine the provisional ballots, determine which of the ballots should be tallied in accordance with the rules stated below, and then tally those ballots.
District of Columbia Voting by Special Ballot FAQ	10 days after the election
Florida <i>Information provided by a state election official</i>	The provisional ballot count must be completed by noon on the third day after a primary election, and noon on the fourth day after a general election.
Georgia Ga. Code. § 21-2-419 (c) (1)	3 days to prove identity or for county registrar to verify registration
Hawaii Hawaii Rev. Stat. § 11-174.5	20 days
Idaho	N/A
Illinois	14 days following the election

State	When Provisional Ballots Are Counted
10 ILCS 5/18A-15	
Indiana Ind. Code § 3-11.7-5-1	10 days after the election
Iowa Election Administrator's Handbook	Thursday after election day
Kansas Kan. Stat. Ann. § 25-3104, The Kansas Election Standards	Provisional ballots are counted as part of the intermediate canvass conducted by the county board of canvassers on either the Monday or Thursday following the election.
Kentucky Ky. Admin. Regs. tit. 13, § 6:020	Not later than 12 p.m., prevailing time, on the Friday following the election
Louisiana La. Rev. Stat. § 18:566.2	Provisional ballots shall be counted on the third day following the election
Maine Me. Rev. Stat. tit. 21-A §673	Reasonable time after the election
Maryland Maryland State Board of Elections, Challengers, Watchers & Other Election Observers Manual	If provisional ballot because of lack of proper ID, the voter has until 10a.m. on the second Wednesday after the election to provide proper ID to local board of elections
Massachusetts Mass. Gen. Laws ch. 54, § 76C	12 days
Michigan Election Inspector's Manual	6 calendar days after the election
Minnesota	N/A
Mississippi Mississippi Poll Manager Guide	5 business days
Missouri Miss. Code Ann. §115.511	Same time as official canvass, two weeks following the election.
Montana	6 days

State	When Provisional Ballots Are Counted
Mont. Code § 13-15-107	
Nebraska Neb. Rev. Stat. § 32-1002	The verification and investigation shall be completed within seven day after the election
Nevada Nev. Rev. Stat. § 293.387	6 working days following the election
New Hampshire	N/A
New Jersey N.J. Stat. § 19:19-1	Before the Monday following the election when the Board of County Canvassers meets
New Mexico N.M. Stat. Ann. § 1-12-7.1	Voter has until 5p.m. on the second day following the election to prov proper identification
New York N.Y. Election Law, § 9-209	No more than fourteen days after a general or special election and no more than eight days after a primary election at which such ballots are voted
North Carolina N.C. Gen. Stat. § 163-182.2	Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed
North Dakota	N/A
Ohio Ohio Code § 3505.183	Until any hearing required to be conducted under section 3503.24 of the Revised Code with regard to the provisional voter is held, or until the eleventh day after the day of the election, whichever is earlier
Oklahoma Okla. Admin. Code 230:35-5-177	After 5 p.m. on Friday after Election Day
Oregon Or. Rev. Stat. § 254.426	14 days
Pennsylvania About Provisional Voting	7 days
Rhode Island Provisional Ballot Overview	48 hours after the election
South Carolina	

State	When Provisional Ballots Are Counted
S.C. Code Ann. § 7-13-830, § 7-17-10, § 7-17-510	Before the board of canvassers meet, on the Thursday following a primary/runoff or the Friday following a general or special election
South Dakota S.D. Codified Laws § 12-20-13.2, 12-20-13.3	7-17 days following the election, just prior to the official canvass
Tennessee Tenn. Code Ann. §2-7-112	The counting of all provisional ballots must be completed within four (4) business days of the close of polls on election day
Texas Tex. Election Code § 65.051	7-13 days
Utah Utah Code 20A-4-301(1)(b)	Counted during the official canvass no later than 14 days after the election.
Vermont Vt. Stat. Ann. tit. 17, § 2557	2 days after the election
Virginia Va. Code § 24.2-653	7 calendar days from the date of the election
Washington Wash. Rev. Code § 29A.60.190	14-21 days after the election
West Virginia W. Va. Code, § 3-6-9	Provisional ballots are investigated during canvass, on the fifth day at the election.
Wisconsin Wis. Stat. § 7.52	4 pm the Friday after the election
Wyoming Wyo. Stat. § 22-16-103	The first Friday following the election

Which States Do Not Use Provisional Ballots?

States that offered same-day voter registration at the time the [National Voter Registration Act](#) was enacted (1993) are also exempt from HAVA's provisional ballot requirements. Those states are: Idaho, Minnesota, New Hampshire, North Dakota (which does not require voter registration although it does keep a list of voters), Wisconsin and Wyoming.

While those states are not required to provide provisional ballots under HAVA, they are also not prohibited from using provisional ballots.

North Dakota, for instance, uses them in cases where the hours at a polling place have been extended. Wisconsin uses provisional ballots for same-day registration when a voter is not able to provide required identification. In this case, a provisional ballot is not counted until identification is shown, allowing the voter to register.

Similarly, Wyoming uses provisional ballots if the voter is not on the registration list and does not have proper identification in order to register on Election Day, if they are challenged by a poll watcher or if there are extended poll hours. The voter is then required to provide additional information, such as proof of residence or identification, in order for the ballot to be counted. The provisional ballot will not be counted if the voter does not provide the requisite information needed for registration.

Idaho, Minnesota and New Hampshire do not issue provisional ballots at all.

Methodology

This information was compiled from various sources, including state statutes and regulations, state election manuals, Election Assistance Commission Statutory Survey, and conversations with state election directors.

To offer comments or corrections, please contact elections-info@ncsl.org.

Additional Resources

- [NCSL LegisBrief](#) on Provisional Ballots

About This NCSL Project

The development of this Web page was generously supported by The Pew Charitable Trusts.

NCSL tracks election and campaign issues in four major categories: [election laws and procedures](#), [campaign finance initiative and referendum](#), and [election results and analysis](#). We provide comprehensive 50-state research and analysis on a wide variety of topics related to these issues.

For [redistricting](#), NCSL provides similar data that covers redistricting laws, commissions and litigation.

Additionally, NCSL's [Redistricting and Elections Standing Committee](#) works on issues that affect all states, including voting technology and redistricting systems and technology.

If you don't find the information you need, please contact our elections team at 303-364-7700 or election-info@ncsl.org. NCSL staff can do specialized searches for legislators and legislative staff.

NCSL Member Toolbox

Members Resources

- Get Involved With NCSL
- Jobs Clearinghouse
- Legislative Careers
- NCSL Staff Directories
- Staff Directories
- StateConnect Directory

Policy & Research Resources

- Bill Information Service
- Legislative Websites
- NCSL Bookstore
- State Legislatures Magazine

Accessibility Support

- Tel: 1-800-659-2656 or 711
- Accessibility Support
- Accessibility Policy

Meeting Resources

- Calendar
- Online Registration

Press Room

- Media Contact
- NCSL in the News
- Press Releases

Denver

7700 East First Place
Denver, CO 80230
Tel: 303-364-7700 | Fax: 303-364-7800

Washington

444 North Capitol Street, N.W., Suite
Washington, D.C. 20001
Tel: 202-624-5400 | Fax: 202-737-1000

EXHIBIT 2

1 MARK BRNOVICH
 2 Attorney General
 3 Firm Bar No. 14000
 4 James Driscoll-MacEachron (027828)
 5 Kara Karlson (029407)
 6 Karen J. Hartman-Tellez (021121)
 7 Assistants Attorney General
 8 1275 W. Washington Street
 9 Phoenix, AZ 85007
 10 Telephone (602) 542-4951
 Facsimile (602) 542-4385
 james.driscoll-maceachron@azag.gov
 kara.karlson@azag.gov
 karen.hartman@azag.gov
Attorneys for State Defendants

11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF ARIZONA**

13)	
14	Leslie Feldman, et al.,	)	Case No. CV-16-01065-PHX-DLR
15)	
16	Plaintiffs,)	
17		)	DECLARATION OF
18	v.	)	ERIC SPENCER
19)	
20	Arizona Secretary of State's Office, et al.,)	
21)	
22	Defendants.)	
23)	

24 I, Eric Spencer, declare:

25 1. I am the Elections Director for the Arizona Secretary of State. I have
 26 personal knowledge of the facts stated herein and if called upon, could testify
 27 competently to them.

28 2. I have worked as Elections Director for the Secretary since January 2015.
 As Elections Director, I ensure the office complies with statutory duties for elections,
 such as logic and accuracy tests and the official state canvass, I field complaints from the

1 general public about elections, and I oversee the election publications from the
2 Secretary's office.

3 **A. Voter Outreach and Education Regarding Polling Places**

4 3. Arizona voters have multiple resources to find the address of their polling
5 place, including direct mail, online resources, and direct outreach efforts by the counties.

6 4. In particular, the counties maintain their own websites and/or a social
7 media presence with contact information and polling place information. Some counties,
8 such as Pima, have their own polling place locator where a voter can enter their address
9 to find their polling place. Other counties, such as Navajo county, link back to the
10 Secretary's polling place locator that provides the same information. Additionally, some
11 counties, such as Maricopa County, have monthly community meetings where voters can
12 raise concerns and receive information about polling places. All counties are also
13 required to have all polling places publicly announced and approved by the county board
14 of supervisors in advance of the election.
15

16 5. The Secretary also provides three different websites that provide
17 information on polling locations: azsos.gov, arizona.vote, and voter.azsos.gov. The
18 Secretary's communications team and the Secretary herself respond to questions posed
19 by voters on social media sites such as Facebook and Twitter. Elections Department staff
20 also provide information to voters who call or email the office about polling place and
21 voter registration information.
22

23 6. The Secretary mails a General Election publicity pamphlet directly to
24 voters' households. The introductory section of the pamphlet provides the voter with
25 information on how to find their polling location, and the address, phone, and email for
26 the Secretary's office and all county recorders' offices.
27
28

1 7. The Arizona Citizens Clean Elections Commission (“CCEC”) is another
2 resource voters can use to find their polling place. The CCEC provides a polling place
3 locator and county recorder information on its website and app for mobile devices.

4 **B. Effect of OOP voting on state official canvass**

5 8. After a General Election, the counties have twenty days to complete their
6 canvass, a process that includes tallying the votes for each candidate or question and
7 providing the vote totals and total voter registration numbers for that county, and provide
8 their canvass to the Secretary. The Secretary then must canvass the election for state
9 offices by the fourth Monday following the General Election in order to verify the
10 information in the canvass, a process that includes verifying that the number of registered
11 voters the county is reporting matches the number that they provided the Secretary on the
12 cut off date and checking that the votes cast for all the candidates in a race equals the
13 total number of votes cast for that race, and certify the official results. The timeline for a
14 Primary Election is even more compressed.
15

16 9. The timelines for the county and state canvasses are extremely tight to
17 ensure that election results are tallied and certified in a timely manner. These timelines
18 are mandatory and set by statute. The official canvass must be completed before the
19 candidate is officially certified.
20

21 10. Based on my experience, instituting a new vote counting procedure would
22 likely delay the canvass process, and therefore likely put the counties and the state past
23 the statutory deadlines. The statute does not allow for delays of the county canvass for
24 any reason other than missing returns from a precinct.

25 11. Additionally, the elections budgets for counties are likely already set and do
26 not necessarily include funds to cover the additional labor and duplicate ballots that
27 would be required to count OOP ballots.
28

EXHIBIT 3

1 WILLIAM G. MONTGOMERY
 2 MARICOPA COUNTY ATTORNEY
 3 By: M. Colleen Connor (Bar No. 015679)
 4 Andrea L. Cummings (Bar No. 013507)
 5 Deputy County Attorneys
 6 MCAO Firm No. 0003200
 7 CIVIL SERVICES DIVISION
 8 222 N. Central Avenue, Suite 1100
 9 Phoenix, Arizona 85004
 10 Telephone (602) 506-8541
 11 Facsimile (602) 506-8567
 12 connorc@mcao.maricopa.gov
 13 cumminga@mcao.maricopa.gov
 14 ca-civilmailbox@mcao.maricopa.gov
 15 Attorneys for Maricopa County Defendants

12 UNITED STATES DISTRICT COURT
 13 FOR THE DISTRICT OF ARIZONA

14 Leslie Feldman, et al.,
 15
 16 Plaintiffs,
 17 v.
 18 Arizona Secretary of State’s Office, et al.,
 19
 20 Defendants.

NO. 16-CV-01065-DLR

**DECLARATION OF
 KAREN OSBORNE IN SUPPORT OF
 MARICOPA COUNTY
 DEFENDANTS’ RESPONSE TO
 PLAINTIFFS’ MOTION FOR
 PRELIMINARY INJUNCTION**

21 Pursuant to 28 U.S.C. § 1746, I, Karen Osborne, declare as follows:

- 22 1. My name is Karen Osborne. I am over the age of 18, have personal knowledge of
 23 the facts stated in this declaration, and can competently testify to their truth.
- 24 2. I am the Director of Elections for Maricopa County. In that capacity, I am respon-
 25 sible for numerous duties of the Maricopa County Recorder and Maricopa County Board
 26 of Supervisors related to conduct of the 2016 Primary and General Elections, including
 27
 28

1 all aspects of administering these elections for more than 2 million voters¹ in Maricopa
2 County, and in particular, establishing polling place locations, ballot printing, early vot-
3 ing and related duties. I have been the Director for 21 years and have been responsible
4 for election duties in 591 local, state, and federal elections in Maricopa County.
5

6 3. I am also knowledgeable about election administration duties and voting systems
7 in Arizona's other counties, having served as Secretary of State for the State of Arizona
8 in 1988, and as Assistant Secretary of State for fourteen years, with statewide responsibil-
9 ities for election administration. Since 1987 I have provided training and technical assis-
10 tance for certified election officers from all of Arizona's counties through the State Elec-
11 tion Officer Certification Program and have served on the Secretary of State Election Of-
12 ficer Education, Training and Certification Advisory Committee.
13
14

15 **VOTING PRECINCT BOUNDARY CHANGES IN 2012**

16 4. Following the 2010 decennial Census, all Arizona counties reviewed their own
17 election districts and redistricted as necessary to meet federal and state criteria for voting
18 precincts, justice court precincts, supervisorial, special health care, and community col-
19 lege districts following release of the 2010 census data, 2011 judicial productivity data
20 from the Arizona Supreme Court, and adoption of the State's Legislative District and
21 Congressional District lines approved by the Arizona Independent Redistricting Commis-
22
23
24
25
26

27 ¹ 2016 Active Voter Registration Count:
28 http://www.azsos.gov/election/VoterReg/Active_Voter_Count.pdf

1 sion (AIRC). The Counties' redistricting programs were accompanied by considerable
2 staff work, demographic, community and geographic analysis, and public hearings.

3 5. As of May of 2016, Maricopa County had 2,026,517 registered voters, or 60% of
4 the total number of registered voters in the State. Eight of the nine Congressional Dis-
5 tricts are either wholly or partially contained in Maricopa County.
6

7 6. Maricopa County has 724 voting precincts all of which were approved by the
8 United States Department of Justice in 2012, and used in the 2012 and 2014 primary and
9 general elections and will be used again in the 2016 primary and general elections. The
10 reasoning, process and outreach in developing the voting precincts are outlined below.
11

12 **Voting Precincts**

13
14 7. County voting precincts are the building blocks for all electoral districts and state,
15 federal and local elections conducted by the County. There are more than 1,400 voting
16 precincts in Arizona, 724 of which are in Maricopa County. State law mandates that the
17 County's voting precinct boundaries align with and match the State's Legislative and
18 Congressional district boundary lines. In addition to aligning with the Legislative and
19 Congressional District lines, voting preicncts must align with the County's own justice
20 court, board of supervisors, community college, and special health care electoral district
21 lines (A.R.S. §§ 16-411(A), 15-1441, 48-5541.01).
22

23
24 8. County election districts, voting registration systems, ballot printing, election
25 board workers, polling places, counting and tabulation systems are all dependent on "pre-
26 cinct-bound" electoral district boundaries. Arizona's laws are rigid with regard to regis-
27 tering voters by precinct, and voting and tabulation which must occur by precinct. Voters
28

1 must vote only in the precincts of their residence; their ballots may only be counted as
2 valid -- and the final tabulation and canvasses for all state, federal and local races and
3 questions must tally -- if they are cast by voters in their proper voting precinct
4 “homes”). A.R.S. § 16-249 allows the votes to be tabulated by congressional districts for
5 a presidential preference election, where A.R.S. § 16-646(A) states the official canvass
6 shall include the results by precinct. Reporting by precinct has been the rule in Arizona
7 for as long as I have worked elections with the exception of the presidential preference
8 election. Also, based upon interactions with others in the nationwide election communi-
9 ty, reporting by precinct is common practice in other states as well.

12 9. Pursuant to A.R.S. § 16-411, the Maricopa County Board of Supervisors was re-
13 quired to complete the reprecincting of voters based on final state, county and federal dis-
14 trict lines prior to December 1, 2011 for the 2012 general election.² The process will be
15 described below and is well documented with much information available on the De-
16 partment’s webpage. See, <http://recorder.maricopa.gov/elections/redistricting.aspx>.

19 10. For 2012, voting precincts were adjusted to align with the new congressional, leg-
20 islative, board of supervisors, and justice court boundaries. In addition, the precincts that
21 had previously been co-located at the same facility, the Maricopa County Elections De-
22 partment (Department) combined the co-location to a single precinct. Also, the Depart-
23 ment considered the volume of voters on the Permanent Early Voting List (PEVL) and
24

26 ²Due to a late change to the congressional and legislative district lines by the Arizona In-
27 dependent Redistricting Commission (“AIRC”) in January of 2012, Maricopa County did
28 not approve the final voting precinct lines until February 6, 2012.

1 total voter registration numbers for each precinct. Moreover, the Department considered
2 the new municipal district boundaries. In light of all of the aforementioned changes, Mar-
3 icopa County reduced the number of voting precincts from 1142 (applicable from 2002 to
4 2010) to 724 voting precincts to go into effect starting in 2012.

5
6 11. Throughout the redistricting and reprecincting process, the County worked collab-
7 oratively with all of the other redistricting entities—from the City/Town Clerks to the Ar-
8 izona Independent Redistricting Commission—in an effort to limit the precinct splits,
9 avoid meaningless vacant traps on the map, and be sure the bedrock (voting precincts) to
10 all of the districts was sound. Many of the changes did not actually result in a change in
11 the voter's polling location; particularly for those voters who continued to go to the same
12 facility that was formerly co-located, or was outside of their precinct and is now in it, or
13 have a precinct name change. The voting precinct lines were specifically drawn with con-
14 sideration of reduction of ballot style splits within a precinct to reduce boardworker and
15 voter confusion.
16
17
18

19 12. The Department went to tremendous effort to ensure the general public was given
20 an opportunity to be involved in the reprecincting process through public presentations
21 and hearings. The general public had the ability to draw line proposals via an online
22 mapping tool as well as draw on maps provided at public hearings and/or request paper
23 maps and return them to the Elections Department. There were a total of five citizen
24 plans submitted for these districts. The Department then took these suggestions and at-
25 tempted to implement appropriate changes. Some submissions included precincts that
26 were non-contiguous, or which split communities of interest, and were not considered as
27
28

1 viable options. These suggestions were discussed at the Department's Community Net-
2 work meeting of August 3rd, 2011 after members were alerted of the meeting, and the
3 Department also provided the information post-meeting for those who were unable to at-
4 tend. Interested parties were able to also communicate their proposals and concerns via
5 email, via phone, as well as meeting in person. The Department worked collaboratively
6 with the Maricopa County Community College Center for Civic Participation and con-
7 ducted public hearings on the community college campuses.
8
9

10 13. There were 18 public hearings with press releases and advertisements placed to
11 notify the public and email notices to interested parties. In addition to the public hearings,
12 solicitation of stakeholders to review proposals and make recommendations was done at
13 meetings with the political parties; and the Maricopa County Community Network repre-
14 senting the Hispanic, Native American, and Persons with Disabilities' interests, was noti-
15 fied of the public hearings in addition to being informed of the opportunity to view the
16 changes on the website.
17
18

19 14. The Elections Department conducted numerous public hearings. The first round of
20 12 hearings occurred in April-May of 2011. After the feedback period, the Department
21 adjusted the lines and took them back out for public comment, during hearings in July-
22 August of 2011. These changes were available on the County's website, presented at nu-
23 merous Community Network meetings, as well as to the political parties and other inter-
24 ested parties including the Inter Tribal Council of Arizona. Indeed, the Department
25 availed itself to every opportunity to discuss redistricting. For example, during a vide-
26 otaping session with the Arizona Center for Disability Law and the Governor's Council
27
28

1 on Developmental Disabilities on voting rights of voters with disabilities, the Department
2 discussed the importance of having voters know where their polling place is prior to Elec-
3 tion Day (particularly for voters who have transportation concerns or who have to rely on
4 others). The Department discussed combining former co-located facilities and how the
5 Department anticipated the separation of the formerly co-located facilities would lead to
6 less congestion and improve the streamlining of staff and materials.
7

8 **Demographic Information**

9
10 15. The Department evaluated the demography of the impacted areas to ensure that the
11 precinct integrity was maintained and that there were not retrogressive effects on racial or
12 linguistic minorities. Not all proposed plans had corresponding demographic analysis if
13 the plan was of transient nature—some were only on the table for a day or two. Addi-
14 tionally, it is important to note that the voter registration numbers varied over the course
15 of the year while the reprecincting process was occurring. For each new set of proposed
16 maps, the most recent data was being used to compare existing lines to proposed line, ap-
17 ples to apples, but comparing a previous proposal to a recent one may introduce slight
18 variations. For the most part, however, the Department's plans were organic in nature
19 and tended to blend and merge rather than maintain rigid autonomy.
20
21
22

23 16. No Tribal Lands were impacted by the changes in the voting precincts. The De-
24 partment worked very closely with Gila River Indian Community Land Use Planning and
25 Development for years prior to the reprecincting. At the time, the Gila River Indian
26 Community sought to designate and administer street names and numeric sequencing,
27 which was a challenge for individuals who attempted to register to vote and were not ac-
28

1 customized to the new names and house numbers. There was a transition period with the
2 new street names, and the Department's GIS database worked with the Community to en-
3 sure the incorporation of the new street names and numbers into the GIS database.

4 **Spanish Language Materials and Assistance**

5
6 17. **Materials Provided by Mail:** All redistricting materials mailed to the public were
7 bilingual with English and Spanish; and election materials mailed to the public continue
8 to be bilingual in both English and Spanish on a single document (with the exception of
9 the federal General Election ballot, which is available as a monolingual text due to the
10 length of the ballot) . In every election, voters are mailed ID cards, sample ballots, pub-
11 licity pamphlets, and official ballots, which either contain information to educate them on
12 what district they reside in, or are providing their choices based on those designations.

13
14
15 18. **Public Notices:** Public hearing press releases, public notices, and website posting
16 of information on both the designated redistricting page as well as the Community Net-
17 work page were posted in English and in Spanish. The Department had translation ser-
18 vices available in Spanish, O'odham, and Sign Language at all of these public meetings.

19
20 19. **Registration:** Voters who were already on the voter file had their districts updated
21 automatically and received notification by way of new voter ID cards and later for each
22 election with their sample ballots as prescribed by Arizona Revised Statutes.

23
24 20. **Publicity:** The Department's publication efforts were intended to notify the public
25 of the ability to participate in the drawing of district lines by submitting maps, comment-
26 ing on proposals, and attending public hearings. This publicity was documented in the
27 numerous Community Network presentations, which reflected information sent to media
28

1 outlets, the signage at such meetings, and email list. Numerous newspaper articles cov-
2 ered the process—from the municipal, county, as well as the 2011 events regarding the
3 AIRC. There were also appearances on local radio and television programs by County
4 Recorder Helen Purcell, Bilingual Coordinator Leticia Castro, and Federal Compliance
5 Officer Tammy Patrick. The Department’s partnership with the Maricopa County Com-
6 munity Colleges provided additional publicity as they did an extensive campaign email-
7 ing information to student and employee groups, posting signage, and, in general, en-
8 couraging participation.
9

10
11 21. Accuracy, Completeness: Translations were provided by our bonded, certified
12 translator and were reviewed by the Bilingual Coordinator, as they have been since the
13 redistricting process ended.
14

15 **Tribal Assistance and Publicity**

16 22. General: O’odham translation was available during redistricting and continues to
17 be available for our Native Speakers on CD and audio file postings. The voter infor-
18 mation telephone call-in center was and continues to be staffed with bilingual agents
19 who assist voters with questions regarding the redistricting and the registration process .
20 Translation was available at all public hearings as well as American Sign Language
21 (ASL) translation.
22

23
24 23. Assistance: Language assistance was available during redistricting and will con-
25 tinue to be provided by our O’odham translators, Mr. Lester Luna and Lillian Celaya. All
26 three Department locations are staffed with Spanish speaking staff for those who require
27 bilingual services. The Department collaborates with Hispanic Community Groups,
28

1 Tribal leaders, and Get Out The Vote specialists and also with advocates for voters with
2 disabilities such as the Arizona Center for Disability Law to ensure that voters facing a
3 variety of barriers receive the assistance that they may need to enable them to participate
4 in the franchise. Our offices also have ASL translation readily available via the Deaf Link
5 service.
6

7 24. Helpers: Special Election Boards (SEB) are available to voters with assistive
8 needs. The SEB teams include bilingual assistance for those voters who request it. Also
9 note that early voting activities continue at the Elders Center at San Lucy for our
10 O’odham voters with the boards in Hickiwan and San Lucy being comprised in part, or in
11 whole, of community members able to speak and assist voters in O’odham.
12
13

14 **Approval by the Department of Justice**

15 25. On February 6, 2012, the Maricopa County Board of Supervisors approved the re-
16 vised voting precincts. In accordance with Section 5 of the Voting Rights Act, Maricopa
17 County then submitted the maps, demographic data, legal descriptions, and reports ex-
18 plaining the changes for each of the 724 new voting precincts to the United States De-
19 partment of Justice. In a letter dated April 3, 2012, the United States Department of Jus-
20 tice notified the Department that it had precleared the County’s voting precinct changes.
21 Since the date of that preclearance, the County has used those same 724 voting precinct
22 boundaries for 2012 Primary and General elections, and the 2014 Primary and General
23 elections. The County will again use those 724 voting precinct boundaries in the upcom-
24 ing 2016 Primary and General Elections.
25
26
27
28

1 26. Additionally, the Department of Justice pre-cleared the polling places for all 724
2 precincts and they were used in the 2012 Primary and General elections, and except for a
3 few changes in the 2014 Primary and General elections, and with some changes that are
4 explained below, most will be used in the 2016 Primary and General elections.
5

6 **POLLING PLACE LOCATIONS, FACILITIES, AND NOTICE**

7 27. While there were 60 polling locations and approximately 300 ePollbooks deployed
8 during the PPE, the 2016 Primary and General Elections will have 724 precincts at 645
9 polling locations with approximately 1650 ePollbooks to be deployed and 125 reserved
10 for trouble shooters, about 25 needing repair, or 1800 altogether. Thus, we will have
11 over ten times the locations and over five times the number of check-in lines in the Gen-
12 eral Election.
13
14

15 28. Every ePoll book deployed represents a check-in line at polling places. With the
16 goal of minimizing wait times, our 1800 ePoll books will be deployed to precincts and to
17 trouble shooters pursuant to a plan developed after considering a myriad factors includ-
18 ing:
19

20 a. records and data concerning precinct by precinct registration, 2012 general elec-
21 tion turnout, PEVL, and provisional ballots;
22

23 b. precinct by precinct demographic information covering minority representation,
24 mobility, poverty, and accessibility;
25

26 c. queuing and wait time simulations compiled and reported on by Dr. Buell, incor-
27 porating peak times, lines prior to poll opening, and other parameters, and whose declara-
28 tion will be filed simultaneously with the Maricopa County Defendants' response, and

1 d. considering epoll book data and timing measurements and features provided by
2 the epoll book vendor, Robis, to estimate the average check-in time for regular and provi-
3 sional voters.

4
5 29. Polling places must meet strict statutory and State Election Procedure Manual
6 (Exhibit 1, see pages 70-77) requirements to ensure accessibility for voters with disabili-
7 ties. The Department inspect every polling location facility to ensure ADA compliance,
8 and reports this information to the Secretary of State. There are specifications called out
9 for parking, walkways and pathways, ramps, elevators, doors, corridors and passageways,
10 interior ramps, stairs, etc. In any given precinct, there may be relatively few locations that
11 are suitable.

12
13
14 30. And those that were suitable in 2014 may not be available in 2016 or in the future.
15 For example, of 75 locations that have changes since 2014, 41 are not available. (Exhibit
16 2. Changes Spreadsheet). There are 12 precincts that used to be co-located, and now each
17 precinct has its own polling location, which means there are 6 new polling locations since
18 2014. Additionally, 6 polling locations that were previously in an adjacent precinct, have
19 moved to locations within the precinct.

20
21
22 31. The Department (see Bartholomew declaration filed simultaneously) makes con-
23 siderable efforts to inform voters of where they need to vote, including:

24 a. an on-line polling place locator (<http://recorder.maricopa.gov/pollingplace/>);

25 b. an on-line polling place list

26
27 ([http://recorder.maricopa.gov/pollingplace/ppdetailresults.aspx?view=other&election=M](http://recorder.maricopa.gov/pollingplace/ppdetailresults.aspx?view=other&election=MARICOPA+COUNTY%2c+8%2f30%2f2016&ElectNo=1300&Type=other)
28 [ARICOPA+COUNTY%2c+8%2f30%2f2016&ElectNo=1300&Type=other](http://recorder.maricopa.gov/pollingplace/ppdetailresults.aspx?view=other&election=MARICOPA+COUNTY%2c+8%2f30%2f2016&ElectNo=1300&Type=other));

1 c. every household with a registered voter that is not on the early voting list is sent a
2 sample ballot listing the precinct and address of the polling place (*See*, Exhibit 3, Sample
3 Ballot, showing polling location lower left corner);

4 d. voters can call the Department at 602-506-1511 to find out the location of their
5 polling place. On election day, the STAR Center (call-in center) will be staffed with extra
6 workers, including bilingual workers, to assist voters with questions.
7

8 e. newspaper, TV, and radio spots informing voters of all the above;

9 f. webpage, facebook and twitter posts are also made; and

10 g. Community Network Meetings and outreach efforts, which include meeting with
11 leadership from community organizations, to inform and advise members of the commu-
12 nity about elections and voting information.
13
14

15 32. Additionally, early voting begins 27 days prior to election day through the mail of
16 through in person early voting. For the in-person early voting, the locations of the early
17 voting sites and the hours of operation are widely available,
18

19 (<http://recorder.maricopa.gov/elections/evlocations.aspx>). Some early in person early vot-
20 ing sites start operating 22 days before the election. A voter may vote at any of the early
21 voting locations, and some locations have extended hours and some open on Saturdays.
22

23 33. Voters may avoid the possibility of lines and parking issues by voting early by
24 mail. Voters can have their name placed on the Permanent Early Voting List (PEVL) and
25 will be mailed a ballot beginning 27 days before the election day. Currently, there are
26 more than 1.3 million voters in Maricopa County on PEVL. When voting by mail, the
27
28

1 ballot must be completed properly and returned to the Recorder's Office, or dropped off
2 at any polling place no later than 7pm on election day.

3 <https://recorder.maricopa.gov/earlyvotingballot/permanentevlistinfo.aspx>.

4
5 34. Also, Special Election Boards can be authorized to take a ballot to any qualified
6 elector who is confined as the result of a continuing illness or physical disability and is,
7 therefore, not able to go to the polls on the election day. In order for the County Record-
8 er or officer in charge of elections to authorize a special election board, a verbal or signed
9 written request shall be provided by the qualified elector. Such requests must be made by
10 written request shall be provided by the qualified elector. Such requests must be made by
11 5:00 p.m. on the second Friday before the election. *See*, ARS § 16-549.

12
13 35. The City of Phoenix's election will be on Maricopa County's November 8, 2016
14 ballot. Thus, a qualified elector who is a resident of Phoenix will only need to go to one
15 location to vote in the City of Phoenix election and all other elections the voter is eligible
16 to vote in. There should be no confusion that could be caused by having separate County
17 and City of Phoenix polling places on election day.

18 19 **ELECTION TRAINING AND CONTINGENCY PLANS**

20
21 36. The conduct of the election is governed by statutes and by the Arizona Secretary
22 of State's Election Manual. (Exhibit 1) The Manual provides standards and requirements
23 on all aspects of the election, and is available on the Secretary's webpage. We are keenly
24 aware of the Manual, I wrote parts of it, and we work hard to ensure that we comply with
25 its principles and practices.

26
27 37. The Department trains all board workers for each election and provides each with
28 a manual describing board worker duties, the mechanics of voting, the nature and use of

1 the equipment. (Exhibit 4, 2016 Board Worker Training Manual,
2 <http://recorder.maricopa.gov/pdf/BWTrainingManual.pdf>). Poll workers must complete
3 the basic training requirements to be certified to work the election, and may take addi-
4 tional training and be certified as a “Premium Board Worker”. The training and manual
5 are available on the Department webpage.
6

7 38. The Elections Department, prior to each election, plans for contingencies and to
8 deal with precincts that are experiencing any type of problem, including long wait
9 times. *See*, Exhibit 5, Wait Time Reduction Plan. The following considerations are part
10 of the contingency planning:
11

- 12 a. moving poll workers from one location to another if necessary based on actual
13 need and volume in Department provided transportation.
- 14 b. adding voting/secrecy booths (i.e. two voting booths for up to 500 voters, with
15 one additional booth for each additional 250 registered voters) and accessible voting de-
16 vices to a polling place on election day if necessary based on actual need and volume.
17
- 18 c. providing, via 120 troubleshooters and additional personnel, equipment or re-
19 sources, such as additional epollbooks, staff or ballots, if necessary.
20
- 21 d. communicating via the STAR Center, separate telephone call-in lines for voters,
22 poll workers, and troubleshooters; and via push to talk phones with troubleshooter team
23 leaders direct to the Department operations center.
24

25 39. Monitoring Wait Times: The marshal shall periodically note the length of waiting
26 times at the polling place as required by ARS § 16-535(B) and if the waiting time is thirty
27
28

1 minutes or more, the marshal shall inform the officer in charge of elections and shall re-
2 quest resources as appropriate.

3 40. Recruiting: The Department consistently attempts to increase the pool of poll
4 workers available to work the polls on election day by:

5
6 a. utilizing student poll workers to increase number of poll workers per precinct;

7 b. utilizing other creative programs to recruit additional poll workers such as Democ-
8 racy Day and the use of other county workers; and

9
10 c. including poll worker recruiting notices with mailings and other outreach efforts,
11 such as the Arizona Citizens Clean Elections Commission webpage:

12 <http://www.azcleelections.gov/>.

13 14 **BALLOT PRINTING**

15 41. The General Election ballot is created by establishing voting databases for each of
16 the 724 voting precincts that must contain the appropriate federal, state, county and city
17 offices. There will be an estimated 1,291 ballot styles for the 2016 General Election
18 based due to all cities and jurisdictions within the County that are having candidate elec-
19 tions or ballot questions.

20
21 42. The Elections Department must prepare a different ballot style for each of the 724
22 voting precincts that must be created, programmed for tabulation, and printed (A.R.S. §§
23 16-461, 16-503) in time for early voting (A.R.S. §§ 16-542, 16-545) and for mailing to
24 registered absent uniformed services voters and overseas voters. (A.R.S. § 16-543). In
25
26 addition, the County must print a separate federal election ballot for registered voters who
27 used a Federal Form, but failed to prove U.S. citizenship.
28

1 43. The ballot layout must be finalized in time for printing for early voting, which be-
2 gins on October 12, 2016, because the early ballots must be identical to the regular, offi-
3 cial ballots for use in the General Elections (A.R.S. § 16-545). For registered absent uni-
4 formed services voters and overseas voters (A.R.S. § 16-543), the General Election bal-
5 lots shall be transmitted to the voters no later than 45 days before the election, or Sep-
6 tember 24, 2016. With that deadline, the Elections Department must complete the ballot
7 layout for over a thousand ballot styles to begin sending the ballot files to the printer in
8
9
10 September of 2016.

11 44. If voting precinct lines are changed or need to be adjusted, there could be delays in
12 overlaying and hand-inputting new/revised geographic lines onto the County's automated
13 voter registration system, and then converting those results into the ballot database man-
14 agement system.
15

16 I declare under penalty of perjury that the foregoing is true and correct.
17

18 DATED this 18 day of August, 2016

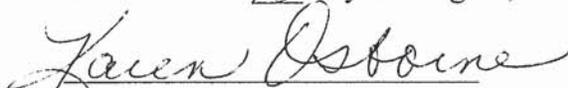
19 
20 Karen Osborne
21 Karen Osborne
22
23
24
25
26
27
28

EXHIBIT 4

1 MARK BRNOVICH
 2 Attorney General
 3 Firm Bar No. 14000
 4 James Driscoll-MacEachron (027828)
 5 Kara Karlson (029407)
 6 Karen J. Hartman-Tellez (021121)
 7 Assistants Attorney General
 8 1275 W. Washington Street
 9 Phoenix, AZ 85007
 10 Telephone (602) 542-4951
 11 Facsimile (602) 542-4385
 12 james.driscoll-maceachron@azag.gov
 13 kara.karlson@azag.gov
 14 karen.hartman@azag.gov
 15 *Attorneys for State Defendants*

11 UNITED STATES DISCTRICK COURT
 12 DISTRICT OF ARIZONA

13	Leslie Feldman, et al.,	)	Case No. CV-16-01065-PHX-DLR
14)	
15	Plaintiffs,)	
16	v.	)	DECLARATION OF
17		)	BRAD NELSON
18	Arizona Secretary of State's Office, et al.,)	
19	Defendants.)	

21 I, Brad Nelson, declare:

22 1. I am the Elections Director for Pima County, Arizona. I have personal
 23 knowledge of the facts stated herein and if called upon, could testify competently to
 24 them.

25 2. I have worked as Elections Director for Pima County for approximately
 26 fourteen years. As Elections Director for the second most populous county in Arizona, I
 27 oversee the production of ballots, manage poll worker training, and ensure accurate post-
 28

1 election ballot processing and counting. Additionally, I engage in voter outreach and
2 education efforts as part of my duties.

3 **A. Voter Outreach and Education Regarding Polling Places**

4 3. Pima County voters have multiple resources to use to find the address of
5 their polling place, including direct mail, online resources, and traditional media.

6 4. Households with registered voters receive at least one piece of mail sent
7 directly to their address with polling place information. For instance, the sample ballot
8 sent to all voters who have not requested an early ballot includes the location for the
9 specific polling place where the voters registered at that address can cast a vote.

10 5. Depending on the election, additional mail with polling place information,
11 such as publicity pamphlets, may be sent directly to registered voter households.

12 6. If circumstances force a change in polling locations after the sample ballots
13 are mailed, Pima County informs voters of this change by mailing postcards directly to
14 the registered voter's address and by posting a sign at the original location with the
15 address of the new polling location.

16 7. These communications with the voters are in both English and Spanish.

17 8. The Pima County Recorder's Office webpage at www.recorder.pima.gov
18 has a polling place locator that provides voters with a list of the jurisdictions they reside
19 in, and the hours and location of their polling place. The Pima County Recorder also
20 provides information to voters on social media websites such as Facebook.

21 9. Pima County provides information to the local English- and Spanish-
22 language media about voting and where to find polling place information. This year,
23 Pima County will also highlight the fact that the general election polling places will be
24 different from the polling places used for the special election.

25 10. To encourage minority participation in elections, Pima County consults
26 with Native American tribes, groups such as Chicanos Por La Causa for Hispanic
27 outreach, and groups that advocate for persons with disabilities, such as the Arizona
28

1 Center for Disability Law. These groups receive information on polling places to ensure
2 the locations are accessible for the populations these organizations represent. When
3 polling locations are eliminated, we also reach out to language minority and
4 organizations.

5 11. Pima County has an Election Integrity Commission of which I am an *ex*
6 *officio* member. The Commission holds public meetings monthly, at which members of
7 the community with questions about polling place locations may raise those questions.

8 12. Individual Pima County employees may take steps above and beyond the
9 standard outreach to assist voters. For example, during this year's special election, my
10 office received a call from a woman who went to a location that she believed was her
11 polling place. I drove to her and helped her get to her actual polling location.

12 13. The polling places Pima County will be using for the 2016 general election
13 are almost unchanged from the polling locations used in the 2014 general election.

14 **B. Poll Worker Training**

15 14. Before Election Day, all poll workers must complete poll worker training.
16 There is separate instruction provided for clerks, marshals, and inspectors/judges. The
17 training format is a one and a half hour long video presentation, focusing on the
18 responsibilities and procedures that poll workers will be responsible for. In addition, poll
19 workers are provided with their own copy of a training manual that includes the
20 information required for their position. The video training and manual emphasize that
21 poll workers must direct voters who are in the wrong polling place to the correct polling
22 place. The training and manual also make clear that poll workers must allow voters to
23 vote in the wrong polling place if the voter insists on voting there.

24 15. In addition to the training they receive before Election Day, poll workers
25 have access to additional resources on Election Day. There is a dedicated phone line that
26 connects poll workers with Pima County Recorder staff if a problem arises at a polling
27 place that the poll worker cannot resolve with the tools already at his or her disposal. If
28

1 there are concerns that need to be addressed on-site, a troubleshooter—a worker with
2 additional experience and training—will be sent to the polling place to offer additional
3 assistance.

4 **C. Procedures at Polling Places**

5 16. When a voter arrives at a polling the place, the first group of poll workers
6 the voter meets are the ID clerks. The ID clerks have a register in front of them that
7 includes the names of everyone eligible to vote in that precinct. If the voter is not in the
8 register, the clerk asks about name and address changes. Any voters who are not in the
9 precinct register are sent to the special situations table.

10 17. Clerks at the special situations table will contact the county recorder's
11 office by phone to find the correct polling place for any voter appearing at the polling
12 place who is not listed in the precinct register. The clerk will then give the voter the
13 information on the voter's correct polling place.

14 18. If a voter insists on voting at a polling place when their name does not
15 appear in the precinct register, poll workers must allow them to vote a provisional ballot.

16 19. There is also a large sign in English and Spanish at all polling places in
17 Pima County informing voters that under Arizona law any voter who casts a ballot in the
18 wrong precinct will not have their vote counted. A true and correct copy of an image of
19 that sign is attached hereto as Exhibit A.

20 **D. Precinct Polling Place Specifics**

21 20. Pima County has 248 precincts with 233 polling places for the 2016 general
22 election. The number of polling places has dropped as more voters are opting to vote by
23 mail.

24 21. The City of Tucson began using all-mail elections in 2011. Accordingly,
25 Tucson no longer holds elections at polling places that differ from those used by the
26 County.
27
28

1 22. For the 2016 Primary Election, Pima County will have precincts that will
2 have up to thirteen ballot styles.

3 23. Pima County is able to provide the appropriate amount of ballots to the
4 polling locations, even those locations with multiple ballot styles, because elections
5 officials know the number of voters who are registered to vote in that precinct and who
6 did not vote early.

7 **E. Administrative Difficulties in Out-of-Precinct Voting**

8 24. To count the votes for some offices cast by a person voting on an incorrect
9 ballot would take additional time, manpower, and financial resources.

10 25. The first step in processing an out-of-precinct provisional ballot would
11 require the recorder to verify the voter's address, which is already part of the process
12 when reviewing provisional ballots.

13 26. For votes from this ballot to be counted, the recorder must next determine
14 where that voter should have cast a ballot. If we applied the process that we use to
15 duplicate damaged ballots, the correct ballot for that precinct would need to be accessed,
16 and a team of two election workers would create a new ballot. One worker would read
17 the voter's selections for the races appearing on both the voted out-of-precinct ballot and
18 the correct ballot for the voter's assigned precinct. Once those votes have been marked,
19 the new ballot is printed by the Express Vote machine.

20 27. The newly-marked ballot for the correct precinct then would be put together
21 with the original ballot and provided to a different two-person team for proofing. The
22 second team would verify that the votes marked on the duplicate ballot matched the votes
23 on the original ballot.

24 28. The duplication process for one ballot would take a different amount of
25 time depending on the length of the ballot. Based on my experience, I would expect it
26 would take the first team ten minutes per ballot to mark the new ballot and five minutes
27 for the second team to proofread it.
28

1 29. The County's existing software does not permit programming to count only
2 certain races cast on out-of-precinct provisional ballots.

3 **F. Vote Centers**

4 30. Vote centers would require poll workers to have access to all ballots at
5 every polling location. Vote centers also raise potential privacy concerns, because the
6 voter registration information of all Pima County's voters would be accessible to poll
7 workers, rather than the more limited universe of the voter registration information for
8 the voters within the precinct, and wireless internet connection is required for e-poll
9 books.

10 31. In certain elections, vote centers have been used within Pima County. For
11 example, the Town of Vail used vote centers when it held an election on incorporation.
12 However, this election had only one question on the ballot, which significantly simplified
13 the process, and it was only open to voters eligible to vote on the question on the ballot.

14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of
15 the United States that the foregoing is true and correct.

16
17 EXECUTED this 19th day of August, 2016 in Tucson, Arizona.

18
19 
20 Brad Nelson
21
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28

EXHIBIT 5



Board worker Training Manual August 30, 2016 Primary Election



VS



VS



MARICOPA COUNTY ELECTIONS DEPARTMENT

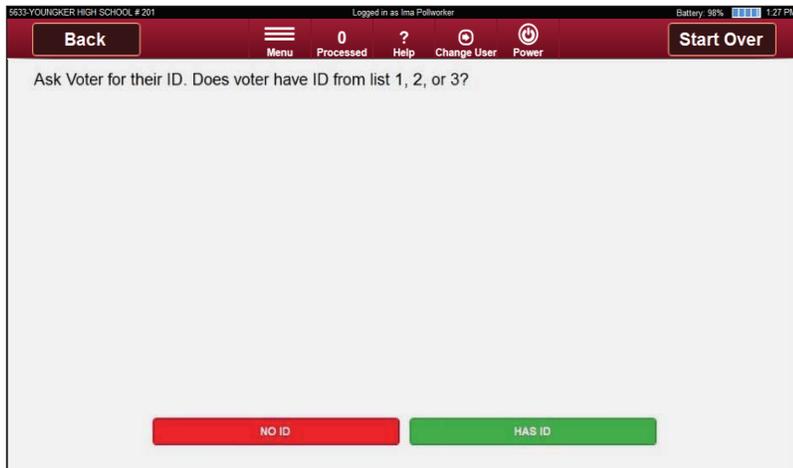
Helen Purcell, COUNTY RECORDER Karen Osborne, ELECTIONS DIRECTOR

Voting Procedures

To begin assisting a voter, the board worker working the ePollbook should greet the voter and follow each screen on the ePollbook, asking the voter for the requested information.

IMPORTANT: Please make sure to read ALL of the instructions on **every** screen carefully and do exactly what it says. The ePollbook will walk you through each check-in scenario if you simply follow the instructions.

Ask the voter is if he or she has identification from lists 1, 2, or 3. If YES, tap the green “Has ID” button and go to next step. If NO, tap the red “NO ID” button, follow the screens to voting a Provisional Ballot, and turn to page 46.



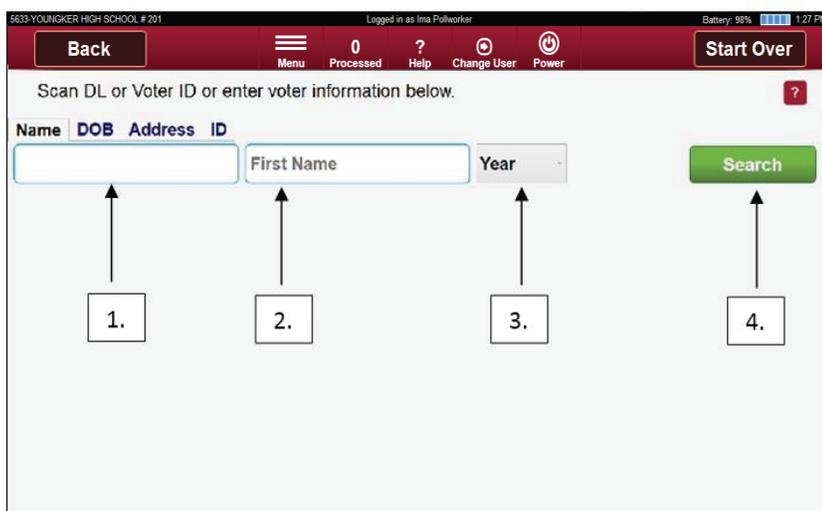
Find the voter by using the scan gun to scan the bar code on the back of his or her AZ driver’s license or AZ ID card, or the bar code on his or her Maricopa County Voter Identification card. Center the red cross in the middle of the bar code and pull the trigger until you hear a beep.



If the voter does not have ID with a bar code, type their name and/or birth year into the search screen:

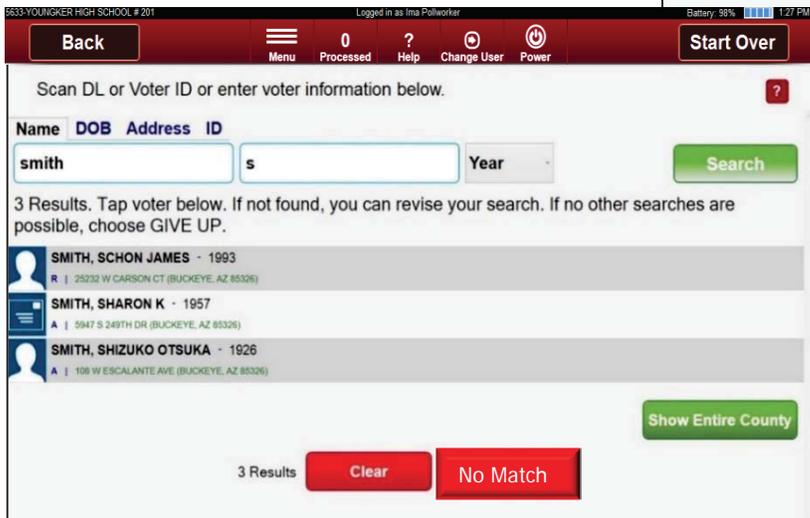
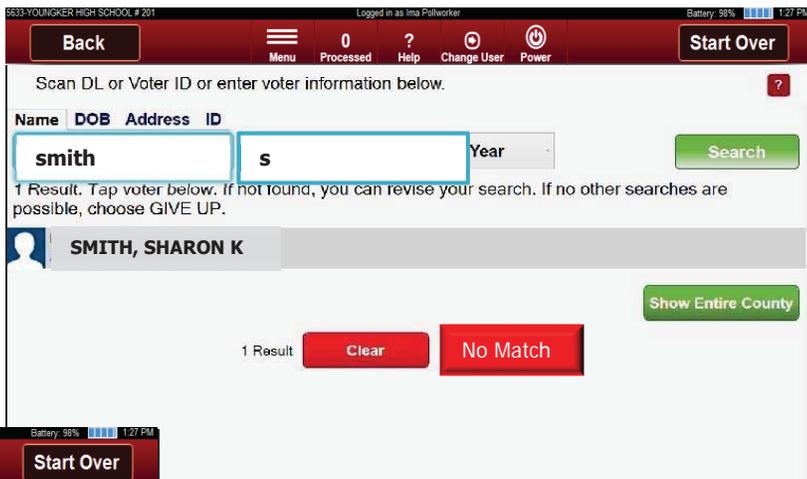
1. Last Name
2. First Name
3. Year of Birth
4. then tap the green “Search” button.

The less information you input the more records you will have come up on the screen.



The voter's name will appear as shown in the screen to the right:

If you have trouble finding the voter using his or her full name, you can enter partial information, such as part of the **last name** and/or **first name** (Example: Smith, S) and the results will display more voters, or look up the voter's address.

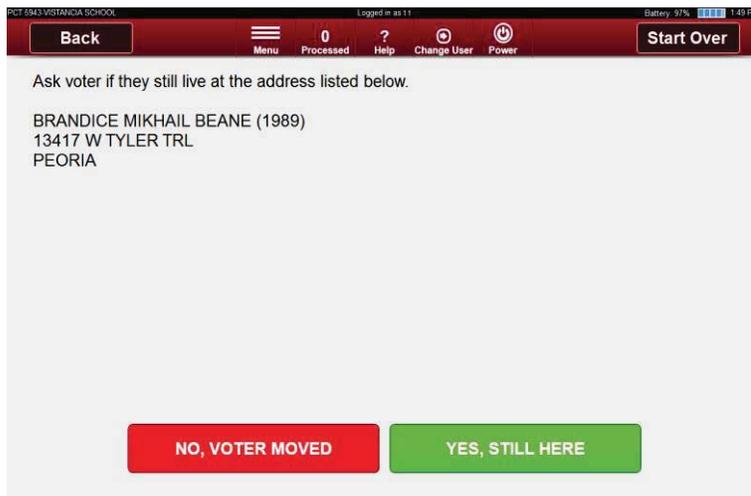


Tap on the correct voter's name to move on to the next step. If you do not find the voter's name, click on the green "Show Entire County" button and turn to page 38 for help for the Lost Voter.

If the voter's name still does not appear, tap the red "No Match" button, and go to page 40 to look the voter up by address.

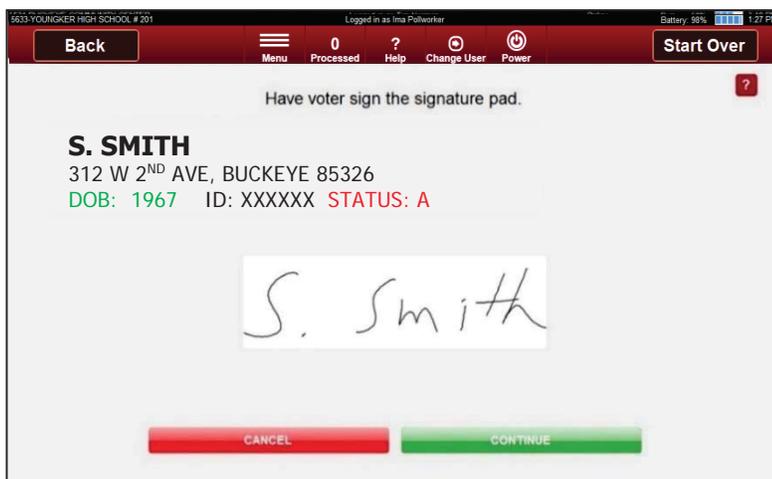
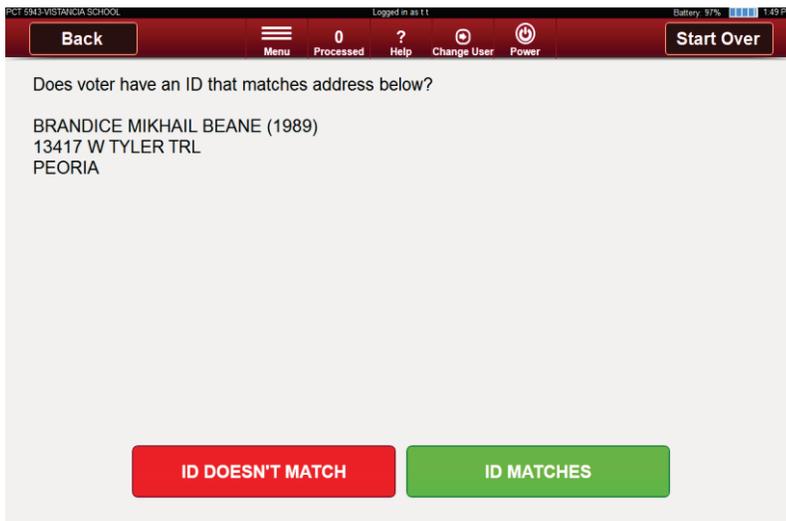
If the voter has an envelope icon next to his or her name, they are an early voter. Click on the voter's name, and turn to page 46 for voting a Provisional Ballot.

Next, ask the voter if they still live at the address listed on the screen. If the voter says yes, tap the green "Yes, Still Here" button and continue. If not, tap the red "No, Voter Moved" button, and turn to page 40 to look the voter up by address.



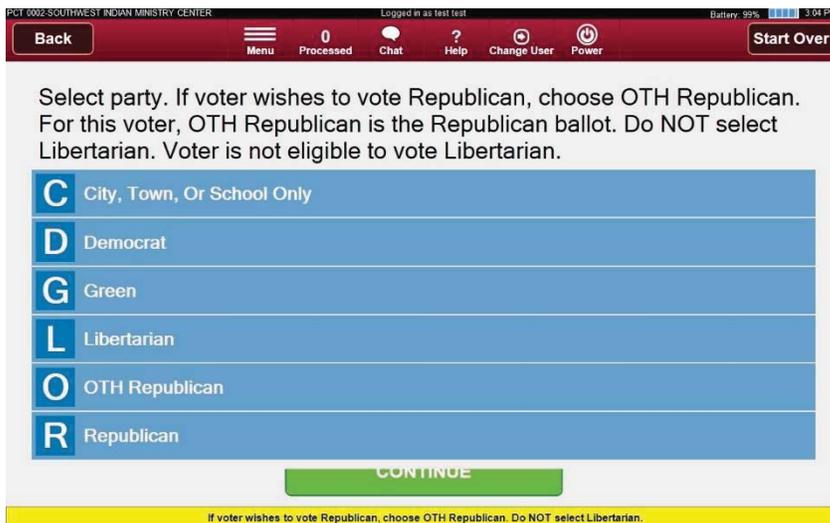
Verify the address on the voter's identification matches the residential or mailing address on the screen. If it matches, tap the green "**ID Matches**" button. If it doesn't, tap the red "ID Doesn't Match" button, and turn to page 46 for a Provisional Ballot.

Next, the signature screen will appear. Instruct the voter to sign on the signature pad, **using the signature pad stylus only**. His or her signature will appear on the tablet screen, as well as the signature pad. Once the voter has finished signing, tap the green "Continue" button.



Primary Election - Issuing the Ballot:

If the voter is not registered in a recognized party (Democrat, Green, Libertarian, or Republican), a so called OTH voter, this screen will appear. Ask the voter what ballot they would like to vote. DO NOT give the voter a Libertarian ballot. The Libertarian Party closed their Primary, so OTH voters are not eligible to vote a Libertarian ballot. Additionally, state law does not allow OTH voters to vote on the race of precinct committeeman, so in precincts where there is a contested precinct committeeman race, there will be separate ballots for these voters (OTH Republican or OTH Democratic ballots). If your precinct has these ballots be sure to give them to the OTH voter, not the regular Democratic or Republican ballot.



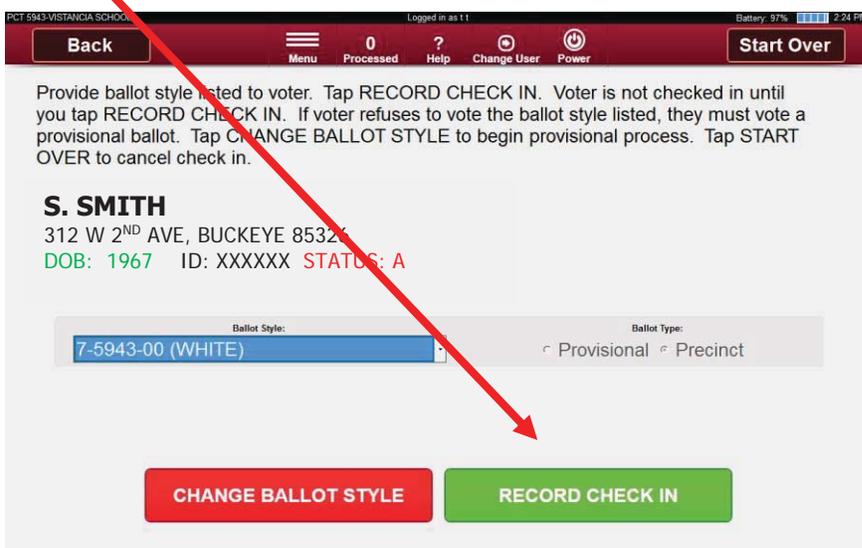
If the voter is registered in a recognized party, the correct ballot will be determined by the system and displayed on the screen.

The voter's signature and record of their check-in will not be saved until you tap on the green "Record Check-In" button.

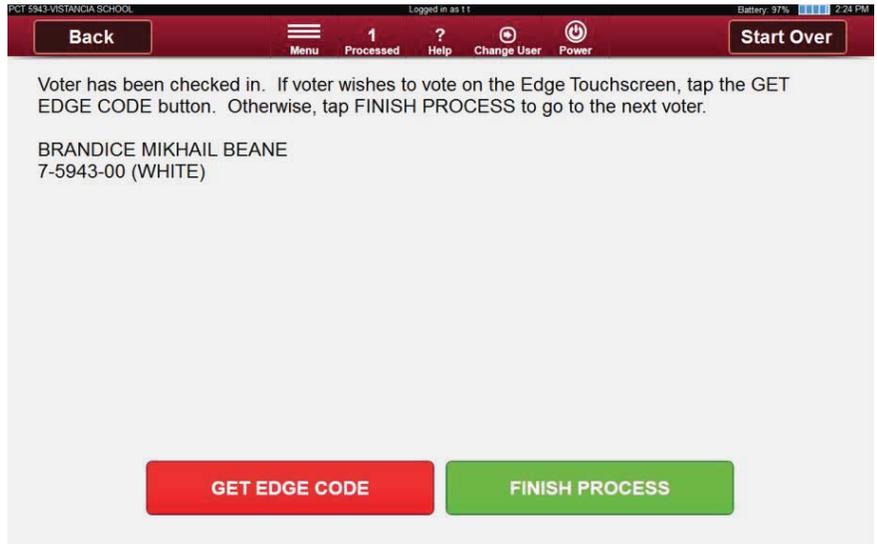
This is important to ensure the number of voters checked in will equal then number of ballots voted at the end of the election. When you tap this button, you will notice the number of voters processed at the top of the screen will increase by one.

If the voter wishes to vote a paper ballot:

- Select the proper ballot, give it to the voter and also offer the voter a secrecy folder.



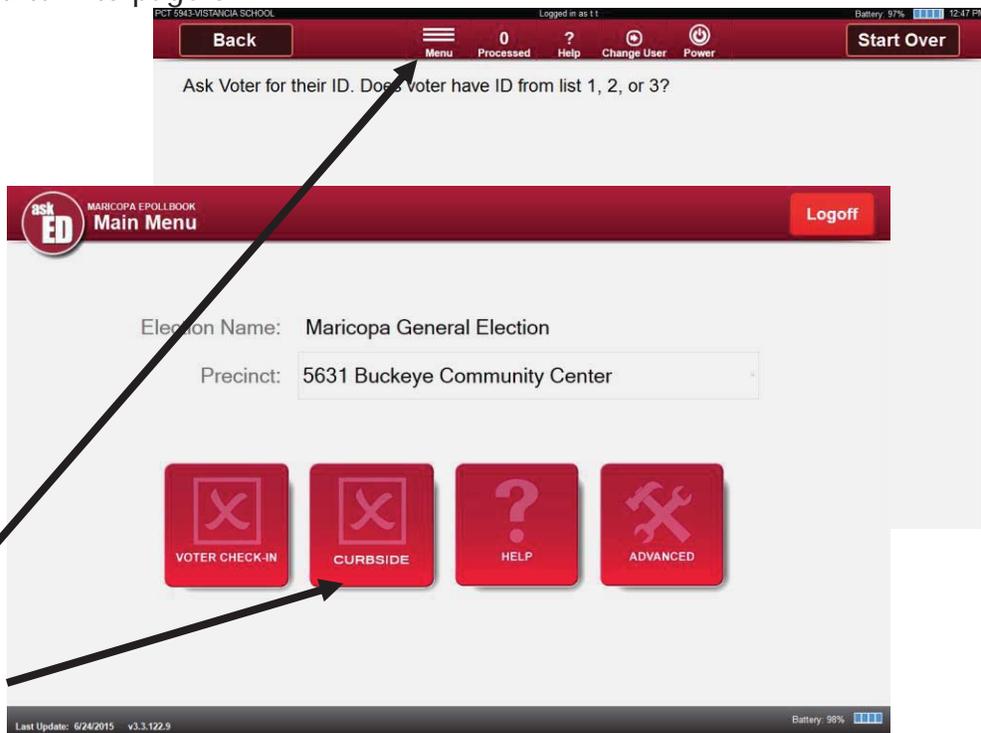
- Using a goldenrod demonstration ballot, show the voter how to properly mark the ballot using a single line to connect the head and the tail of the arrow; explain that a special black ballot marking pen must be used and that a single line is sufficient to connect the arrow.
- Explain how to do a write-in, if applicable, by writing in the candidate's name AND connecting the head and tail of the arrow next to the name written.
- Remind the voter to vote BOTH sides of the ballot, if applicable.
- Explain that a mis-marked ballot can be spoiled and a replacement ballot issued. LIMIT 3.
- Explain how the ballot is inserted into the Insight by the voter.
- Tap the green "Next Voter" button to start the check-in process again.



If the voter wishes to vote on the Edge Touch-screen, tap the red "Get Edge Code" button, and turn to page 51.

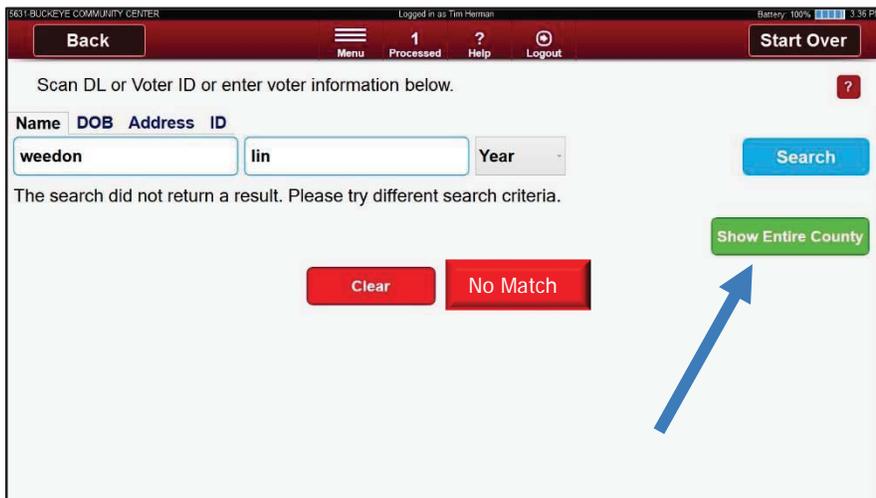
Assisting a Voter Curbside:

If a voter needs to vote while staying in their vehicle curbside, follow the procedures that are outlined on page 11 concerning curbside voters. When the marshal comes to the ePollbook with the Curbside Voter Affidavit, tap the Menu button at the top of any screen, and at the Main Menu, tap Curbside Voter. Then answer the questions and tap the correct buttons to check in like all other voters. When it comes to the screen requesting the voter's signature, write the words "Curbside Voter" on the ePollbook signature pad in place of the voter's signature. Continue as directed on page 11. When you have completed the check-in process, tap Menu at the top of the screen again to re-enter the Voter Check-in area. Place the Curbside Voter Affidavit in the Payroll Voucher Envelope.



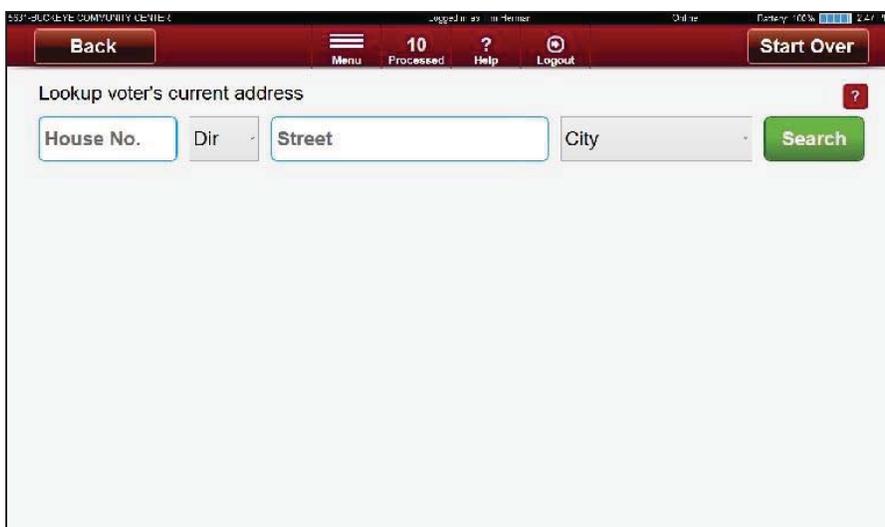
Looking up a Lost Voter:

If a voter's name is not found in the precinct in which you are working, tap on the green "Show Entire County" button. If the voter is then found, tap on the name. If the address on the screen is correct, the voter will be directed to the correct polling location (see next page).

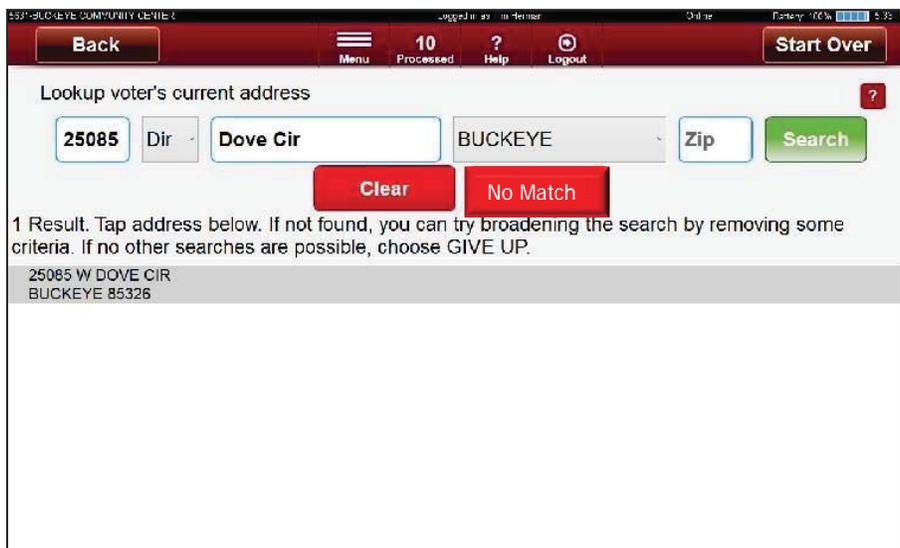


Searching by Address:

If a voter cannot be found by name, tap the red "No Match" button and it takes you to this screen. Type the voter's current address into the appropriate fields: house number, street direction, street name and city name, and tap the search button.



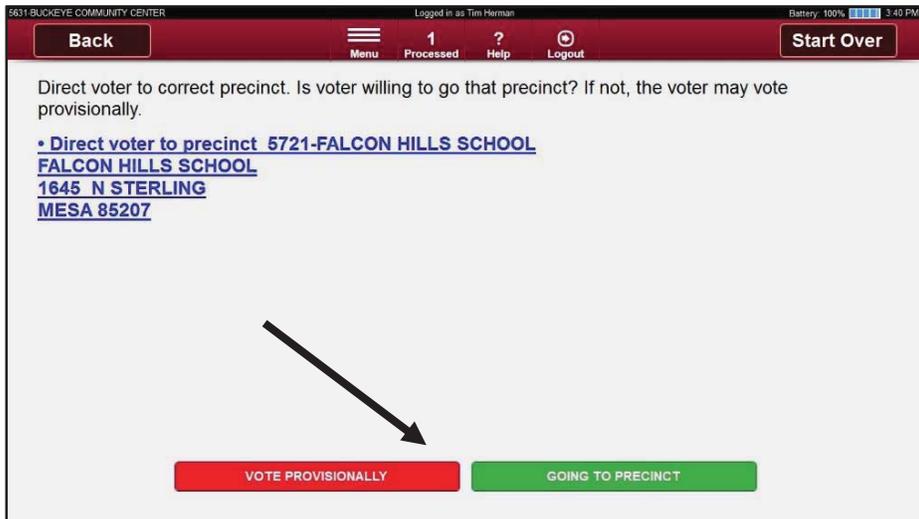
The address will come up on the screen. (If for some reason it does not, call the Hotline.) Tap on the address. If the address is located within your precinct, it will direct you to vote the voter a Provisional Ballot. Tap the "Vote Provisionally" button and turn to page 46.



If you wish to attempt another search, tap the red "Clear" button.

Directing a Voter to the Correct Polling Location:

If the address is found, but not located within the precinct, it will take you to a screen advising you to direct the voter to the correct precinct. If the voter will go to the correct precinct, tap on the green "Going to Precinct" button, and then tap on the actual polling place address. When the green "Print" button appears, tap that button and give the printed tape to the voter. If the voter refuses to go to the correct precinct, tap the red "Vote Provisionally" button and turn to page 46.





CLERKS & MARSHALS HANDBOOK

August 2016 edition

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appropriate box on the Voter ID Slip, issues the slip to the voter, and directs them to the Special Situations table.

- The voter’s name is not found in the Precinct Register. The ID Clerk checks the appropriate box on the slip, issues the slip to the voter, and directs them to the Special Situations table.

Regular Ballot: The ID Clerk locates the voter’s name in the register and the ID reasonably matches the register information. The ID Clerk enters on the Voter ID Slip the voter’s register number from the Precinct Register, checks the appropriate (top) box on the Voter ID Slip, places their initials on the line next to the register number, issues the slip to the voter and directs the voter to the Signature Roster Judge (Judge of the Same Party or JSP). The voter continues with standard voting procedures as follows.

The JSP locates the voter’s name in the Signature Roster and marks the correct signature line with a small “x.” The voter signs the roster in the space provided next to his or her name. The voter may sign “upside down” from the JSP’s point of view unless the signature line contains an affirmation statement. If it does, the JSP will turn the Signature Roster around so that the voter can attest to the statement on the signature line.

2016 PRIMARY ELECTION		000	'A'
Reg #	PARTY VOTER ID NAME RESIDENTIAL ADDRESS MAILING ADDRESS	STRIPE STATUS	SIGNATURE
1	REP 2048821 ADAMS, KEVIN E 909 N 2ND AVE	 SAL IA	I swear/affirm the address listed is correct and where I reside.
2	DEM 2132611 ADKINS, LUIS D 213 W 10TH ST	 BLU	
3	PND 1801672 ALLEN, JOHN D 121 N MCKINLEY AVE PO BOX 133	 NON	
4	GRN 2017760 BEATRIZ, DAVID ROBERT 841 S 7TH ST	 GRN	
5	LIB 1050173 BUCKLEY, DONALD BYRON 321 E OCOTILLO DR	 YEL	<i>Early Ballot</i>

step prior to returning to the table). The Special Situations Clerk removes the numbered receipt and hands it to the voter along with a copy of the yellow official Recorder's Office Location sheet (these lists can be found in the "R" envelope located in the steel cage). The clerk or the voter can then deposit the Conditional Provisional Ballot Envelope in the Blue Ballot Box.

Voter is not found on Precinct Register: The voter shows acceptable ID but the ID Clerk cannot locate the elector's name in the Precinct Register. The ID Clerk enters nothing on the Voter ID Slip for the voter's register number but checks the appropriate (fifth) box on the Voter ID Slip, places their initials on the line next to the register number, issues the slip to the voter and directs the voter to the Special Situations table.

The Special Situations Clerk calls the Recorder's hotline (724-4330) to determine the voter's correct polling location. If the voter is NOT in the correct polling place, the Recorder's Office will give the voter the address of their correct polling location. If the voter is in the correct polling location, the Special Situations Clerk needs to get the voter's ballot information from the Recorder's Office and will perform the same Provisional Ballot Envelope procedures as listed for a voter with an Early Ballot as stated above.

Spoiled Ballot Procedure

If a voter makes a mistake on their ballot, the ballot is spoiled and returned to the person who issued the ballot (regular ballot – JOP; provisional ballot – Special Situations Clerk) for a replacement. However, no more than a total of 3 ballots may be issued to any one voter. Spoiled ballots are to be marked **SPOILED** on the ballot and placed in the Official Returns Envelope. The voter may write **SPOILED** on the ballot if he or she wishes to do so. The word **SPOILED** should also be entered in **RED** ink above the voter's name in whichever poll list their information was recorded (Red Poll List for regular ballot; Provisional Ballot Poll List/Signature Roster for provisional ballot).

POLL WORKER TRAINING MANUAL



2016 ELECTIONS

Gila County, Arizona

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Who is Eligible to Vote?
ARS §16-120 & 121

An elector is eligible to vote if:

1. The elector is a qualified elector. A qualified elector is a person who is registered to vote and will be 18 years of age on or before the date of the election.
2. The elector is registered at a residence within the boundaries of the election district;
3. The elector is registered prior to midnight of the twenty-ninth (29) day before the date of the election. The 29th day falls on the 5th Monday before the election.

Regular Voter Procedure

Most electors who come to the polls are “regular voters”. Their names appear in the ExpressPoll Tablet, their address is correct, and they have appropriate identification. Following are the steps for the “Regular Voter”:

1. ID Clerk finds voter file in the ExpressPoll Tablet
2. ID Clerk has voter sign ExpressPoll Tablet
3. Upon acceptance of signature ID Clerk prints Voter slip and ballot
4. Ballot Judge issues the correct ballot and gives any instructions as needed
5. Elector is directed to the voting booth
6. Elector votes ballot
7. Marshal (or other poll worker at the ballot box) instructs elector how to insert their ballot into the ballot box
8. Marshal (or other poll worker at the scanner) gives the Elector the “I Voted” sticker

NOTE: According to ARS §16-102 a power of attorney or other form of proxy is not valid for use by a person in any procedure or transaction concerning elections, including voter registration, petition circulation or signature, early ballot requests or voting another person’s ballot.

Elector Has Changed Name

If an elector has changed their name and they have not changed their voter registration record, they must vote a Provisional Ballot.

1. If the elector's identification is the proper form, reflects the name change, and their residence is located in the precinct, the ID clerk will mark the Voter Slip **Provisional - Name Change**. The Provisional Clerk will check the appropriate box on the **Provisional** Ballot Affidavit. The voter will enter their Former Name on the Affidavit.
2. If the elector has no ID or only one form of non-photo ID, the ID clerk will mark the Voter Slip **Conditional - No ID (or only one form of non-photo ID)**. The Provisional Clerk will check the appropriate box on the **Conditional** Ballot Affidavit. The voter will enter their Former Name on the Affidavit.
3. In all cases, the voter should complete a new Voter Registration form.

Elector Has Moved

If an elector has moved and they have not changed their voter registration record, they must vote a Provisional Ballot.

1. If the elector has moved within the same precinct, their name should be listed in the Precinct Register.
2. If there is any question about whether the residence is within the precinct, call the County Recorder for assistance. If the elector's new address is in a different precinct refer them to their new precinct polling place.
3. If the new address is within the precinct, the ID Clerk will mark the Voter Slip **Provisional - Address has Changed**. The Provisional Clerk will check the appropriate box on the **Provisional** Ballot Affidavit. The voter will enter their Former Address on the Affidavit.
4. If the elector has no ID or only one form of non-photo ID, the ID clerk will mark the Voter Slip **Conditional - No ID (or only one form of non-photo ID)**. The Provisional Clerk will check the appropriate box on the **Conditional** Ballot Affidavit. The voter will enter their Former Address on the Affidavit.
5. In all cases, the voter should complete a new Voter Registration form.

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Leslie Feldman, <i>et al.</i> ,)
)
Plaintiffs,)
)
v.)
)
Arizona Secretary of State's Office, <i>et al.</i> ,)
)
Defendants.)
)
)
)
)

Case No.16-1065-PHX-DLR

Rebuttal Report of Janet R. Thornton, Ph.D.

1. I am a Managing Director at Berkeley Research Group (BRG), a consulting firm specializing in the application of economic, econometric, and statistical analysis to litigation, regulatory compliance, and risk assessment matters. BRG experts have analyzed data for matters involving firms in many sectors, government entities, as well as institutions of higher education and research. My fields of special interest include computer analysis of large databases, applied econometrics and statistical analysis.

2. I received doctoral and master's degrees in economics from The Florida State University, and a bachelor's degree from the University of Central Florida in economics and political science.

3. I am a member of the American Economic Association, the National Association of Forensic Economics, and the North Florida Committee on Foreign Relations.

4. Prior to my employment at BRG, I was employed at ERS Group for nearly 30 years and held the title of Managing Director. Over the past 30 years, I have prepared analyses for both plaintiffs and defendants, as well as for risk assessment. In the field of labor economics I have

performed research and analyzed data in matters involving allegations of gender, race, ethnicity, religious, and age discrimination in a variety of employment practices including selection, termination, and compensation, and have prepared analyses regarding Fair Labor Standards Act compliance. I have also studied borrower characteristics as they relate to the ability to obtain credit and their effect on the terms of credit transactions.

5. On several occasions I have been asked to design legally defensible sampling/survey methodologies and to serve as an expert witness to critique the validity of samples prepared by others including use of margins of error, sample size, and stratification methods. I have also prepared numerous estimates of economic damages.

6. I have extensive experience working with the decennial Census' Public Use Microdata Sample (PUMS), Summary Files, and EEO files, as well as the American Community Survey (ACS) data among other types of Census data. My doctoral dissertation used PUMS and Current Population Survey (CPS) data from 1960 and 1980 to examine educational drop-out rates of boys and girls. In the course of my work I routinely utilize these data to address issues raised in credit, insurance, housing, and employment discrimination matters. Additionally, I have designed Affirmative Action Plans for employers that rely on the decennial Census and American Community Survey (ACS) EEO files, which provide availability measures by job category and geographic area. My knowledge of Census data has resulted in expert testimony regarding the strengths and weaknesses of these data.

7. I have provided expert testimony in arbitration hearings and before federal and state courts and regulatory agencies. I testified in the matters of North Carolina State Conference of the NAACP, et al. v. Patrick Lloyd McCrory, in his official capacity as Governor of North Carolina, et al.; League of Women Voters of North Carolina, et al. and Louis M. Duke, et al. v.

The State of North Carolina, et al.; United States of America v. The State of North Carolina, et al.; and Barbara H. Lee, et al. v. Virginia State Board of Elections, et al. No court has rejected me as an expert qualified to testify in my fields.

8. I have been an adjunct professor of quantitative methods and statistics at The Florida State University and am a frequent presenter at seminars on the topics of statistical techniques, data and modeling, compensation analysis, and calculating damages. I have published articles in the *Journal of Legal Economics* and the *Journal of Forensic Economics*, and co-authored a chapter in the anthology *Developments in Litigation Economics*, which discusses equal business opportunity programs, among other topics.

9. I have been retained by Counsel for the Defendants to provide expert testimony in the above captioned matter. I manage a team of professionals who have assisted me with this matter and worked under my direction and supervision. All work was vetted and verified by me and my team.¹ My time is billed at the rate of \$550 per hour for this matter. My updated curriculum vitae and list of testimony in the past four years are contained in Appendix A.

I. Findings

10. Counsel for the Defendants in the above captioned matter asked me to review and respond to the report produced by Plaintiffs' expert, Jonathan Rodden, Ph.D. (hereafter "Dr. Rodden"). In particular, I am responding to Plaintiffs' expert's analyses that allege that the State of Arizona's changes in voting precincts, usage of different types of precincts, and use of

¹ Carole Amidon, Ph.D., and Jill Fitzpatrick, Ph.D., economists at BRG, were the primary researchers who assisted me with this project.

provisional ballots adversely impacts African-American, Hispanic, and Native-American voters, as well as those who are part of the Democratic Party.²

11. Based upon my review of Plaintiffs' expert's report, as well as my review of the data, I conclude the following:

- Dr. Rodden failed to provide all of the underlying code and output sufficient to replicate all of his findings.
- Dr. Rodden makes assertions without the context of minority voter participation in mid-term compared to presidential elections.

Usage of Absentee Voting

- Dr. Rodden provides misleading statistics regarding the usage of absentee voting. Dr. Rodden asserts that absentee ballots returned as a percentage of absentee ballots mailed out has been decreasing over time. In fact, Arizona registered voters are shown to have increased their usage of absentee voting when they voted.
- Dr. Rodden states the percentage of submitted absentee ballots which are rejected has been increasing over time. However, nearly all of Arizona's absentee votes (over 99%) are counted in each mid-term and presidential election from 2008 through 2014, and there has been little deviation over the time period in the percentage of absentee ballots rejected.
- Of the absentee ballots not counted, the majority were not counted because the registered voter missed the return deadline and/or failed to sign the ballot.

Usage of Provisional Voting

- Dr. Rodden's comparison between Arizona and the U.S. in regards to the usage of provisional voting is deceptive. The usage of provisional voting in Arizona as both a percentage of the registered voters and as a percentage of the number of ballots cast has generally declined over time.³
- The percentage of provisional ballots counted has increased over time, from 70.7% in 2008 to 82% in 2012, and from 82.3% in 2010 to 87.2% in 2014.
- Reasons other than out-of-precinct provisional ballots account for the majority of the provisional ballots that are not counted.
- Out-of-precinct ballots as a percentage of the number of ballots cast has declined over time both across the state as well as within Maricopa and Pima counties.
- Dr. Rodden's study of Maricopa County rejected provisional ballots is misleading and not informative.
- The explanatory power of his models of out-of-precinct ballots is weak and his usage of estimated race/ethnicity data produce unreliable estimates.

² Amended Complaint, page 13.

³ In 2012 the total number of provisional ballots as a percentage of registered voters and as a percentage of votes cast increased slightly.

- Dr. Rodden’s “falsely disenfranchised” voter argument, in which he claims “fully 35% of ballots discarded as being ‘out of precinct’ were discarded in error” is false.⁴ The voter’s actual address was *not* the address contained in the registration data and, as a consequence, did not correspond with the provisional precinct.
- The statistical analyses relied upon by Dr. Rodden are incomplete for assessing the relationship between polling location, race/ethnicity and the propensity to cast rejected provisional ballots.

Presidential Preference Elections

- Dr. Rodden’s analysis of issues related to the 2016 Presidential Preference Election (PPE) ignores trends in primary voting and improperly assumes that all registered voters, regardless of their eligibility or interest in voting in the PPE, should have been considered when Maricopa County selected the vote center locations.

12. Each of these findings is described below following an outline of the information I reviewed to prepare this report.

II. Information Relied Upon

13. I reviewed the following information that was received from the Arizona Secretary of State’s Office:⁵

- Amended Complaint, dated April 19, 2016
- Expert Report of Jonathan Rodden, Ph.D., dated June 10, 2016, (“Rodden Report”) with supporting materials contained on a hard drive
- Deposition transcript of Jonathan Rodden, Ph.D., dated August 11, 2016 with exhibits (“Rodden Deposition”)
- Updated Expert Report of Jonathan Rodden, Ph.D., received August 17, 2016
- Redline Revised Expert Report of Jonathan Rodden, Ph.D., received August 17, 2016
- J. Rodden Guide to Data Produced on June 13, 2016, dated August 17, 2016
- Data files from the Arizona Secretary of State’s Office:
 - Litigationelection20160526.txt
 - Litigationreg20160531.txt
 - Election_Polling_Place.txt
 - Provisional_Ballot_Update.txt
 - Notice_Log_Update.txt
 - Activity_Log.txt

⁴ Rodden Report, page 53.

⁵ If additional information is obtained that is relevant to this report, it may need to be modified or supplemented.

- Definition Tables Confidential Voter Registration Information Subject to Protective Order.xlsx
- Street Confidential Voter Registration Information Subject to Protective Order.txt
- Street_Directional Confidential Voter Registration Information Subject to Protective Order.txt
- Street_Segment Confidential Voter Registration Information Subject to Protective Order.txt
- Street_Segment_Future Confidential Voter Registration Information Subject to Protective Order.txt
- Street_Segment_Future_Mapping Confidential Voter Registration Information Subject to Protective Order.txt

In addition, I relied upon information from public sources as referenced below.

III. Dr. Rodden Failed to Provide All of His Underlying Materials and Analyses

14. We received a hard drive containing 25 folders of information that were to be the complete backup to the results and foundation for the conclusions and findings contained in Dr. Rodden's report.⁶ The folders contained several files of programming logic using either Stata or R. However, Dr. Rodden did not produce any log files (i.e., output files) from the Stata or R programming logic, even though at his deposition he answered affirmatively when asked if the graduate students who assisted him with the programming provided logs of their output for him to review.⁷ As a consequence, without attempting to rerun each of Dr. Rodden's programs, we cannot identify the path that Dr. Rodden took to generate his findings. While we have attempted to rerun the programs to verify his results, some of the programs contain programming errors which prevent the programs from running properly. Therefore, Dr. Rodden appears to have failed to produce the actual programs that he relied upon, failed to produce all of the programs that he relied upon, and/or failed to produce the complete output to the programs.

⁶ Many of these folders contained sub-folders.

⁷ Rodden Deposition, page 27, lines 16-21.

15. In addition, Dr. Rodden changed native file names before reading them into his programming code, then failed to provide a key to connect the native and renamed files. Dr. Rodden's programs also reference files that have no origination.⁸ For example, Dr. Rodden references the file "prov12.dta," a Stata data file, which has no origination, meaning that we do not know how Dr. Rodden constructed the file. With respect to the regression analyses that he references at pages 33, 54, 55, 57, 59, and 60 of his report,⁹ Dr. Rodden did not produce *any* programs that would have executed his models when he submitted his June 10, 2016 report. Without the programs and output, one cannot know the exact specification of his models nor how well the models fit the data that he attempted to analyze. As such, it is difficult to opine about the validity of his conclusions when he produced nothing in support of these findings. Nevertheless, I have attempted to reconstruct his models.

16. Dr. Rodden subsequently produced a document entitled *J. Rodden Guide to Data Produced on June 13, 2016.pdf* (the "guide") which contains additional explanation and various lines of computer code in support of his analyses. Dr. Rodden continues to fail to produce full programs and log files showing the execution of his computer programming with the analytical results for his report. Dr. Rodden implies throughout this "guide" that the statistics he reported without foundation are reproducible without assistance. Prior to the production of this "guide," I was able to reproduce a version of most of his statistics, after correcting his code. However, because Dr. Rodden failed to provide any backup for the numbers and statements in his report, any

⁸ Dr. Rodden renamed many of the data files when they were produced which further obfuscates the process he used to create the files and how the files were used for analysis. Thus, Dr. Rodden was requested to provide the names of the "source" files for each of his input files to the program that he produced. This information was requested because Dr. Rodden renamed each of the native files before reading them into his programs. As a consequence, the researcher is required to "guess" the name of the native file that was the source of the input file.

⁹ Report pages reflect Dr. Rodden's updated report dated August 17, 2016.

reproduction I prepared would be subject to scrutiny because I could not ascertain all of his assumptions without the actual code.

17. This can be illustrated through the guide that Dr. Rodden has now provided containing a substantial amount of key lines of code which incorporate many assumptions he failed to note in his report. For example, in his report, Dr. Rodden stated that he calculated the distance between registered voters and their assigned polling places, then determined which voters lived far from or close to their polling place. However, he did not describe the foundation of his definition of “far” as more than 1.4 miles or of “close” as less than 0.4 miles.¹⁰ By reviewing the pieces of code that he provided on August 17, 2016, I learned that he defined “far” and “close” by the 20th and 80th percentiles. I do not know how a statistician could have correctly guessed that this is how Dr. Rodden defined “far” and “close.” In fact, when he was deposed, Dr. Rodden himself did not know how he defined “far” and “close,” testifying, “I believe those were the 25th and 75th percentile values.”¹¹ Dr. Rodden’s failure to provide the underlying results of his statistical analyses leads to misinformation regarding the reliability and usefulness of his models.

IV. The Racial/Ethnic Composition of the Arizona CVAP and Participation by Election Type Should Be Considered When Making Comparisons

18. The racial and ethnic composition of Arizona varies across the state, and also differs from the nation. In comparison to the U.S., Arizona has a considerably lower African-American population among the Citizen Voting Age Population (CVAP), 4% compared to 12.3% nationwide, as reported by the Bureau of Census. On the other hand, among the CVAP, Arizona has a higher percentage of American Indian/Alaska Native and Hispanic/Latino citizens, at 4.1%

¹⁰ Rodden Report, page 55.

¹¹ Rodden Deposition, page 158, lines 15-18.

and 20.5%, respectively, compared to 0.7% and 10.7% nationwide. It is important to consider these percentages when evaluating the information provided by Dr. Rodden in his expert report.

Table 1—Demographic Composition of Citizen Voting Age Population, 2010-2014

Area	American Indian or Alaska Native*	Black or African-American**	Hispanic or Latino
United States	0.7%	12.3%	10.7%
Arizona	4.1%	4.0%	20.5%
Maricopa County, Arizona	1.7%	5.0%	19.2%
Pima County, Arizona	2.4%	3.2%	26.9%
Apache County, Arizona	71.8%	0.4%	4.3%
Cochise County, Arizona	0.8%	4.1%	25.1%
Coconino County, Arizona	24.4%	1.4%	10.0%
Gila County, Arizona	12.6%	0.5%	14.9%
Graham County, Arizona	12.8%	2.7%	27.0%
Greenlee County, Arizona	2.9%	1.3%	42.6%
La Paz County, Arizona	11.3%	0.3%	13.4%
Mohave County, Arizona	1.4%	1.1%	9.9%
Navajo County, Arizona	41.0%	0.6%	8.6%
Pinal County, Arizona	4.9%	4.5%	21.5%
Santa Cruz County, Arizona	0.1%	0.3%	74.0%
Yavapai County, Arizona	1.5%	0.5%	8.3%
Yuma County, Arizona	1.2%	2.5%	47.1%

Source: https://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html; American Community Survey, 2010-2014.
On average, the margin of error associated with the 90% confidence interval as calculated by the Bureau of Census across Arizona is $\pm 0.2\%$.
*If American Indian or Alaska Native and African-American is included the percentage for Arizona is 4.2%.
**If Black or African-American and White is included the percentage for Arizona is 4.2%.

19. As shown above, the percentage African-American in Arizona's CVAP is approximately one-third of the U.S. percentage. Further, in many of Arizona's counties the percentage African-American is a fraction of a percentage; for example, Gila County has 0.5% African-American among the CVAP. Because Arizona does not collect the racial and ethnic composition of its registered voters, Dr. Rodden reports the race of Arizona voters using the data from the Current Population Survey (CPS). However, this is problematic due to the differences in

the percentages of African-Americans and other ethnicities in Arizona compared to the U.S., and there is a margin of error associated with each of Dr. Rodden's estimates. The margin of error is also relatively large for the Hispanic CVAP as compared to the U.S., because the sample sizes for Arizona are relatively small. At Figures 1, 2, and 3 of his report, Dr. Rodden reports state-wide figures of the percentage of CVAP who turned out to vote. However, he fails to report the margins of error associated with these figures.¹² The Bureau of Census warns that, "Although the CPS is a state representative survey, the sample sizes for voting statistics at the state level, when combined with estimates of race and Hispanic origin, result in margins of error for voting rates in many states that are so large that the estimates become unreliable."¹³

20. To illustrate, Table 2 reports the overall percentages and the percentages among the African-American and Hispanic CVAP who registered to vote, as well as the percentage who voted, for Arizona and the U.S. as collected by the Bureau of Census through the Current Population Survey. The Bureau reports the margin of error to calculate the 90% confidence interval around its estimates. In comparison to the estimates for the U.S., the confidence intervals for Arizona are substantially wider.¹⁴ For example, the 90% confidence interval for the percentage among the African-American CVAP who registered to vote in 2014 is 47.6% to 73% for Arizona compared to 62.4% to 64.4% for the U.S. What this means is that to be 90% confident of the actual population parameter in Arizona, the interval from which the estimate is made must have a

¹² Dr. Rodden stated at his deposition that he did not take the margins of error into account when constructing Figures 1, 2, and 3 in his report despite admitting that the information on the margins of error was included in the source data for these tables. (Rodden Deposition, page 98, lines 4-14.)

¹³ File, Thom. *The Diversifying Electorate—Voting Rates by Race and Hispanic Origin in 2012 (and Other Recent Elections)*. U.S. Census Bureau, May 2013 (at page 8). Available at: <https://www.census.gov/prod/2013pubs/p20-568.pdf>.

¹⁴ One of the factors influencing the margin of error, and thus the width of the confidence interval, is the sample size. All else equal, a larger sample size reduces the margin of error, thereby reducing the width of the confidence interval. (See: Newbold, Paul, William L. Carlson, and Betty Thorne. *Statistics for Business and Economics*, 5th ed. Upper Saddle River, N.J.: Prentice Hall, 2003, at page 268.)

wide range. Thus, there is a larger measure of uncertainty (potential for error) in estimating the number of African-Americans and Hispanics who registered to vote and actually voted in Arizona relative to the U.S. as a whole. As a consequence, it is improper to make comparisons between Arizona and other states, or the U.S., as Dr. Rodden has done, without taking these fundamental differences into account.

Table 2—Percentage of Overall, African-American, and Hispanic CVAP Who Registered to Vote and Voted in General Elections in Arizona and the U.S.

Election	Overall		African-American		Hispanic	
	Percentage of CVAP	Confidence Interval	Percentage of CVAP	Confidence Interval	Percentage of CVAP	Confidence Interval
<i>Registered to Vote</i>						
<i>Arizona</i>						
2004	60.3%	58.0% - 62.6%	57.0%	41.8% - 72.2%	30.5%	24.1% - 36.9%
2006	62.1%	59.9% - 64.3%	51.8%	37.1% - 66.5%	53.6%	46.9% - 60.3%
2008	68.9%	66.9% - 70.9%	66.4%	53.8% - 79.0%	51.5%	44.8% - 58.2%
2010	66.0%	63.9% - 68.1%	65.5%	52.8% - 78.2%	57.5%	50.3% - 64.7%
2012	65.2%	63.0% - 67.4%	58.6%	46.2% - 71.0%	52.2%	44.7% - 59.7%
2014	62.3%	60.1% - 64.5%	60.3%	47.6% - 73.0%	60.0%	53.1% - 66.9%
<i>United States</i>						
2004	65.9%	65.6% - 66.2%	64.4%	63.4% - 65.4%	34.3%	33.0% - 35.6%
2006	67.6%	67.3% - 67.9%	60.9%	59.9% - 61.9%	53.7%	52.4% - 55.0%
2008	71.0%	70.7% - 71.3%	69.7%	68.7% - 70.7%	59.4%	58.2% - 60.6%
2010	65.1%	64.8% - 65.4%	62.8%	61.8% - 63.8%	51.6%	50.1% - 53.1%
2012	71.2%	70.9% - 71.5%	73.1%	72.2% - 74.0%	58.7%	57.3% - 60.1%
2014	64.6%	64.3% - 64.9%	63.4%	62.4% - 64.4%	51.3%	49.9% - 52.7%
<i>Turnout</i>						
<i>Arizona</i>						
2004	54.3%	52.0% - 56.6%	46.6%	31.3% - 61.9%	25.5%	19.4% - 31.6%
2006	46.4%	44.1% - 48.7%	24.4%	11.8% - 37.0%	36.4%	29.9% - 42.9%
2008	59.9%	57.8% - 62%	52.4%	39.1% - 65.7%	36.6%	30.1% - 43.1%
2010	48.8%	46.5% - 51.1%	41.0%	27.9% - 54.1%	38.3%	31.3% - 45.3%
2012	55.9%	53.6% - 58.2%	46.0%	33.4% - 58.6%	40.4%	33.0% - 47.8%
2014	40.6%	38.4% - 42.8%	33.1%	20.9% - 45.3%	31.8%	25.3% - 38.3%
<i>United States</i>						
2004	58.3%	58.0% - 58.6%	56.3%	55.2% - 57.4%	28.0%	26.8% - 29.2%
2006	47.8%	47.5% - 48.1%	41.0%	40.0% - 42.0%	32.3%	31.1% - 33.5%

Table 2—Percentage of Overall, African-American, and Hispanic CVAP Who Registered to Vote and Voted in General Elections in Arizona and the U.S.

Election	Overall		African-American		Hispanic	
	Percentage of CVAP	Confidence Interval	Percentage of CVAP	Confidence Interval	Percentage of CVAP	Confidence Interval
2008	63.6%	63.3% - 63.9%	64.7%	63.7% - 65.7%	49.9%	48.6% - 51.2%
2010	45.5%	45.2% - 45.8%	43.5%	42.4% - 44.6%	31.2%	29.8% - 32.6%
2012	61.8%	61.5% - 62.1%	66.2%	65.2% - 67.2%	48.0%	46.5% - 49.5%
2014	41.9%	41.6% - 42.2%	39.7%	38.7% - 40.7%	27.0%	25.8% - 28.2%

Source: <http://www.census.gov/topics/public-sector/voting/data/tables.All.html>.

21. Dr. Rodden’s analyses also make comparisons outside the context of election type. Some of the comparisons that Dr. Rodden performed are between the 2012 presidential election and the 2014 mid-term election.¹⁵ However, such a comparison is inappropriate because presidential and mid-term elections vary in significant ways, including turnout volume and voter participation by race.¹⁶ Since the 1840s, voter turnout has declined in mid-term elections as compared to presidential elections. For example, in 2008, 57.1% of the voting-age population cast ballots while in 2010, 36.9% voted in the mid-term election.¹⁷ Comparisons of prior elections to the 2014 mid-term election are even more distorted because the 2014 mid-term election had the lowest voter turnout in 72 years.¹⁸ Further, voter participation of minorities varies depending on the type of election. Minorities and younger individuals are substantially less likely to vote in mid-term elections relative to presidential elections. As shown above for the U.S., on average, 62% of the African-American CVAP voted in the presidential elections compared to 41% in the mid-term

¹⁵ For example, he states at page 41 of his report that the percentage of out-of-precinct ballots cast by younger voters increased between the 2012 and 2014 elections (Rodden Report, page 41).

¹⁶ At his deposition, Dr. Rodden agreed with this point. “If I wanted to understand factors that contribute to turnout, then ideally I would want to, yes, as you described, compare midterm to midterm or presidential to presidential.” (Rodden Deposition, page 65, lines 9-14.)

¹⁷ Desilver, Drew. *Voter Turnout Always Drops Off for Midterm Elections, but Why?* Pew Research Center, July 24, 2014. Available at <http://www.pewresearch.org/fact-tank/2014/07/24/voter-turnout-always-drops-off-for-midterm-elections-but-why/>.

¹⁸ Alter, Charlotte. “Voter Turnout in Midterm Elections Hits 72-Year Low.” *Time*, November 10, 2014. Available at <http://time.com/3576090/midterm-elections-turnout-world-war-two/>.

elections. Furthermore, Dr. Rodden agreed that turnout for a presidential election is generally higher than for a midterm election, and based on his understanding from the literature, voters who vote in midterm elections are generally older and more informed about the process.¹⁹ Dr. Rodden also testified that “the proportion of voters who are minorities is lower in midterm years” and based on the literature, the electorate is “wealthier” and “more educated” during a midterm election.²⁰

22. Because they are based on flawed comparisons, Dr. Rodden’s analyses are unreliable and misleading. They should instead be considered in context of the racial and ethnic composition of Arizona and the margins of error of the state of Arizona compared to the U.S data as well as the particular election being examined.

V. Dr. Rodden’s Reliance on Volume of Ballots Results in Faulty Conclusions Regarding Absentee Ballots

23. At Table 1 of his report, Dr. Rodden provides a summary of the total number of registered voters and counts regarding absentee voting in Arizona²¹ based on data from the United States Election Assistance Commission (EAC). However, he does not actually depict the volume of absentee voting in the correct context, as he compares dissimilar election types.²²

¹⁹ Rodden Deposition, page 65, lines 15-22; page 93, lines 7-15.

²⁰ Rodden Deposition, page 92, line 16 – page 93, line 19.

²¹ Rodden Report, page 17.

²² For example, Dr. Rodden compares the growth rate in absentee ballots over time without comparing like elections. (Rodden Report, page 16.)

Table 3—Percentage of Registered Voters Sent, Submitted, and Counted Absentee Ballots by Election in Arizona

	2008	2010	2012	2014
Total Registered	3,441,141	3,502,743	3,725,362	3,802,786
<i>Absentee Ballots and Voting (Percentage of Registered Voters)</i>				
Ballots Sent	1,308,030	1,410,083	1,920,746	2,060,603
	38.0%	40.3%	51.6%	54.2%
Ballots Submitted	1,223,936	1,084,665	1,542,855	1,193,537
	35.6%	31.0%	41.4%	31.4%
Ballots Counted	1,217,109	1,076,402	1,530,465	1,182,149
	35.4%	30.7%	41.1%	31.1%
Ballots Rejected	6,827	8,263	12,390	10,388
	0.2%	0.2%	0.3%	0.3%
Source: U.S. Election Assistance Commission (EAC) data available at: http://www.eac.gov/research/election_administration_and_voting_survey.aspx ; and Arizona voter registration data available at: http://www.azsos.gov/elections/voter-registration-historical-election-data/voter-registration-counts .				

24. Dr. Rodden asserts that the number of absentee ballots returned over time has declined as a percentage of the number of ballots sent.²³ As shown in Table 3, while it is correct that the number of absentee ballots sent to Arizona’s registered voters has increased over time, the percentage submitted and counted has also increased over time when comparing presidential and mid-term elections, separately, among registered voters. In 2008, 38% of registered voters were sent an absentee ballot compared to 51.6% in 2012. The percentage who submitted an absentee ballot also increased from 35.6% in 2008 to 41.4% in 2012. Similar percentages occurred among the absentee ballots counted, increasing from 35.4% to 41.1% between 2008 and 2012.

²³ Dr. Rodden’s initial report limited the 2008 number of registered voters reported in his Table 1 to active voters while other years reported the total of active and inactive registered voters. At his deposition, Dr. Rodden agreed that the number in his Table 1 for 2008 (2,987,451) does not include inactive voters while the counts for the other years in the table include both active and inactive voters. (Rodden Deposition, page 84, line 16 – page 87, line 1.) Dr. Rodden subsequently provided a corrected report on August 17, 2016, with the correct number in his Table 1. The number of active and inactive registered voters is available in the reports provided at the Arizona Secretary of State’s website at: <http://www.azsos.gov/elections/voter-registration-historical-election-data/voter-registration-counts>.

25. When comparing the mid-term elections, which have lower overall voter turnout, the percentage who submitted an absentee ballot and the percentage of absentee ballots counted increased slightly among the registered voters between 2010 and 2014. These comparisons should be considered in the context of voter participation at the time; in both Arizona and the U.S., turnout was lower between the two presidential elections and the two mid-term elections. As noted, 2014 had the lowest turnout in 72 years. As a consequence, contrary to Dr. Rodden's conclusion, the number of absentee ballots submitted and counted increased when calculated as a percentage of registered voters.²⁴ This comparison is relevant because a potential reason for the increase in the number of absentee ballots may be the addition of the Permanent Early Voting List (PEVL) option as part of Arizona's on-line voter registration process.²⁵ To join the PEVL, individuals can click a box during their on-line voter registration and are then automatically enrolled in early voting by mail (absentee voting). A study of the PEVL ballots that were not returned showed that a relatively large proportion came from those who registered on-line.²⁶ Thus, these individuals perhaps clicked the box to be placed on the PEVL without necessarily intending to vote through an absentee ballot.

26. The number of rejected absentee ballots over time needs to be placed in the context of the number of absentee ballots being submitted over time. If the number of submitted absentee ballots is increasing, then we would anticipate the number of rejected ballots to also increase over time. There is little deviation over the time period in the percentage of ballots that were rejected,

²⁴ Dr. Rodden agreed that the number of absentee ballots sent out has increased over time, and when comparing presidential elections to presidential elections and midterm elections to midterm elections, the number of absentee ballots returned has also increased. (Rodden Deposition, page 87, lines 16-25.)

²⁵ Patrick, Tammy. *Cost of Elections: Online Voter Registration and Provisional Ballots*. Maricopa County, Arizona Elections Department (at page 20). Available at <https://recorder.maricopa.gov/voteroutreach/pdf/english/Cost%20of%20Elections%20Online%20VR%20and%20Provisionals.pdf>.

²⁶ *Ibid.*, pages 25-27.

ranging from 0.6% to 0.9% of the absentee ballots submitted, or between 0.2% and 0.3% of registered voters.

27. Thus, of the absentee ballots submitted, over 99% were counted and less than 1% were rejected in any of the four elections, 2008-2014. The percentage of absentee ballots counted in Arizona is actually higher than the percentage counted in the U.S, as shown in Table 4.²⁷ While some states use absentee ballots differently, with some states requiring an excuse and others not, this comparison shows that, in general, there is not a difference in the rejection rates between the U.S. and Arizona.

Table 4—Percentage of Returned Absentee Ballots Counted in the U.S. and Arizona by Election

Election	U.S.	Arizona
2010	98.3%	99.2%
2012	97.1%	99.2%
2014	98.2%	99.1%
Source: U.S. Election Assistance Commission (EAC) data available at: http://www.eac.gov/research/election_administration_and_voting_survey.aspx		

28. Table 5 reports the distribution of the rejection reasons for each of the four elections, 2008-2014. Regardless of the election, over 68% of absentee ballots were rejected because the voter either missed the deadline for returning the ballot or failed to sign the ballot.²⁸ The percentage of rejected absentee ballots with a non-matching signature declined from 24.1% in 2008 to 16.6% in 2012 and increased 1.4% percentage points between 2010 and 2014.

²⁷ The 2008 percentages are not provided because the data from the EAC for the U.S. reports the number counted as being greater than the number returned which is not possible.

²⁸ Dr. Rodden testified that the primary reasons for the rejection of early ballots during the 2014 election were lack of voter signature and missed deadlines. He agreed that these reasons involve decisions/actions made by the voter. (Rodden Deposition, page 91, line 21 – page 92, line 9.)

Table 5—Distribution of the Reasons for Rejecting an Absentee Ballot By Election in Arizona

Reason	2008	2010	2012	2014
Missed Deadline	23.6%	35.6%	33.1%	31.9%
No Voter Signature	44.5%	44.7%	42.4%	41.1%
No Witness Signature	0.0%	0.0%	0.0%	0.0%
Non-matching Signature	24.1%	13.6%	16.6%	15.0%
No Election Official's Signature on Ballot	0.0%	0.0%	0.0%	0.0%
Returned in Unofficial Envelope	0.0%	0.0%	0.6%	2.8%
Ballot Missing from Envelope	2.5%	0.6%	1.4%	0.5%
Envelope Not Sealed	0.0%	0.0%	0.0%	0.0%
No Resident Address on Envelope	0.0%	0.0%	1.0%	0.0%
Multiple Ballots Returned in One Envelope	0.1%	0.0%	0.0%	0.0%
Voter Deceased	0.0%	0.0%	1.8%	3.1%
Voter Already Voted in Person	1.1%	0.0%	0.1%	0.4%
First-time Voter without Proper ID	0.0%	0.0%	0.0%	0.0%
No Ballot Application on Record	0.0%	0.0%	0.2%	0.0%
No Specific Reason	4.1%	5.4%	2.7%	5.2%
Source: U.S. Election Assistance Commission (EAC) data available at http://www.eac.gov/research/election_administration_and_voting_survey.aspx				

29. In summary, my review of the information provided by Dr. Rodden finds that there has not been a decline in the usage of absentee voting in Arizona. Over 99% of Arizona's absentee ballots are counted, which is higher than the U.S., overall. Further, the most common reasons for rejected absentee ballots in Arizona are due to the failure of the registered voter to return the ballot on-time or to sign the ballot.

VI. Dr. Rodden Fails to Consider the Limited Volume of Rejected Provisional Ballots, the Decline in the Percentage of Rejected Ballots and Incorrectly Characterizes Out-of-Precinct Votes as “Falsely Disenfranchised”

30. Dr. Rodden concludes that Arizona utilized provisional ballots at a higher rate and had a higher incidence of out-of-precinct voting than the U.S.²⁹ He relies upon, in part, the EAC information for his comparisons. However, as the EAC states in its 2012 report:

California and New York reported the largest number of provisional ballots, accounting for 56.1% of all provisional ballots cast nationwide in the 2012 election. As a share of voters participating in the election, the District of Columbia (13.1%), California (7.4%), Arizona (6.5%), and Alaska (6.0%) had the largest percentages of voters cast provisional ballots. Readers should note that the different ways in which States use provisional ballots makes comparisons among States difficult. Those States that require a provisional ballot for more circumstances will have a higher incidence of provisional ballot usage when compared to those States with more limited uses. Ohio, for example, uses provisional ballots to process voters' change of address requests in addition to providing an alternative means to vote.³⁰

31. Thus, comparisons to the U.S. or to other states should be made with caution. Yet, at Figures 4 through 6 of his report, Dr. Rodden compares Arizona to all states including those who do not utilize provisional voting in any form, such as Minnesota. To calculate provisional votes as a percentage of all votes could be misleading when some of the states included do not utilize provisional voting. Such a calculation would necessarily result in a lower percentage overall in comparison to a state such as Arizona that utilizes provisional voting.

32. Dr. Rodden focuses on the provisional ballots cast as a share of in-person ballots cast. However, as shown in the table below, as a share of the total registered voters or the votes cast during each election, 2008-2014, the percentages have declined with the exception of the total number as a percentage of votes cast or registered voters in 2012. In addition, the percentage

²⁹ Rodden Report, pages 23-26.

³⁰ *The 2012 Election Administration and Voting Survey – A Summary of Key Findings*. U.S. Elections Assistance Commission, September 2013 (at page 12). Available at http://www.eac.gov/assets/1/Page/990-050%20EAC%20VoterSurvey_508Compliant.pdf. Arizona also uses provisional ballots to process voters' change of address requests (A.R.S. § 16-135(B)).

rejected has declined when comparing mid-term to mid-term and presidential to presidential election.

Table 6—Provisional Votes as a Percentage of the Registered Voters and Votes Cast by Election in Arizona

Provisional Ballots	2008	2010	2012	2014
<i>Provisional Votes as a Percentage of Registered Voters</i>				
Total Provisional	4.4%	2.3%	4.9%	1.7%
Counted	3.1%	1.9%	4.0%	1.5%
Rejected Ballot	1.3%	0.4%	0.9%	0.2%
<i>Provisional Votes as a Percentage of Votes Cast</i>				
Total Provisional	6.5%	4.7%	7.9%	4.3%
Counted	4.6%	3.8%	6.5%	3.7%
Rejected Ballot	1.9%	0.8%	1.4%	0.6%
Source: U.S. Election Assistance Commission (EAC) data available at: http://www.eac.gov/research/election_administration_and_voting_survey.aspx and Arizona voter registration data available at: http://www.azsos.gov/elections/voter-registration-historical-election-data/voter-registration-counts .				

33. More importantly, most of Arizona's provisional ballots are counted in each of the general elections, 2008 through 2014. As shown in the table below, the percentage of provisional ballots rejected has actually declined from 29.3% in 2008 to 18% in 2012 and from 17.7% in 2010 to 12.8% in 2014. Thus, the arguments that Dr. Rodden makes regarding the high rate of provisional ballots is without merit in light of the low percentage of provisional ballots cast and the fact that most of these limited provisional ballots are counted. Further, in his comparisons to other states, Dr. Rodden fails to report that the rejection rate is higher in the U.S. overall among provisional votes compared to the rejection rate in Arizona. In the U.S. overall, 24% of provisional votes were rejected in 2012 compared to 18% in Arizona.³¹

³¹ U.S. Election Assistance Commission (EAC) data available at: http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

Table 7—Provisional Votes and Distribution of Rejected Provisional Votes by Reason and Election in Arizona

Provisional Ballots	2008	2010	2012	2014
Total Provisional	151,799	81,844	183,259	65,980
Counted	70.7%	82.3%	82.0%	87.2%
Rejected Ballot	29.3%	17.7%	18.0%	12.8%
<i>Distribution of the Reasons for Rejecting Provisional Ballots</i>				
Not Registered in State	32.7%	36.3%	37.8%	25.6%
Vote in Wrong Jurisdiction	0.1%	0.3%	0.5%	1.9%
Vote in Wrong Precinct	33.5%	34.0%	33.2%	42.3%
Failure to Provide Sufficient ID	5.7%	5.1%	4.0%	2.1%
Envelope or Ballot was Incomplete and/or Illegible	4.8%	7.3%	7.6%	8.2%
Ballot Missing from Envelope	0.9%	0.3%	0.2%	0.1%
No Signature	0.4%	0.8%	0.5%	0.6%
Non-matching Signature	0.8%	1.5%	0.1%	0.0%
Voter Already Voted in Person	1.8%	3.0%	3.4%	4.7%
Not Specified	19.2%	11.4%	12.7%	14.4%
Source: U.S. Election Assistance Commission (EAC) data available at: http://www.eac.gov/research/election_administration_and_voting_survey.aspx .				

34. When reviewing the reasons for rejecting provisional ballots as reported in Table 7, voting out-of-precinct does not comprise the majority of the rejected provisional ballots. One third of the limited number of provisional ballots that were rejected in 2008 and 2012 resulted from voting out-of-precinct. In 2014 the percentage increased to 42.3%; however, this year had the lowest number and percentage of provisional ballots cast and the lowest percentage of rejected provisional ballots overall.

35. Importantly, Dr. Rodden does not examine the rejection reasons in the U.S. compared to those reported for Arizona. Focusing again on 2012, a higher proportion of the U.S. provisional votes were rejected for reasons not specified (29%) compared to Arizona (12.7%). Further, while nearly 20% of the provisional ballots in the U.S. were rejected for an incorrect jurisdiction, very few provisional votes are rejected for this reason in Arizona.³² Such differences

³² U.S. Election Assistance Commission (EAC) data available at:
http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

in the reasons for provisional ballots being rejected can be attributable to the variation in state regulations regarding reasons for rejecting provisional ballots.³³ For example, in New York for the 2012 election, there were 94,240 provisional ballots classified as “voter registered in state but attempted to vote in the wrong jurisdiction” and no provisional ballots classified as “voter registered in state but attempted to vote in the wrong precinct.”³⁴

36. Similar findings occur when we focus on the largest counties in Arizona, Maricopa and Pima counties, which together comprise 75% of Arizona’s registered voters.³⁵ As shown in Table 8, in both counties, the percentage of provisional ballots counted has increased over time. In Maricopa County the percentage of provisional ballots counted increased from 70.4% to 81.4% between 2008 and 2012 and from 81.1% in 2010 to 86% in 2014. In Pima County the percentage of provisional ballots counted increased from 74.7% in 2008 to 85.2% in 2012 and from 88.2% in 2010 to 92.2% in 2014. In terms of the reasons for rejecting provisional ballots, Maricopa County follows the State. In 2014, the percentage of the rejected ballots attributable to voting out-of-precinct is higher than in the other years, but the overall rejection rate was considerably lower than in other years.

³³ “Provisional Ballots.” National Conference of State Legislators. June 19, 2015. Available at www.ncsl.org/research/elections-and-campaigns/provisional-ballots.aspx.

³⁴ *The 2012 Election Administration and Voting Survey – A Summary of Key Findings*. U.S. Elections Assistance Commission, September 2013 (at Table 35A). Available at http://www.eac.gov/assets/1/Page/990-050%20EAC%20VoterSurvey_508Compliant.pdf.

³⁵ Arizona voter registration data available at: <http://www.azsos.gov/elections/voter-registration-historical-election-data/voter-registration-counts>.

Table 8—Provisional Votes and Distribution of Rejected Provisional Votes by Reason and Election in Maricopa and Pima County, Arizona

Provisional Ballots	2008	2010	2012	2014
<i>Maricopa County</i>				
Total Provisional	99,826	52,677	122,524	39,577
Counted	70.4%	81.1%	81.4%	86.0%
Rejected Ballot	29.6%	18.9%	18.6%	14.0%
<i>Distribution of the Reasons for Rejecting Provisional Ballots</i>				
Not Registered in State	29.9%	31.3%	31.6%	19.2%
Vote in Wrong Jurisdiction	0.0%	0.0%	0.0%	0.0%
Vote in Wrong Precinct	31.0%	35.4%	33.0%	50.1%
Failure to Provide Sufficient ID	6.1%	5.2%	4.5%	1.4%
Envelope or Ballot was Incomplete and/or Illegible	6.3%	9.7%	10.5%	8.7%
Ballot Missing from Envelope	1.1%	0.0%	0.0%	0.0%
No Signature	0.0%	0.0%	0.0%	0.0%
Non-matching Signature	1.1%	2.0%	0.0%	0.0%
Voter Already Voted in Person	1.7%	2.7%	3.6%	2.4%
Not Specified	22.9%	13.8%	16.8%	18.3%
<i>Pima County</i>				
Total Provisional	23,951	12,993	27,643	10,141
Counted	74.7%	88.2%	85.2%	92.2%
Rejected Ballot	25.3%	11.8%	14.8%	7.8%
<i>Distribution of the Reasons for Rejecting Provisional Ballots</i>				
Not Registered in State	15.2%	41.7%	31.4%	18.4%
Vote in Wrong Jurisdiction	0.0%	0.4%	0.0%	0.5%
Vote in Wrong Precinct	53.2%	41.7%	54.2%	46.8%
Failure to Provide Sufficient ID	3.3%	3.5%	2.2%	2.0%
Envelope or Ballot was Incomplete and/or Illegible	0.0%	0.0%	0.0%	0.0%
Ballot Missing from Envelope	0.3%	0.0%	0.0%	0.0%
No Signature	1.5%	2.5%	1.6%	3.5%
Non-matching Signature	0.2%	1.1%	0.9%	0.4%
Voter Already Voted in Person	3.0%	4.9%	3.0%	6.4%
Not Specified	23.4%	4.1%	6.7%	21.8%
Source: U.S. Election Assistance Commission (EAC) data available at http://www.eac.gov/research/election_administration_and_voting_survey.aspx .				

37. The number of provisional votes in Maricopa County may have been influenced by the conveniently placed PEVL check box available when citizens registered to vote on-line. As reported by the County, the number of provisional ballots increased after the PEVL option was

available when voters registered on-line. Voters registering online may not have realized that PEVL is early voting via absentee ballot. Registered voters who signed up to receive absentee ballots are not sent a sample ballot because they are sent the official absentee ballot instead. Because official ballots cannot be forwarded, PEVL registered voters who move and who do not update their address information will not receive their absentee ballot. As a consequence, the PEVL registered voter may visit the incorrect precinct, necessarily causing the number of provisional ballots to increase.³⁶ Dr. Rodden fails to consider this common sense reason for out-of-precinct ballots.³⁷ As discussed below, Dr. Rodden's models of out-of-precinct voting explain virtually none of the variation in the percentage of out-of-precinct votes in the census areas that he included in his model. The addition of an indicator such as whether or not the registered voters were on the PEVL could perhaps be included in Dr. Rodden's models and this factor or other missing factors may be correlated with the factors that he chose to include in his models.

38. Therefore, the concerns regarding the usage of provisional voting should be viewed in light of its limited usage in each of the elections and in light of the fact that most provisional ballots are counted. Moreover, out-of-precinct votes as a percentage of the total number of votes cast has declined over time both across the state as well as within Maricopa and Pima Counties as shown in the table below.

³⁶ Patrick, Tammy. *Cost of Elections: Online Voter Registration and Provisional Ballots*. Maricopa County, Arizona Elections Department (at page 27). Available at <https://recorder.maricopa.gov/voteroutreach/pdf/english/Cost%20of%20Elections%20Online%20VR%20and%20Provisionals.pdf>.

³⁷ At his deposition, Dr. Rodden stated, "I'm learning things here from you. So it's not – it's not forwardable." regarding official election mail not being forwardable even if there is a forwarding order with the post office. (Rodden Deposition, page 109, line 2 – page 110, line 1.)

Table 9—Out-of-Precinct Ballots as a Percentage of the Ballots Cast

Ballots	2008	2010	2012	2014
<i>Arizona</i>				
Ballots Cast	2,320,851	1,750,840	2,323,579	1,537,671
Out-of-Precinct Ballots	14,885	4,916	10,979	3,582
Out-of-Precinct Ballots as a Percentage of Ballots Cast	0.6%	0.3%	0.5%	0.2%
<i>Maricopa County</i>				
Ballots Cast	1,380,571	1,004,125	1,390,836	877,187
Out-of-Precinct Ballots	9,159	3,527	7,529	2,781
Out-of-Precinct Ballots as a Percentage of Ballots Cast	0.7%	0.4%	0.5%	0.3%
<i>Pima County</i>				
Ballots Cast	397,503	318,995	385,725	274,449
Out-of-Precinct Ballots	3,227	641	2,212	371
Out-of-Precinct Ballots as a Percentage of Ballots Cast	0.8%	0.2%	0.6%	0.1%
Source: U.S. Election Assistance Commission Data (EAC) http://www.eac.gov/research/election_administration_and_voting_survey.aspx .				

Dr. Rodden's Study of Maricopa County

39. Because Arizona does not collect the race/ethnicity of registered voters, Dr. Rodden estimates the probability that an individual Arizona voter is white, African-American, Hispanic, Asian, and “other” using data from the Current Population Survey (CPS) based on the voter’s last name and address. After assigning the percent African-American, Hispanic, Caucasian, Asian and “other” race based on an algorithm, he calculates the average percentage across the voters identified as being out-of-precinct. When he assigned the average percentage, a review of the surname file from the Bureau of Census shows that he would have been unable to match the surname to 11% of the out-of-precinct voters.³⁸ Thus, for the 11%, it appears that he relied solely on the demographic information of the census tract/block group for the address of the voter.³⁹

³⁸ There were 81 voters without a name among the 7,525 in Dr. Rodden’s “voters_merges.dta” file. If the 81 were included as a no-match in addition to the 11%, then the percentage would be higher.

³⁹ The demographic information relied upon by Dr. Rodden is the voting age population from the 2010 census (i.e., not the citizen voting age population).

40. When I examine the racial composition of the 7,525 voters (referred to as the 7,500 in Dr. Rodden's report)⁴⁰ in Maricopa County whom Dr. Rodden identifies as having their out-of-precinct ballots rejected in 2012, I find that he calculates the average probability of a voter being white is 56%, African-American 13%, Hispanic 26%, Asian 3.3%, and "other race" 1.6%. Again, this is based on calculating the average percentage that he assigned for each racial/ethnic category based on the surname and address of the voter. While overall, the out-of-precinct ballots are 0.5% of the ballots cast in Maricopa County in 2012, an even smaller percentage of the total ballots cast would have been attributed to African-American and Hispanic voters as measured by Dr. Rodden. White voters casting out-of-precinct ballots would represent 0.3% of the total number of ballots cast in comparison to 0.13% for Hispanic out-of-precinct voters and 0.07% for African-American out-of-precinct voters.

41. These percentages assume that Dr. Rodden has correctly predicted the racial/ethnic composition of the 7,525 out-of-precinct voters. Among the 7,525 voters, 2,088 are registered Republicans. Of the 2,088 registered Republicans, 508 (24%) have a probability of being African-American that is 14% or higher. That is, nearly one-quarter of the Republicans among the 7,525 have a probability of being African-American that is above the overall average probability of being African-American for this group of voters that Dr. Rodden estimated as being 13% overall. Further, 351 of the Republican out-of-precinct voters have a probability value of being African-

⁴⁰ The EAC reports 7,529 out-of-precinct ballots. Dr. Rodden relied upon a listing of 7,525 out-of-precinct ballots. There are 25 voters for whom Dr. Rodden does not have the predicted race/ethnicity values calculated among the group of the 7,525. It is not clear if Dr. Rodden removed 25 ballots to arrive at the 7,500 that he refers to in his report. Additionally, Dr. Rodden has different files containing the 7,525 voters, some of whom have different surname and race/ethnicity information. The file voters_merges.dta contains 7,525 voters with reason12 code of "B14." The file prov_geo_race2012.csv contains the same 7,525 voter id values after selecting that the variable "counted12" has a value of "N" and that the variable "reason12" has a value of "B14." Comparing the two sets of 7,525 voters from these two files, the surnames differ for 203 voters and some voters' race/ethnic information is different. For example, one voter id number is connected to a ten-letter surname in the file prov_geo_race12.csv and the same voter id number is connected to a surname containing only the first four letters in the voters_merges.dta file. The race/ethnic probabilities for this voter are also different between the two files.

American that is over 20%. Over 45%, 953 of the 2,088 registered Republicans, have a probability of being African-American that is higher than the overall Arizona state-wide percentage of 4% African-American. In comparison, in Arizona, less than one percent of Republicans or those who lean toward the Republican Party affiliation are African-American.⁴¹ This striking disparity in the percent African-American illustrates the unreliable racial probability “coding” that Dr. Rodden performed.⁴²

42. Dr. Rodden prepared a study of these 7,525 out-of-precinct ballots for Maricopa County.⁴³ He claims that the rejected provisional ballots are concentrated in certain areas and related to the population characteristics such as the share of voters who were Hispanic or African-American, renters, or in areas with more turnover in housing. To support his claims, Dr. Rodden provides Figures 9 through 11 which are “heat maps” showing the prevalence of rejected provisional ballots within Maricopa County. However, Dr. Rodden fails to note that precincts with more ballots cast will have more rejected provisional ballots simply because of the number of voters. Therefore, what Dr. Rodden is actually showing in his Figures 9 through 11 is the more highly concentrated renter populations that are also more likely to be the more densely populated areas of Maricopa County.⁴⁴ No additional conclusions can be drawn from the analysis.⁴⁵ Further, relying on a probability or a census availability to estimate race/ethnicity has an error rate. The

⁴¹ *Racial and Ethnic Composition Among Adults in Arizona by Political Party - Religion in America: U.S. Religious Data, Demographics and Statistics*. Pew Research Center. Available at <http://www.pewforum.org/religious-landscape-study/compare/racial-and-ethnic-composition/by/party-affiliation/among/state/arizona/>. Dr. Rodden estimated that among the 2,088 Republican out-of-precinct voters nearly 10% were African-American which is approximately 9 percentage points higher than the expected percentage.

⁴² Dr. Rodden testified that he has used other methods in the past to assign race to voters, including third party methods which “have a couple of additional bells and whistles that I did not have.” (Rodden Deposition, page 136, line 10 – page 137, line 24.)

⁴³ Rodden Report pages 29-34.

⁴⁴ However, he testified that he is “sure the correlation is positive” between rental housing and population density. (Rodden Deposition, page 125 lines 5-24.)

⁴⁵ As Dr. Rodden testified, “It gets really hard to make those judgments from looking at the maps.” (Rodden Deposition, page 127 lines 20 and 21.)

illustration above with respect to those of the 7,525 out-of-precinct voters with a Republican Party affiliation shows that Dr. Rodden's reliance on these data is likely to overstate and/or understate the actual likelihood that an individual is of a particular race/ethnic group.

43. Dr. Rodden next attempts to statistically relate the rate of rejected provisional ballots to the share of renters, households who moved, Hispanics, and African-Americans in each Census block group using a regression analysis.⁴⁶ To do so, he independently relates the log of the share of ballots cast that were rejected to the log of the share of renters, the log of the share of households that moved, the log of the percent Hispanic, and the log of the percent African-American, separately. Dr. Rodden's analyses do not simultaneously relate more than one of the factors at a time, meaning that Dr. Rodden assumes, for example, that the percent Hispanic in a block group is unrelated to the percent of renters in a block group despite his conclusions from the heat maps that these two factors are related.

44. Additionally, Dr. Rodden's analyses do not include census block groups which have zero percent African-American or Hispanic, nor do they include census block groups which have no out-of-precinct votes. This is because his analyses use the natural log of these variables (e.g., natural log of the percent African-American) and mathematically it is not possible to compute/define the log of zero, so the values become "missing" when the natural log is taken; the statistical software programming logic automatically drops such cases before performing the analyses. Approximately 16% of the observations are excluded in his analysis because of these reasons.⁴⁷ For example, Block Group 2, Census Tract 822.09, has no rejected out-of-precinct

⁴⁶ Analysts use multiple regression analysis to determine whether a statistically significant relationship exists between two factors. The advantage of using a multiple regression is that it can estimate this relationship while simultaneously taking into account the effect of additional factors which may be related to the study. Generally, as described, Dr. Rodden only accounted for a single factor in his regression analysis. The measure of the influence of each of the factors included in a regression model is reflected in each variable's "coefficient."

⁴⁷ Dr. Rodden testified that if a census block group does not have any Hispanic residents and/or any out-of-precinct votes, the model would *include* that census block group. Dr. Rodden testified it would enter the model as a zero,

ballots yet the percent Hispanic, according to Dr. Rodden's file, is over 87%. However, this Block Group would have been eliminated from Dr. Rodden's regression analysis due to his choice of using the log of the share of ballots that were rejected as out-of-precinct.⁴⁸ Because Dr. Rodden prepared woefully incomplete models to explain the relationships, his conclusions from the model results are unreliable and not meaningful.⁴⁹

45. Further, in his analysis of rejected provisional ballots vis-à-vis the percent Hispanic or African-American in a block group, Dr. Rodden used the voting age population (VAP) from the 2010 Census. Therefore, Dr. Rodden is overstating the percent Hispanic in the *citizen* voting age population (CVAP). I found that the percent Hispanic in Dr. Rodden's analysis file is approximately 25% for the VAP while the percent Hispanic for the CVAP is 19.2% for 2010-2014.

46. Dr. Rodden's interpretation of the effect of the Hispanic or African-American share of the population on the share of the ballots that were rejected is overstated. The effect of the Hispanic/African-American share in a block group can be interpreted as the percentage increase in the share of the ballots that are rejected for being out-of-precinct for a given percentage increase in the Hispanic/African-American block group share. Across the block groups in Maricopa County, the average percentage of the ballots that are rejected is 0.12% and it ranges from 0.0% of the ballots to 2.5% of the ballots. Because the rejected share of the ballots is exceedingly small, even the increases stated by Dr. Rodden would have a negligible effect on the *number* of ballots

which is incorrect as the mathematical computation of taking the log of zero is not defined. (Rodden Deposition, page 133, lines 18-21.)

⁴⁸ This is not an isolated example. There are 388 Block Groups that are not included in Dr. Rodden's regression analyses because they had 0 rejected out-of-precinct ballots. The percent Hispanic for these Block Groups ranges from 0% to 91% and the percent African-American ranges from 0% to 53%.

⁴⁹ Dr. Rodden failed to provide the exact model specifications used for his analyses on pages 33 and 34. When asked at deposition as to whether the models were provided, Dr. Rodden testified, "I provided the data. Whether there is a file that has just the very simple code for the regression, I would have to check. I hope so, but it's possible that I ran this analysis kind of interactively on the screen and reported the results and I have the results and I have the data. I don't recall whether there is a file that has the code for that particular regression. I hope there is, but it's something I can follow up on." (Rodden Deposition, page 131, lines 15-24).

rejected. For example, Dr. Rodden's statement regarding "a doubling of the Hispanic voting-age population—moving from a block group with a 25 percent Hispanic share to a 50 percent share—is associated with a striking 19 percent increase in the out-of-precinct voting rate"⁵⁰ means that for a census block group with the average percentage rejection rate of 0.12%, the rejection rate would increase to 0.1428%, or by approximately 10 ballots.⁵¹

47. The regression models prepared by Dr. Rodden are also flawed in that they fail to explain the variation in the log of the share of ballots rejected, which is the variable that Dr. Rodden is attempting to analyze. In other words, Dr. Rodden has failed to include relevant factors in his modeling and the results should be deemed unreliable. Further, Dr. Rodden failed to report the extremely low explanatory power of all of his statistical analyses.

48. A statistical measure of how well the model fits the data is called the Adjusted R-squared.⁵² This statistic represents the proportion of the decision variable's variance which is "explained," or accounted for, by the independent variables (e.g., share of ballots rejected, percent Hispanic, etc.), in the model after taking into account the number of variables in the model. The closer the Adjusted R-squared value is to one, or 100%, the better the model's fit. For example, an Adjusted R-squared value of 2.9% means that 2.9% of the variation in the dependent variable (e.g., share of out-of-precinct votes rejected) is explained by the variables included in the model. This means, that about 97.1% of the variation is not explained by the model. The maximum value that an Adjusted R-squared value can have is 100%. This would indicate that the factor(s) included in the model explain 100% of the variation.

⁵⁰ Rodden Report, page 33.

⁵¹ Note that Dr. Rodden's example of a 100 percent increase in a race/ethnicity's share of the block group population is quite extreme.

⁵² Berenson, Mark L. and David M. Levine. *Basic Business Statistics*, 7th ed. Upper Saddle River, NJ: Prentice Hall, 1999, at page 819.

49. The following table provides a summary of the Adjusted R-squared values from Dr. Rodden's regression models which show that Dr. Rodden's models explain 0.9% to 5.3% of the variation in the log of the share of out-of-precinct votes rejected. That is, Dr. Rodden's models failed to explain between 94% and 99% of the variation in the log of the share of ballots rejected. While all of Dr. Rodden's models suffer from very low explanatory power, the relationship between the log of the share of ballots rejected and the log of the percent who moved within the same city ("movers") is less than 1% based on the Adjusted R-squared value. Because so little of the variation is explained by Dr. Rodden's models, my conclusion is that there are other factors that may be correlated with the factors that he tested which should have been included in his model. Thus, his models are incomplete and Dr. Rodden has failed to include relevant factors in his modeling and the results should be deemed unreliable. Additionally, the effects, which Dr. Rodden describes as "highly statistically significant"⁵³ should be interpreted with caution due to the relatively large number of observations (approximately 2,000) included in the model.⁵⁴ Finally, he does not adjust for the fact that a census tract-block group with 4,000 individuals, such as Block Group 2, Census Tract 8124, is more likely to have an out-of-precinct ballot compared to a census tract-block group with 500 individuals, such as Block Group 1, Census Tract 1076.01.

⁵³ Rodden Report, page 34.

⁵⁴ "The mere existence of a large t-score for a huge sample has no real substantive significance because if the sample size is large enough, you can reject almost any null hypothesis!" (See: Studenmund, A.H. *Using Econometrics: A Practical Guide*, 4th ed. New York: Addison Wesley Longman, 2001, page 142.)

Table 10—Dr. Rodden’s Regression Results for His Analysis of the Share of Out-of-Precinct Votes as a Percentage of Registered Voters

Explanatory Variable Included in His Four Models	Adjusted R-Squared (Percentage of the Share of Out-of Precinct Votes Explained by His Model)
Percent Renter	2.9%
Percent Movers	0.9%
Percent Hispanic	5.3%
Percent African-American	4.6%

50. Finally, with respect to Dr. Rodden’s assertion that Arizona had the second highest number of movers between 2000 and 2010, he relied upon the American Community Survey data from the period 2006-2010.⁵⁵ However, this period of time included the Great Recession which impacted states such as Nevada, Arizona, California, and Florida more than other states.⁵⁶ Dr. Rodden then relates these data to out-of-precinct ballots in 2012. However, a later ACS survey reports that “The percentage of people who changed residences between 2010 and 2011 — 11.6 percent — was the lowest recorded rate since the Current Population Survey began collecting statistics on the movement of people in the United States in 1948, the U.S. Census Bureau reported today.”⁵⁷

51. Dr. Rodden continues his analysis of Maricopa County voting patterns by assigning a probability of each race and ethnicity group to each voter based on their surname and geographic location.⁵⁸ Using these probabilities, he then calculates the share of out-of-precinct ballots that were cast by Hispanics, African-Americans, and Caucasians and prepared his Figures 12 through

⁵⁵ As Dr. Rodden testified, the ACS data are not limited to registered voters or to the citizen voting-age population. (Rodden Deposition, page 58, lines 1-6.)

⁵⁶ Dr. Rodden testified that the years 2008, 2009, and 2010 were part of the housing crisis, and that he assumes that Arizona had a high rate of foreclosures during that time period. (Rodden Deposition, page 51, line 7 – page 52, line 1.)

⁵⁷ *Mover Rate Reaches Record Low, Census Bureau Reports*. U.S. Census Bureau, November 15, 2011. Available at: http://www.census.gov/newsroom/releases/archives/mobility_of_the_population/cb11-193.html.

⁵⁸ See paragraph 41 explaining the unreliability of the assignment of the probability of race.

15. Dr. Rodden's underlying materials show that he estimated 6,731 rejected out-of-precinct ballots and 394,997 total ballots cast at polling places in 2012. Therefore, Dr. Rodden's estimates are approximately 10% lower than the actual number of rejected out-of-precinct ballots and approximately 8% lower than the number of ballots cast at polling places. These differences underscore the lack of Dr. Rodden's attention to the error rates in assigning race and ethnicity. Further, with such a large undercount of ballots, it is possible that the conclusions drawn by Dr. Rodden would be greatly reduced or eliminated if the race and ethnicity coding were more accurate.

"Falsely Disenfranchised" Voters

52. Dr. Rodden further claims that 2,645 of the 7,525 out-of-precinct ballots in Maricopa County in 2012 were incorrectly labelled as being out-of-precinct and, therefore, were "falsely disenfranchised" voters.⁵⁹ He claims that similar outcomes occurred in 2008. However, Dr. Rodden is assuming that the address associated with the "assigned" precinct in the provisional data for Maricopa County is the "actual" address where the individual lived when he/she went to a precinct to vote. The relevant address is the provisional ballot address that the voter provided at the polls, which is not necessarily the address that is on file. This occurs when a voter moves and does not inform the County Recorder of the new address.

53. To test the problem with Dr. Rodden's assumption, for each of Dr. Rodden's 2,645 "disenfranchised" voters, we compared the "assigned" precinct in the voter registration file, "voters_merges", provided by Dr. Rodden to the "actual" address provided by the voter at the polls and determined that 2,595 (or 98%) have a different 2012 precinct in the voter registration file.

⁵⁹ Rodden Report, page 45.

54. Dr. Rodden provides illustrations of the 12 out-of-precinct ballots cast in precinct 173 (Goodyear) that he believes to have been falsely disenfranchised. However, a review of the 2012 precinct in the voter registration file provided by Dr. Rodden shows that none of the 12 have an actual precinct of 173 and, therefore, did indeed vote out-of-precinct.

55. Dr. Rodden provided various analyses of the relationship between polling location and the incidence of rejected out-of-precinct ballots. To do so, he prepared several regression analyses as shown in the table below that included one or, at most, two factors. In each regression, Dr. Rodden has reclassified his “falsely disenfranchised” voters as having voted in precinct which therefore removes 2,645 observations from the rejected out-of-precinct ballots.⁶⁰ He is then left with approximately 5,000 out-of-precinct ballots to which he is comparing over 400,000 polling place ballots. In each regression analysis, the effect of each variable is small and the percentage of variation explained by each model is always less than 1%. In other words, over 99% of the variation in the out-of-precinct ballots is not explained by his models. It is not surprising that Dr. Rodden has found a statistically significant outcome with these very tiny effects (e.g., an effect of 0.000000237), because he has over 400,000 observations. Finally, Dr. Rodden used a multiple regression model when analyzing a binary question (i.e., “out-of-precinct ballot” or not). As a consequence, he is using the incorrect statistical technique. He should have used either a logistic regression or a probit model. For all of these reasons, the analyses provided by Dr. Rodden are not reliable and are not informative to address the question that he is seeking to ask.

56. The effects estimated by Dr. Rodden are very small. For example, the effect of increasing the distance to a polling place by 1,000 meters (0.62 miles) would increase the number of rejected out-of-precinct ballots by .000237 ballots. Similarly, if there are 2 polling places within

⁶⁰ Because Dr. Rodden failed to provide the programming code for these regressions in his original submission, I was unable to determine his assumption regarding who he actually included in his models as it is not clear from his report.

a mile of a voter, the number of rejected out-of-precinct ballots is predicted to increase by 0.0011768 ballots. Finally, if a voter experienced a polling place change between 2010 and 2012, the number of rejected out-of-precinct ballots is predicted to increase by 0.0053554 ballots.

Table 11—Dr. Rodden’s Regression Results for Geography and Out-of-Precinct Ballots

Explanatory Variable Included in Rodden’s Model	Effect of Explanatory Variable	Adjusted R-Squared
Model 1: Distance to the Polling Place	0.000000237	0.73%
Model 2: Number of Polling Places within 1 Mile	0.0005884	0.01%
Model 3: In Phoenix or Not	0.0036936	0.30%
Model 4: Polling Place Change	0.0053554	0.75%
- Add Primary Polling Place Used to Model 4	0.0036412	0.05%

57. Dr. Rodden additionally prepared analyses of the relationship between the explanatory variables in the table above with the estimated race and ethnicity of the voters.⁶¹ These models include only race/ethnicity as an explanatory variable for all 2 million plus registered voters in Maricopa County in 2012. Again, given the number of observations, even a small deviation will likely be statistically significant. As in the table above, though, the effects of the race variables are small and the amount of variation that race/ethnicity explains is less than 1%, as shown below. For example, the effect of being African-American on the distance to the polling place is that African-Americans are closer to their polling place by 490 meters (0.3 of a mile) while the effect of being Hispanic on the distance to the polling place is 33.83 meters (0.02 miles). Dr. Rodden’s models do not provide useful information.

⁶¹ Prior to receiving the additional programming code from Dr. Rodden, I was not able to ascertain that the population he analyzed included all voters. This is an assumption that Dr. Rodden failed to make clear in his report yet the additional programming code did make it clear.

Table 12—Dr. Rodden’s Regression Results for Geography and Ethnicity/Race

Model	Effect of African-American	Effect of Native American	Effect of Asian	Effect of Hispanic	Adjusted R-Squared
Model 1: Distance to Polling Place (Meters)	-490.35	1,744.49	-783.19	33.83	0.04%
Model 2: Number of Polling Places within 1 Mile	0.0340	0.1237	-0.2694	0.1295	0.17%
Model 3: Polling Place Change	0.0854	0.0281	-0.0056	0.0058	0.09%

58. Dr. Rodden also provides a summary of analyses that he performed for Pima County. To do so, Dr. Rodden states in his “guide” that the program “pima.do” is the basis of the analytical results. However, the program “pima.do” does not execute as it is written; in other words, there is a mistake in the code which causes it to fail. Therefore, Dr. Rodden appears to have failed to provide the actual underlying materials for his analysis of Pima County. Further, the statistical techniques that Dr. Rodden used in these analyses differs from those he used for Maricopa County without explanation. For this analysis, Dr. Rodden chose to prepare a probit analysis which is a more appropriate statistical technique. However, as with his previous statistical modeling, he includes hundreds of thousands of observations, the effects are minimal, and the variation explained is less than 1%.

VII. Use of Presidential Preference Elections

59. The PPE is “solely for voters registered within a specific political party to specify their preference for a candidate of their political party for the Office of President.”⁶² The Secretary of State website answers the following questions regarding the PPE, including who can vote in these elections as well as how and where registered voters can cast their votes:⁶³

⁶² “Frequently Asked Questions.” Maricopa County Recorder. Available at <http://recorder.maricopa.gov/site/faq.aspx>

⁶³ “2016 Presidential Preference Election – March 22, 2016.” Arizona Secretary of State. Available at <http://apps.azsos.gov/election/2016/PPE/ElectionInformation.htm>

What is a presidential preference election?

The PPE is a preference election, whereby registered voters of participating, recognized political parties cast their vote for who they prefer the Arizona delegates cast their vote for at their party's national convention.

Is the presidential preference election a primary?

No, the PPE is not a primary election. The primary election will be held on August 30, 2016 and will not contain presidential/vice presidential candidates. The PPE is strictly a preference election and the only candidates that will appear on this ballot are presidential nominees from their respective political parties.

Can independent voters cast a vote in the presidential preference election?

No, only voters registered with a participating political party may vote in the PPE.

Do all recognized parties participate in the presidential preference election?

They might, but not always. Participation is voluntary per the party's choice.

I'm on the permanent early voter list. Will I still get my early ballot for the presidential preference election?

Yes, if you are registered with a participating party you will automatically receive an early mail-in ballot if you are already signed up to receive an early ballot.

Will my polling place be the same for the presidential preference election as it is for all other elections?

Polling place locations are always subject to change, no matter what election is being held. For the PPE elections, polling places are consolidated.

60. As such, in 2004 when the incumbent president was Republican, there was not a PPE for the Republican Party. Similarly, in 2012 when the incumbent president was a Democrat, there was not a PPE for the Democratic Party.⁶⁴ Therefore, the only comparison that can be made

⁶⁴ At his deposition, Dr. Rodden agreed that approximately one-third of the registered voters in Arizona were eligible to vote in the 2012 Presidential Preference Election. (Rodden Deposition, page 61, lines 4-7). Dr. Rodden testified, "I don't recall whether I included a partisanship control variable in some of the models." (Rodden Deposition, page 64, lines 2-8.)

is between 2008 and 2016 when both the Republican and Democratic Parties had a PPE. The percentage that cast votes in these PPEs increased from 51.3% in 2008 to 52.6% in 2016.⁶⁵

61. Dr. Rodden criticizes Maricopa County's use of 60 voting centers for the PPE in 2016. The registered voters in Maricopa County were not limited to one voting center, but instead could utilize any of 60 voting centers. Dr. Rodden focuses on the participation of the PPE voters in criticizing the use of the voting centers, but his claims are made in a vacuum without reference to the trends in primaries. Specifically, Dr. Rodden ignores that more educated and older registered voters are more likely to vote in primary elections than less educated and younger voters.⁶⁶ In doing so, he assumes that all registered voters would have been interested in voting during the PPE. Based on this assumption, Dr. Rodden then calculates the travel distance and time to the polling place. However, before calculating the travel distance and time, the subset of registered voters who would have been interested in voting in person during the PPE would need to be identified. Even with Dr. Rodden's assumption that all registered voters should be considered for his calculations, as reported at Table 3 of his report, Caucasian registered voters had a higher proportion in the more than 15 minutes category.⁶⁷

VIII. Conclusions

62. Dr. Rodden makes assertions without the context of minority voter participation in mid-term compared to presidential elections. Further, Arizona registered voters are shown to have increased their usage of absentee voting and most of the rejected absentee ballots, which were

⁶⁵ State of Arizona Official Canvass documents for the 2008 and 2016 Presidential Preference Elections. Available at <http://apps.azsos.gov/election/2008/PPE/Canvass2008PPE.pdf> and <http://apps.azsos.gov/election/2016/PPE/canvass2016ppe.pdf>.

⁶⁶ Rodden Deposition, page 94, lines 12-14.

⁶⁷ Rodden Report, page 68.

limited in scope, were the result of the voter failing to return the ballot on-time or from failing to sign their ballot.

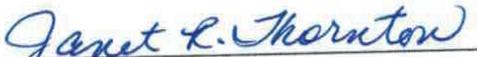
63. The use of provisional voting as a percentage of the registered voters and as a percentage of the number of ballots cast has declined over time. Similar findings occurred with respect to out-of-precinct ballots which constituted less than one percent of the ballots cast in any election analyzed in Dr. Rodden's report.

64. Dr. Rodden incorrectly assumed that provisional ballots were misclassified. It was shown that over 98% of these ballots had a difference between their provisional precinct and actual precinct.

65. Dr. Rodden's examination of Maricopa County is misleading with respect to his conclusions regarding out-of-precinct voting. First, he relies on VAP rather than CVAP and as a consequence overstates the percentage Hispanic. Second, data regarding party affiliation by race/ethnicity suggests that his estimates of the race/ethnicity of out-of-precinct voters are incorrect. Third, his regression equations are single variable equations that explain little of the variation in the share of registered voters with out-of-precinct ballots.

66. Finally, Dr. Rodden's analysis of issues related to the 2016 Presidential Preference Election ignores trends in primary voting and improperly assumes that all registered voters, regardless of their eligibility or interest in voting in the PPE, should have been considered when Maricopa County selected the vote center locations.

Dated: August 22, 2016


Janet R. Thornton, Ph.D.

Appendix A

Curriculum Vitae



Janet R. Thornton, Ph.D.
BERKELEY RESEARCH GROUP, LLC
2457 Care Drive, Suite A-200, Tallahassee, FL 32308

Direct: 850-402-5105
jthornton@thinkbrg.com

EDUCATION

Ph.D., Florida State University, Economics, 1992.
M.S., Florida State University, Economics, 1985.
B.A., University of Central Florida, Economics and Political Science, 1981

ACADEMIC EXPERIENCE

FLORIDA STATE UNIVERSITY

Instructor, Quantitative Methods for Business Decisions (2010)
Instructor, Quantitative Methods and Statistics (2000-2001)
Instructor, Economics (1984-1985)
Instructor and Teaching Assistant, Economics (1982-1984)

GEORGIA SOUTHWESTERN COLLEGE

Part-time Instructor (1985-1986)

UNIVERSITY OF CENTRAL FLORIDA

Research Assistant (1981)

PRESENT EMPLOYMENT

Managing Director, Berkeley Research Group, LLC (2015)

Dr. Thornton specializes in analyzing employment, insurance, and credit decisions. She has testified as an expert witness in federal court, state court, and administrative hearings regarding allegations of discrimination and the calculation of economic damages, and has been retained by both plaintiffs and defendants.

Dr. Thornton has prepared economic and statistical analyses involving allegations of gender, race, ethnicity, religious, and age discrimination in a variety of employment practices including selection, termination, and compensation. She has prepared analyses for employers both proactively and in response to litigation and OFCCP audits.

Dr. Thornton estimates economic damages and provides analysis of wage and hour claims as they relate to overtime (including misclassification), calculation of the regular rate of pay, and off-the-clock work issues including donning and doffing time. She has provided expert



witness testimony in wage and hour matters including a class action involving a large restaurant/retail chain.

Dr. Thornton has provided expert witness testimony regarding simple and complex random sampling designs, has analyzed survey data, and has calculated and incorporated statistical error rates associated with sampling designs. This expertise and her knowledge of complex databases has been used to help organize, manage, and process data for litigation including the use of sampling to identify anomalies in the organizations data processes.

Dr. Thornton's expertise in the analysis of lending practices has led her to design monitoring software specifically tailored to meet her clients' needs. She has prepared several reports and testified in class action lawsuits related to credit pricing issues.

Dr. Thornton has provided expert witness testimony regarding voting rights issues including the analysis of voter ID match rates and voting patterns among demographic groups.

PREVIOUS POSITIONS

Managing Director, ERS Group (2011 – 2015)
Director, ERS Group (2004-2011)
Vice President and Senior Research Economist, ERS Group (1998-2004)
Senior Research Economist, ERS Group (1997-1998)
Research Economist, ERS Group (1986-1997)
Research Assistant, ERS Group (Summer 1985)
Research Assistant, ERS Group (Summer 1984)

HONORS AND AWARDS

Omicron Delta Epsilon (Economics)
Omicron Delta Kappa (National Leadership)
Pi Sigma Alpha (Political Science)
Phi Kappa Phi Honor Society
Scholarship to attend the Conference on Public Choice at the Center for Public Choice in Blacksburg, Virginia, 1983

SPECIALIZATION

Labor and Natural Resource Economics



PUBLICATIONS

ARTICLES

“New Tools for the Calculation of Infringement Damages,” (with Roy Weinstein and Paul White). Prepared for The Center of American and International Law, Plano, TX, October 2010.

“Weathering the Economic Downturn: Economic and Statistical Analysis for Layoffs,” (with Fredrick Holt), EEO Insight, Vol. 1, Issue 3, 2009.

“Recent Developments in the Analysis of Employment Practices,” (with Joan Haworth and Paul White), Developments in Litigation Economics, Eds. Patrick Gaughan and Robert Thornton. Vol. 87 of Contemporary Studies in Economic and Financial Analysis. Amsterdam: Elsevier, 2005.

“Minority and Female Owned Business Opportunity in Atlanta,” (with Joan G. Haworth). Prepared for the City of Atlanta, October 2000.

“Cohort Analysis and the Determination of Economic Damages Resulting from Employment Discrimination,” (with Michael J. Piette). Journal of Forensic Economics, Vol. VIII, No. 1, Winter 1995.

“Using New Labor Force Participation Rates When Computing Economic Damage and Loss: A Methodological Note,” (with Michael J. Piette). Journal of Legal Economics, Vol. 4, No. 2, Summer 1994.

“A Human Capital Approach to School Retention,” Ph.D. Dissertation, Department of Economics, Florida State University, April 1992.

“The Use of Cohort Analysis in the Litigation Context,” (with Michael J. Piette). Presented at the American Economic Association Meeting, New Orleans, LA, January 1992.

“Changes in Labor Force Participation Rates Over Time: Some New Evidence from Census Data,” (with Michael J. Piette). Presented at the Southern Economic Association Meeting, Washington, D.C., November 1992.

PRESENTATION AND TRAINING ENGAGEMENTS

“Deep Diving Pay Equity” (panel with Hon. Charlotte A. Burrows, Adam T. Klein and Nancy E. Rafuse), presented at the American Bar Association National Conference on Equal Employment Opportunity Law, March 2016.

“Economic and Statistical Analyses of Common Employment Issues” (with Bo Shippen) presented at Fisher & Phillips, November 2014.

“Shoot First, Ask Questions Later: Managing through the EEOC’s Strategic Priorities” (with Shay Hable and Nancy Rafuse), presented at the Corporate Counsel Institute Program, December 2013.

“How to Prepare for an OFCCP Compensation Audit” (with Steve Greene), a webinar for



World at Work, September 2013.

"Compensation Analysis for Federal Contractors/Sub-Contractors," presented at the Jacksonville, Florida, Industry Liaison Group Conference, July 2012.

"WHO SAID LIFE WAS FAIR: Successfully Analyzing and Defending Fair Lending Claims" (with Eric Taylor), presented at the American Conference Institute's 13th National Forum on Consumer Finance Class Actions & Litigation, January 2012.

"Compensation Analyses," presented at the Space Coast Florida Industry Liaison Group Conference, October 2011.

"Compensation Analyses and Pay Equity," presented at the Central/Space Coast Florida Industry Liaison Group Conference, March 2010.

"Basic Statistics and Applications in AA Plan Development, Adverse Impact and Compensation," a course for the American Association for Affirmative Action's PDTI training 2010, February 2010.

"Demystifying Compensation Analysis: Concepts & Challenges, Part II," a webinar for the American Association for Affirmative Action's PDTI 2009 Webinar Series, September 2009.

"Tools for Analyzing and Monitoring Compensation," presented at the Jacksonville Industry Liaison Group Conference, May 2009.

"Tools for Analyzing and Monitoring Compensation," presented at the Central/Space Coast Florida Industry Liaison Group Conference, April 2009.

"Demystifying Compensation Analysis: Concepts & Challenges," a webinar for the American Association for Affirmative Action's PDTI 2009 Webinar Series, March 2009.

"Weathering the Economic Downturn: Economic and Statistical Analysis for Layoffs," presented at the Jacksonville Industry Liaison Group Conference, "Preparing for Change: Hot Topics for 2009 and Beyond," February 2009.

"Tools for Analyzing and Monitoring Compensation," presented at the Southwest and Rocky Mountain Regional Industry Liaison Group Conference, "Fairness and Inclusion in a Changing Workforce," November 2008.

Presented at the Proskauer Rose LLP seminar "Navigating Wage and Hour Issues in California," Los Angeles, April 2008.

SEMINAR PRESENTATIONS

"Employment Discrimination: Economic and Statistical Evidence," an ERS Group seminar. Presented the following topics: "Commonly Used Statistical Techniques" and/or "Advanced Statistical Techniques: Compensation Analysis" and/or "Statistical Concepts: Modeling & Data Issues" and/or "Exposure and Liability: Calculating Damages." Orlando, 2012 and 2014; Washington, D.C. and New York, 2009; Washington, D.C. and New York, 2006; Washington, D.C. and New York, 2004; Washington, D.C. and New York, 2003; Chicago and New York, 2002; Dallas, 2001; New York and Los Angeles, 2000; Atlanta, Chicago, San Francisco, 1999; and Los Angeles, 1998.



“2010 Compensation Tune-up: Are Your Pay Practices Ready for Challenges?” an ERS Group webinar, January 2010.

“Weathering the Economic Downturn: Economic and Statistical Analysis for Layoffs,” an ERS Group webinar, January 2009 and December 2008.

“Compensation Tune-Up for 2007: Tools for Analyzing and Monitoring Compensation,” an ERS Group webinar, February 2007.

“Analyzing and Monitoring Compensation in Today’s Regulatory Environment,” an ERS Group seminar, Washington, D.C. and San Francisco, 2005.

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

American Economic Association
National Association of Forensic Economics
North Florida Committee on Foreign Relations

COMPUTER LANGUAGES AND STATISTICAL PACKAGES

Extensive knowledge and use of FORTRAN, SAS, and SPSS on mainframe and personal computers
Knowledge and use of FOCUS, BMDP, COBOL, and Pascal
Knowledge and use of Atlas Pro Software to construct thematic maps

COMPUTER SYSTEMS

IBM RS6000 Model 58H, operating in an IBM UNIX environment
IBM 3090-400 VM-CMS environment at the University of Florida, Gainesville, Florida
Concurrent Corporation/Perkin-Elmer at Economic Research Services, Inc., Tallahassee, Florida
Control Data Cyber 850 at the Florida State University, Tallahassee, Florida

Expert Testimony
Within the Last Four Years



Janet R. Thornton, Ph.D.
BERKELEY RESEARCH GROUP, LLC
2457 Care Drive, Suite A-200, Tallahassee, FL 32308

United States of America v. Alabama State Personnel Director, et al.; Case No. 68-T-2709-N, U.S. District Court, Middle District of Alabama, Northern Division. [depositions, affidavits]

Clifford L. Whitaker, et al. v. 3M Company; Court File No. C4-04-12239, State of Minnesota District Court, County of Ramsey, Second Judicial District. [affidavits, deposition, hearing testimony]

Mirna E. Serrano, et al. v. Cintas Corporation; Case No. 04-CV-40132 consolidated for pre-trial proceedings with Blanca Nelly Avalos v. Cintas Corporation; Case No. 06-CV-12311, U.S. District Court, Eastern District of Michigan, Southern Division. [declarations, deposition]

Michael Richards v. Johnson & Johnson, Inc. and Johnson & Johnson Consumer Products Companies; Case No. 05-CV-3663 (KSH), U.S. District Court, District of New Jersey. [affidavit]

United States of America v. Jefferson County, Alabama, et al.; Case No. CV-75-5-666-S, U.S. District Court, Northern District of Alabama, Southern Division. [depositions, affidavit, trial testimony]

Dennis Ham, et al. v. City of Atlanta, Georgia, et al. and Russell E. Martin, et al. v. City of Atlanta, Georgia and Dennis L. Rubin; Case Nos. 1:07-CV-0326-BBM and 1:07-CV-0309-BBM, U.S. District Court, Northern District of Georgia, Atlanta Division. [deposition]

Johnny Reynolds, et al. v. Alabama Department of Transportation, et al.; Case No. CV-85-T-665-N, U.S. District Court, Middle District of Alabama, Northern Division. [affidavits]

Lee Lewis, et al. v. Smithfield Packing Company, Inc. and Jerry Parker, Wilbert Tatum, Dannie King, Jr. and Alexander Herring, et al. v. Smithfield Packing Company, Inc.; Case Nos. 7:07-CV-00166-H and 7:07-CV-00176-H, U.S. District Court, Eastern District of North Carolina, Southern Division. [deposition, declarations]

Carol Bell v. Lockheed Martin Corporation; Case No. 08-6292, U.S. District Court, District of New Jersey. [declaration]

Melissa C. Butterworth v. Laboratory Corporation of America Holdings; Case No. 3:08-CV-411-J-33JRK, U.S. District Court, Middle District of Florida, Jacksonville Division. [deposition]

Greater New Orleans Fair Action Housing Center, et al. v. United States Department of Housing and Urban Development, et al.; Case No. 1:08-cv-1938-HHK, U.S. District Court, District of Columbia. [declaration]

Shirley Craig, et al. v. Rite Aid Corporation and Eckerd Corporation d/b/a Rite Aid; Case No. 4:08-CV-02317, U.S. District Court, Middle District of Pennsylvania. [declarations]



Pamalon Rollins, et al. v. Alabama Community College System, et al.; Case No. 2:09-cv-636-WHA, U.S. District Court, Middle District of Alabama, Northern Division. [deposition]

Shana L. Kennedy, et al. v. Virginia Polytechnic Institute and State University; Case No. 7:08-cv-00579, U.S. District Court, Western District of Virginia. [hearing testimony, trial testimony]

Ginger Hooper and Larry Marshall v. Total System Services, Inc.; Case No. 4:08-cv-159, U.S. District Court, Middle District of Georgia. [deposition]

Justin Bell, et al. v. Citizens Financial Group, Inc., RBS Citizens, N.A. (d/b/a Citizens Bank), and Citizens Bank of Pennsylvania (d/b/a Citizens Bank); Case No. 10-CV-00320-GLL, U.S. District Court, Western District of Pennsylvania. [affidavits]

Roxie Sibley, et al. v. Sprint Nextel Corporation and Sprint/United Management Company; Case No. 02:08-CV-02063-KHV/JPO, U.S. District Court, District of Kansas. [affidavits, deposition]

Synthia G. Ross, et al. v. RBS Citizens, N.A. (d/b/a Charter One) and Citizens Financial Group, Inc.; Case No. 1:09-CV-5695, U.S. District Court, Northern District of Illinois, Eastern Division. [affidavits]

Kevin Martin, et al. v. Citizens Financial Group, Inc., RBS Citizens, N.A. (d/b/a Citizens Bank), and Citizens Bank of Pennsylvania (d/b/a Citizens Bank); Case No. 10-cv-00260-MSG, U.S. District Court, Eastern District of Pennsylvania. [affidavit]

Jimmy Turner v. TAMKO Building Products, Inc. et al.; Case No. 7:11-cv-03741-TMP, U.S. District Court, Northern District of Alabama, Western Division. [declaration]

The Equal Rights Center v. Richman Property Services, Inc., et al.; Case No. 1:10-cv-03038-JFM, U.S. District Court, District of Maryland. [affidavits, deposition]

Colleen Bowen, et al. v. Washington Suburban Sanitary Commission, et al.; Case No. CAL-06-2234, Circuit Court for Prince George's County, Maryland. [deposition, trial testimony]

North Carolina State Conference of the NAACP, et al. v. Patrick Lloyd McCrory, in his official capacity as Governor of North Carolina, et al. (Case No. 1:13CV658); League of Women Voters of North Carolina, et al. and Louis M. Duke, et al. v. The State of North Carolina, et al. (Case No. 1:13CV660); and United States of America v. The State of North Carolina, et al. (Case No. 1:13CV861), U.S. District Court, Middle District of North Carolina. [declarations, depositions, trial testimony]

Charles M. Bingham v. Raytheon Technical Services Co., LLC; Case No. 1:13-CV-00211-TWP-DKL, U.S. District Court, Southern District of Indiana, Indianapolis Division. [declaration]

Alberta Currie, et al. v. The State of North Carolina and the North Carolina State Board of Elections; Case No. 13-CVS-1419, State of North Carolina General Court of Justice, Superior Court Division, County of Orange. [affidavit]



Barbara H. Lee, et al. v. Virginia State Board of Elections, et al.; Case No. 3:15-CV-357, U.S. District Court, Eastern District of Virginia. [deposition, declaration, trial testimony]

EXHIBIT 7

VOTE CENTERS

Updated October 2015

Introduction

Vote centers are an alternative to traditional, neighborhood-based precincts. When a jurisdiction opts to use vote centers, voters may cast their ballots on Election Day at any vote center in the jurisdiction, regardless of their residential address. Eleven states now either permit jurisdictions to replace precincts with vote centers, or have authorized vote center projects in selected jurisdictions.

Possible advantages:

Voter convenience — Citizens can vote near home, near work or school, or anywhere that is convenient.

Financial savings — With fewer locations to staff, Election Day expenses are reduced.

Turnout — Because of convenience, turnout may increase.

Possible drawbacks:

Tradition — The civic experience of voting with neighbors at a local school, church, or other polling place is changed.

Voter education — Vote centers can cause confusion if the switch isn't well publicized and explained to the public.

Equipment — Vote centers must be able to produce the appropriate ballot for each voter; this requires either touchscreen machines that can be reset for each voter or "print demand" equipment.

Technology — Jurisdictions must first convert to the use of "electronic poll books;" when a voter casts a ballot in one location, it is recorded at all locations via networked computers.

History

2003: Larimer County, Colo., piloted the first vote centers in 2003 and authorizing legislation was passed in 2004 ([SB 153](#)).

2006: Indiana began a pilot project in five counties ([HB 1011](#)).

2008: Iowa passed legislation that allows jurisdictions to use vote centers for city, school and special elections ([HF 2620](#)).

by 2010: North Dakota ([HB 1378](#)), South Dakota ([SB 101](#)), Tennessee ([SB 3687](#)) and Texas ([HB 719](#)) had begun pilot projects.

2011: Arizona ([HB 2303](#)), Indiana ([SB 32](#)), New Mexico ([SB 337](#)), Tennessee ([HB 1268](#)), Texas ([HB 2194](#)) and Utah ([HB 130](#)) passed legislation to permit all jurisdictions to use vote centers.

2012: South Dakota ([HB 58](#)) authorized the use of vote centers in the state. A pilot project in certain jurisdictions had been authorized previously.

2013: Arkansas ([HB 1875](#)) passed legislation to permit (but not require) all jurisdictions to use voter centers.

2015: Wyoming ([SF 52](#)) authorized the use of vote centers and electronic poll books.

Additional Resources

Articles from NCSL's elections newsletter, *The Canvass*:

[Vote Centers Come of Age](#)

[Vote Centers—The Big-Box Option](#)

[Use of Vote Centers on the Rise Nationwide](#), from the Pew Charitable Trusts

[Indiana's Office of the Secretary of State](#)

[Larimer County, Colo.'s County Clerk and Recorder website](#)

["Engaging the Unengaged Voter: Vote Centers and Voter Turnout" by Robert Stein and Greg Vonnahme](#)

For More Information

For more information on vote centers, email [NCSL's elections staff](#) or call 303-364-7700.

NCSL Member Toolbox

[Members Resources](#)

[Policy & Research Resources](#)

[Meeting Resources](#)

[Denver](#)

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- Jobs Clearinghouse
- Legislative Careers
- NCSL Staff Directories
- Staff Directories
- StateConnect Directory

- Bill Information Service
- Legislative Websites
- NCSL Bookstore
- State Legislatures Magazine

Accessibility Support

- Tel: 1-800-659-2656 or 711
- Accessibility Support
- Accessibility Policy

- Calendar
- Online Registration

Press Room

- Media Contact
- NCSL in the News
- Press Releases

7700 East First Place
Denver, CO 80230
Tel: 303-364-7700 | Fax: 303-364-7800

Washington

444 North Capitol Street, N.W., Suite
Washington, D.C. 20001
Tel: 202-624-5400 | Fax: 202-737-1000

EXHIBIT 8

Senate Engrossed House Bill

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

CHAPTER 331
HOUSE BILL 2303

AN ACT

AMENDING SECTIONS 16-168, 16-169, 16-411, 16-511, 16-516, 16-571, 16-579,
16-602 AND 16-615, ARIZONA REVISED STATUTES; RELATING TO CONDUCT OF
ELECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

H.B. 2303

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 16-168, Arizona Revised Statutes, is amended to
3 read:

4 16-168. Precinct registers; date of preparation; contents;
5 copies; reports; statewide database; violation;
6 classification

7 A. By the tenth day preceding the primary and general elections the
8 county recorder shall prepare from the original registration forms or from
9 electronic media at least four lists that are printed or typed on paper, OR
10 AT LEAST TWO ELECTRONIC MEDIA POLL LISTS, OR ANY COMBINATION OF BOTH, of all
11 qualified electors in each precinct in the county, and the lists shall be the
12 official precinct registers.

13 B. The official precinct registers for use at the polling place shall
14 contain at least the names in full, party preference, date of registration
15 and residence address of each qualified elector in the respective precincts.
16 The names shall be in alphabetical order and, in a column to the left of the
17 names, shall be numbered consecutively beginning with number 1 in each
18 precinct register.

19 C. For the purposes of transmitting voter registration information as
20 prescribed by this subsection, electronic media shall be the principal media.
21 A county or state chairman who is eligible to receive copies of precinct
22 lists as prescribed by this subsection may request that the recorder provide
23 a paper copy of the precinct lists. In addition to preparing the official
24 precinct lists, the county recorder shall provide a means for electronically
25 reproducing the precinct lists. Unless otherwise agreed, the county recorder
26 shall deliver one electronic media copy of each precinct list in the county
27 without charge and on the same day within eight days after the close of
28 registration for the primary and general elections to the county chairman and
29 one electronic media copy to the state chairman of each party that has at
30 least four candidates other than presidential electors appearing on the
31 ballot in that county at the current election. The secretary of state shall
32 prescribe the manner, format and template in which all county recorders
33 provide this data to the secretary of state to ensure that the submissions
34 are uniform from all counties in this state. The electronic media copies of
35 the precinct lists that are delivered to the party chairmen shall include for
36 each elector the following information:

- 37 1. Name in full and appropriate title.
- 38 2. Party preference.
- 39 3. Date of registration.
- 40 4. Residence address.
- 41 5. Mailing address, if different from residence address.
- 42 6. Zip code.
- 43 7. Telephone number if given.
- 44 8. Birth year.
- 45 9. Occupation if given.

H.B. 2303

1 10. Voting history for all elections in the prior four years and any
2 other information regarding registered voters that the county recorder or
3 city or town clerk maintains electronically and that is public information.

4 11. All data relating to permanent early voters and nonpermanent early
5 voters, including ballot requests and ballot returns.

6 D. The names on the precinct lists shall be in alphabetical order and
7 the precinct lists in their entirety, unless otherwise agreed, shall be
8 delivered to each county chairman and each state chairman within ten business
9 days of the close of each date for counting registered voters prescribed by
10 subsection G of this section other than the primary and general election
11 registered voter counts in the same format and media as prescribed by
12 subsection C of this section. During the thirty-three days immediately
13 preceding an election and on request from a county or state chairman, the
14 county recorder shall provide at no cost a daily list of persons who have
15 requested an early ballot and shall provide at no cost a weekly listing of
16 persons who have returned their early ballots. The recorder shall provide
17 the daily and weekly information through the Friday preceding the election.
18 On request from a county chairman or state chairman, the county recorder of a
19 county with a population of more than eight hundred thousand persons shall
20 provide at no cost a daily listing of persons who have returned their early
21 ballots. The daily listing shall be provided Mondays through Fridays,
22 beginning with the first Monday following the start of early voting and
23 ending on the Monday before the election.

24 E. Precinct registers and other lists and information derived from
25 registration forms may be used only for purposes relating to a political or
26 political party activity, a political campaign or an election, for revising
27 election district boundaries or for any other purpose specifically authorized
28 by law and may not be used for a commercial purpose as defined in section
29 39-121.03. The sale of registers, lists and information derived from
30 registration forms to a candidate or a registered political committee for a
31 use specifically authorized by this subsection does not constitute use for a
32 commercial purpose. The county recorder, on a request for an authorized use
33 and within thirty days from receipt of the request, shall prepare additional
34 copies of an official precinct list and furnish them to any person requesting
35 them on payment of a fee equal to five cents for each name appearing on the
36 register for a printed list and one cent for each name for an electronic data
37 medium, plus the cost of the blank computer disk or computer software if
38 furnished by the recorder, for each copy so furnished.

39 F. Any person in possession of a precinct register or list, in whole
40 or part, or any reproduction of a precinct register or list, shall not permit
41 the register or list to be used, bought, sold or otherwise transferred for
42 any purpose except for uses otherwise authorized by this section. A person
43 in possession of information derived from voter registration forms or
44 precinct registers shall not distribute, post or otherwise provide access to
45 any portion of that information through the internet except as authorized by
46 subsection J of this section. Nothing in this section shall preclude public

H.B. 2303

1 inspection of voter registration records at the office of the county recorder
2 for the purposes prescribed by this section, except that the month and day of
3 birth date, the social security number or any portion thereof, the driver
4 license number or nonoperating identification license number, the Indian
5 census number, the father's name or mother's maiden name, the state or
6 country of birth and the records containing a voter's signature shall not be
7 accessible or reproduced by any person other than the voter, by an authorized
8 government official in the scope of the official's duties, for signature
9 verification on petitions and candidate filings, for election purposes and
10 for news gathering purposes by a person engaged in newspaper, radio,
11 television or reportorial work, or connected with or employed by a newspaper,
12 radio or television station or pursuant to a court order. A person who
13 violates this subsection or subsection E of this section is guilty of a class
14 6 felony.

15 G. The county recorder shall count the registered voters by political
16 party by precinct, legislative district and congressional district as
17 follows:

18 1. In even numbered years, the county recorder shall count all persons
19 who are registered to vote as of:

20 (a) January 1.

21 (b) March 1.

22 (c) June 1.

23 (d) The last day on which a person may register to be eligible to vote
24 in the next primary election.

25 (e) The last day on which a person may register to be eligible to vote
26 in the next general election.

27 (f) The last day on which a person may register to be eligible to vote
28 in the next presidential preference election.

29 2. In odd numbered years, the county recorder shall count all persons
30 who are registered to vote as of:

31 (a) January 1.

32 (b) April 1.

33 (c) July 1.

34 (d) October 1.

35 H. The county recorder shall report the totals to the secretary of
36 state as soon as is practicable following each of the dates prescribed in
37 subsection G of this section. The report shall include completed
38 registration forms returned in accordance with section 16-134, subsection B.
39 The county recorder shall also provide the report in a uniform electronic
40 computer media format that shall be agreed on between the secretary of state
41 and all county recorders. The secretary of state shall then prepare a
42 summary report for the state and shall maintain that report as a permanent
43 record.

44 I. The county recorder and the secretary of state shall protect access
45 to voter registration information in an auditable format and method specified

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1 in the secretary of state's electronic voting system instructions and
2 procedures manual that is adopted pursuant to section 16-452.

3 J. The secretary of state shall develop and administer a statewide
4 database of voter registration information that contains the name and
5 registration information of every registered voter in this state. The
6 statewide database is a matter of statewide concern and is not subject to
7 modification or further regulation by a political subdivision. The database
8 shall include an identifier that is unique for each individual voter. The
9 database shall provide for access by voter registration officials and shall
10 allow expedited entry of voter registration information after it is received
11 by county recorders. As a part of the statewide voter registration database,
12 county recorders shall provide for the electronic transmittal of that
13 information to the secretary of state on a real time basis. The secretary of
14 state shall provide for maintenance of the database, including provisions
15 regarding removal of ineligible voters that are consistent with the national
16 voter registration act of 1993 (P.L. 103-31; 107 Stat. 77; 42 United States
17 Code section 394) and the help America vote act of 2002 (P.L. 107-252; 116
18 Stat. 1666; 42 United States Code sections 15301 through 15545), provisions
19 regarding removal of duplicate registrations and provisions to ensure that
20 eligible voters are not removed in error. For the purpose of maintaining
21 compliance with the help America vote act of 2002, each county voter
22 registration system is subject to approval by the secretary of state for
23 compatibility with the statewide voter registration database system.

24 K. Except as provided in subsection L of this section, for requests
25 for the use of registration forms and access to information as provided in
26 subsections E and F of this section, the county recorder shall receive and
27 respond to requests regarding federal, state and county elections.

28 L. Beginning January 1, 2008, recognized political parties shall
29 request precinct lists and access to information as provided in subsections E
30 and F of this section during the time periods prescribed in subsection C or D
31 of this section and the county recorder shall receive and respond to those
32 requests. If the county recorder does not provide the requested materials
33 within the applicable time prescribed for the county recorder pursuant to
34 subsection C or D of this section, a recognized political party may request
35 that the secretary of state provide precinct lists and access to information
36 as provided in subsections E and F of this section for federal, state and
37 county elections. The secretary of state shall not provide access to
38 precinct lists and information for recognized political parties unless the
39 county recorder has failed or refused to provide the lists and materials as
40 prescribed by this section. The secretary of state may charge the county
41 recorder a fee determined by rule for each name or record produced.

42 M. For municipal registration information in those municipalities in
43 which the county administers the municipal elections, county and state party
44 chairmen shall request and obtain voter registration information and precinct
45 lists from the city or town clerk during the time periods prescribed in
46 subsection C or D of this section. If the city or town clerk does not

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1 provide that information within the same time prescribed for county recorders
2 pursuant to subsection C or D of this section, the county or state party
3 chairman may request and obtain the information from the county recorder.
4 The county recorder shall provide the municipal voter registration and
5 precinct lists within the time prescribed in subsection C or D of this
6 section.

7 N. The county recorders and the secretary of state shall not prohibit
8 any person or entity prescribed in subsection C of this section from
9 distributing a precinct list to any person or entity that is deemed to be
10 using the precinct list in a lawful manner as prescribed in subsections E and
11 F of this section.

12 Sec. 2. Section 16-169, Arizona Revised Statutes, is amended to read:
13 16-169. Disposition and use of precinct registers; signature
14 roster; form

15 A. Upon completion of the precinct registers, the county recorder
16 shall certify to their completeness and correctness and shall transmit ~~the~~
17 ~~original and two copies~~ THEM to the ~~several~~ election boards. A copy shall be
18 retained by the county recorder IN EITHER PRINT OR ELECTRONIC MEDIA for
19 verification purposes on election day, and then ~~such~~ THAT copy shall be
20 delivered by the recorder to the early election boards. The board of
21 election shall use the original of the precinct register, which shall be
22 known as the "signature roster", for identifying the electors qualified to
23 vote in the precinct and may use the remaining copies to process voters or
24 may place them in a convenient place outside the poll limits for use by the
25 electors.

26 B. IF PAPER SIGNATURE ROSTERS ARE USED, the signature roster shall be
27 bound with suitable covers and shall bear on the outside front cover the
28 title, "signature roster _____ precinct, _____ county,
29 Arizona." On the cover shall appear, printed or typed, a certificate to be
30 signed by the inspector substantially as follows:

31 I, _____, inspector of the board of election of
32 _____ precinct, _____ county, Arizona hereby certify that
33 the foregoing (excepting signatures in red) are true and correct
34 signatures of all electors who voted in _____ precinct
35 on _____.
36 (date)

37 _____
38 (inspector)

39 C. IF ELECTRONIC MEDIA POLL BOOK SYSTEMS ARE USED FOR SIGNATURE
40 ROSTERS, A SEPARATE AFFIDAVIT SHALL BE SUPPLIED FOR THE INSPECTOR'S SIGNATURE
41 THAT IS IN SUBSTANTIALLY THE SAME FORMAT AS PRESCRIBED IN SUBSECTION B OF
42 THIS SECTION.

43 Sec. 3. Section 16-411, Arizona Revised Statutes, is amended to read:
44 16-411. Designation of election precincts and polling places;
45 voting centers; electioneering; wait times

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1 A. Except as prescribed by subsection J of this section, the board of
2 supervisors of each county, on or before December 1 of each year preceding
3 the year of a general election, by an order, shall establish a convenient
4 number of election precincts in the county and define the boundaries of the
5 precincts. Such election precinct boundaries shall be so established as
6 included within election districts prescribed by law for elected officers of
7 the state and its political subdivisions including community college district
8 precincts, except those elected officers provided for in titles 30 and 48.

9 B. Not less than twenty days before a general or primary election, and
10 at least ten days before a special election, the board shall designate one
11 polling place within each precinct where the election shall be held, except
12 that:

13 1. On a specific finding of the board, included in the order or
14 resolution designating polling places pursuant to this subsection, that no
15 suitable polling place is available within a precinct, a polling place for
16 such precinct may be designated within an adjacent precinct.

17 2. Adjacent precincts may be combined if boundaries so established are
18 included in election districts prescribed by law for state elected officials
19 and political subdivisions including community college districts but not
20 including elected officials prescribed by titles 30 and 48. The officer in
21 charge of elections may also split a precinct for administrative purposes.
22 Any such polling places shall be listed in separate sections of the order or
23 resolution.

24 3. On a specific finding of the board that the number of persons who
25 are listed as permanent early voters pursuant to section 16-544 is likely to
26 substantially reduce the number of voters appearing at one or more specific
27 polling places at that election, adjacent precincts may be consolidated by
28 combining polling places and precinct boards for that election. The board of
29 supervisors shall ensure that a reasonable and adequate number of polling
30 places will be designated for that election. Any consolidated polling places
31 shall be listed in separate sections of the order or resolution of the board.

32 4. ON A SPECIFIC RESOLUTION OF THE BOARD, THE BOARD MAY AUTHORIZE THE
33 USE OF VOTING CENTERS IN PLACE OF OR IN ADDITION TO SPECIFICALLY DESIGNATED
34 POLLING PLACES. A VOTING CENTER SHALL ALLOW ANY VOTER IN THAT COUNTY TO
35 RECEIVE THE APPROPRIATE BALLOT FOR THAT VOTER ON ELECTION DAY AND LAWFULLY
36 CAST THE BALLOT. VOTING CENTERS MAY BE ESTABLISHED IN COORDINATION AND
37 CONSULTATION WITH THE COUNTY RECORDER, AT OTHER COUNTY OFFICES OR AT OTHER
38 LOCATIONS IN THE COUNTY DEEMED APPROPRIATE.

39 C. If the board fails to designate the place for holding the election,
40 or if it cannot be held at or about the place designated, the justice of the
41 peace in the precinct, two days before the election, by an order, copies of
42 which the justice of the peace shall immediately post in three public places
43 in the precinct, shall designate the place within the precinct for holding
44 the election. If there is no justice of the peace in the precinct, or if the
45 justice of the peace fails to do so, the election board of the precinct shall
46 designate and give notice of the place within the precinct of holding the

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1 election. For any election in which there are no candidates for elected
2 office appearing on the ballot, the board may consolidate polling places and
3 precinct boards and may consolidate the tabulation of results for that
4 election if all of the following apply:

5 1. All affected voters are notified by mail of the change at least
6 thirty-three days before the election.

7 2. Notice of the change in polling places includes notice of the new
8 voting location, notice of the hours for voting on election day and notice of
9 the telephone number to call for voter assistance.

10 3. All affected voters receive information on early voting that
11 includes the application used to request an early voting ballot.

12 D. The board is not required to designate a polling place for special
13 district mail ballot elections held pursuant to article 8.1 of this chapter,
14 but the board may designate one or more sites for voters to deposit marked
15 ballots until 7:00 p.m. on the day of the election.

16 E. Except as provided in subsection F of this section, a public school
17 shall provide sufficient space for use as a polling place for any city,
18 county or state election when requested by the officer in charge of
19 elections.

20 F. The principal of the school may deny a request to provide space for
21 use as a polling place for any city, county or state election if, within two
22 weeks after a request has been made, the principal provides a written
23 statement indicating a reason the election cannot be held in the school,
24 including any of the following:

25 1. Space is not available at the school.

26 2. The safety or welfare of the children would be jeopardized.

27 G. The board shall make available to the public as a public record a
28 list of the polling places for all precincts in which the election is to be
29 held including identification of polling place changes that were submitted to
30 the United States department of justice for approval.

31 H. Except in the case of an emergency, any facility that is used as a
32 polling place on election day shall allow persons to electioneer and engage
33 in other political activity outside of the seventy-five foot limit prescribed
34 by section 16-515 in public areas and parking lots used by voters. This
35 subsection shall not be construed to permit the temporary or permanent
36 construction of structures in public areas and parking lots or the blocking
37 or other impairment of access to parking spaces for voters.

38 I. The secretary of state shall provide through the instructions and
39 procedures manual adopted pursuant to section 16-452 the maximum allowable
40 wait time for any election that is subject to section 16-204 and provide for
41 a method to reduce voter wait time at the polls in the primary and general
42 elections. The method shall consider at least all of the following for
43 primary and general elections in each precinct:

44 1. The number of ballots voted in the prior primary and general
45 elections.

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1 A. Every qualified elector, before receiving a ballot, shall announce
2 the elector's name and place of residence in a clear, audible tone of voice
3 to the election official in charge of the signature roster or present the
4 elector's name and residence in writing. The election official in charge of
5 the signature roster shall comply with the following and the qualified
6 elector shall be allowed within the voting area:

7 1. The elector shall present any of the following:

8 (a) A valid form of identification that bears the photograph, name and
9 address of the elector that reasonably ~~appears~~ APPEAR to be the same as the
10 name and address in the precinct register, including an Arizona driver
11 license, an Arizona nonoperating identification license, a tribal enrollment
12 card or other form of tribal identification or a United States federal, state
13 or local government issued identification. Identification is deemed valid
14 unless it can be determined on its face that it has expired.

15 (b) Two different items that contain the name and address of the
16 elector that reasonably ~~appears~~ APPEAR to be the same as the name and address
17 in the precinct register, including a utility bill, a bank or credit union
18 statement that is dated within ninety days of the date of the election, a
19 valid Arizona vehicle registration, an Arizona vehicle insurance card, AN
20 Indian census card, tribal enrollment card or other form of tribal
21 identification, a property tax statement, a recorder's certificate, a voter
22 registration card, a valid United States federal, state or local government
23 issued identification or any mailing that is LABELED AS "official election
24 material". Identification is deemed valid unless it can be determined on its
25 face that it has expired.

26 (c) A valid form of identification that bears the photograph, name and
27 address of the elector except that if the address on the identification does
28 not reasonably appear to be the same as the address in the precinct register
29 or the identification is a valid United States military identification card
30 or a valid United States passport and does not bear an address, the
31 identification must be accompanied by one of the items listed in subdivision
32 (b) of this paragraph.

33 2. If the elector does not present identification that complies with
34 paragraph 1 of this subsection, the elector is only eligible to vote a
35 provisional ballot as prescribed by section 16-584 or a conditional
36 provisional ballot as provided for in the secretary of state's instruction
37 and procedures manual adopted pursuant to section 16-452.

38 B. Any qualified elector who is listed as having applied for an early
39 ballot but who states that the elector has not voted and will not vote an
40 early ballot for this election or surrenders the early ballot to the precinct
41 inspector on election day shall be allowed to vote pursuant to the procedure
42 set forth in section 16-584.

43 C. Each qualified elector's name shall be numbered consecutively by
44 the clerks, ~~with the number on the stub of the ballot delivered to the~~
45 ~~elector,~~ and in the order of applications for ballots. ~~The election judge~~
46 ~~having charge of the ballots shall also write the elector's initials on the~~

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1 ~~stub and the number of the qualified elector as it appears on the precinct~~
2 ~~register.~~ The judge shall give the qualified elector only one ballot, and
3 the elector's name shall be immediately checked on the precinct register.

4 D. FOR PRECINCTS IN WHICH A PAPER SIGNATURE ROSTER IS USED, each
5 qualified elector shall sign the elector's name in the signature roster prior
6 to receiving a ballot, but an inspector or judge may sign the roster for an
7 elector who is unable to sign because of physical disability, and in that
8 event the name of the elector shall be written with red ink, and no
9 attestation or other proof shall be necessary. The provisions of this
10 subsection relating to signing the signature roster shall not apply to
11 electors casting a ballot using early voting procedures.

12 E. FOR PRECINCTS IN WHICH AN ELECTRONIC POLL BOOK SYSTEM IS USED, EACH
13 QUALIFIED ELECTOR SHALL SIGN THE ELECTOR'S NAME AS PRESCRIBED IN THE
14 INSTRUCTIONS AND PROCEDURES MANUAL ADOPTED BY THE SECRETARY OF STATE PURSUANT
15 TO SECTION 16-452 BEFORE RECEIVING A BALLOT, BUT AN INSPECTOR OR JUDGE MAY
16 SIGN THE ROSTER FOR AN ELECTOR WHO IS UNABLE TO SIGN BECAUSE OF PHYSICAL
17 DISABILITY, AND IN THAT EVENT THE NAME OF THE ELECTOR SHALL BE WRITTEN WITH
18 THE INSPECTOR'S OR JUDGE'S ATTESTATION ON THE SAME SIGNATURE LINE.

19 ~~E.~~ F. A person offering to vote at a special district election for
20 which no special district register has been supplied shall sign an affidavit
21 stating the person's address and that the person resides within the district
22 boundaries or proposed district boundaries and swearing that the person is a
23 qualified elector and has not already voted at the election being held.

24 Sec. 8. Section 16-602, Arizona Revised Statutes, is amended to read:

25 16-602. Removal of ballots from ballot boxes; disposition of
26 ballots folded together or excessive ballots;
27 designated margin; hand counts; vote count
28 verification committee

29 A. For any primary or general election in which the votes are cast on
30 an electronic voting machine or tabulator, the election judge shall compare
31 the number of votes cast as indicated on the machine or tabulator with the
32 number of votes cast as indicated on the poll list and the number of
33 provisional ballots cast and that information shall be noted in a written
34 report prepared and submitted to the officer in charge of elections along
35 with other tally reports.

36 B. For each countywide primary, general and presidential preference
37 election, the county officer in charge of the election shall conduct a hand
38 count at one or more secure facilities. THE HAND COUNT SHALL BE CONDUCTED AS
39 PRESCRIBED BY THIS SECTION AND IN ACCORDANCE WITH HAND COUNT PROCEDURES
40 ESTABLISHED BY THE SECRETARY OF STATE IN THE OFFICIAL INSTRUCTIONS AND
41 PROCEDURES MANUAL ADOPTED PURSUANT TO SECTION 16-452. The hand count is not
42 subject to the live video requirements of section 16-621, subsection C, but
43 the party representatives who are observing the hand count may bring their
44 own video cameras in order to record the hand count. The recording shall not
45 interfere with the conduct of the hand count and the officer in charge of the
46 election may prohibit from recording or remove from the facility persons who

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1 are taking actions to disrupt the count. The sole act of recording the hand
2 count does not constitute sufficient grounds for the officer in charge of the
3 election to prohibit observers from recording or to remove them from the
4 facility. The hand count shall be conducted in the following order:

5 1. At least two per cent of the precincts in that county, or two
6 precincts, whichever is greater, shall be selected at random from a pool
7 consisting of every precinct in that county. The county political party
8 chairman for each political party that is entitled to continued
9 representation on the state ballot or the chairman's designee shall conduct
10 the selection of the precincts to be hand counted. The precincts shall be
11 selected by lot without the use of a computer, and the order of selection by
12 the county political party chairmen shall also be by lot. The selection of
13 the precincts shall not begin until all ballots voted in the precinct polling
14 places have been delivered to the central counting center. The unofficial
15 vote totals from all precincts shall be made public before selecting the
16 precincts to be hand counted. Only the ballots cast in the polling places
17 and ballots from direct recording electronic machines shall be included in
18 the hand counts conducted pursuant to this section. Provisional ballots,
19 conditional provisional ballots and write-in votes shall not be included in
20 the hand counts and the early ballots shall be grouped separately by the
21 officer in charge of elections for purposes of a separate manual audit
22 pursuant to subsection F of this section.

23 2. The races to be counted on the ballots from the precincts that were
24 selected pursuant to paragraph 1 of this subsection for each primary and
25 general election shall include up to five contested races. After the county
26 recorder or other officer in charge of elections separates the primary
27 ballots by political party, the races to be counted shall be determined by
28 selecting by lot without the use of a computer from those ballots as follows:

29 (a) For a general election, one statewide ballot measure, unless there
30 are no measures on the ballot.

31 (b) One contested statewide race for statewide office.

32 (c) One contested race for federal office, either United States senate
33 or United States house of representatives. If the United States house of
34 representatives race is selected, the names of the candidates may vary among
35 the sampled precincts.

36 (d) One contested race for state legislative office, either state
37 house of representatives or state senate. In either case, the names of the
38 candidates may vary among the sampled precincts.

39 (e) If there are fewer than four contested races resulting from the
40 selections made pursuant to subdivisions (a) through (d) and if there are
41 additional contested federal, statewide or legislative races or ballot
42 measures, additional contested races shall be selected by lot not using a
43 computer until four races have been selected or until no additional contested
44 federal, statewide or legislative races or ballot measures are available for
45 selection.

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1 (f) If there are no contested races as prescribed by this paragraph, a
2 hand count shall not be conducted for that precinct for that election.

3 3. For the presidential preference election, select by lot two per
4 cent of the polling places designated and used pursuant to section 16-248 and
5 perform the hand count of those ballots.

6 4. For the purposes of this section, a write-in candidacy in a race
7 does not constitute a contested race.

8 5. In elections in which there are candidates for president, the
9 presidential race shall be added to the four categories of hand counted
10 races.

11 6. Each county chairman of a political party that is entitled to
12 continued representation on the state ballot or the chairman's designee shall
13 select by lot the individual races to be hand counted pursuant to this
14 section.

15 7. The county chairman of each political party shall designate and
16 provide the number of election board members as designated by the county
17 officer in charge of elections who shall perform the hand count under the
18 supervision of the county officer in charge of elections. For each precinct
19 that is to be audited, the county chairmen shall designate at least two board
20 workers who are registered members of any or no political party to assist
21 with the audit. Any qualified elector from this state may be a board worker
22 without regard to party designation. The county election officer shall
23 provide for compensation for those board workers, not to include travel, meal
24 or lodging expenses. If there are less than two persons for each audited
25 precinct available to participate on behalf of each recognized political
26 party, the recorder or officer in charge of elections, with the approval of
27 at least two county party chairpersons in the county in which the shortfall
28 occurs, shall substitute additional individual electors who are provided by
29 any political party from anywhere in the state without regard to party
30 designation to conduct the hand count. A county party chairman shall approve
31 only those substitute electors who are provided by the county chairman's
32 political party. The political parties shall provide to the recorder or
33 officer in charge of elections in writing the names of those persons
34 intending to participate in the hand count at the audited precincts not later
35 than 5:00 p.m. on the Tuesday preceding the election. If the total number of
36 board workers provided by all parties is less than four times the number of
37 precincts to be audited, the recorder or officer in charge of elections shall
38 notify the parties of the shortage by 9:00 a.m. on the Wednesday preceding
39 the election. The hand count shall not proceed unless the political parties
40 provide the recorder or officer in charge of elections, in writing, a
41 sufficient number of persons by 5:00 p.m. on the Thursday preceding the
42 election and a sufficient number of persons, pursuant to this paragraph,
43 arrive to perform the hand count. The recorder or officer in charge of
44 elections may prohibit persons from participating in the hand count if they
45 are taking actions to disrupt the count or are unable to perform the duties
46 as assigned. For the hand count to proceed, no more than seventy-five per

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1 cent of the persons performing the hand count shall be from the same
2 political party.

3 8. If a political party is not represented by a designated chairperson
4 within a county, the state chairperson for that political party, or a person
5 designated by the state chairperson, may perform the actions required by the
6 county chairperson as specified in this section.

7 C. If the randomly selected races result in a difference in any race
8 that is less than the designated margin when compared to the electronic
9 tabulation of those same ballots, the results of the electronic tabulation
10 constitute the official count for that race. If the randomly selected races
11 result in a difference in any race that is equal to or greater than the
12 designated margin when compared to the electronic tabulation of those same
13 ballots, a second hand count of those same ballots and races shall be
14 performed. If the second hand count results in a difference in any race that
15 is less than the designated margin when compared to the electronic tabulation
16 for those same ballots, the electronic tabulation constitutes the official
17 count for that race. If the second hand count results in a difference in any
18 race that is equal to or greater than the designated margin when compared to
19 the electronic tabulation for those same ballots, the hand count shall be
20 expanded to include a total of twice the original number of randomly selected
21 precincts. Those additional precincts shall be selected by lot without the
22 use of a computer.

23 D. In any expanded count of randomly selected precincts, if the
24 randomly selected precinct hand counts result in a difference in any race
25 that is equal to or greater than the designated margin when compared to the
26 electronic tabulation of those same ballots, the final hand count shall be
27 extended to include the entire jurisdiction for that race. If the
28 jurisdictional boundary for that race would include any portion of more than
29 one county, the final hand count shall not be extended into the precincts of
30 that race that are outside of the county that is conducting the expanded hand
31 count. If the expanded hand count results in a difference in that race that
32 is less than the designated margin when compared to the electronic tabulation
33 of those same ballots, the electronic tabulation constitutes the official
34 count for that race.

35 E. If a final hand count is performed for an entire jurisdiction for a
36 race, the final hand count shall be repeated for that race until a hand count
37 for that race for the entire jurisdiction results in a count that is
38 identical to one other hand count for that race for the entire jurisdiction
39 and that hand count constitutes the official count for that race.

40 F. After the electronic tabulation of early ballots and at one or more
41 times selected by the chairman of the political parties entitled to continued
42 representation on the ballot or the chairman's designee, the chairmen or the
43 chairmen's designees shall randomly select one or more batches of early
44 ballots that have been tabulated to include at least one batch from each
45 machine used for tabulating early ballots and those ballots shall be securely
46 sequestered by the county recorder or officer in charge of elections along

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1 with their unofficial tally reports for a postelection manual audit. The
2 chairmen or the chairmen's designees shall randomly select from those
3 sequestered early ballots a number equal to one per cent of the total number
4 of early ballots cast or five thousand early ballots, whichever is less.
5 From those randomly selected early ballots, the county officer in charge of
6 elections shall conduct a manual audit of the same races that are being hand
7 counted pursuant to subsection B of this section. If the manual audit of the
8 early ballots results in a difference in any race that is equal to or greater
9 than the designated margin when compared to the electronically tabulated
10 results for those same early ballots, the manual audit shall be repeated for
11 those same early ballots. If the second manual audit results in a difference
12 in that race that is equal to or greater than the designated margin when
13 compared to the electronically tabulated results for those same early
14 ballots, the manual audit shall be expanded only for that race to a number of
15 additional early ballots equal to one per cent of the total early ballots
16 cast or an additional five thousand ballots, whichever is less, to be
17 randomly selected from the batch or batches of sequestered early ballots. If
18 the expanded early ballot manual audit results in a difference for that race
19 that is equal to or greater than the designated margin when compared to any
20 of the earlier manual counts for that race, the manual counts shall be
21 repeated for that race until a manual count results in a difference in that
22 race that is less than the designated margin. If at any point in the manual
23 audit of early ballots the difference between any manual count of early
24 ballots is less than the designated margin when compared to the electronic
25 tabulation of those ballots, the electronic tabulation shall be included in
26 the canvass and no further manual audit of the early ballots shall be
27 conducted.

28 G. During any hand count of early ballots, the county officer in
29 charge of elections and election board workers shall attempt to determine the
30 intent of the voter in casting the ballot.

31 H. Notwithstanding any other law, the county officer in charge of
32 elections shall retain custody of the ballots for purposes of performing any
33 required hand counts and the officer shall provide for security for those
34 ballots.

35 I. The hand counts prescribed by this section shall begin within
36 twenty-four hours after the closing of the polls and shall be completed
37 before the canvassing of the election for that county. The results of those
38 hand counts shall be provided to the secretary of state, who shall make those
39 results publicly available on the secretary of state's ~~web-site~~ WEBSITE.

40 J. For any county in which a hand count has been expanded to all
41 precincts in the jurisdiction, the secretary of state shall make available
42 the escrowed source code for that county to the superior court. The superior
43 court shall appoint a special master to review the computer software. The
44 special master shall have expertise in software engineering, shall not be
45 affiliated with an election software vendor nor with a candidate, shall sign
46 and be bound by a nondisclosure agreement regarding the source code itself

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1 and shall issue a public report to the court and to the secretary of state
2 regarding the special master's findings on the reasons for the
3 discrepancies. The secretary of state shall consider the reports for
4 purposes of reviewing the certification of that equipment and software for
5 use in this state.

6 K. The vote count verification committee is established in the office
7 of the secretary of state and all of the following apply:

8 1. At least thirty days before the 2006 primary election, the
9 secretary of state shall appoint seven persons to the committee, no more than
10 three of whom are members of the same political party.

11 2. Members of the committee shall have expertise in any two or more of
12 the areas of advanced mathematics, statistics, random selection methods,
13 systems operations or voting systems.

14 3. A person is not eligible to be a committee member if that person
15 has been affiliated with or received any income in the preceding five years
16 from any person or entity that provides election equipment or services in
17 this state.

18 4. The vote count verification committee shall meet and establish one
19 or more designated margins to be used in reviewing the hand counting of votes
20 as required pursuant to this section. The committee shall review and
21 consider revising the designated margins every two years for use in the
22 applicable elections. The committee shall provide the designated margins to
23 the secretary of state at least ten days before the primary election and at
24 least ten days before the general election, and the secretary of state shall
25 make that information publicly available on the secretary of state's ~~web site~~
26 WEBSITE.

27 5. Members of the vote count verification committee are not eligible
28 to receive compensation but are eligible for reimbursement of expenses
29 pursuant to title 38, chapter 4, article 2. The committee is a public body
30 and its meetings are subject to title 38, chapter 3, article 3.1 and its
31 reports and records are subject to title 39, chapter 1.

32 Sec. 9. Section 16-615, Arizona Revised Statutes, is amended to read:

33 16-615. Delivery of returns

34 A. Before it adjourns, the election board or tally board shall enclose
35 and seal in a strong envelope provided for that purpose one of the poll lists
36 and one of the tally lists, signed as required, ~~and the stubs of the voted~~
37 ~~ballots and shall direct it to the board of supervisors.~~

38 B. The envelope containing the poll list, ~~AND~~ the tally list ~~and the~~
39 ~~stubs of the voted ballots~~ shall constitute the official returns of the
40 election and shall, together with the envelope containing the voted ballots,
41 be delivered to one of the members of the election board or tally board,
42 previously determined by lot, unless otherwise agreed upon, and such member
43 shall by himself, or by an agent agreed upon by the board and sworn by a
44 member thereof, in the presence of the board to faithfully perform the duties
45 of election messenger, without delay, and by the most expeditious means and
46 route, deliver the packages and envelopes, without opening them, to the

H.B. 2303

1 officer in charge of the election at his office, or to the nearest postmaster
2 or sworn express agent, who shall endorse on the packages and envelopes the
3 name of the person delivering them, and the hour and date of the delivery,
4 and forward the packages and envelopes by the first mail or express to the
5 officer in charge of the election at the county seat.

APPROVED BY THE GOVERNOR APRIL 29, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2011.

EXHIBIT 9

Arizona State Legislature

Bill Number Search:



Fiftieth Legislature - First Regular Session

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[Senate](#) [House](#) [Legislative Council](#) [JLBC](#) [More Agencies](#) [Bills](#) [Committees](#) [Calendars/News](#)

BILL STATUS OVERVIEW

HB2303

SPONSORS: [MESNARD](#) P [DIAL](#) P [WEIERS](#) J P
 [YEE](#) P [GALLARDO](#) P [TOBIN](#) C
 [MCCOMISH](#) C

TITLE: voting centers; polling places

HOUSE FIRST READ: 01/20/11

COMMITTEES: ASSIGNED COMMITTEES ACTION

[Vote Detail](#) 01/20/11 [JUD](#) 02/03/11 (9-0-0-0-0) [DPA](#)
[Vote Detail](#) 01/20/11 [RULES](#) 02/14/11 (9-0-0-0-0) [C&P](#)

HOUSE SECOND READ: 01/24/11

MAJORITY CAUCUS: 02/15/11 Y

MINORITY CAUCUS: 02/15/11 Y

COW ACTION 1: DATE ACTION AYES NAYS NV EXC VAC
 02/17/11 [DPA](#) 0 0 0 0

AMENDMENTS

JUD - passed

THIRD READ: DATE AYES NAYS NV EXC VAC EMER AMEND RFE 2/3 VOTE RESULT
[Vote Detail](#) 02/22/11 55 5 0 0 Y PASSED

TRANSMIT TO SENATE: 02/22/11

SENATE FIRST READ: 02/23/11

SENATE SECOND READ: 02/24/11

COMMITTEES: ASSIGNED COMMITTEES ACTION

[Vote Detail](#) 02/23/11 [JUD](#) 02/28/11 (9-0-0-0) [DP](#)
 02/23/11 [RULES](#) 03/14/11 [PFC](#)

MAJORITY CAUCUS: 03/22/11 Y

MINORITY CAUCUS: 03/22/11 Y

CONSENT CALENDAR: 03/14/11 1:10 PM Object

COW ACTION 1: DATE ACTION AYES NAYS NV EXC VAC
 03/28/11 [DPA](#) 0 0 0 0

AMENDMENTS

Gould flr amend (ref Bill) adopted

THIRD READ: DATE AYES NAYS NV EXC VAC EMER AMEND RFE 2/3 VOTE RESULT
[Vote Detail](#) 04/19/11 29 0 1 0 Y PASSED

TRANSMIT TO HOUSE: 04/19/11

MAJORITY CAUCUS: 04/19/11 Y

MINORITY CAUCUS: 04/19/11 Y

Concurrence recommended

HOUSE CONCURRENCE: DATE AYES NAYS NV EXC
 04/19/11 0 0 0 0

HOUSE FINAL READ: DATE AYES NAYS NV EXC VAC EMER RFE 2/3 VOTE RESULT

Vote Detail	04/19/11	59	1	0	0	PASSED
TRANSMITTED TO:	GOVERNOR				04/20/11	
ACTION:	SIGNED				04/29/11	
CHAPTER:	331					
CHAPTERED VERSION:	Senate Engrossed Version					

Arizona State Legislature

Bill Number Search:



Fiftieth Legislature - First Regular Session

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BILL STATUS VOTES FOR HB2303 - Third Reading

Y = Yes
 N = No
 NV = Not Voting
 EXC = Excused
 V = Vacant

Member Name	Vote	Member Name	Vote	Member Name	Vote
Paula Aboud	Y	Sylvia Allen	Y	Frank Antenori	Y
Nancy Barto	Y	Andy Biggs	Y	Scott Bundgaard	Y
Olivia Cajero Bedford	Y	Rich Crandall	Y	Adam Driggs	Y
Steve Gallardo	NV	Ron Gould	Y	Linda Gray	Y
Gail Griffin	Y	Jack Jackson Jr.	Y	Lori Klein	Y
Leah Landrum Taylor	Y	Linda Lopez	Y	John McComish	Y
Al Melvin	Y	Robert Meza	Y	Rick Murphy	Y
John Nelson	Y	Steve Pierce	Y	Michele Reagan	Y
David Schapira	Y	Don Shooter	Y	Kyrsten Sinema	Y
Steve Smith	Y	Steve Yarbrough	Y	Russell Pearce	Y

AYES: 29 NAYS: 0 NOT VOTING: 1 EXCUSED: 0 VACANT: 0

Arizona State Legislature

Bill Number Search:



Fiftieth Legislature - First Regular Session

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BILL STATUS VOTES FOR HB2303 - Final Reading

Y = Yes
 N = No
 NV = Not Voting
 EXC = Excused
 V = Vacant

Member Name	Vote	Member Name	Vote	Member Name	Vote
Eddie Ableser	Y	Lela Alston	Y	Ben Arredondo	Y
Cecil P. Ash	Y	Brenda Barton	Y	Kate Brophy McGee	Y
Judy Burges	Y	Chad Campbell	Y	Heather Carter	Y
Tom Chabin	Y	Steve Court	Y	Chester Crandell	Y
Jeff Dial	Y	Karen Fann	Y	Steve Farley	Y
Eddie Farnsworth	Y	John Fillmore	Y	Tom Forese	Y
Ruben Gallego	Y	Sally Ann Gonzales	Y	Doris Goodale	Y
David Gowan	Y	Rick Gray	Y	Albert Hale	Y
Jack W. Harper	Y	Matt Heinz	Y	Katie Hobbs	Y
Russ Jones	Y	Peggy Judd	Y	John Kavanagh	Y
Debbie Lesko	Y	Debbie McCune Davis	N	Nancy McLain	Y
Javan "J.D." Mesnard	Y	Eric Meyer	Y	Catherine H. Miranda	Y
Richard Miranda	Y	Steve B. Montenegro	Y	Justin Olson	Y
Lynne Pancrazi	Y	Daniel Patterson	Y	Frank Pratt	Y
Terri Proud	Y	Amanda A. Reeve	Y	Bob Robson	Y
Macario Saldate IV	Y	Carl Seel	Y	David Burnell Smith	Y
David W. Stevens	Y	Andy Tobin	Y	Anna Tovar	Y
Michelle Ugenti	Y	Steve Urie	Y	Ted Vogt	Y
Jim Weiers	Y	Jerry Weiers	Y	Bruce Wheeler	Y
Vic Williams	Y	Kimberly Yee	Y	Kirk D. Adams	Y

AYES: 59 NAYS: 1 NOT VOTING: 0 EXCUSED: 0 VACANT: 0

EXHIBIT 10

1 MARK BRNOVICH
 2 Attorney General
 3 Firm Bar No. 14000
 4 James Driscoll-MacEachron (027828)
 5 Kara Karlson (029407)
 6 Karen J. Hartman-Tellez (021121)
 7 Assistants Attorney General
 8 1275 W. Washington Street
 9 Phoenix, AZ 85007
 10 Telephone (602) 542-4951
 11 Facsimile (602) 542-4385
 12 james.driscoll-maceachron@azag.gov
 13 kara.karlson@azag.gov
 14 karen.hartman@azag.gov
 15 *Attorneys for State Defendants*

11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF ARIZONA**

13	Leslie Feldman, et al.,	)	Case No. CV-16-01065-PHX-DLR
14)	
15	Plaintiffs,)	
16	v.	)	DECLARATION OF
17		)	LYNN CONSTABILE
18	Arizona Secretary of State's Office, et al.,)	
19	Defendants.)	

20 I, Lynn Constabile, declare:

21 1. I am the Elections Director for Yavapai County, Arizona. I have personal
 22 knowledge of the facts stated herein and if called upon, could testify competently to
 23 them.

24 2. I have worked as Elections Director for Yavapai County for twelve years.
 25 As Elections Director, I was an integral part of transitioning Yavapai County from
 26
 27
 28

1 precinct-based polling places to vote centers that allow a Yavapai County voter to cast a
2 ballot anywhere within the County.

3 **A. Yavapai County Demographics**

4 3. As of August 16, 2016, there are 130,588 active registered voters in
5 Yavapai County, and approximately ninety-percent are registered in urban areas. 92,708
6 of those voters, or seventy-one percent, are on the PEVL.
7

8 **B. Yavapai's Choice to Use Vote Centers**

9 4. In the late 2000's, Yavapai County had roughly one hundred precincts and
10 ninety-five polling places.

11 5. During that same time, there was a marked decrease in the number of
12 people voting in person due to the increase in early voting and the creation of the
13 Permanent Early Voting List ("PEVL"). At some precincts, only fifty voters would cast
14 ballots on Election Day.

15 6. Running nearly one hundred polling places each election, when a number
16 of them served such a small number of voters, was an inefficient use of our County's
17 limited resources.

18 7. Based on the number of voters within our county, the trends in voting in
19 our county, and our ability to obtain the necessary technology, we chose to implement
20 vote centers for the first time in the 2012 Presidential Preference Election. Each county
21 deciding whether to use vote centers would need to make that decision based on an
22 individualized assessment of that county's needs and available technology.
23

24 8. Yavapai County was one of the first counties in Arizona to use vote centers
25 for an election. The County went from ninety-five polling places in 2008 to fifty
26 consolidated polling places in 2010 to thirty vote centers in 2012.
27
28

1 9. When the County switched to vote centers, each vote center was required to
2 have four scanners to scan all the ballots. Each scanner accepted up to twenty-five
3 precincts' ballots. The number of precincts' ballots a scanner is able to read affected the
4 County's ability to have more vote centers. The County had to rent additional scanners to
5 operate its vote centers. To open more vote centers, the County would have had to
6 purchase or rent more scanners.
7

8 10. In addition to the scanners, each vote center needs at least two e-poll books.
9 More than one e-poll book is required to ensure there is a back-up at the vote center in
10 case one of them fails. The e-poll books replace precinct lists, and provide poll workers
11 with a list of everyone eligible to vote in that election. E-poll books are necessary
12 because they have the ability to connect to each other via a secure virtual private network,
13 which allows the roster to be updated in real time and prevents a voter from casting a
14 ballot at multiple locations.
15

16 11. At vote centers located within a city in Yavapai County, the County has
17 four to eight e-poll books and a ballot-on-demand printer. The printer prints the
18 appropriate ballot when a voter checks in.
19

20 12. Rural vote centers have pre-printed ballots for the closest jurisdictions. If a
21 voter comes to the vote center who needs a different ballot, they use the touch screen
22 machine at that location to vote. The county cannot afford to place ballot-on-demand
23 printers at rural locations, but ensures voters may cast their vote either on a preprinted
24 ballot or on the touch screen. If the areas surrounding our rural vote centers required
25 more ballot styles, we would need to purchase more ballot-on-demand printers.
26

27 13. There is still a significant difference in the amount of traffic each vote
28 center serves, and it is difficult to determine which vote centers will receive the most
traffic. For instance, there is a vote center located in the middle of a busy area containing

1 several businesses, which we thought would see a lot of traffic; however, few voters use
2 this vote center. On the other hand, there tends to be more in-person voting in rural areas
3 compared to the urban centers.

4 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of
5 the United States that the foregoing is true and correct.
6

7
8 EXECUTED this 19th day of August, 2016 in Prescott, Arizona.

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Lynn Constabile

EXHIBIT 11

1 MARK BRNOVICH
 2 Attorney General
 Firm Bar No. 14000
 3 James Driscoll-MacEachron (027828)
 Kara Karlson (029407)
 4 Karen J. Hartman-Tellez (021121)
 5 Assistant Attorney General
 1275 W. Washington Street
 6 Phoenix, AZ 85007
 7 Telephone (602) 542-4951
 Facsimile (602) 542-4385
 8 james.driscoll-maceachron@azag.gov
 kara.karlson@azag.gov
 9 karen.hartman@azag.gov
 10 *Attorneys for State Defendants*

11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF ARIZONA**

13	Leslie Feldman, et al.,	)	Case No. CV-16-01065-PHX-DLR
14)	
15	Plaintiffs,	)	DECLARATION OF
16	v.	)	ALYSIA M. CRONISE
17	Arizona Secretary of State’s Office, et al.,)	
18)	
19	Defendants.)	
20)	
21)	
22)	

23 I, Alysia M. Cronise, declare:

24 1. I am employed by the Office of the Arizona Attorney General as a
 25 Paralegal Project Specialist in the Civil Appeals Section. I make this Declaration in
 26 support of the Secretary of State’s Response to Plaintiffs’ Motion for Preliminary
 27 Injunction of Polling Place Allocation and Provisional Ballot Claims. I have personal
 28

1 knowledge of the facts stated herein and if called upon, could testify competently to
2 them.

3 2. On or about August 15, 2016, I called the offices of the county recorders of
4 Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Mohave, Navajo, Pinal,
5 Santa Cruz, Yavapai, and Yuma Counties to ask if the county had used vote centers or
6 precinct polling places since 2012. I also asked the county recorders' offices if the
7 county planned to use vote centers or precinct polling places for upcoming 2016
8 elections.

9 3. I was informed by the Graham County Recorder's Office that they had used
10 some vote centers in 2014.

11 4. I was informed by the Yavapai County Recorder's Office that they had
12 used vote centers since 2012.

13 5. I was informed by the Yuma County Recorder's Office that they had used
14 vote centers since 2012.

15 6. None of the other county recorders' offices that I called reported using vote
16 centers before 2016.

17
18 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of
19 the United States that the foregoing is true and correct.

20
21 EXECUTED this 22nd day of August, 2016 in Phoenix, Arizona.

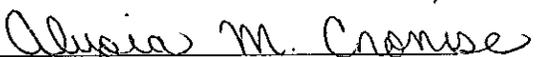
22 
23 Alysia M. Cronise
24
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27
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EXHIBIT 12

5/13/2016 15:58

STATE OF ARIZONA REGISTRATION REPORT
2016 May Special Voter Registration - May 17, 2016
Compiled and Issued by the Arizona Secretary of State

ACTIVE									
	Precincts	Date/Period	Democratic	Green	Libertarian	Republican	Other	TOTAL	
Apache	45	PPE 2016	26,731	34	144	7,870	13,191	47,970	
	45	Mar-16	26,784	34	144	7,893	13,227	48,082	
	45	May-16	27,583	39	142	8,142	12,681	48,587	
Cochise	49	PPE 2016	19,132	102	411	26,718	25,097	71,460	
	49	Mar-16	19,289	102	411	26,795	25,365	71,962	
	49	May-16	19,308	106	421	27,084	24,981	71,900	
Coconino	71	PPE 2016	27,365	188	709	17,832	23,029	69,123	
	71	Mar-16	27,365	188	709	17,832	23,029	69,123	
	71	May-16	29,166	196	703	18,682	23,238	71,985	
Gila	39	PPE 2016	9,136	23	167	11,344	8,156	28,826	
	39	Mar-16	9,136	23	167	11,344	8,156	28,826	
	39	May-16	9,348	24	171	11,796	8,159	29,498	
Graham	22	PPE 2016	5,586	7	63	7,480	4,614	17,750	
	22	Mar-16	5,587	7	62	7,486	4,643	17,785	
	22	May-16	5,620	7	65	7,721	4,521	17,934	
Greenlee	8	PPE 2016	2,001	0	25	1,130	1,193	4,349	
	8	Mar-16	2,001	0	25	1,130	1,193	4,349	
	8	May-16	2,008	0	27	1,192	1,205	4,432	
La Paz	11	PPE 2016	2,205	10	34	3,377	3,669	9,295	
	11	Mar-16	2,216	10	34	3,386	3,676	9,322	
	11	May-16	2,264	10	36	3,496	3,673	9,479	
Maricopa	724	PPE 2016	530,192	2,101	16,626	706,215	733,577	1,988,711	
	724	Mar-16	532,946	2,109	16,626	708,941	733,577	1,994,199	
	724	May-16	555,036	2,208	16,617	724,414	728,242	2,026,517	
Mohave	24	PPE 2016	20,107	94	626	45,208	44,150	110,185	
	24	Mar-16	20,180	96	628	45,358	44,475	110,737	
	24	May-16	19,604	92	593	45,551	41,890	107,730	
Navajo	14	PPE 2016	23,330	41	368	18,883	17,316	59,938	
	14	Mar-16	23,315	41	368	18,875	17,307	59,906	
	14	May-16	24,332	43	368	19,742	16,939	61,424	
Pima	248	PPE 2016	178,471	1,347	3,530	147,881	159,251	490,480	
	248	Mar-16	179,043	1,351	3,547	148,215	159,929	492,085	
	248	May-16	186,249	1,330	3,560	152,396	157,048	500,583	
Pinal	101	PPE 2016	43,546	147	1,105	54,419	66,437	165,654	
	101	Mar-16	43,551	147	1,106	54,416	66,445	165,665	
	101	May-16	46,032	158	1,129	58,137	65,901	171,357	
Santa Cruz	24	PPE 2016	11,782	34	128	3,891	8,322	24,157	
	24	Mar-16	11,784	34	128	3,890	8,320	24,156	
	24	May-16	12,213	36	131	4,006	8,310	24,696	
Yavapai	44	PPE 2016	25,965	214	928	55,878	44,509	127,494	
	44	Mar-16	25,965	214	928	55,878	44,509	127,494	
	44	May-16	26,980	201	920	57,715	44,444	130,260	
Yuma	42	PPE 2016	23,434	26	459	20,477	30,015	74,411	
	42	Mar-16	23,365	26	450	20,399	29,949	74,189	
	43	May-16	24,674	30	457	21,742	30,024	76,927	
TOTALS:	1,466	PPE 2016	948,983	4,368	25,323	1,128,603	1,182,526	3,289,803	
	1,466	Mar-16	952,527	4,382	25,333	1,131,838	1,183,800	3,297,880	
	1,467	May-16	990,417	4,480	25,340	1,161,816	1,171,256	3,353,309	
PERCENTAGES:		PPE 2016	28.85	0.13	0.77	34.31	35.95		
		Mar-16	28.88	0.13	0.77	34.32	35.9		
		May-16	29.54	0.13	0.76	34.65	34.93		

5/13/2016 15:58

STATE OF ARIZONA REGISTRATION REPORT
2016 May Special Voter Registration - May 17, 2016
Compiled and Issued by the Arizona Secretary of State
INACTIVE

	Precincts	Date/Period	Democratic	Green	Libertarian	Republican	Other	TOTAL
Apache	45	PPE 2016	1,509	8	15	577	932	3,041
	45	Mar-16	1,504	8	15	576	938	3,041
	45	May-16	1,542	7	14	605	904	3,072
Cochise	49	PPE 2016	2,127	25	72	2,553	3,992	8,769
	49	Mar-16	2,000	25	72	2,516	3,796	8,409
	49	May-16	2,331	25	72	2,747	4,058	9,233
Coconino	71	PPE 2016	4,147	76	230	2,927	7,898	15,278
	71	Mar-16	4,147	76	230	2,927	7,898	15,278
	71	May-16	3,562	68	210	2,604	7,317	13,761
Gila	39	PPE 2016	1,527	7	43	1,775	2,183	5,535
	39	Mar-16	1,527	7	43	1,775	2,183	5,535
	39	May-16	1,402	7	43	1,614	2,098	5,164
Graham	22	PPE 2016	618	3	16	971	768	2,376
	22	Mar-16	623	3	16	980	774	2,396
	22	May-16	619	3	16	961	826	2,425
Greenlee	8	PPE 2016	149	0	2	122	189	462
	8	Mar-16	149	0	2	122	189	462
	8	May-16	150	0	2	116	183	451
La Paz	11	PPE 2016	515	8	12	528	808	1,871
	11	Mar-16	518	8	12	531	812	1,881
	11	May-16	506	8	12	515	798	1,839
Maricopa	724	PPE 2016	78,698	725	3,587	74,209	131,214	288,433
	724	Mar-16	78,522	724	3,587	74,032	131,214	288,079
	724	May-16	75,447	685	3,395	72,042	126,765	278,334
Mohave	24	PPE 2016	4,937	28	132	6,694	10,769	22,560
	24	Mar-16	4,939	28	132	6,709	10,773	22,581
	24	May-16	5,787	34	160	8,000	12,984	26,965
Navajo	14	PPE 2016	2,277	11	54	1,931	2,246	6,519
	14	Mar-16	2,271	11	54	1,916	2,236	6,488
	14	May-16	2,048	10	53	1,711	2,128	5,950
Pima	248	PPE 2016	27,066	399	910	20,878	35,348	84,601
	248	Mar-16	26,802	395	899	20,654	35,094	83,844
	248	May-16	25,388	383	876	19,892	34,417	80,956
Pinal	101	PPE 2016	11,857	65	312	10,302	19,508	42,044
	101	Mar-16	11,857	65	312	10,307	19,509	42,050
	101	May-16	11,351	64	302	9,725	18,979	40,421
Santa Cruz	24	PPE 2016	1,279	4	17	449	1,247	2,996
	24	Mar-16	1,279	4	17	449	1,244	2,993
	24	May-16	1,216	4	17	430	1,215	2,882
Yavapai	44	PPE 2016	3,325	62	195	5,581	8,581	17,744
	44	Mar-16	3,392	62	197	5,698	8,604	17,953
	44	May-16	3,209	59	188	5,397	8,286	17,139
Yuma	42	PPE 2016	6,167	17	195	5,934	10,817	23,130
	42	Mar-16	6,245	17	198	6,032	10,897	23,389
	43	May-16	5,881	17	186	5,645	10,540	22,269
TOTALS:	1,466	PPE 2016	146,198	1,438	5,792	135,431	236,500	525,359
	1,466	Mar-16	145,775	1,433	5,786	135,224	236,161	524,379
	1,467	May-16	140,439	1,374	5,546	132,004	231,498	510,861
PERCENTAGES:		PPE 2016	27.83	0.27	1.1	25.78	45.02	
		Mar-16	27.8	0.27	1.1	25.79	45.04	
		May-16	27.49	0.27	1.09	25.84	45.32	

EXHIBIT 13

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Maria M. Gonzalez, et al.,

Plaintiffs,

vs.

State of Arizona, et al.,

Defendants.

) No. CV-06-1268-PHX-ROS
) consolidated with:
) No. CV-06-1362-PCT-JAT
) No. CV-06-1575-PHX-EHC

**ORDER; FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This case comprises two actions: (1) Gonzalez v. State of Arizona, CV 06-1268-PHX-ROS (filed May 9, 2006) (“Gonzalez”); and (2) Inter Tribal Council of Ariz., Inc. v. Brewer, No. CV 06-1362-PCT-JAT (filed May 26, 2006) (“ITCA”).¹

Plaintiffs seek to permanently enjoin enforcement of the Arizona Taxpayer and Citizen Protection Act, also known as “Proposition 200.” Enacted pursuant to a voter initiative in the 2004 general election, Proposition 200 requires proof of citizenship to register to vote and proof of identification to vote in person on election day. A.R.S. §§ 16-166(F), 579(A).

¹ The third consolidated action, Navajo Nation v. Brewer, CV 06-1575-PHX-EHC (filed June 20, 2006), was dismissed by stipulation of the parties on May 27, 2008. (Doc. 775).

1 Collectively, Plaintiffs assert that these requirements violate the Equal Protection
2 Clause, First Amendment, Section 2 of the Voting Rights Act, 42 U.S.C. § 1973(a), and Title
3 VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*² (Doc. 352; ITCA, Doc. 1).

4 For the reasons stated below, Plaintiffs’ request for relief will be denied.

5 PROCEDURAL BACKGROUND

6 In May and August 2006, Plaintiffs filed motions for preliminary injunction, seeking
7 to enjoin the enforcement of Proposition 200. (Docs. 7, 146, 149). On September 11, 2006,
8 the motions were denied. (Doc. 183).

9 Plaintiffs appealed the denial, (Docs. 184, 189), and requested an emergency
10 injunction pending appeal, *see Purcell v. Gonzalez*, 549 U.S. 1, 6 (2006). On October 5, the
11 Ninth Circuit granted the request for an emergency injunction pending appeal. *Id.* The
12 Supreme Court vacated the emergency injunction on October 20, 2006. *Id.* at 8.

13 On April 20, 2007, the Ninth Circuit affirmed the Court’s order denying preliminary
14 injunctive relief. *Gonzalez v. Arizona*, 485 F.3d 1041, 1052 (2007). The parties then
15 underwent significant discovery and motions practice extending over a year and a half. The
16 Court endeavored to give Plaintiffs access to all data in Defendants’ possession to make their
17 case.

18 Beginning July 9, 2008, the Court held a six-day bench trial to determine whether a
19 permanent injunction should issue. Post-trial briefing was completed on July 30, 2008.

20 FACTUAL BACKGROUND

21 I. Proposition 200

22 On November 2, 2004, Arizona voters approved a voter initiative called Proposition
23 200, which was officially proclaimed law by Governor Janet Napolitano on December 13,
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27 ² ITCA and Gonzalez Plaintiffs’ other claims were dismissed on August 28, 2007 and
February 5, 2008, respectively. (Docs. 330, 611).

1 2004.³ (Trial Tr. 648). It was then submitted to the Department of Justice for preclearance
2 under Section 5 of the Voting Rights Act.⁴ Id. Upon approval by the Justice Department,
3 Proposition 200 became effective January 25, 2005. Id.

4 A. Proof of Citizenship to Register to Vote

5 Before Proposition 200, a person seeking to register to vote did not need to provide
6 proof of citizenship. (Ex. 6). Rather, the person signed a statement, under penalty of law,
7 that the applicant is a U.S. citizen. Id.

8 Proposition 200, which amended A.R.S. §§ 16-152, 166, requires individuals wishing
9 to register to vote to provide proof of citizenship. An applicant is still required to affirm,
10 under penalty of law, that the applicant is a U.S. citizen. A.R.S. § 16-152(14). Section 16-
11 166, as amended, states:

12 The county recorder shall reject any application for registration that is not
13 accompanied by satisfactory evidence of United States citizenship. Satisfactory
evidence of citizenship shall include any of the following:

14 1. The number of the applicant's driver license or nonoperating identification
15 license issued after October 1, 1996 by the department of transportation or the
equivalent governmental agency of another state within the United States if the
agency indicates on the applicant's driver license or nonoperating identification
license that the person has provided satisfactory proof of United States citizenship.

16 2. A legible photocopy of the applicant's birth certificate that verifies
citizenship to the satisfaction of the county recorder.

17 3. A legible photocopy of pertinent pages of the applicant's United States
18 passport identifying the applicant and the applicant's passport number or presentation
to the county recorder of the applicant's United States passport.

19 4. A presentation to the county recorder of the applicant's United States
20 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

21 ³The Arizona Constitution authorizes voter initiatives, which then become law "when
22 approved by a majority of the votes cast thereon and upon proclamation of the governor."
23 Ariz. Const. art. IV § 1.

24 ⁴Arizona is a covered jurisdiction under Section 5 of the Voting Rights Act, 42 U.S.C.
25 § 1973c. Therefore, Arizona is required to preclear any new voting "standard, practice, or
26 procedure" with either the United States Attorney General or the District Court for the
District of Columbia to ensure its new standard, practice, or procedure does "not have the
27 purpose [or] effect of denying or abridging the right to vote on account of race or color." Id.;
see also Purcell, 549 U.S. at 6.

1 included in the registration rolls until the number of the certificate of naturalization
2 is verified with the United States immigration and naturalization service by the county
recorder.

3 5. Other documents or methods of proof that are established pursuant to the
[I]mmigration [R]eform and [C]ontrol [A]ct of 1986.

4 6. The applicant's bureau of Indian affairs card number, tribal treaty card
number or tribal enrollment number.

5 A.R.S. § 16-166(F).

6 Without this proof, a person may not register to vote. Id. This includes applicants that
7 use the federal voter registration form or postcard but do not include proof of citizenship.
8 (Trial Tr. 701). There is no provision that permits waiver of the proof of citizenship
9 requirement.

10 If an applicant does not provide proof of citizenship, the applicant is mailed a letter
11 explaining why the application was rejected and instructing the applicant to submit a new
12 registration form with proper proof of citizenship. (Rodriguez Dep. 77-78, Jan. 22, 2008;
13 Altaha Dep. 12, Jan. 14, 2008; Wayman-Trujillo Dep. 50, 51, Jan. 9, 2008; Rodriguez Dep.
14 23, Aug. 2, 2006; Justman Dep. 15-16, Aug. 1, 2006). Counties are required to provide a
15 blank voter registration form with this letter. (Ex.4, at 54).

16 Under the procedures implemented immediately after Proposition 200, an applicant
17 relying on naturalization documents to provide proof of citizenship was required to provide
18 a "certificate of naturalization number." (Trial Tr. 654; see also Ex. 147). It was soon
19 learned, however, that this number could not be used to verify the person's citizenship using
20 the federal immigration online database, the Systematic Alien Verification for Entitlements
21 Program ("SAVE"). (Trial Tr. 654; Ex. 305). Rather, the database used the alien registration
22 number, or "A-number." (Trial Tr. 654; Ratliff Dep. 32, Apr. 22, 2008). Consequently, the
23 election procedures were amended to instruct an applicant to provide the alien registration
24 number, which is also listed on a certificate of naturalization.⁵ (Trial Tr. 654; Ex. 1357).

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26 ⁵ Before approximately 1975, certificates of naturalization did not have A-numbers
27 printed on them. (Quinn Dep. 54, Apr. 22, 2008; see also Ex. 961 (certificate of
28 naturalization from 1960 that does not have A-number)).

1 This change was precleared by the Justice Department on December 6, 2007. (Kanefield
2 Dep. 8, Jan. 1, 2008).

3 B. Elector Identification to Cast a Ballot

4 i. *Voting In Person on Election Day*

5 Before Proposition 200, a person seeking to vote in person on election day did not
6 need to provide proof of identification. (Ex. 5). Rather, the person stated his or her name
7 and residence, and, if the name was found on the voter rolls, the person signed the signature
8 roster and was given a ballot. Id.

9 After Proposition 200, which amended A.R.S. § 16-579, an elector voting in person
10 on election day must now present proof of identification. A voter may obtain a regular
11 ballot⁶ only by presenting either one form of identification with a photograph, name, and
12 address, or two forms of identification that bear the name and address. A.R.S. § 16-579(A).

13 The specific types of identification are set forth in the Election Procedures Manual,
14 which has the force and effect of law. A.R.S. § 16-452(C). The current version, approved
15 in October 2007 (the “Manual”), was drafted by Secretary of State Jan Brewer and then
16 submitted to Governor Janet Napolitano and Arizona Attorney General Terry Goddard for
17 review and approval. See generally Ex. 4; A.R.S. § 16-452(A)-(B). It was then precleared
18 by the Department of Justice.

19 Acceptable forms of identification with a photograph, name, and address are: (1) a
20 valid Arizona driver license; (2) Arizona nonoperating identification license; (3) tribal
21 enrollment card or other form of tribal identification; or (4) other federal, state, or local
22 government issued identification. (Ex. 4, at 128).

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⁶ The different types of ballots are discussed *infra*, Part C.

1 Acceptable forms of identification without a photograph that bear the name and
2 address of the elector are: (1) utility bill dated within 90 days of the date of the election;⁷ (2)
3 bank or credit union statement dated within 90 days of the date of the election; (3) valid
4 Arizona vehicle registration; (4) property tax statement of the elector's residence; (5) vehicle
5 insurance card; (6) recorder's certificate; or (7) federal, state, or local government issued
6 identification, including a voter registration card issued by the county recorder. Id.

7 In addition to these forms of identification, an elector who identifies himself or herself
8 as a member of a federally recognized American Indian tribe may present tribal
9 identification, including: (1) a tribal identification or enrollment card issued under the
10 authority of a federally recognized Indian tribe, nation, community, or band, a tribal
11 subdivision or the Bureau of Indian Affairs; (2) a Certificate of Indian Blood issued to a
12 tribal member under the authority of a tribe or by the Bureau of Indian Affairs; (3) a voter
13 registration card for tribal elections issued under the authority of a tribe; (4) a home site
14 assignment lease, permit or allotment issued under the authority of a tribe, tribal subdivision,
15 or the Bureau of Indian Affairs; or (5) a grazing permit or allotment issued to a tribal member
16 under the authority of a tribe, tribal subdivision, or the Bureau of Indian Affairs.⁸ (Docs. 775
17 & 776; Trial Tr. 680-81).

18 In addition, several counties have added "official election mail" sent by the county to
19 individual voters to the list of acceptable non-photo identification. (See Trial Tr. 748;
20 Osborne Dep. 60-61, Jul. 31, 2006 (Maricopa County); Dastrup Dep. 10, Aug. 1, 2006
21 (Navajo County); Hoyos Dep. 27-28, Jan. 16, 2008 (Pinal County); Hansen Dep. 55, Aug.
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23 ⁷ "A utility bill may be for electric, gas, water, solid waste, sewer, telephone, cellular
24 phone, or cable television." (Ex. 4, at 128).

25 ⁸ These forms of tribal identification were part of the terms of settlement in Navajo
26 Nation v. Brewer, CV 06-1575. They were precleared by the Department of Justice on May
27 22, 2008, (Doc. 774), and are currently an addendum to the Manual, (Trial Tr. 681). The
28 next version of the Manual will include this addendum. Id.

1 1, 2006 (Coconino County); Pew Dep. 21-22, Aug. 1, 2006 (Apache County); Rodriguez
2 Dep. 145-46, Aug. 2, 2006 (Pima County); Wayman-Trujillo Dep. 107-08, Jan. 9, 2008
3 (Yavapai County). But see Stallworth Dep. 32-33, Jan. 18, 2008 (Yuma County)). The
4 counties are not required, however, to provide election mail, and their ability to do so is
5 subject to budgetary constraints. (See Osborne Dep. 83-84, 86, Jan. 14, 2008; Wayman-
6 Trujillo Dep. 108-09, Jan. 9, 2008).

7 ii. *Voting Early*

8 Proposition 200 did not change the requirements for voting early. Every registered
9 voter is eligible to vote by early ballot. A.R.S. § 16-541. Proof of identification is not
10 required to obtain or submit an early ballot. A.R.S. §§ 16-542, -547. An early ballot may
11 be mailed or dropped off at a polling place by 7:00 p.m. on election day. A.R.S. § 16-548.

12 All counties also allow for in person early voting at certain polling places. No
13 identification is required of early voters who wish to vote in person. (Trial Tr. at 689).

14 All early ballots, whether cast by mail or in person, are subject to signature
15 verification, which the State and counties believe is sufficient to prevent voter fraud. (Trial
16 Tr. 746; Rodriguez Dep. 151-52, Jan. 22, 2008; Hoyos Dep. 43-44, Jan. 16, 2008;
17 Wayman-Trujillo Dep. 113, Jan. 8, 2008; Owens Dep. 111-12, Aug. 30, 2006; Dastrup Dep.
18 28, Aug. 1, 2006; Justman Dep. 35, Aug. 1, 2006; Hansen Dep. 70, Aug. 1, 2006; Pew Dep.
19 19, Aug. 1, 2006; Osborne Dep. 75, July 31, 2006).

20 C. Types of Ballots

21 There are three types of ballots provided for in person voting on election day: regular,
22 provisional, and conditional provisional. (Ex. 4, at 129). The type of ballot issued depends
23 upon what form of proof of identification is provided by the voter. Id.

24 i. *Regular Ballot*

25 If the voter's proof of identification matches the information on the voter rolls, the
26 voter is issued a regular ballot. Id.

1 ii. *Provisional Ballot*

2 “If the name and address on the identification do not reasonably appear to be the same
3 as the name and address on the signature roster or the photo does not reasonably appear to
4 be the elector, then the elector shall not be issued a regular ballot, but shall be issued a
5 provisional ballot.” Id.; see also id. at 136. For example, if a person changes her name after
6 marriage, but has not yet updated either the voter rolls or her identification, she will be issued
7 a provisional ballot. (Trial Tr. at 708-09). In addition, if a voter presents one form of tribal
8 identification, the voter is issued a provisional ballot. (Ex. 4, at 135).

9 If a voter casts a provisional ballot, the voter is not required to take additional steps.
10 The county verifies that the voter’s signature on the provisional ballot matches that on the
11 voter rolls, and, as long as the voter did not already vote for that election, the voter’s ballot
12 is counted. (Ex. 4, at 164-65, 167-69).

13 iii. *Conditional Provisional Ballot*

14 If the voter presents only one form of non-photo identification or does not present any
15 form of identification, the voter is issued a conditional provisional ballot. Id. at 129, 135.

16 If the voter casts the conditional provisional ballot, the voter must present proof of
17 identification at certain designated locations within three-to-five days after the election,
18 depending on the type of election. Id. at 135.

19 D. Availability and Cost of Proof of Citizenship

20 i. *Arizona Driver License and Non-Operating Identification Card*

21 A new Arizona driver license costs: \$25.00 if the driver is between the ages 16 and
22 39; \$20.00 if the driver is between the ages of 40 and 44; \$15.00 if the driver is between the
23 ages 45-49; and \$10.00 if the driver is age 50 or older. (Ex. 676). A replacement or
24 duplicate license costs \$4.00. Id.

25 An Arizona non-operating identification card costs \$12.00. Arizona Dep’t of Transp.,
26 Motor Vehicle Div. (“MVD”), Frequently Asked Questions (“MVD FAQ”) (last visited Aug.
27 3, 2008), <http://www.azdot.gov/mvd/faqs/scripts/faqs.asp?section=dl#5>. For persons age 65
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1 or older, or anyone receiving federal Supplemental Security Income disability payments,
2 there is no fee. A.R.S. § 28-3165(J); MVD FAQ.

3 Approximately 90% of voting-age Arizona citizens possess an Arizona driver’s
4 license. (Trial Tr. 706). There was no evidence regarding what portion of the remaining
5 10% had other forms of photo identification, including Arizona non-operating identification
6 cards.

7 In order to obtain a new Arizona driver’s license or non-operating card, an applicant
8 must present identification consisting of either: (1) two documents, one of which has a
9 photograph, or (2) three documents with no photograph. Arizona Dep’t of Transp., MVD,
10 Identification Requirements (last visited Aug. 4, 2008),
11 <http://mvd.azdot.gov/mvd/formsandpub/viewPDF.asp?lngProductKey=1410&lngFormInfoKey=1410>. In either case, one of the documents must be considered a “primary” document.
12 Id. (listing acceptable primary and secondary documents).

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14 ii. *Birth Certificate*

15 In Arizona, a replacement birth certificate and a delayed birth registration costs
16 \$10.00. (Ex. 672, 675). To obtain a delayed birth certificate for a child who is 1-14 years
17 of age, the following documentation must be provided: (1) an affidavit by someone with
18 personal knowledge of when and where the child was born; (2) a document by an unrelated
19 person that was established before the child was five years old stating the child’s name, date
20 of birth, place of birth, and the date the document was created; and (3) an independent factual
21 document that establishes the mother’s presence in Arizona at the time of the child’s birth
22 stating the mother’s name, street address and date the document was created. (Ex. 672).

23 To obtain a delayed birth certificate for a child who is 15 years of age or older, the
24 following documentation must be provided: (1) an affidavit by someone with personal
25 knowledge of when and where the child was born; (2) a document by an unrelated person
26 that was established before the child was ten years old stating the child’s name, date of birth,
27 place of birth, and the date the document was created; (3) an independent factual document

1 that was established at least five years prior to the application date stating the child's name,
2 date of birth, place of birth, and the date the document was established; and (4) an
3 independent factual document that establishes the mother's presence in Arizona at the time
4 of the child's birth stating the mother's name, street address and date the document was
5 created. Id. In other states, the cost and means of obtaining a birth certificate varies. (See
6 Ex. 673).

7 iii. *Passport*

8 The cost for obtaining a passport book or card is \$100 and \$45, respectively. Dep't
9 of State, Passport Fees (last visited Aug. 3, 2008),
10 http://travel.state.gov/passport/get/fees/fees_837.html.

11 iv. *Certificate of Naturalization*

12 A replacement certificate of naturalization costs \$380. Dep't of Homeland Security,
13 U.S. Citizenship and Immigration Services, Instructions for N-565, Application for
14 Replacement Naturalization/Citizenship Document (last visited Aug. 3, 2008),
15 <http://www.uscis.gov/files/form/N-565instr.pdf>.

16 v. *Bureau of Indian Affairs Card, Tribal Treaty Card, or Tribal*
17 *Enrollment Card*

18 Bureau of Indian Affairs and tribal treaty cards are not in use in Arizona. (Trial Tr.
19 474-75).

20 All tribes in Arizona, except the Havasupai Tribe and Navajo Nation,⁹ issue tribal
21 enrollment cards. (Id. at 483, 486; Ex. 1325). Cards issued by the Hopi Tribe, Yavapai-
22 Apache Nation, and Tonto Apache Tribe do not include enrollment numbers. (Ex. 1325).

23 Tribal enrollment cards are free for most tribes. For the Hopi Tribe, the first card is
24 free, and an additional card is \$15. Id. For the Yavapai-Apache Nation, a card costs \$5.00.

25 ⁹ Navajo Nation is not a member of the Inter Tribal Council of Arizona, Inc., and was
26 represented by separate counsel in this litigation. See Navajo Nation v. Brewer, CV 06-1575.
27 It did not challenge Proposition 200's proof of citizenship requirement. (See Trial Tr. 483-
28 84).

1 Id. And for the Colorado River Indian Tribe, the first card is free, and an additional card is
2 \$12.00. Id.

3 E. Verification of Proof of Citizenship

4 Photocopies of birth certificates, photocopies of U.S. Passports, tribal identification
5 numbers, and naturalization certificates presented in person or via photocopy are accepted
6 on their face without subsequent verification. (Ex. 4 at 48; Trial Tr. 700-01; Rodriguez Dep.
7 86-87, Jan. 22, 2008; Dean-Lytle Dep. 50, Jan. 16, 2008; Osborne Dep. 38-39, 50, Jan. 14,
8 2008; Wayman-Trujillo Dep. 63-65, Jan. 9, 2008; Rodriguez Dep. 68, 87, Jan. 22, 2008;
9 Dean-Lytle Dep. 50, Jan. 16, 2008; Osborne Dep. 50, Jan. 14, 2008; Kanefield 19-21, Jan.
10 11, 2008; Marin Dep. 45-47, 113, Jan. 18, 2008).

11 A-numbers are verified using USCIS's online system called the Systematic Alien
12 Verification for Entitlements Program (SAVE). (Ex. 4 at 47; Trial Tr. 735).

13 Driver's licenses and non-operating identification cards are verified using the
14 Secretary of State's online voter registration system, VRAZ,¹⁰ which collects voter
15 registration information from the counties and compares the information about the registrants
16 and existing voters against the MVD database. (Exs. 38, 165, 167, 307.)

17 VRAZ flags applicants whose Arizona driver's licenses were issued before October
18 1, 1996 or are coded "Type F." (Exs. 126, 153, 175). One thousand three hundred applicants
19 were unable to register online due to attempts to use a license issued before October 1, 1996
20 or a Type F license. (Kanefield Dep. 30-31, Jan. 11, 2008). It is unclear how many of these
21 applicants were subsequently able to register.

22 Since 1996, before issuing an Arizona license, the MVD has verified lawful presence,
23 and, since 2000, it has issued Type F licenses to non-citizens who establish lawful presence.
24 (Yanofsky Dep. 14, 34, Jan. 10, 2008). Thus, even though MVD is not charged with
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26 ¹⁰ VRAZ also checks voter registration information against the Social Security
27 Administration database, as well as Arizona death records and records of felony convictions.
28 (Exs. 38, 165, 167, 307).

1 monitoring citizenship, and even though some older licenses belonging to non-citizens may
2 not be coded Type F, there is a reasonable relationship between the type of license issued and
3 a person's citizenship status.

4 Because a license does not reflect whether it is Type F on its face, a recently
5 naturalized citizen who uses a Type F license to register to vote may have to provide
6 additional proof of identification. (Ex. 175). In such circumstances, a naturalized citizen has
7 the option of obtaining an updated license by presenting a naturalization certificate to the
8 MVD and pay a fee of \$4, or registering to vote without incurring additional cost using a
9 naturalization certificate. (Yanofsky Dep. at 65-66; Gage Dep. 90, Jan. 10, 2008).

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1 F. Impact of Proposition 200

2 i. *Proof of Citizenship Requirement*¹¹

3 Between January 2005 and September 2007, the number of applicants in 14 of
4 Arizona's 15 counties¹² unable (initially) to register to vote because of Proposition 200 was
5 31,550.¹³ (Ex. 883, Table 1; Trial Tr. 246).

6 Of these applicants, Plaintiffs' expert, Dr. Louis Lanier, estimated that 5,258, or
7 16.7%, were Latino, which was 2.8% higher than their representation in total number of
8 registration applicants. (Ex. 883, Table 2). To arrive at this estimate, Dr. Lanier used a list
9 of Latino surnames compiled by the U.S. Census Bureau known as the "Passel-Word List."
10 (Trial Tr. 242). This list divides surnames into five categories based on the probability that
11 they represent a Latino person. *Id.* Dr. Lanier assumed names listed as "heavily Hispanic"
12 and "generally Hispanic" were surnames for Latino persons for purposes of his analysis. *Id.*
13 Defendants' expert, Dr. Jeffrey Zax, did not assert that use of the Passel-Word List was an
14 inappropriate means of predicting whether a person is Latino. (Trial Tr. 800).

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17 ¹¹ ITCA Plaintiffs' expert, Dr. Ronald Sissons, testified in his deposition that 2% of
18 Arizona's non-registered, voting eligible population did not have proof of citizenship.
19 (Sissons Dep. 9, 10, Aug. 11, 2006). His deposition testimony was admitted at trial by
20 stipulation of the Parties. (Doc. 1014).

21 Dr. Sissons testified to the same at the preliminary injunction hearing. (Prelim. Inj.
22 H'rg Tr. 138-39, Aug. 30, 2006). The Court, however, did not then find this testimony
23 reliable, and the Court does not find it reliable here. (*See* Doc. 219 at 9 ("The Court has
24 reservations regarding the reliability of [Dr. Sisson's] statistics."); *id.* at 10 ("[T]he Court was
25 not presented with sufficiently reliable information regarding the number of voters that do
26 not have adequate forms of identification.")).

27 ¹² This number does not include rejected voter registration forms from Santa Cruz
28 County, which did not produce any forms, and did not include a portion of the rejected forms
from Yuma County. (Trial Tr. 246-47).

¹³ This number is exclusive of duplicate forms, forms with missing information, forms
with "no" in the U.S. citizenship field, and forms with a registration date prior to January 1,
2005. (Trial. Tr. 242). The total inclusive of these forms is about 38,000. *Id.*

1 Most rejected applicants listed their birthplace in the United States: 86.6% of Latinos,
2 and 92.9% of non-Latinos. (Ex. 885, Table 3).

3 By comparing the names on rejected voter registration forms to the voter rolls, Dr.
4 Lanier determined if an applicant, initially unsuccessful, was ultimately able to register to
5 vote through a later successful application. (Trial Tr. 244). Of the 31,550 applicants initially
6 unable to register to voter, approximately 11,000, or 30%, were subsequently able to register
7 to vote. (Trial Tr. 329). Of the approximately 20,000 applicants unable to register to vote,
8 4,013, or about 20%, were Latino. (Ex. 884, Table 2; Trial Tr. 835-36).

9 Assuming that everyone prevented from registering by Proposition 200 was allowed
10 to register, i.e., Proposition 200 had not gone into effect, Dr. Lanier predicted that 13.8% of
11 the electorate would have been Latino. (Ex. 883, Table 4). Using Dr. Lanier's data, Dr. Zax
12 calculated the percentage of the electorate that was Latino with Proposition 200 in effect as
13 13.7%—a difference of 0.1%. (Trial Tr. 799). Using the same data and incorporating Dr.
14 Engstrom's turnout data, Dr. Zax also calculated what the Latino voter turnout would have
15 been in the 2006 general election for Secretary of State with and without Proposition 200.
16 Id. at 831. The difference in the Latino voter turnout was 0.06%. Id.

17 Plaintiff's expert Dr. Rodolfo Espino examined the effects of Proposition 200 on the
18 flow of voter registrations in Arizona and its individual counties. He examined the 941 days
19 before and after the implementation of Proposition 200. (Trial Tr. 377). Both Latinos and
20 non-Latinos experienced a drop in their registration rates following the implementation of
21 Proposition 200 when compared to the period before Proposition 200. (Trial Tr. 391). This
22 drop is not unexpected because the period before Proposition 200 included the 2004
23 Presidential election, which was accompanied by a drastic increase in the number of voter
24 registrations. (Ex. 879, Chart 1¹⁴).

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26 ¹⁴ Although Dr. Lanier, no longer relied upon the expert report in which this chart is
27 included in reaching his conclusions in this case, (Trial Tr. 271), the Court finds reliable the
28 portion of Chart 1 that reflects actual voter registrations, as opposed to predicted voter

1 Statewide, the percent drop in number of individuals registered to vote per week was
2 36.67% for Latinos and 35.75% for non-Latinos, a difference of 0.92%. (Trial Tr. 411; Def.
3 Imp. Ex. 2, Table 3). On a county-by-county basis, the percent drop for Latinos was greater
4 than that of non-Latinos in seven of Arizona's fifteen counties, specifically Apache, Gila,
5 Graham, Greenlee, Pima, Santa Cruz, and Yuma. (Def. Imp. Ex. 2, Table 4; Trial Tr. 432-
6 33). Examining the percent change in weekly registration rates before and after Proposition
7 200 based upon the regression slope, the decline in the rate of Latinos becoming registered
8 to vote was worse than non-Latinos in five of fifteen counties, specifically Apache, Greenlee,
9 Pima, and Santa Cruz. (Trial Tr. 421-23; Ex. 877, Table 1).

10 ii. *Proof of Identification*

11 In the 2006 primary, 2006 general, and the 2008 Presidential preference elections,
12 3,135,951 ballots were cast. (Trial Tr. 683-84). Of these, 4,194 ballots, or 0.13%, were
13 uncounted due to lack of proof of identification. (Trial Tr. 318). Of the uncounted ballots,
14 461, or 11%, were Latino. Id. As of September 2007, Latino represented 12.3% of
15 registered voters. (Ex. 886).

16 Regarding the 2006 general election for Governor specifically, Dr. Lanier estimated
17 that Latinos comprised between 2.6% and 4.2% of the voters who turned out that day, but
18 Latinos cast 10.3% of ballots that went uncounted because of insufficient identification. (Ex.
19 886).

20 Regarding the 2008 presidential preference election, in a non-scientific study,
21 Maricopa County reported, of 897 conditional provisional ballots, 739 went uncounted. (Ex.
22 954). Of the 739 uncounted ballots, 129, or 17%, were Latino. Id. Maricopa County further
23 noted that 12% of its registered voters were Latino. Id.

24 **VI. Evidence of Voter Fraud in Arizona**

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27 registrations.

1 In 2005, Maricopa County Recorder Helen Purcell referred 159 matters to the
2 Maricopa County Attorney Andrew Thomas based on evidence that non-citizens had
3 registered to vote. (Osborne Dep. Ex. 3 at 4, July 31, 2006). In August 2005, Thomas
4 announced that ten non-citizens had been charged in felony criminal complaints for falsely
5 filing voter registration forms claiming they were in fact United States citizens, four of which
6 had voted in an election. Id.

7 Maricopa County Elections Director Karen Osborne also testified to voter registration
8 organizations, which are paid on a per-registration-form basis, submitting “garbage” voter
9 registration forms and misleading non-citizen residents into registering to vote. (Osborne
10 Dep. 16-28, 18-30, 70, Jan. 14, 2008).

11 In Pima and Maricopa counties, 208 individuals had their voter registrations cancelled
12 after they swore under oath to the Jury Commissioner that they were not citizens, 56 of
13 whom are alleged to have voted in a election. (Exs. 1108, 1351).

14 Pima County has also referred several instances of non-citizens either attempting to
15 register to vote or cast votes to the Pima County Attorney. (Ex. 1108 at 2-3 & ex. A).

16 Yuma County Voter Registration Coordinator Krysty Marin testified that a woman
17 who was not a citizen and who registered to vote right before the 2004 election. (Marin Dep.
18 98-99, 101-04, Jan. 18, 2008). Yuma County was able to identify her as a non-citizen
19 because her license subsequently showed up as Type F. Id. at 98. Fortunately, she did not
20 vote and has since cancelled her voter registration. Id. at 102. After talking with this
21 woman, Marin believes she was a victim of an unscrupulous voter registration organization.
22 Id. at 99, 103.

23 In addition, Defendants have introduced court records for nine persons prosecuted for
24 illegal voting and presentment of false instrument for filing. Ex. 1349a-g,y-z. According to
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1 the charging papers, five of the nine were alleged to be non-citizens that had in fact voted.¹⁵
2 Ex. 1349a,c,d,e,f,g. Of the five, four pleaded guilty. Id.

3 **V. Plaintiffs**

4 A. Gonzalez

5 i. *Individual Plaintiffs*

6 There are four individual plaintiffs: Jesus Gonzalez, Bernie Abeytia, Georgia
7 Morrison-Flores, and Debra Lopez.¹⁶ Abeytia did not testify at trial.

8 a. Jesus Gonzalez

9 Jesus Gonzalez was born in Mexico and is Latino. (Trial Tr. 221-22). He became a
10 naturalized citizen on August 18, 2005. (Id.; Ex. 711). After the naturalization ceremony,
11 he applied to register to vote using the number from his certificate of naturalization, rather
12 than his alien registration number, as proof of citizenship, which is what the voter registration
13 form at the time required. (Trial Tr. 222-23; Ex. 712).

14 His application was denied for failure to provide proof of citizenship. (Ex. 712).¹⁷
15 The letter of denial specified that satisfactory evidence of citizenship included the A-number
16 on the naturalization certificate. Id. Jesus Gonzalez's naturalization certificate bears a series
17 of numbers beginning with an "A." (Ex. 711). In addition, attached to the letter was Jesus
18 Gonzalez's voter registration application with his certificate of naturalization number crossed
19 out, and a notation "A#" written above.

22 ¹⁵ The act of registering to vote by a non-citizen is a class six felony. A.R.S. §§ 16-
23 182, 39-161. If that person also votes, the offense is a class five felony. A.R.S. § 16-1016.

24 ¹⁶ Naeem Abdul-Kareem, Luciano Valencia, and Maria Gonzalez were dismissed on
25 June 27, 2008. (Doc. 883).

26 ¹⁷ Although the trial exhibit was in English, and Jesus Gonzalez cannot read English,
27 he testified that the letter arrived in Spanish (for an example, see Ex. 697) and in English.
(Trial Tr. 230).

1 In October 2006, Jesus Gonzalez tried to register again online at EZ Voter
2 Registration, <https://servicearizona.com/webapp/evoter/>, using his Arizona driver’s license.
3 (Trial Tr. 220, 225, 235). His application was denied because his Arizona driver’s license
4 was issued to him before October 1, 1996. Id. at 225.

5 Jesus Gonzalez has a U.S. passport, issued November 8, 2006, which he purchased
6 for \$112.95. (Exs. 709-10). He purchased the passport to travel to and from Mexico, rather
7 than to register to vote. (Trial Tr. 232).

8 There is no dispute that Jesus Gonzalez possess the documentation required to
9 establish proof of citizenship to register vote—he has a naturalization certificate with an A-
10 number and a U.S. passport.

11 b. Georgia Morrison-Flores

12 Morrison-Flores was born in Yuma, Arizona. (Morrison-Flores Dep. 12, Jan. 17,
13 2008). She got married on July 5, 2003. Id. Prior to her marriage, her name was “Georgia
14 Morrison-Vasquez.” Id. at 14. She registered to vote in 2004 under the name “Georgia
15 Flores-Morrison.” Id. at 34, 36-38, 41-42. It appears that she accidentally filled out the form
16 incorrectly: it should read “Georgia Morrison-Flores.” Id. at 41-42; see also Doc. 617, Ex.
17 21. There is no evidence that she has tried to correct her name on the voter rolls.

18 Morrison-Flores receives monthly bank statements from SunBank. Id. at 22-23. She
19 also still has the voter registration card that she received from the Yuma County elections
20 department after registering to vote in 2004. Id. at 41, 77. She also has received sample
21 ballots from Yuma County. Id. at 65.

22 On November 7, 2006, she attempted to vote at her polling place using her license
23 as proof of identification, but was not allowed to because the name on her license at the time
24 was “Georgia Morrison-Vasquez,” which did not match the name on the voter rolls, “Georgia
25 Flores-Morrison.” Id. at 43-44. She was not offered a provisional ballot. Id. at 45-46.

1 In April 2007, she went to an office of the MVD and updated her name in their
2 records to reflect her married name. Id. at 48-49. Morrison-Flores' current drivers' license
3 reads "Georgia Morrison-Flores." Id. at 51.

4 Morrison-Flores can correct the name on the voter rolls for free. Once she does this,
5 she has the proof of identification required in order to vote in person on election day.

6 c. Debra Lopez

7 Lopez is a consultant, creating grass-root strategies for non-profit political and
8 corporate clients. (Trial Tr. 605). For example, she worked for the Latino Vote Project and
9 the Southwest Voter Registration Education Project. Id. at 619. She has been registering
10 voters since she was 18 years old, as part of her employment and on a volunteer basis, and
11 does so every chance that she gets. Id. at 606. She volunteers at festivals and fiestas, and
12 conducts impromptu registration using registration forms she keeps in her car. Id. She
13 focuses on registering Latino voters. Id. at 607. She herself is registered to vote, and she
14 possesses sufficient voter identification to vote in person on election day. Id. at 617, 618.

15 Prior to Proposition 200, Lopez said she could register every person that wanted to
16 register. Id. at 610, 621. After Proposition 200, it is more difficult for her because people
17 she encounters sometimes do not carry the necessary documentation on their persons. Id. at
18 612. In addition, if the documents have to be photocopied, such as a birth certificate or
19 passport, she has to bring a photocopy machine and rent a generator to run it. Otherwise, she
20 tries to obtain copies on the person's behalf, or to explain to the person how to obtain
21 photocopies. Id. at 612-13, 623. Her personal expenditures related to Proposition 200
22 involved time, gas, and photocopies. Id. at 622-23.

23 She did not identify any particular individuals who cannot register due to Proposition
24 200.

25 ii. *Organizational Plaintiffs*

26 The Gonzalez organizational plaintiffs include: Chicanos Por La Causa, Valle Del Sol,
27 Association of Community Organizations for Reform Now, Arizona Hispanic Community
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1 Forum, Friendly House, Project Vote, Southwest Voter Registration Education Project, and
2 Common Cause. Only Chicanos Por La Causa and Valle Del Sol testified at trial.

3 a. Chicanos Por La Causa (“CPLC”)

4 Vice President of Human Resources Salvador Martinez testified on CPLC’s behalf.
5 (Trial Tr. 551-52). CPLC is a statewide, community-based organization. Id. Its mission is
6 to advocate on behalf of those individuals that are disenfranchised and to provide services
7 for those unable to provide for themselves. Id. at 552. As part of that mission, it conducts
8 voter registration, outreach, and education. Id. at 552-53.

9 Martinez testified that Proposition 200 is “somewhat burdensome” on CPLC. He
10 stated that it has made voter registration more expensive because CPLC has to makes copies
11 of registrants’ documents, and more manpower is required. Id. at 554-55. In addition,
12 Martinez testified that CPLC had to create and copy for distribution several documents
13 because of Proposition 200 in order to educate CPLC’s personnel and constituents about the
14 new law’s requirements. Id. at 557-58; Exs. 538, 563, 566, 569, 570. Only one of these
15 documents, though, mentions Proposition 200's requirements. (Ex. 538).

16 Martinez testified that CPLC incurred \$7,000 related to copying, *et cetera*, and
17 unspecified labor costs because of Proposition 200. (Trial Tr. 566). No documentation was
18 provided supporting these costs, nor was there evidence that these costs were due to
19 Proposition 200, as opposed to its general voting expenditures.

20 When registering voters, Martinez encountered only two people who wished to
21 register, but did not have the requisite proof of citizenship on their person. (Trial Tr. 559-
22 60). He did not testify that they did not have proof of citizenship, merely that they did not
23 have it with them. He instructed the first person to go home and return with the documents.
24 Id. at 560. The person did not return, and Martinez does not know if he ever registered to
25 vote. Id. at 561. Martinez drove the second person home to obtain the documents because
26 that person did not have transportation. Id. at 560. Martinez testified that one of these
27 persons was Latino, but did not testify whether either was a member of CPLC. Id. at 573.

1 Latino. Id. at 176. Representative Gallardo is running for reelection this year for another
2 two year term, and has qualified for the primary ballot. Id.

3 Representative Gallardo has also been an at-large member of the Phoenix Union High
4 School Governing Board since 2004. Tr. 176-77. The high school district he represents
5 covers the City of Phoenix, which contains over a million people, and is majority Latino. Id.
6 at 177. Again, he is running for reelection this year for another four year term. Id. at 177-78.

7 Representative Gallardo was reelected to his House seat in 2006—after the
8 implementation of Proposition 200. Id. at 189. Also he testified that, as a candidate, if he
9 wants his constituents to vote for him, he needs to notify them about the acceptable forms of
10 identification. Id. at 186. He is not aware, however, of any specific person who has been
11 unable to register to vote or that would vote for him but cannot because of Proposition 200.
12 Id. at 180, 198, 201.

13 ii. *Organizational Plaintiffs*

14 The ITCA organizational plaintiffs include: Inter Tribal Council of Arizona, Inc.,
15 Arizona Advocacy Network, League of Women Voters of Arizona, Hopi Tribe, and League
16 of United Latin American Citizens. The Hopi Tribe and the League of United Latin
17 American Citizens did not testify.

18 a. Inter Tribal Council of Arizona, Inc. (“ITC”)

19 Executive Director John Lewis testified on behalf of ITC. (Trial Tr. 443-44). ITC
20 comprises the highest elected tribal officials of 20 of the 22 tribes located in Arizona, not
21 including the Navajo Nation. Id. at 444, 447; Ex. 1190. Its purpose is to work collectively
22 on common issues that face them as tribal governments. Id. at 444. As part of that purpose,
23 ITC seeks to promote American Indian voting rights and provides voter education programs
24 for tribe members. Id. at 444-45, 470-71.

25 He testified tribal members were less likely to possess birth certificates, especially
26 members over the age of 40, and driver’s licenses due to lack of access to health care and
27 economic conditions. (Trial Tr. 457-60, 472-74).

1 Lewis said, however, that neither he nor ITC was aware of any tribal member who
2 lacks satisfactory evidence of citizenship to register to vote. Id. at 486-87, 489; see also Ex.
3 1311.

4 b. Arizona Advocacy Network (“AzAN”)

5 Executive Director Linda Brown testified on AzAN’s behalf. (Trial Tr. 581).
6 AzAN’s mission is to promote social, economic, and environmental justice by increasing
7 civic participation. Id. To advance its mission, AzAN conducts voter registration. Id. at
8 582.

9 AzAN is affiliated with a national group called USAction Education Fund
10 (“USAction”), one of the nation’s leading organizations in nonpartisan voter registration.
11 Id. at 584. AzAN has a contract with USAction to register a certain number of voters; their
12 current goal is 5,000 voters for the 2008 Presidential election. Id. at 584, 585. AzAN is paid
13 by USAction based on the number of confirmed registrations. Id. at 584.

14 AzAN spent \$19,025 in polling place monitoring over the four elections held in 2006.
15 (Trial Tr. 588; Ex. 1223). Brown personally monitored some polling places during two
16 elections, during which she offered voters a “voter bill of rights” drafted by AzAN,
17 describing, among other things, the proof of identification options. (Trial Tr. 588). AzAN
18 spent \$2,298 in printing costs for the voter bill of rights. (Ex. 1223).

19 Brown said that, because of Proposition 200, it takes more people more time to
20 register each voter as compared to a state without identification requirements. Id. at 586.
21 For example, in AzAN’s 2008 projected voter registration budget, the cost per voter
22 registered is estimated as between \$9.28 and \$12.21 in Arizona, as opposed to a typical state
23 where it is between \$7.08 and \$7.81 per voter registered, which is a total cost difference of
24 \$11,000-22,000. (Ex. 1223). This reflects Brown’s belief that, in Arizona, AzAN can
25 register 6-10 persons in a four-hour shift in Arizona, as opposed to 15-20 per shift in other
26 states. (Trial Tr. 586). As part of its efforts, AzAN also seeks to help recruit 120 poll
27

1 workers for the counties and conduct supplemental training focusing on Proposition 200's
2 requirements. Id. at 602.

3 AzAN also has projected that it will spend \$40,440 on election protection efforts for
4 the 2008 general election. Id. Brown projected that all of this cost is attributable to
5 Proposition 200. (Trial Tr. 601). This testimony is not particularly reliable, however,
6 because AzAN conducted election related efforts before Proposition 200.

7 While conducting registration since Proposition 200's implementation, Brown
8 encountered four people that were unable to register because they lacked proof of citizenship
9 on their person. Id. at 583-84. She did not testify whether these people were members of
10 AzAN.

11 c. League of Women Voters of Arizona (the "League")

12 President Bonnie Saunders, Ph.D., testified on behalf of the League. (Prelim. Inj.
13 H'rg Tr. 116, Aug. 30, 2006). One of the League's primary goals is to promote voter
14 participation. Id. Prior to Proposition 200, it conducted voter registration drives at parents'
15 night in local schools and other venues. Id. at 118-21. After Proposition 200, it did not
16 register voters, but merely passed out voter registration forms. Id. at 122-23. The League
17 decided it would not take responsibility for peoples' drivers license numbers or making
18 photocopies of other identification documents. Id. Saunders did not testify as to whether any
19 member of the League did not possess proof of citizenship.

20 **V. Defendants**

21 Defendants comprise the State of Arizona, the Arizona Secretary of State, Jan Brewer,
22 in her official capacity (collectively, the "State"), the County Recorder and County Director
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1 of Elections of every county in Arizona in their official capacities¹⁸ (collectively, the
2 “Counties”). (Doc. 352; ITCA, Doc. 1).

3 **VI. Lay Testimony by Non-Parties**

4 A. Maria Gonzalez

5 Maria Gonzalez is a former Gonzalez plaintiff; she was dismissed for lack of standing
6 on June 27, 2008. (Doc. 883). She was born in Mexico, and she became a naturalized citizen
7 on August 18, 2005. (Trial Tr. 207; Ex. 715). After the naturalization ceremony, she applied
8 to register to vote using the number from her certificate of naturalization, rather than her A-
9 number, as proof of citizenship, which was required by the voter registration form at the
10 time, now amended to allow the A-number. (Trial Tr. 207; Ex. 711).

11 Her application was denied for failure to provide proof of citizenship. (Ex. 697). But
12 the letter she received in Spanish and English specified satisfactory evidence of citizenship
13 included the “A-number” on the naturalization certificate. Id. Maria Gonzalez’s
14 naturalization certificate bears a series of numbers beginning with an “A.” (Ex. 715). In
15 addition, attached to the letter was Maria Gonzalez’s voter registration application with her
16 certificate of naturalization number crossed out, and a notation “A#” written above.” (Ex.
17 697).

18
19 ¹⁸ The specific persons are: Maricopa County Recorder Helen Purcell and Maricopa
20 County Elections Director Karen Osborne; Apache County Recorder LeNora Johnson and
21 Apache County Elections Director Penny L. Pew; Cochise County Recorder Christine
22 Rhodes and Cochise County Elections Director Thomas Schelling; Gila County Recorder
23 Linda Haught Ortega and Gila County Elections Director Dixie Mundy; Graham County
24 Recorder Wendy John and Graham County Elections Director Judy Dickerson; Greenlee
25 County Recorder Berta Manuz and Greenlee County Elections Director Yvonne Pearson; La
26 Paz County Recorder Shelly Baker and La Paz County Elections Director Donna Hale;
27 Mohave County Recorder Joan McCall and Mohave County Elections Director Allen
28 Tempert; Pima County Recorder F. Ann Rodriguez and Pima County Elections Director Brad
R. Nelson; Santa Cruz County Recorder Suzie Sainz and Santa Cruz County Elections
Director Melinda Meek; Yavapai County Recorder Ana Wayman-Trujillo and Yavapai
County Elections Director Lynn A. Constabile; and Yuma County Recorder Susan
Hightower Marler and Yuma County Elections Director Patti Madrill.

1 In October 2006, Maria Gonzalez attempted to register again at EZ Voter Registration,
2 <https://servicearizona.com/webapp/evoter/>, using her Arizona driver's license issued in 2005,
3 and was successful. (Trial Tr. 214, 219-20). Thus, she is registered to vote in the 2008
4 Presidential election.

5 B. Agnes Laughter

6 Agnes Laughter is a former Navajo Nation plaintiff, which case was dismissed by
7 stipulation on May 27, 2008. (Doc. 775). She was born Jane Begay in Chilchibeto, located
8 on the Navajo Nation reservation in Arizona. (Laughter Dep. 9, Oct. 19, 2006). She was
9 born at home in a hogan, and is 74 years old. Id. She is now registered to vote, id. at 14-15,
10 and has a certificate of Indian blood and a bank statement as voter identification. (Doc. 435,
11 Ex. 9). Therefore, Laughter can vote in person on election day.

12 C. Shirley Preiss

13 Shirley Preiss, who, by stipulation, is not Latina, was born Shirley Meshew on August
14 17, 1910 in Clinton, Kentucky. (Trial Tr. 82; 89-90). She was born at home rather than a
15 hospital, and was not issued a birth certificate. Id. at 83. She did not testify that she is
16 American Indian.

17 Preiss moved to Arizona about three years ago. Id. at 84. She is cared for by her son
18 and has made efforts to register to vote in Arizona, but has been unsuccessful because she
19 does not possess the proof of citizenship required by Proposition 200. Id. at 87. She has
20 tried to obtain a delayed birth certificate from Kentucky, but has also been unsuccessful in
21 this pursuit. Id. at 83. She does not have an Arizona driver or nonoperating license, nor a
22 passport. Id. at 87, 88.

23 D. Donna Fulton

24 In late 2007, Fulton moved from Safford, Arizona in Graham County, where she was
25 a registered voter, to Eloy, Arizona in Pinal County. (Ex. 968). She did not testify whether
26 she is either Latina or Native American. In December 2007, she completed a new voter
27 registration form and mailed it to the Pinal County Recorder's Office. Id.

1 On February 5, 2008, Fulton attempted to vote in the Presidential preference primary
2 election, but the poll worker could not find her name on the Pinal County voter roll. Id.
3 After showing proof of identification with her current address, Fulton cast a conditional
4 provisional ballot. Id. She reports that the poll worker did not instruct her to return to the
5 County Recorder's Office to provide her identification again. Id.

6 Approximately one month after the election, Fulton received a letter in the mail stating
7 that her ballot was not counted because she failed to provide proof of citizenship. Id.

8 Assuming the veracity of Fulton's testimony, County Defendants state that Fulton
9 should have been issued a provisional ballot, rather than a conditional provisional ballot, and
10 her ballot was improperly not counted. (Doc. 1031, at 4).

11 E. Brenda Rogers

12 Rogers lives on the Gila River Reservation, and is registered to vote in Pinal County.
13 (Ex. 967). She did not testify whether she is either Latina or Native American. Rogers'
14 driver's license does not reflect her current address. Id. Although her home does not have
15 a street address, her registered voter address is Gila River Dist 4B, Sacaton, Arizona 85247.
16 Id. Rogers receives mail at P.O. Box 13493, Chandler, Arizona 85248, which is also on her
17 voter record.

18 On February 5, 2008, Rogers says she attempted to vote in the Presidential preference
19 primary election. Id. She showed her voter registration card and driver's license. Id. The
20 poll workers found her on the voter rolls but said that she had to vote a conditional
21 provisional ballot because the address on her driver's license did not match her registered
22 voter address. Id. Rogers cast a conditional provision ballot. Id.

23 Assuming the veracity of Rogers's testimony, County Defendants state that Rogers
24 should have been issued a provisional ballot, rather than a conditional provisional ballot, and
25 her ballot was improperly not counted. (Doc. 1031, at 4).

STANDARD OF REVIEW

To secure a permanent injunction, “[a] plaintiff must demonstrate: (1) [] it has suffered an irreparable injury; (2) [] remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) [] considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) [] the public interest would not be disserved by a permanent injunction.” eBay Inc. v. MercExchange, L.L.C., 126 S.Ct. 1837, 1839 (2006). This burden must be demonstrated by a preponderance of the evidence. Walters v. Reno, 145 F.3d 1032, 1048 (9th Cir. 1998).

LEVEL OF SCRUTINY FOR CONSTITUTIONAL CLAIMS

I. Constitutional Challenges to Election Laws Generally

“It is beyond cavil that ‘voting is of the most fundamental significance under our constitutional structure.’” Burdick v. Takushi, 504 U. S. 428, 433 (1992) (quoting Ill. Bd. of Elections v. Socialist Workers Party, 440 U. S. 173, 184 (1979)). Nonetheless, “‘as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.’” Id. (quoting Storer v. Brown, 415 U. S. 724, 730 (1974)); see also U.S. Const. Art. I, § 4, cl. 1 (“The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof . . .”). “This [regulatory] power is not absolute, but is subject to the limitation that [it] may not be exercised in a way that violates . . . specific provisions of the Constitution.” Wash. State Grange v. Wash. State Republican Party, 128 S. Ct. 1184, 1992 (2008) (quoting Williams v. Rhodes, 393 U.S. 23, 29 (1968)).

Because of these competing interests, the Supreme Court has adopted a sliding-scale balancing approach for analyzing election laws. Crawford v. Marion County Election Bd., 128 S. Ct. 1610, 1615-16 (2008); id. at 1624-25 (Scalia, J., concurring); id. at 1628 (Souter, J., dissenting); Wash. State Grange v. Wash. State Republican Party, 128 S. Ct. 1184, 1191 (2008). Election regulations that impose a severe burden on constitutional rights are subject

1 to strict scrutiny. Wash. State Grange, 128 S. Ct. at 1191. “If a statute imposes only modest
2 burdens, however, then ‘the State’s important regulatory interests are generally sufficient to
3 justify reasonable, nondiscriminatory restrictions’ on election procedures.” Id. (quoting
4 Anderson v. Celebrezze, 460 U.S. 780, 788 (1983)). That said, if the state’s interest is
5 unrelated to voter qualifications, the regulation likely will be struck down no matter how
6 slight its burden. See Crawford, 128 S. Ct. at 1615-16; Harper v. Va. Bd. of Elections, 383
7 U.S. 663 (1966).

8 Finally, in applying this approach, the Court is reminded, “since the right to exercise
9 the franchise in a free and unimpaired manner is preservative of other basic civil and political
10 rights, any alleged infringement of the right of citizens to vote must be carefully and
11 meticulously scrutinized.” Reynolds v. Sims, 377 U. S. 533, 562 (1964).

12 **II. Facial Versus As Applied Constitutional Challenges**

13 Whereas a facial challenge seeks to invalidate a statute in all of its applications, an as
14 applied challenge argues that the law is unconstitutional as applied to the plaintiff even
15 though the law may be capable of valid application to others. See Foti v. City of Menlo Park,
16 146 F.3d 629, 635 (9th Cir. 1998) (discussing the difference between facial and as applied
17 challenges).

18 Although the standard to be applied to a facial challenge is a subject of debate among
19 the Justices of the Supreme Court, they do agree “a facial challenge must fail where the
20 statute has a ‘plainly legitimate sweep.’” Crawford, 128 S. Ct. at 1623 (quoting Washington
21 State Grange, 128 S. Ct. at 1190).

22 **ANALYSIS**

23 **I. Equal Protection: Undue Burden on the Fundamental Right to Vote**

24 Plaintiffs, except the Hopi Tribe and ITC, assert Proposition 200's proof of citizenship
25 and identification provisions impose an unconstitutional burden on the fundamental right to
26 vote. The Hopi Tribe and ITC only challenge the proof of citizenship provision. ITCA
27

1 Plaintiffs' claims are facial and as-applied challenges, while Gonzalez Plaintiffs' claims are
2 as-applied challenges only.

3 A. Strict Scrutiny is Not Appropriate.

4 Strict scrutiny of Proposition 200 is not warranted because Plaintiffs have failed to
5 demonstrate that the character and magnitude of the asserted injury excessively burdens the
6 right to vote.

7 i. The Burden on Naturalized Citizens Is Not Excessive.

8 Gonzalez Plaintiffs assert that naturalized citizens suffer an excessive burden under
9 Proposition 200 because they have to "register twice or appear in person at the Recorder's
10 Office to register to vote." (Doc. 1033, at 6). To the extent that some applicants had to
11 register twice immediately following Proposition 200's implementation when they used their
12 naturalization certificate number to provide proof of citizenship, current and future applicants
13 do not.

14 Proposition 200 allows applicants to use "the number of the certificate of
15 naturalization" to register. A.R.S. § 16-166(F)(4). There are two numbers on a certificate
16 of naturalization, however: (1) a number with the heading "No.,"; and (2) a number with the
17 heading "INS Registration No.," which begins with the letter A. No system exists, on the
18 federal or state level, to verify the former. There is a federal system in place, SAVE, that
19 verifies the latter. Given the clear requirement of Proposition 200 to verify "the number"
20 with USCIS, *id.*, election officials reasonably interpreted Proposition 200 to require an
21 applicant to provide the A-number. See A.R.S. § 1-221(B) ("Statutes shall be liberally
22 construed to effect their objects and to promote justice."); Berger v. City of Seattle, 512 F.3d
23 582, 597 (9th Cir. 2008) ("We give due consideration to the government's interpretation and
24 past application of its rule.").

25 Prior to realizing that the number with the heading "No." is not verifiable, the voter
26 registration forms revised immediately following Proposition 200's implementation asked for
27 the certificate of naturalization number. As a result, some applicants, such as Maria and
28

1 Jesus Gonzalez, who correctly filed out their voter registration form by providing the number
2 beginning with “No.” were denied registration, and they had to try to register a second time.

3 The registration form, however, has now been revised to clearly require the A-number,
4 which is verifiable. Thus, although some applicants unfortunately had to register twice
5 immediately following Proposition 200's implementation, current and future applicants will
6 not suffer the same impediment in the upcoming 2008 election. See City of Los Angeles v.
7 Lyons, 461 U.S. 95, 105 (1983) (noting that a prospective injunction requires the threat of
8 future harm). Again, a “[plaintiff] must show a very significant possibility of future harm
9 because he seeks injunctive relief.” Mortensen v. County of Sacramento, 368 F.3d 1082,
10 1086 (9th Cir. 2004) (internal quotation marks omitted).

11 Moreover, if a newly naturalized citizen uses a Type F license to register to vote and
12 is required to provide additional proof of citizenship, the applicant merely has to file a new
13 form to register using his or her A-number. While inconvenient, this is hardly a severe
14 burden. As the Supreme Court recently explained, “the inconvenience of making a trip to
15 the [Bureau of Motor Vehicles], gathering the required documents, and posing for a
16 photograph surely does not qualify as a substantial burden on the right to vote, or even
17 represent a significant increase over the usual burdens of voting.” See Crawford, 128 S. Ct.
18 at 1621.

19 Further, a naturalized citizen does not have to appear in person at the Recorder’s
20 Office to register to vote. An applicant may provide a license number, a photocopy of a U.S.
21 passport, or an A-number to register without appearing in person.

22 In addition, if the applicant elects to forgo these options and to instead use the
23 certificate of naturalization form to register to vote, several counties accept photocopies of
24 naturalization certificates. (See Dean-Lytle Dep. 53, Jan. 16, 2008 (Pinal County); Marin
25 Dep. 112, Jan. 18, 2008 (Yuma County); Osborne Dep. 38-39, Jul. 1, 2006 (Maricopa
26 County); Hansen Dep. 27, Aug. 1, 2006 (Coconino County); Rodriguez Dep. 63, Aug. 2,
27 2006 (Pima County)). Contrary to Plaintiffs’ assertion, accepting a photocopy of a
28

1 naturalization certificate is not forbidden by the Manual. (See Ex. 4, at 48). The Secretary
2 of State's representative, Joseph Kanefield,¹⁹ specifically testified that a county recorder is
3 not violating the Manual by accepting photocopies. (Trial Tr. 756). Accordingly, it is the
4 applicant's choice to travel to the county recorder to present a naturalization certificate.

5 Naturalized citizens do not suffer an excessive burden due to Proposition 200.

6 ii. The Burden on Arizona Citizens as a Whole Is Not Excessive.

7 Of the approximately 20,000 voters ultimately unable to register to vote due to
8 Proposition 200's proof of citizenship requirement, Plaintiffs have not presented any reliable
9 evidence as to the number of these applicants or voting eligible persons generally who lack
10 sufficient proof of identification or are unable to attain it. See Crawford, 128 S. Ct. 1620
11 ("The burdens that are relevant to the issue before us are those imposed on persons who are
12 eligible to vote but do not possess a current photo identification that complies with the
13 requirements of [the voter identification statute.]). Indeed, they have only produced one
14 person, Shirley Preiss, who is unable to register to vote due to Proposition 200's proof of
15 citizenship requirement. Nor have they demonstrated that the persons rejected are in fact
16 eligible to register to vote.

17 Regarding Proposition 200's proof of identification requirement, Plaintiffs have not
18 produced a single person who lacks proof of identification. In addition, individuals who lack
19 proof of identification may vote early without providing identification, even on the day of
20 the election itself.

21 Of the over 3 million ballots cast in the 2006 primary, 2006 general, and the 2008
22 Presidential preference elections, only 4,194 ballots, or 0.13%, were uncounted due to lack
23 of proof of identification. County Defendants have admitted, two of these ballots, Fulton and
24

25 ¹⁹ Joseph Kanefield is the Director of the Election Services Division of the Secretary
26 of State's office. (Trial Tr. 644). His testimony both at trial and deposition demonstrates the
27 significant efforts the Secretary of State's office has taken to liberally construe questions
28 raised regarding the right of an elector to vote in favor of allowing the elector to vote.

1 Rogers, went uncounted by mistake, but Plaintiffs have not presented any evidence that the
2 remaining 4,192 persons were in fact eligible to vote.²⁰

3 Very recently, in Crawford, the Supreme Court found that Indiana’s voter
4 identification law did not deserve strict scrutiny. 128 S. Ct. at 1623. Plaintiffs seek to
5 distinguish Crawford on the grounds that the plurality stated: “The fact that most voters
6 already possess a valid driver’s license, or some other form of acceptable identification,
7 would not save the statute under our reasoning in Harper, if the State required voters to pay
8 a tax or a fee to obtain a new photo identification,” essentially a poll tax. Id. at 1620-21.
9 Harper involved a poll tax unrelated to voter qualifications and is distinguishable. 383 U.S.
10 at 666. Proposition 200’s requirements go directly to voter qualifications: whether a
11 registrant is a U.S. citizen, and whether an in person voter is who he or she says he or she is.
12 Moreover, as the dissent in Crawford noted, the “free” identification provided by Indiana is
13 a hollow promise, as obtaining the documents necessary to get the “free” identification
14 require the payment of a fee. See 128 S. Ct. at 1631. The Court is bound by the Ninth
15 Circuit’s holding on appeal of this case that Proposition 200 is not a poll tax even though
16 some Arizonans may be required to spend money to obtain necessary documents.²¹
17 Gonzalez, 485 F.3d at 1048.

18 Proposition 200’s burden on Arizona citizens as a whole is not excessive.

19 * * *

20
21 ²⁰ Although that Defendants admit that mistakes occurred and can occur in applying
22 Proposition 200 at the polls, especially when it was new, they endeavor to “make it very clear
23 to poll workers that under no circumstances is someone ever to be turned away from the polls
24 without voting.” (Trial Tr. 728). In addition, if it was brought to their attention that a poll
25 worker misunderstood or was misapplying Proposition 200’s requirements, they quickly tried
26 to remedy the problem. Id.; Ex. 409.

27 ²¹ The Court is also bound by its prior holding that Proposition 200 does not constitute
28 a poll tax. See Ingle v. Circuit City, 408 F.3d 592, 594 (9th Cir. 2005) (“Under the law of
the case doctrine, a court is generally precluded from reconsidering an issue previously
decided by the same court, or a higher court in the identical case.”); Docs. 611 & 330.

1 Because neither the burden on naturalized citizens nor Arizonans generally is
2 excessive, Plaintiffs' challenges are not subject to strict scrutiny. See id. at 1623.

3 B. Defendants' Interests in Prevention of Voter Fraud and Maintaining Voter
4 Confidence in the Electoral System Are Important.

5 Defendants have asserted two interests to justify Proposition 200's burden on voters
6 and potential voters: (1) prevention of voter fraud; and (2) maintaining voter confidence.

7 a. Voter Fraud

8 Although an evidentiary showing of fraud is not required to find a government's
9 interest in preventing voter fraud to be important, id. at 1617 (detering in person voter fraud
10 an important state interest despite no evidence of fraud occurring in Indiana), the Defendants
11 demonstrated instances of voter fraud in Arizona. See supra, Section V. In addition, in
12 Crawford, the Supreme Court detailed examples of voter fraud in other states, supporting
13 Defendants' assertion that voter fraud is a legitimate and real concern. 128 S. Ct. at 1619.

14 As the Supreme Court explained:

15 There is no question about the legitimacy or importance of the State's interest in
16 counting only the votes of eligible voters. Moreover, the interest in orderly
17 administration and accurate recordkeeping provides a sufficient justification for
18 carefully identifying all voters participating in the election process. While the most
effective method of preventing election fraud may well be debatable, the propriety of
doing so is perfectly clear.

19 Id.; see also Purcell, 549 U.S. at 7 ("A state indisputably has a compelling interest in
20 preserving the integrity of its election process.").

21 Defendants' interest in preventing voter fraud is an important governmental interest
22 in Arizona.

23 b. Voter Confidence

24 Defendants also assert that they have an interest in protecting voter confidence in the
25 electoral system. "While that interest is closely related to the State's interest in preventing
26 voter fraud, public confidence in the integrity of the electoral process has independent
27 significance, because it encourages citizen participation in the democratic process." Id. at
28

1 1620; see also Purcell, 549 U.S. at 7 (“Confidence in the integrity of our electoral process
2 is essential to the functioning of our participatory democracy.”).

3 Defendants’ interest in protecting voter confidence is an important governmental
4 interest in Arizona.

5 C. Defendants’ Important Interests Outweigh the Modest Burden on the Right to
6 Vote Imposed by Proposition 200.

7 Because Plaintiffs have not demonstrated that Proposition 200 is excessively
8 burdensome, “the State’s important regulatory interests are [] sufficient to justify reasonable,
9 nondiscriminatory restrictions’ on election procedures.” Wash. State Grange, 128 S. Ct. at
10 1191 (internal quotation marks omitted); see also Crawford, 128 S. Ct. at 1623.

11 Proposition 200 enhances the accuracy of Arizona’s voter rolls and ensures that the
12 rights of lawful voters are not debased by unlawfully cast ballots. See Commission on
13 Federal Election Reform, Report, Building Confidence in U.S. Elections 18 (Sept. 2005)
14 (“The electoral system cannot inspire public confidence if no safeguards exist to deter or
15 detect fraud or confirm the identity of voters.”). As such, Plaintiffs’ challenge must fail. See
16 Crawford, 128 S. Ct. at 1623; id. at 1627 (Scalia, J., concurring in the judgment).

17 **II. Equal Protection: Discrimination Against Naturalized Citizens**

18 Gonzalez Plaintiffs contend Proposition 200's proof of citizenship requirement
19 violates the Equal Protection Clause by discriminating against naturalized citizens. To
20 establish an equal protection claim for discrimination, “a plaintiff must show that the
21 defendants acted with an intent or purpose to discriminate against the plaintiff based upon
22 membership in a protected class.” Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir.
23 2001). To show intentional discrimination, “a plaintiff must establish that ‘the
24 decision-maker . . . selected or reaffirmed a particular course of action at least in part
25 ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.”
26 Rosenbaum v. City and County of San Francisco, 484 F.3d 1142, 1153 (9th Cir. 2007)
27 (quoting Wayte v. United States, 470 U.S. 598, 610 (1985)); see also Thornton v. Ctiy of St.

1 Helens, 425 F.3d 1158, 1167 (9th Cir. 2005) (“Mere indifference to the effects of a decision
2 on a particular class does not give rise to an equal protection claim.”).

3 Gonzalez Plaintiffs offer only three facts to show discriminatory intent.²² First,
4 Proposition 200's “findings and declaration” state:

5 This state finds that illegal immigration is causing economic hardship to this state and
6 that illegal immigration is encouraged by public agencies within this state that provide
7 public benefits without verifying immigration status. This state further finds that
8 illegal immigrants have been given a safe haven in this state with the aid of
9 identification cards that are issued without verifying immigration status, and that this
10 conduct contradicts federal immigration policy, undermines the security of our
11 borders and demeans the value of citizenship. Therefore, the people of this state
12 declare that the public interest of this state requires all public agencies within this
13 state to cooperate with federal immigration authorities to discourage illegal
14 immigration.

15 Ex. 1. Second, Proposition 200 allows photocopies of an applicant’s birth certificate and
16 passport, but not certificate of naturalization. Id. And third, Proposition 200 states, “if only
17 the number of the certificate of naturalization is provided, the applicant shall not be included
18 in the registration rolls until the number of the certificate is verified” Id.

19 However, these facts do not establish intentional discrimination by a preponderance
20 of the evidence. Proposition 200's findings and declaration does not demonstrate that the
21 voters in Arizona approved Proposition 200 because of its adverse effects upon naturalized
22 citizens. Rather, the findings and declaration shows a concern with illegal immigrants, not
23 with naturalized citizens. Moreover, unlike a finding or declaration in a bill vetted by
24 Congress, Arizona voters did not have any input into its specific language, which weakens
25 its evidentiary value as to the electorate’s intent. Cf. Arlington Cent. School Dist. Bd. of
26 Educ. v. Murphy, 548 U.S. 291, 312-13 (2006) (Souter, J., dissenting) (arguing that when
27 members of the House and Senate met in conference to work out differences and then

28 ²² Although the admitted exhibits showed that, as anticipated problems, surfaced
regarding Proposition 200's implementation, the response by the State and County
Defendants was consistent and immediate. There is no evidence of a purposeful
misapplication of Proposition 200's requirements or and intent to discriminate in its
application.

1 produced a joint conference report that was subsequently adopted by the Senate and House,
2 it is probative of Congress's intent).

3 The second fact also fails to establish that Arizona voters approved Proposition 200
4 because of its adverse effects upon naturalized citizens. An applicant need only present the
5 certificate of naturalization in person if the applicant chooses not to write down the A-
6 number on the voter registration form. In fact, federal law criminalizes the photocopying of
7 certificates of naturalization without lawful authority. 18 U.S.C. § 1426(h).²³

8 Finally, Plaintiffs argue that the third fact evidences discriminatory intent because
9 "only naturalized citizens are subject to third-party verification." (Doc. 1029, at 4). This is
10 not strictly true because naturalized citizens can use their driver's license or passport to
11 register to vote, and, if they present their naturalization certificate in person, verification is
12 not required.²⁴

13 Importantly, the Help America Vote Act already requires Arizona driver's licenses
14 to be verified, so there was no need to so specify in the text of Proposition 200. See 42
15 U.S.C. § 15483(b)(5). And, indeed, when an applicant provides a license number, the
16

17
18 ²³ 18 U.S.C. § 1426 (h) provides:

19 Whoever, without lawful authority, prints, photographs, makes or executes any print
20 or impression in the likeness of a certificate of arrival, declaration of intention to
21 become a citizen, or certificate of naturalization or citizenship, or any part thereof -
22 Shall be fined under this title or imprisoned not more than 25 years (if the offense was
23 committed to facilitate an act of international terrorism (as defined in section 2331 of
24 this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime
25 (as defined in section 929(a) of this title)), 10 years (in the case of the first or second
26 such offense, if the offense was not committed to facilitate such an act of international
27 terrorism or a drug trafficking crime), or 15 years (in the case of any other offense),
28 or both.

24 For example, the counties often, if not always, attend naturalization ceremonies.
If a naturalized citizen seeks to register after the ceremony and presents his or her
naturalization certificate as proof of citizenship, the document is accepted on its face, and no
further verification with USCIS is required.

1 application is not included on the voter rolls until the license is verified using Arizona's
2 online system. (Trial Tr. 655-56).

3 Of course, alien registration numbers have to be verified with a third party—the
4 federal government is the only entity that possesses such information. In contrast, county
5 recorders can verify Arizona driver's licenses using their own system, which has not been
6 proven to be unreliable.

7 Moreover, applicants who wish to use their certificate of naturalization have more
8 options than applicants who use birth certificates or passports. Applicants who rely on a
9 birth certificate or passport as proof of citizenship do not have the option of merely providing
10 a number, but must incur the cost of photocopying the birth certificate. However, persons
11 with a certificate of naturalization are allowed to prove citizenship by either: (1) presenting
12 the actual certificate of naturalization, or (2) submitting the number on the naturalization
13 certificate, subject to verification.

14 The purpose of Proposition 200 – preventing voter fraud and enhancing voter
15 confidence – would be frustrated if naturalization numbers submitted without documentary
16 proof were not subject to verification.

17 Thus, regardless of the standard of scrutiny, because Gonzalez Plaintiffs have failed
18 to establish intentional discrimination, they have not proved that Proposition 200's proof of
19 citizenship requirement violates the Equal Protection Clause by discriminating against
20 naturalized citizens.

21 **III. First Amendment**

22 Gonzalez Plaintiffs assert that Proposition 200's proof of citizenship requirement, as
23 applied, curtails their speech and associational rights in violation of the First Amendment by
24 making it harder and more expensive to register people to vote.

25 There is no question that voter registration efforts are protected by the First
26 Amendment. See Bernbeck v. Moore, 126 F.3d 1114, 1117 (8th Cir. 1997); Monterey
27 County Democratic Cent. Comm. v. U.S. Postal Service, 812 F.2d 1194, 1196 (9th Cir.

1 1986); Project Vote v. Blackwell, 455 F. Supp. 2d 694, 706 (N.D. Ohio 2006). As the
2 Supreme Court explained in McConnell v. Federal Election Commission:

3 Common sense dictates . . . that a [group]’s efforts to register voters sympathetic to
4 that [group] directly assist the [group]’s candidates for federal office. . . . It is equally
5 clear that federal candidates reap substantial rewards from any efforts that increase
6 the number of like-minded registered voters who actually go to the polls.

540 U.S. 93, 167-68 (2003) (citations omitted).

7 Proposition 200, however, does not regulate voter registration organizations, and
8 Plaintiffs are still able to disseminate their views to the public without restriction.
9 Accordingly, Proposition 200 does not “necessarily reduce[] the quantity of expression.”
10 Buckley v. Valeo, 424 U.S. 1, 19 (1976); see also Meyer v. Grant, 486 U.S. 422-23 (1988).

11 Importantly, none of the Gonzalez Plaintiffs testified that Proposition 200 is a severe
12 burden on their First Amendment rights. (See Trial Tr. 554-55 (Proposition 200 is
13 “somewhat burdensome on CPLC”); id. at 514 (Proposition 200 has “not [had] a huge
14 impact” on Valle)).

15 Because Proposition 200 imposes only a modest burden on Gonzalez Plaintiffs’ First
16 Amendment rights, Defendants’ important regulatory interests, discussed supra, Part I(B),
17 are sufficient to justify the asserted burden.

18 **IV. Section 2 of the Voting Rights Act**

19 Gonzalez and ITCA Plaintiffs allege Proposition 200 violates Section 2 of the Voting
20 Rights Act (“VRA”) by abridging Latino voters’ right to vote. In addition, ITCA Plaintiffs
21 allege that it also abridges the rights of American Indians.

22 Section 2 of the Voting Rights Act provides in relevant part:

23 (a) No voting qualification or prerequisite to voting or standard, practice, or
24 procedure shall be imposed or applied by any State or political subdivision in a
25 manner which results in a denial or abridgement of the right of any citizen of the
26 United States to vote on account of race or color, or in contravention of the guarantees
27 set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this
28 section.

(b) A violation of subsection (a) of this section is established if, based on the
totality of circumstances, it is shown that the political processes leading to nomination
or election in the State or political subdivision are not equally open to participation

1 by members of a class of citizens protected by subsection (a) of this section in that its
2 members have less opportunity than other members of the electorate to participate in
the political process and to elect representatives of their choice. . . .

3 42 U.S.C. § 1973.

4 Thus, to establish a Section 2 claim, a plaintiff must show that its members have less
5 opportunity to: (1) participate in the political process; and (2) elect representatives of their
6 choice. Chisom v. Roemer, 501 U.S. 380, 396 (1991).

7 The challenged voting practice need only result in discrimination on account of race.
8 Farrakhan v. Washington, 338 F.3d 1009, 1015 (9th Cir. 2003); see also Southwest Voter
9 Registration Educ. Project v. Shelley, 344 F.3d 914, 918 (9th Cir. 2003). A plaintiff need
10 not demonstrate discriminatory intent. Farrakhan, 338 F.3d at 1014 (“Congress amended
11 Section 2 of the VRA in 1982 to relieve plaintiffs of the burden of proving discriminatory
12 intent.”); Smith v. Salt River Project Agr. Imp. and Power Dist., 109 F.3d 586, 594 (9th Cir.
13 1997) (“Section 2 requires proof only of a discriminatory result, not of discriminatory
14 intent.”).

15 In analyzing whether Section 2 has been violated, the Court may consider:

16 (1) the extent of any history of official discrimination in the state or political
17 subdivision that touched the right of the members of the minority group to register,
to vote, or otherwise to participate in the democratic process;

18 (2) the extent to which voting in the elections of the state or political
subdivision is racially polarized;

19 (3) the extent to which the state or political subdivision has used unusually
large election districts, majority vote requirements, anti-single shot provisions, or
20 other voting practices or procedures that may enhance the opportunity for
discrimination against the minority group;

21 (4) if there is a candidate slating process, whether the members of the minority
group have been denied access to that process;

22 (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;

23 (6) whether political campaigns have been characterized by overt or subtle
racial appeals;

24 (7) the extent to which members of the minority group have been elected to
public office in the jurisdiction;

25 (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;

26 (9) whether the policy underlying the state or political subdivision’s use of
27 such voting qualification, prerequisite to voting, or standard, practice or procedure is
tenuous.

1 Farrakhan, 338 F.3d at 1015 (quoting S. Rep. No. 97-417, at 28-29 (1982), reprinted in 1982
2 U.S.C.C.A.N. 177, 206-07) (the “Senate Factors”); see also Gingles, 478 U.S. at 36-37.

3 This list is not exclusive, nor do “any particular number of factors [need to] be proved,
4 or [] a majority of them point one way or the other.” Farrakhan, 338 F.3d at 1015 (quoting
5 S. Rep. No. 97-417 at 29). Rather, “courts must consider how the challenged practice
6 ‘interacts with social and historical conditions to cause an inequality in the opportunities
7 enjoyed by black and white voters to elect their preferred representatives.’” Id. (quoting
8 Thornburg v. Gingles, 478 U.S. 30, 47 (1986)). “[A] voting practice or procedure violates
9 the VRA when a plaintiff is able to show, based on the totality of the circumstances, that the
10 challenged voting practice results in discrimination on account of race.” Id. at 1017
11 (emphasis in original omitted).

12 A. Latino Voters

13 i. *Statistical Evidence of Disparate Impact*

14 Taking all of the expert testimony into consideration, Plaintiffs have not demonstrated
15 that Proposition 200 had a statistically significant impact. It is true that the percent of Latino
16 voter registration applicants rejected was 2.8% higher than their representation in total
17 number of registration applicants, 19.8% of those ultimately unable to register to vote were
18 Latino, and the percent of Latino votes that go uncounted is higher than their representation
19 in the number of voters casting ballots.

20 Despite this seeming disparity, even if everyone prevented from registering by
21 Proposition 200 was allowed to register, the percentage of the electorate that was Latino
22 would only increase by 0.1%, and the difference in Latino turnout in the 2006 general
23 election for Secretary of State would have been even less, 0.06%. Further, although the drop
24 in Latino registration rates was 0.92% more than the drop in non-Latino registration rates
25 following Proposition 200, this could have been driven, at least in part, by the lower Latino
26 population growth in 2005-2006.

1 Dr. Zax credibly testified that these differences were not nearly large enough to be
2 statistically significant. (Trial Tr. 800-03). This is especially true in light of the fact that the
3 Passel-Word List, while a good estimate, is merely an estimator of Latino descent. Id. at 801.
4 Thus, when one considers the uncertainty as to the actual number of Latinos, minute
5 differences of less than one-tenth of one percent are subsumed by the uncertainty associated
6 with the original identification of who is and is not Latino. Id.

7 Thus, examining the facts as a whole, Proposition 200 does not have a statistically
8 significant disparate impact on Latino voters.

9 ii. *Senate Factors*

10 Factors not considered because no evidence was presented at trial are: use of voting
11 practices for discrimination; candidate slating process; racial appeals during political
12 campaigns; lack of responsiveness; and tenuousness of the voting practice.

13 a. *History of Discrimination*

14 Plaintiffs expert, Dr. Arturo Rosales, testified to the history of discrimination against
15 Latinos in Arizona from before statehood to the 1970's, and as to one court case in the 1990's.
16 (Trial Tr. 264). Defendants do not contest these facts. Dr. Rosales concluded that
17 discrimination against Latinos in Arizona has historically hindered their ability to fully
18 participate in the political process. (Trial Tr. 363). The Court agrees.

19 From the beginning of Arizona's territorial history, Mexicans were excluded from the
20 political process and discriminated against. (Trial Tr. 353-55). While still a U.S. territory,
21 Arizona legislators adopted constitutional codes that restricted electoral eligibility
22 requirements that allowed only white males and white Mexican males, a vast minority, to
23 vote. Id. at 354.

24 Just prior to 1910, Arizona voters passed a literacy law that explicitly targeted
25 Mexicans and disqualified non-English speakers from voting in state elections. Id. at 353-54.
26 As late as 1960's, these literacy requirements were a precondition to voter registration in
27 Arizona. Id.

1 After Arizona attained statehood in 1912, there was an anti-immigrant campaign
2 characterized by increasingly racist rhetoric and a series of proposals restricting Mexican
3 immigrants' political rights and the right to work in Arizona. Id. at 359-60. The new
4 Arizona constitution restricted non-citizens from working on public projects. Id. at 361-62.
5 And, in 1914, the legislature enacted the "eighty percent law," which stated that eighty
6 percent of the employees in businesses that had five or more employees had to be
7 "native-born citizens of the United States." Id. Employment discrimination continued
8 throughout various sectors of the Arizona economy. Id. at 360-61. As recently as the 1990's
9 in Tempe, Mexican-Americans brought a successful federal lawsuit in which they alleged
10 systematic racial discrimination in employment practices against the City of Tempe. Id.

11 Latinos have also suffered a history of segregation. After World War II, Phoenix
12 segregated Mexican American veterans in separate housing units. Id. at 362. Segregation
13 of Latinos also occurred in schools, housing, theaters, swimming pools, parks, and
14 restaurants. Id. Even after Mexican parents began to challenge school segregation
15 successfully in court, school districts failed to comply with integration rulings. Id. at 357-58.
16 Dr. Rosales credibly testified that segregation persists due to a lack of funding for English
17 Language Learner programs. Id. at 358-59.

18 b. Current Demographic and Socioeconomic Statistics

19 Plaintiffs' expert, Dr. Jorge Chapa, testified to current demographic and
20 socioeconomic statistics in Arizona. In 2006, Arizona's total population was 6,166,318, and
21 its citizen voting age population ("CVAP") was 3,973,912. (Ex. 862, Tables 1, 3).
22 Approximately one-third of Arizona's total population was Latino, and 17% of Arizona's
23 CVAP was Latino. Id. at Tables 1, 9e.

24 Between 2000 and 2006, Arizona's CVAP grew by 17.3%. Id. at Table 9e. Between
25 2000 and 2004, the Latino CVAP grew at a rate of 16.7%, and white, non-Latino CVAP at
26 4.55%. (Trial Tr. 55-65). Between 2005 and 2006, the Latino CVAP grew at a rate of
27 4.62%, and non-Latinos at 5.82%. Id.

1 As of 2006, Latinos had lower levels of education when compared to white
2 non-Latinos. (Ex. 862, Tables 6a, 6b; Trial Tr. 41-42). The average personal income of
3 Latinos was also lower than white, non-Latinos. (Ex. 862, at Table 7 (Latino: \$25,433;
4 White, non-Latino: \$37,843)).

5 In addition, as of 2004, the Latino voter registration rate is 56%, compared to 76% for
6 white, non-Latinos. Id. at Table 8a. The percent of Latino citizens who voted is also lower
7 compared to white, non-Latinos, 47% and 70%, respectively. Id. Dr. Chapa testified that
8 there is a widely held belief that lower socioeconomic status is associated with lower rates
9 of political participation. (Trial Tr. 43-44).

10 There are socioeconomic disparities between Latinos and white, non-Latinos, which
11 hinders Latinos' ability to participate effectively in the political process.

12 c. Racially Polarized Voting

13 Dr. Engstrom analyzed ten racially contested (Latino versus non-Latino) elections
14 held in Arizona since 2002 to determine whether voting is racially polarized. (Trial Tr. 99).
15 "Elections between white and minority candidates are the most probative in determining the
16 existence of legally significant white bloc voting." Old Person v. Cooney, 230 F.3d 1113,
17 1123-24 (9th Cir. 2000); see also Gingles, 478 U.S. at 80-82 (relying exclusively on
18 interracial legislative contests to determine whether a legislative redistricting plan diluted the
19 black vote); United States v. Blaine County, Mont., 363 F.3d 897, 911 (9th Cir. 2004)
20 (contests between white and American Indian candidates are most probative of bloc voting).

21 Dr. Engstrom used three standard methodologies to measure racially polarized voting:
22 ecological regression; homogeneous precinct analysis; and ecological inference. Id. at 100-
23 02; see also United States v. City of Euclid, No. 1:06cv01652, 2008 WL 1775282, at *10,
24 13 (N.D. Ohio Apr. 16, 2008) (approving the use of these methods); Bone Shirt v. Hazeltine,
25 336 F. Supp. 2d 976, 1001-04 (D.S.D. 2004) (same) (collecting cases).

26 He analyzed four races in the 2002 Democratic primary; three in the 2004 general
27 election; and three in the 2006 general election. (Ex. 872, Table). In the 2002 Democratic

1 primary elections, all four races demonstrated racially polarized voting. Id. at 124-25; Ex.
2 872, Table. In these elections, however, at most 10% of the total electorate voted. (Trial Tr.
3 153-54).

4 In 2004 general election, the Latino-preferred candidate won two out of three
5 elections. Id. at 164. The Latino candidate also received a majority or near-majority of the
6 non-Latino votes in two out of three races. (Ex. 872, Table). While Representative Pastor
7 commanded a majority of the non-Latino vote, Representative Grijalva obtained a near-
8 majority: 49.4% of the non-Latino vote according to ecological inference, 48.4% according
9 to ecological regression, and 56.4% according to homogeneous precinct analysis. Id.

10 In 2006 general election, after the implementation of Proposition 200, the Latino
11 preferred candidate again won two out of three elections. (Trial Tr. 164). The Latino
12 candidate again received a majority of the non-Latino votes in two out of three races. (Ex.
13 872, Table). Representative Pastor again commanded, by a large margin, a majority of the
14 non-Latino vote. Id. Receiving increased support amongst non-Latinos, Grijalva also
15 commanded a majority of the non-Latino vote. Id.

16 Dr. Engstrom concluded that Latinos voters prefer Latino candidates. (Trial Tr. 120-
17 21). With some significant exceptions, he also testified that this preference for Latino
18 candidates is not shared by non-Latino voters. Id. at 121. These exceptions include U.S.
19 Representatives Ed Pastor and Raul Grijalva. Id. Dr. Engstrom attempted to explain the
20 reason for these exceptions was that they were Latino incumbents in Latino-majority
21 districts. Id. at 122, 123; see also Gingles, 478 U.S. at 57 (incumbency is a special
22 circumstance that may explain minority electoral success in an otherwise racially polarized
23 electorate).

24 Defendants contend Plaintiffs have not established racially polarized voting because
25 the Latino candidates fared better than the non-Latino candidates in two-thirds of the general
26 elections both before and after Proposition 200. See Bone Shirt, 336 F. Supp. 2d at 1010 (“In
27 order for white bloc voting to be legally significant, [] it ha[s] to be high enough to ‘normally
28

1 defeat the combined strength of minority support plus white crossover votes.” (quoting
2 Gingles, 478 U.S. at 56)) (emphasis added).

3 However, the racially-polarized voting inquiry centers around districts with a non-
4 Latino majority. See Old Person, 230 F.3d at 1122 (holding that the district court erred by
5 failing to draw a distinction between majority-minority and majority-white districts in
6 determining racial polarization). “To do otherwise would permit white bloc voting in a
7 majority-white district to be washed clean by electoral success in neighboring
8 majority-[minority] districts.” Id.

9 Examining Latino candidates’ performance in majority non-Latino districts in the
10 2004 and 2006 general elections, the Latino preferred candidate lost both times. (Ex. 872,
11 Table).

12 The Court finds that to some degree there continues to be to some racially polarized
13 voting in Arizona.

14 d. Latinos Elected to Public Office

15 As of 2007, there were 354 elected Latino officials in Arizona. (Trial Tr. 202-03).

16 ii. *Causation*

17 Although Plaintiffs have demonstrated, at best, limited statistical disparity and some
18 of the Senate Factors, their Section 2 claim must fail because they have failed to demonstrate
19 causation.

20 To establish a Section 2 claim, Plaintiffs must establish the Proposition 200 results in
21 discrimination “on account of race or color.” 42 U.S.C. § 1973. A mere statistical disparity
22 in impact is not sufficient enough. Smith v. Salt River Project Agr. Improvement and Power
23 Dist., 109 F.3d 586, 595 (9th Cir. 1997) (“[A] bare statistical showing of disproportionate
24 impact on a racial minority does not satisfy the § 2 ‘results’ inquiry.”) (collecting cases).
25 “Instead, Section 2 plaintiffs must show a causal connection between the challenged voting
26 practice and a prohibited discriminatory result.” Id. (emphasis added).

1 Under the totality of the circumstances, Plaintiffs have failed to demonstrate that
2 Proposition 200 interacts with social and historical conditions to deny Latino voters equal
3 access to the political process and to elect their preferred representatives. In particular,
4 Plaintiffs have not adduced any evidence that the observed difference in voter registration
5 and voting rates of Latinos is substantially explained by race, as opposed to factors
6 independent of race. See Salt River, 109 F.3d at 591. Not a single expert so testified.

7 Because Plaintiffs have not established that the statistically disproportionate impact
8 suffered by Latinos is on account of race or color, Proposition 200 does not violate Section
9 2 of the Voting Rights Act.

10 B. American Indian Voters

11 i. *Statistical Evidence of Disparate Impact*

12 Plaintiffs did not provide any statistical evidence of a disparate impact on American
13 Indian voters.

14 ii. *Senate Factors*

15 Factors not considered because no evidence was presented at trial are: use of voting
16 practices for discrimination; racially polarized voting; candidate slating process; racial
17 appeals during political campaigns; lack of responsiveness; and tenuousness of the voting
18 practice.

19 a. *History of Discrimination*

20 Lewis testified, and Defendants do not dispute, that American Indians have suffered
21 a history of discrimination in Arizona. And the Court so finds.

22 American Indians were not recognized as citizens until 1924. Indian Citizenship Act
23 of 1924, 8 U.S.C. § 1401. And they did not win the right to vote until 1948. (Trial Tr. 445-
24 46 (citing Harrison v. Laveen, 196 P.2d 456 (Ariz. 1948)).

25 Again, from 1909 until banned by the Voting Rights Act Amendments of 1970,
26 Arizona had a literacy test for voting. (Trial Tr. 354). Arizona also held English-only
27

1 elections until the state became covered by the language minority provisions of the VRA.

2 Id.

3 b. Current Socioeconomic Statistics

4 The Court finds there are substantial socioeconomic disparities between American
5 Indians and the Arizona population as a whole, which hinders American Indians' ability to
6 participate effectively in the political process.

7 As of 2000, 13.9% of Arizonans lived below the poverty line, compared to 38% of the
8 American Indian population. (Trial Tr. 461; Ex. 1197-98). The median household income
9 for all Arizona was \$40,388, compared to \$23,709 for the American Indian population. Id.

10 Among those 18 and over in Arizona, 7.6% had not completed the ninth grade,
11 compared to 30.2% of the American Indian population. Id.

12 Among all households in Arizona in 2000, 7.4% had no vehicle available, while
13 20.3% of American Indian households did not. (Ex. 1198).

14 c. American Indians Elected to Public Office

15 As of 2007, there were 54 elected American Indian officials in Arizona. (Trial Tr.
16 202-03).

17 *iii. Causation*

18 Under the totality of the circumstances, Plaintiffs have failed to demonstrate that
19 Proposition 200 interacts with social and historical conditions to deny American Indian
20 voters equal access to the political process and to elect their preferred representatives.
21 Therefore, they have not established a Section 2 violation.

22 **V. Title VI of the Civil Rights Act of 1964**

23 Gonzalez Plaintiffs assert Proposition 200's proof of citizenship requirement violates
24 Title VI of the Civil Rights Act by discriminating against naturalized citizens. Title VI
25 provides in relevant part:

26 No person in the United States shall, on the ground of race, color, or national
27 origin, be excluded from participation in, be denied the benefits of, or be subjected
28 to discrimination under any program or activity receiving Federal financial assistance.

1 42 U.S.C. § 2000d.

2 To establish a claim under Title VI, a plaintiff must prove that the challenged law
3 intentionally discriminates on the basis of race or national origin. Alexander v. Sandoval,
4 532 U.S. 275, 280 (2001) (it is “beyond dispute” that “§ 601 prohibits only intentional
5 discrimination”); Alexander v. Choate, 469 U.S. 287, 293 (1985) (“Title VI itself directly
6 reach[es] only instances of intentional discrimination.”). There is no private cause-of-action
7 for mere disparate treatment. Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 177-78
8 (2005); Sandoval, 532 U.S. at 285.

9 As discussed supra, Section II, Gonzalez Plaintiffs have failed to demonstrate
10 intentional discrimination. Therefore, they have not established a violation of Title VI.

11
12 Accordingly,

13 **IT IS ORDERED** the Clerk of Court shall enter judgment on behalf of the
14 Defendants.

15 **IT IS FURTHER ORDERED** this case shall be terminated.

16 DATED this 20th day of August, 2008.

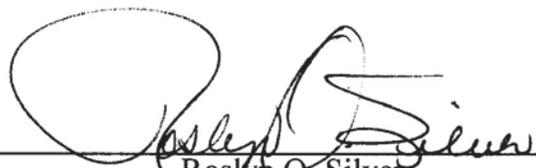
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18 
19 _____
20 Roslyn O. Silver
21 United States District Judge
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EXHIBIT 14

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

LESLIE FELDMAN, et al.,
Plaintiffs,

vs.

Case No. CV-16-01065-PHX-DLR

ARIZONA SECRETARY OF STATE'S
OFFICE, et al.,
Defendants.

-----/

DEPOSITION OF JONATHAN RODDEN, Ph.D.
THURSDAY, AUGUST 11, 2016
PALO ALTO, CALIFORNIA

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REPORTED BY: DEBRA L. ACEVEDO-RAMIREZ, RPR, CSR. 7692
Arizona 50807

FILE NO: AA07D5E

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1 through some of the bugs and the coding was something
2 that Brad did; and so ultimately, I am the one who --
3 who approved of the final code that was used for this
4 analysis and the one that ran the code, and the same
5 thing is true of Nick Eubank, who helped me with the
6 analysis of travel times.

7 It is an -- it requires a little bit of
8 programming to use the Google API, which is the -- it's
9 a way that we can process lots of -- lots of distances
10 and lots of travel times. It was -- it's necessary to
11 break that task up into a lot of smaller jobs, and so
12 Nick helped me with the programming required to
13 calculate these travel times that I oversaw that
14 development of that code and running of the code and
15 understand very well what was done there.

16 Q. Okay. Did they provide you logs of their
17 programming output to review?

18 A. Yes, and that -- that code then became my
19 code, and I developed it a little further, and I'm the
20 one that ran it actually, and it was all turned over to
21 them as part of the discovery process.

22 Q. And how did you know if there were any errors
23 in their work?

24 A. This is all a type of code that I've used
25 myself before. It's just cumbersome to tailor it to a

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1 MS. HARTMAN-TELLEZ: It is the last full
2 paragraph on page 9.

3 MS. CALLAIS: Okay.

4 BY MS. HARTMAN-TELLEZ:

5 Q. And starting with the second sentence.

6 A. Yes.

7 Q. You acknowledge in your report that precincts
8 must be created and ballots printed, so that the
9 residential address of every voter is connected to the
10 right bouquet of local elected offices, correct?

11 A. Correct.

12 MS. CALLAIS: Where are you?

13 BY MS. HARTMAN-TELLEZ:

14 Q. That is page 10. You aren't opining that a
15 voter who moved should not be required to update his
16 voter registration with his new address, are you?

17 A. Throughout the report I don't -- I reframe
18 from opining about how -- what the ideal system of
19 election administration would be. I'm just trying to
20 report some -- the system and the way it works
21 currently.

22 Q. So in the way the system works currently, the
23 offices that a person is entitled to vote for are tied
24 to their residential address; is that correct?

25 A. Yes.

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1 A. That's my understanding.

2 Q. Okay. Starting at the bottom of page 11, you
3 use the American Community Survey 2006 to 2010 five-year
4 estimates for your opinions regarding residential
5 instability; is that correct?

6 A. Yes.

7 Q. That time period 2006 to 2010 covers the
8 height of the housing crisis, doesn't it?

9 A. The year 2008 was an especially -- was an
10 especially big one, so, yes.

11 Q. And the years following 2008, so 2009 and 2010
12 were also part of what we commonly call the housing
13 crisis?

14 A. Yes.

15 Q. Okay. And is it your understanding that
16 Arizona was one of the states that was particularly hard
17 hit during the housing crisis?

18 MS. CALLAIS: Objection. Form.

19 THE WITNESS: I don't know the state by state
20 analysis. I mean, all the western states were among
21 those that were hardest hit, but I don't know where
22 Arizona sits.

23 BY MS. HARTMAN-TELLEZ:

24 Q. And do you know about whether Arizona had a
25 high rate of foreclosures during that time?

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1 A. I assume that it did.

2 Q. Why didn't you use the American Community
3 Survey Datasets from 2010 to 2014?

4 A. I don't believe I had -- I was using the
5 five-year estimates and everything I was doing
6 throughout this section in the report was focusing on
7 2010 decennial as the -- as the kind of anchor and so
8 that was the -- that was the natural five-year ACS to
9 use. Just to explain a little bit how the ACS works.

10 In the past one would have for this kind of
11 data, one would have just used the decennial census
12 because the decennial census no longer has the long
13 forms that includes all these questions about things
14 like length of residency. So, the Census Department has
15 gone to a new approach, which is to collect data from
16 waves of surveys every year and then they combine those
17 into different products -- the three-year, and the
18 five-year ACS, which is just combinations of those
19 one-year surveys. So, one gets them the most accurate
20 and large sample from using the five-year ACS, and I
21 believe this was the most recent five-year ACS that I
22 had access to that contained those variables, and I was
23 focusing on the decennial 2010-year in any case. But,
24 that went into that decision. It didn't occur to me
25 think about other sources for that, maybe use three-year

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1 Q. And this data from the ACS, does it include --
2 is it limited to registered voters?

3 A. No.

4 Q. Okay. Is it limited to citizen voting-age
5 population?

6 A. No.

7 Q. Do you know how many of the residential
8 movers, people who reported moving in the last year, are
9 registered to vote?

10 A. No.

11 Q. Turning to page 13 of your report, you discuss
12 the number of polling places in Maricopa County for the
13 2008, 2012 and 2016 presidential preference elections,
14 correct?

15 A. Yes.

16 Q. You state that a completely different precinct
17 system was used for the presidential preference primary
18 than for the general election, right?

19 A. Yes.

20 Q. Isn't it true in 2008 and 2012 Maricopa County
21 kept its precinct system but consolidated several
22 precincts into fewer polling places?

23 A. I believe that's how it worked.

24 Q. And far fewer voters are eligible to vote in a
25 presidential preference election than in a general

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1 Q. The incumbent was running and so the party
2 didn't hold a primary, right?

3 A. That's right.

4 Q. So, in 2012 approximately one third of the
5 registered voters in Arizona were eligible to vote in
6 the presidential preference election; is that right?

7 A. That's correct.

8 Q. Should a county be required to bear the cost
9 of running the same number of polling places for an
10 election where only one third of registered voters are
11 eligible to vote as for an election when all registered
12 voters can vote?

13 A. That's a question on which I have not
14 developed any opinion.

15 Q. Your report recognizes that Arizonians are
16 increasingly taking advantage of early voting by mail,
17 which reduces the number of voters who vote at the poles
18 on election day; is that correct?

19 A. Yes.

20 Q. Is it your opinion that counties should not
21 consider the cost of conducting an election when making
22 decisions about how many polling place to have and where
23 to locate them?

24 A. My report and my analysis has not addressed
25 that question.

1 mechanism beyond that, I don't have a clear sense of.

2 Q. When you reviewed and analyzed the data, did
3 you control for the fact that democrats and people with
4 no-party preference would not have gone to the poles for
5 the presidential preference elections?

6 A. I don't recall whether I included a
7 partisanship control variable in some of the models.
8 I'm afraid I don't remember.

9 Q. Okay. Starting with the last sentence on
10 page 13, you state that "There was a spike in the number
11 of out-of-precinct ballots cast in 2012, which
12 corresponds to the major change in precincts discussed
13 above as well as the substantial change in polling
14 locations between the 2012 PPE and the 2012 general
15 election."

16 Is that correct?

17 A. On page 13?

18 Q. The last sentence that begins on page 13 and
19 carries over to page 14.

20 A. Yes.

21 Q. "The substantial change in precincts discussed
22 above refers to the change from 1,142 to 724 precincts
23 in Maricopa County that followed redistricting."

24 Correct?

25 A. Yes.

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1 Q. Is it your opinion that Maricopa County should
2 not have changed precincts in connection with
3 redistricting?

4 A. No, I have no opinion on that.

5 Q. When comparing elections shouldn't you compare
6 presidential elections to a presidential election and a
7 midterm election to a midterm election?

8 A. It depends on the question being asked.

9 Q. If the question is impacted by turnout should
10 you compare like elections?

11 A. If I wanted to understand factors that
12 contribute to turnout, then ideally I would want to,
13 yes, as you described, compare midterm to midterm or
14 presidential to presidential.

15 Q. And turnout is generally higher in
16 presidential election years?

17 A. Yes.

18 Q. And the voters who vote in midterm elections
19 are generally older and more informed about the process;
20 is that correct?

21 A. That is the understanding that emerges from
22 the literature.

23 MS. HARTMAN-TELLEZ: Can you mark this.

24 (Whereupon, Exhibit 4 was marked for
25 identification.)

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1 not sure that changes in any way my concerns.

2 Q. Okay. Turning to page 17 of your report, this
3 is -- on this page appears table 1 in which you provide
4 counts of what you call absentee voting. It is in fact
5 voting by early voting by mail, but I'm comfortable
6 using the term "absentee."

7 MS. CALLAIS: It is not.

8 BY MS. HARTMAN-TELLEZ:

9 Q. We'll use absentee because you used it here.
10 What is your source for this information?

11 A. The Election Assistance Commission Reports,
12 the same ones we have been looking at earlier.

13 Q. Other parts of the report because we only had
14 an excerpt; is that correct?

15 A. Yes.

16 Q. Do the numbers of registered voters listed in
17 the first row include active and inactive registered
18 voters?

19 A. I don't recall how the EAC addresses these
20 questions. I would have to guess. I don't remember.

21 Q. Going back to what was marked as Exhibit 3,
22 just the state of Arizona Registration Report. The
23 first page is the 2008 General Election Registration
24 Report For Active Voters. Do you see the number on the
25 bottom right -- almost the bottom right -- the total

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1 registration number?

2 A. Yes. I'm trying to understand why there are
3 three lines under totals.

4 Q. The one is for the general election from 2006,
5 one is for the primary election from 2008 and the last
6 one is from the general 2008.

7 A. These numbers agree. 2,987,451.

8 Q. So those are only active voters; is that
9 correct?

10 A. I don't know.

11 Q. Do you see where it says "active" at the
12 center near the top of the page?

13 A. Oh, I do now, yes.

14 Q. If you turn to the next page. This is also
15 the 2008 report, but that is for inactive voters?

16 A. Yes, I see that now.

17 Q. You see there are 453,690 inactive voters in
18 2008?

19 A. Yes.

20 Q. But, that number was not included in the
21 number that you reported for registered voters for 2008
22 in table 1?

23 A. That's correct.

24 Q. And if you will turn to the third page of
25 Exhibit 3, this is the 2010 active voter registration

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1 for the general election. Do you see the total is
2 3,146,418?

3 A. Yes.

4 Q. And the number you reported as registered
5 voters was 3,502,743?

6 A. Yes. It appears that one must include the
7 inactive.

8 Q. And is that the number that you reported for
9 registered voters for 2012 -- does that include active
10 and inactive?

11 A. It appears to be -- yes, including both. So
12 it looks like in the presidential years, there is
13 something about the way the EAC reporting worked that it
14 included active and inactive in these presidential
15 years.

16 Q. But, 2008 was a presidential year; wasn't it?

17 A. Was that one that was only active?

18 Q. Correct.

19 A. Yes. I don't know what the -- it's possible
20 that when I was transferring data from the -- from the
21 individual reports, I made a mistake in looking at the
22 lines I was moving over to the table. That would seem
23 the most likely explanation for using a combination of
24 active and inactive in one year. But, it's also
25 possible that the problem is there in the EAC reports.

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1 I would have to go and check.

2 Q. Would you agree the data reported by the
3 Arizona Secretary of State in its official registration
4 reports is likely more accurate than the EAC if they
5 differ?

6 A. Well, the EAC is merely reporting the data
7 that was sent over by the state of Arizona, but I would
8 rather go to the source, yes.

9 Q. Okay. Inactive voters are eligible to vote;
10 are they not?

11 A. Yes.

12 Q. In table 1, other than this one number that we
13 have agreed is in error, these are the sort of the raw
14 numbers. They're not percentages or anything, correct?

15 A. Correct.

16 Q. So the number of absentee ballots sent out
17 over time has increased, correct?

18 A. Yes.

19 Q. And if you were to compare presidential
20 elections and midterm elections, presidential to
21 presidential, midterm to midterm, the number of absentee
22 ballots returned has also increased?

23 A. We are referring to ballots submitted.

24 Q. Correct.

25 A. Yes.

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1 I would have to go and check.

2 Q. Would you agree the data reported by the
3 Arizona Secretary of State in its official registration
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21 presidential, midterm to midterm, the number of absentee
22 ballots returned has also increased?

23 A. We are referring to ballots submitted.

24 Q. Correct.

25 A. Yes.

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1 percentage who returned an absentee ballot as proportion
2 of registered voters has increased?

3 MS. CALLAIS: Objection. Form.

4 THE WITNESS: I recall reporting in the report
5 something about that, and so I will have to take a
6 moment to recall what I reported. I'm afraid I won't be
7 able to recall beyond anything that's on the report
8 right now.

9 This early voting by mail was not a focus of
10 my report, and it's not something on which my memory is
11 very strong. So I report absentee ballots just kind of
12 in general 2012, the percentage of registered voters to
13 whom absentee ballots were sent, and I also go on to
14 report that the share of those ballots returned has been
15 decreasing, so I was looking at the share of ballots
16 returned and dividing it by the number of ballots sent
17 out. So I was not reporting the number of ballots
18 submitted divided by registered voters. We can
19 certainly calculate that now if it's useful.

20 BY MS. HARTMAN-TELLEZ:

21 Q. We don't need to. Do you know what the
22 primary reasons for rejection of early ballots were in
23 2014?

24 A. According to table 1, assuming that it is
25 correct, it was a lack of voter signature followed

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1 closely by missed deadlines.

2 Q. The decision to send in an absentee ballot is
3 made by whom?

4 A. The voter.

5 Q. And what about when to send it?

6 A. The voter.

7 Q. And the decision to follow the instructions
8 and sign the ballot is made by whom?

9 A. The voter.

10 MS. HARTMAN-TELLEZ: You want to take a break?

11 COURT REPORTER: Yes.

12 (Whereupon, a break was taken from 11:30 a.m.
13 to 11:45 a.m.)

14 BY MS. HARTMAN-TELLEZ:

15 Q. We are back on the record.

16 Do minorities comprise the same proportion of
17 those who turnout to vote in presidential and midterm
18 elections?

19 A. So minorities as a share of election day
20 voters or overall in ballots cast?

21 Q. This is a general question.

22 A. I'm trying to make sure I understand. In
23 presidential versus midterms, the proportion of voters
24 who are minorities is lower in midterm years.

25 Q. Do those with lower income vote at the same

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23 presidential versus midterms, the proportion of voters
24 who are minorities is lower in midterm years.

25 Q. Do those with lower income vote at the same

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1 rate between presidential and midterm elections?

2 A. No. The general understanding from the
3 literature is that -- I'm sorry -- maybe the answer is
4 that it is a wealthier electorate in the midterm and a
5 lower -- you know, the median or median income is going
6 to be lower in the presidential year.

7 Q. What about younger voters, are they more
8 likely to vote in presidential elections as opposed to
9 midterm elections?

10 A. Yes. The midterm electorate also tends to be
11 a bit older.

12 Q. And what about educational attainment between
13 presidential and midterm?

14 A. And also a more educated electorate in the
15 midterm usually.

16 Q. And you say this is from the literature that
17 you had this information?

18 A. Yes, and so in Arizona, specifically, I did
19 not analyze education and income.

20 Q. And who are the leaders in the research who
21 has created this literature on which you rely?

22 A. It's hard to know where to begin. Anyone who
23 uses something like the National Election Study or the
24 Cooperative Congressional Study and looks at multiple
25 elections will see this pattern. So, the person who

1 rate between presidential and midterm elections?

2 A. No. The general understanding from the
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4 that it is a wealthier electorate in the midterm and a
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23 uses something like the National Election Study or the
24 Cooperative Congressional Study and looks at multiple
25 elections will see this pattern. So, the person who

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1 crafted the congressional -- Cooperative Congressional
2 Election Study is Steven Salbar at Harvard. I think
3 there is lots of his papers where one would see that
4 pattern. Simon Jackman, my colleague at Stanford who
5 also has done a lot of work using the American National
6 Election Study, I'm sure some of papers we would see
7 those, but it's can quite a common observation.

8 Q. And these patterns that we just discussed, do
9 you see similar patterns between primary elections and
10 general elections?

11 MS. CALLAIS: Objection. Form.

12 THE WITNESS: So, yes, primary electorates
13 tend to be also fewer minorities, more educated and
14 higher information type of general.

15 BY MS. HARTMAN-TELLEZ:

16 Q. Turning back to Exhibit 1, your report, pages
17 20 through 23, which include figures 1, 2 and 3. You
18 used data from the United States Census Bureau's Current
19 Population Survey. Is that correct?

20 A. Yes.

21 Q. Okay. The CPS is just a survey, right?

22 A. That's right.

23 Q. How reliable are the statistics that you
24 report for each state individually in? -- I mean, some
25 of it is in the text but also in figures 1, 2 and 3?

1 it's most likely, but where understanding the
2 uncertainty associated with that sampling process
3 places the true value somewhere in that band.

4 Q. Are you aware of the margins of error
5 associated with the percentages that you reported in
6 figures 1, 2 and 3 of your report?

7 A. I don't have that in front of me.

8 Q. At the time that you created your report, were
9 you aware of the margins of error?

10 A. Yes. They were in the tables that I
11 downloaded.

12 Q. Did you take them into account in any way in
13 making these figures?

14 A. No. I just was making a visualization just
15 showing the ranking of the states. I wasn't making a --
16 I wasn't conducting a statistical analysis in which I
17 was trying to convince the reader that -- that, you
18 know, the race for, for a particular state was
19 significantly different than that for another state. If
20 I was, certainly those margins of error would have
21 become crucial and discussed them extensively. This was
22 just really giving the court a visualization of the raw
23 data from the survey.

24 Q. So if you did take into account the margins of
25 error, is it possible that the Arizona could move up or

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1 BY MS. HARTMAN-TELLEZ:

2 Q. If an Arizona voter receives an early ballot
3 but decides to vote at the poles, that person has to
4 vote by provisional ballot; doesn't they?

5 A. That's my understanding.

6 Q. If a person is on the early voter list and
7 moves but does not update his address on his voter
8 registration, he won't receive an early ballot, will he?

9 A. Can you repeat that?

10 Q. A person who was on the permanent early voter
11 list moves and does not update his address with the
12 elections officials won't receive an early ballot after
13 the move, will he?

14 A. I would think not, right. They have to report
15 that move.

16 Q. And it's your understanding that early ballots
17 and other election mail are not forwarded?

18 A. I suppose they could be if one left -- I'm
19 speculating. I imagine if you left with the post office
20 an address forwarding instruction, that they would like
21 all other mail, that would be forwarded.

22 Q. Do you have any reason to disagree with me
23 that election -- official election mail is not
24 forwardable even if you have a forwarding order?

25 A. I'm learning things here from you. So it's

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1 not -- it's not forwardable. Okay.

2 Q. So you don't have a reason to disagree with me
3 on that?

4 A. I will accept that, yes.

5 Q. So, but that person who has -- who is on the
6 permanent early voter list and has moved, in the
7 election officials records would show that he was mailed
8 an early ballot?

9 A. This is getting inside baseball administration
10 detail, but I'm fascinated by it.

11 Q. But, is it your understanding that people who
12 are on the permanent early voting list are mailed
13 ballots for every election in which they are entitled to
14 vote?

15 A. Yes.

16 Q. And that the elections officials keep some
17 record of whether they have mailed an early ballot to a
18 voter?

19 A. Yes.

20 Q. So someone who has moved and hasn't reported
21 their move doesn't receive their early ballot because it
22 can't be forwarded?

23 A. Right.

24 Q. But the elections officials records would show
25 they mailed the ballot. Does that sound right?

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1 A. Yes.

2 Q. Rental property is generally higher density
3 than single family owned property; isn't it?

4 A. Yes.

5 Q. So figure 10 essentially shows there are more
6 rejected out-of-precinct ballots where there are more
7 people, correct?

8 A. No. The pop -- a map of population density in
9 Maricopa County does not look all that similar to the
10 heat map of -- the heat map of out-of-precinct voting.
11 If your question was whether the black dots were
12 corresponding to rental housing, necessarily like what
13 is the correlation between rental housing and population
14 density. I'm sure the correlation is positive. But,
15 this is really meant as just kind of a primer, a starter
16 for someone who is new to this question to understand
17 where -- where is everybody located. I mean, I
18 wouldn't -- I would not bank on this as an analysis of
19 the location of renters and whether there is a
20 correlation between renting and voting out-of-precinct.
21 That would rely on the qualitative analysis I do a
22 couple pages later. This kind of shows people where the
23 rental housing is located and where the out-of-precinct
24 voting is located.

25 Q. And moving to the third page, this heat map

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1 A. Yes.

2 Q. Upon my visual inspection, it looks like these
3 are either pretty much evenly Hispanic and white or
4 especially with the I-17 corridor, perhaps slightly more
5 white than Hispanic. Do you agree with me on that?

6 MS. CALLAIS: Objection. Form.

7 THE WITNESS: On the I-17 corridor it's the --
8 once get north of that -- the orange area above
9 Glendale, I would agree with that characterization.
10 When we get down to the other area you mentioned, it
11 depends on what part of that area we're looking at. The
12 southern part is predominantly Hispanic and as we go
13 north, it's less Hispanic.

14 BY MS. HARTMAN-TELLEZ:

15 Q. At the yellow and orange hot spot that appears
16 around the word "Tempe" on the map, that similar is
17 either evenly Hispanic and white or more white than
18 Hispanic.

19 Do you agree?

20 A. It gets really hard to make those judgments
21 from looking at the maps. One would need to make
22 calculations. As we move from east to west, we have a
23 couple of areas of higher density of Hispanics. The
24 overall Tempe area is more divided. I would agree with
25 that characterization.

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1 beginning that we would be happy if you have a question
2 about anything in Dr. Rodden's documents, we would be
3 happy to point you to.

4 MS. HARTMAN-TELLEZ: I would appreciate that.

5 BY MS. HARTMAN-TELLEZ:

6 Q. All right. In the last paragraph on page 33,
7 the paragraph that begins on page 33 and goes over to
8 page to 34, you state that similar regression models
9 have also been estimated with race and ethnicity as the
10 independent variable.

11 Correct?

12 A. Yes.

13 Q. Did you conduct those regression models?

14 A. Yes.

15 Q. And did you provide the code as part of your
16 underlying materials?

17 A. I provided the data. Whether there is a file
18 that has just the very simple code for the regression, I
19 would have to check. I hope so, but it's possible that
20 I ran this analysis kind of interactively on the screen
21 and reported the results and I have the results and I
22 have the data. I don't recall whether there is a file
23 that has the code for that particular regression. I
24 hope there is, but it's something I can follow up on.

25 Q. We will put that on the list.

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1 square and number of observations and so forth. That's
2 something I would be very happy to do, but I remember
3 that co-efficient being sufficiently similar, it didn't
4 seem worth reporting it separately.

5 Q. So these regression models that you made, do
6 they account for the population in each of the census
7 block groups?

8 A. Yes. So this is a block group level analysis
9 where to measure the prevalence of out-of-precinct
10 voting, I divide the number of out-of-precinct
11 provisional ballots by the number of registered voters
12 in the block group, and then on the -- for the other
13 variables, those are also proportions, so I'm not using
14 raw data. I'm using proportions for each, and so when I
15 run the model in that way, this produces sensible
16 results that are not affected by asymmetries in the size
17 of block groups.

18 Q. If a census block group does not have any
19 Hispanic residents and/or any out-of-precinct votes,
20 your model drops that census block group, right?

21 A. No. It enters as a zero.

22 Q. On page 33 at the end of the only full
23 paragraph on that page, you write that residential turn
24 in neighborhoods with frequent moves between rentals is
25 clearly an important part of the story of

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1 Department in 2000. The Census Department tells us the
2 probability of belonging to a certain race associated
3 with each surname. So that's one of the ingredients and
4 then the low level information on race in the census
5 blocks is another bit of information and we're combining
6 those with the data from the voter file. We're taking
7 those surnames and those locations, replacing people
8 within the geographic units and estimating their race
9 from that information.

10 Q. At other times, so not associated with your
11 creation of the report in this case, have you used other
12 methods to estimate or determine the race of voters?

13 MS. CALLAIS: Objection. Form.

14 THE WITNESS: To other methods to estimate
15 race...

16 BY MS. HARTMAN-TELLEZ:

17 Q. To assign race to voters, which is what you
18 have essentially done here, right?

19 A. In my Virginia report, I used an application
20 of the same technique that was conducted by a third
21 party, which was a data analytics firms that has its own
22 approach. It essentially does the same thing.

23 Q. How is it different from what you did here?

24 A. They have a couple of additional bells and
25 whistles that I did not have. One of them is that they

1 use first names in addition to surnames. They actually
2 have some proprietary list of -- I don't know where they
3 get it from but of first names that they believe helps
4 them improve their estimates. What else do they have?
5 They also had something that captured the year of birth
6 for an individual, so that they -- they slightly alter
7 the probability. For instance, with those first names
8 if one is named Clarence in a certain year, that's
9 different than Clarence in a different year.

10 I have a daughter named Evelyn, who in a
11 previous would have, I believe, a higher African
12 probability, but in this generation it's become a
13 prevalent name names for whites, so they captured that,
14 and I don't have that in my -- in my analysis. But,
15 what I've -- I believe I've learned is that those things
16 are very minor, and that we can do very well with the
17 technique that has now been made available for everyone
18 to use with this software that I've described. It's a
19 very recent development.

20 In fact, that software had not been developed
21 when I was doing the Virginia case. That's how recent
22 that is. I have the ability do this now myself. I'd
23 much rather do things myself than outsource them. So
24 that's how that decision was made.

25 Q. Okay. Turning to page 37 and 38 of your

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1 A. Unfortunately not. No, I did not have the
2 opportunity.

3 MS. HARTMAN-TELLEZ: Okay. We can take a
4 break now.

5 (Whereupon, a break was taken from 2:43 p.m.
6 to 2:52 p.m.)

7 BY MS. HARTMAN-TELLEZ:

8 Q. We're back on the record. Turning to page 55
9 of your report. In this paragraph at the top, so I
10 guess it is the paragraph that starts on page 54. You
11 discuss the casting of out-of-precinct ballots in
12 relation to the distance to the voters correct polling
13 place; is that right?

14 A. Yes.

15 Q. Okay. How did you decide that more than
16 1.4 miles was far while less than .4 miles was close?

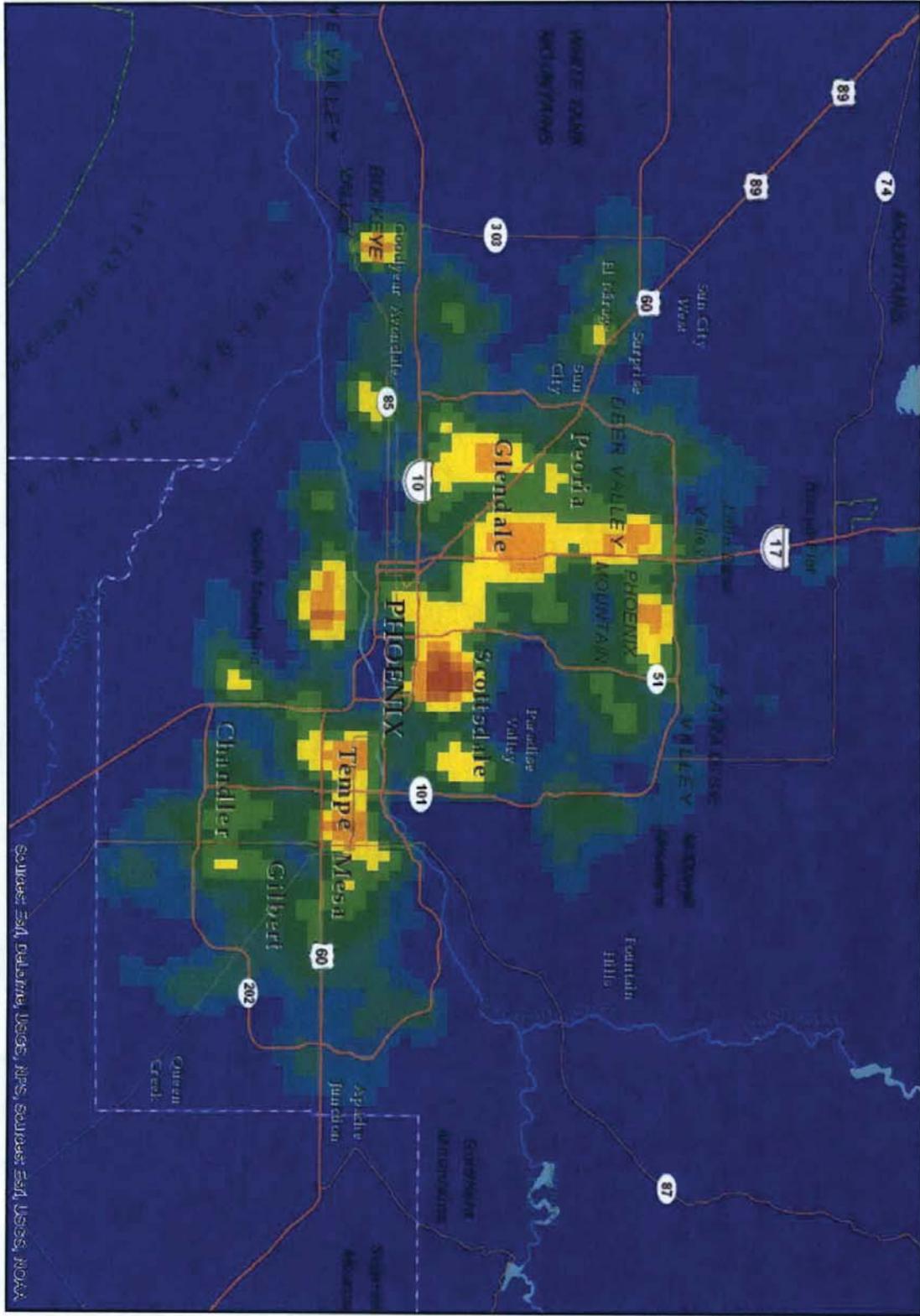
17 A. I believe those were the 25th and
18 75th percentile values.

19 Q. Okay. Would that close-far determination
20 change depending on whether the area is more or less
21 developed?

22 A. I'm not sure I understand the question.

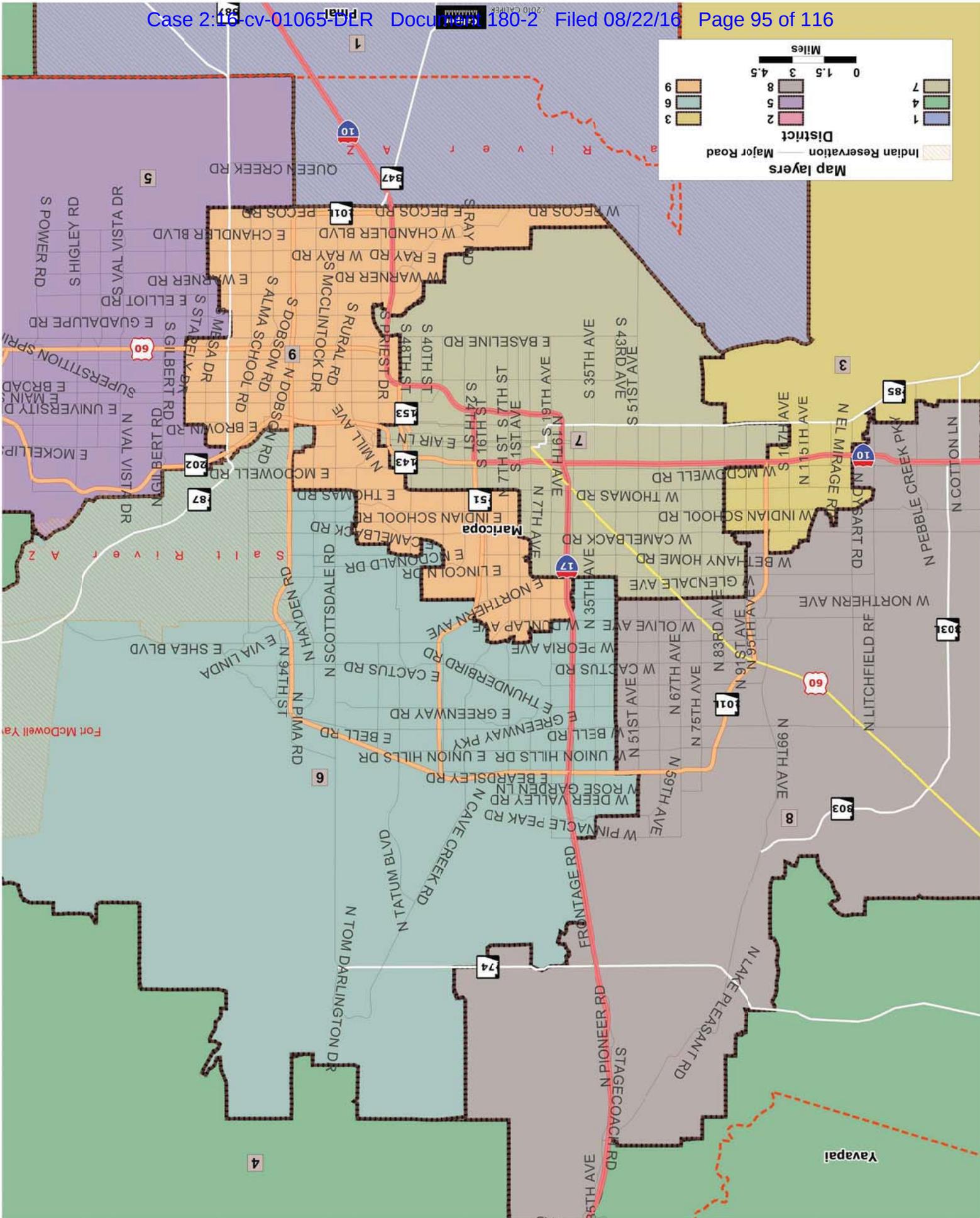
23 Q. Let me ask you a different question. This
24 close-far distinction, did you control for population
25 density in making those distinctions?

EXHIBIT 15

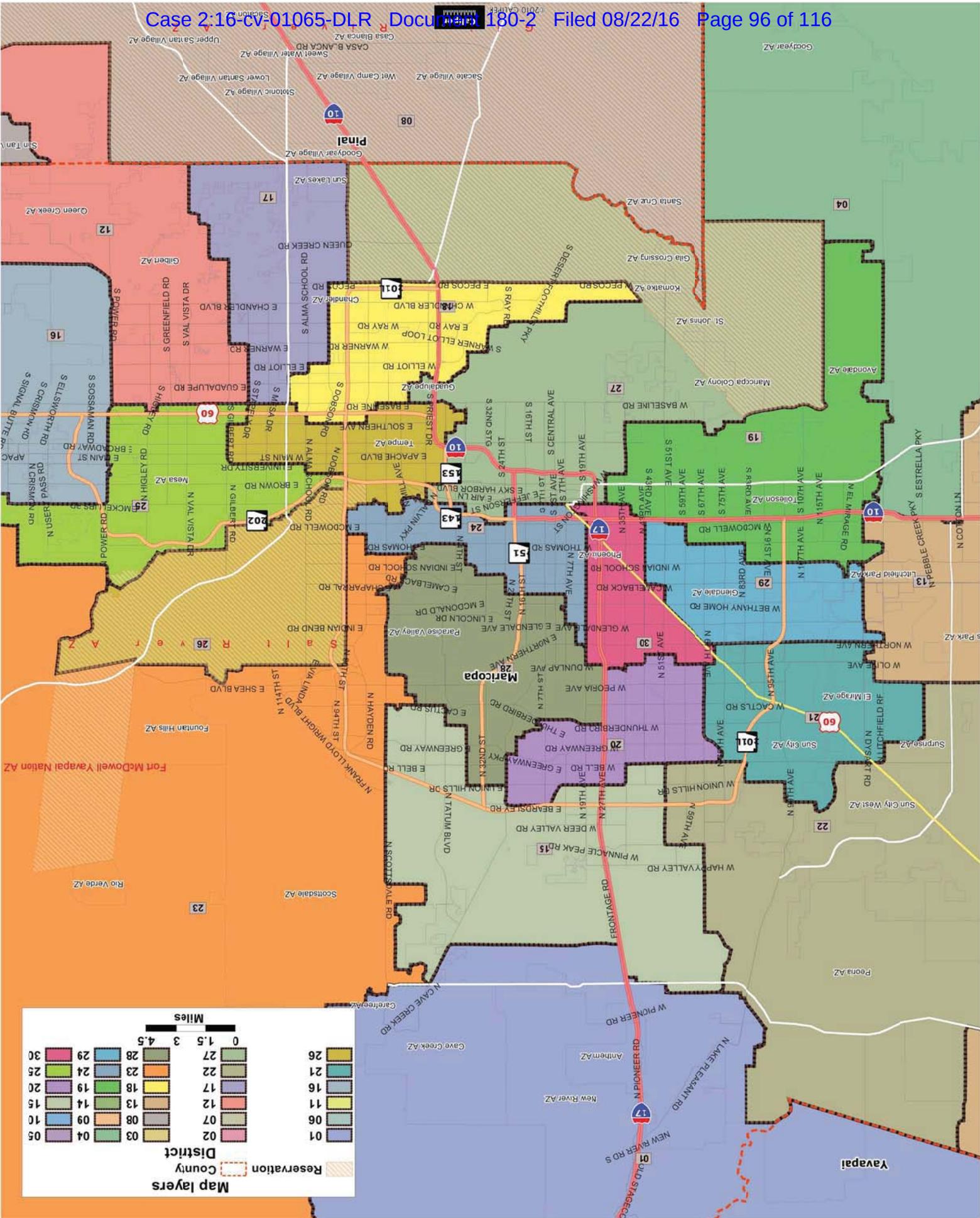


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8-11-16
Rodden



Final Congressional Districts - Approved 1/17/12 - Maricopa County



Final Legislative Districts - Approved 1/17/12 - Maricopa County

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Alabama

District	Name	Party	Room	Phone	Committee Assignment
1	Byrne, Bradley	R	119 CHOB	202-225-4931	Armed Services Education and the Workforce Rules
2	Roby, Martha	R	442 CHOB	202-225-2901	Appropriations Select Committee on Benghazi
3	Rogers, Mike	R	324 CHOB	202-225-3261	Agriculture Armed Services Homeland Security
4	Aderholt, Robert	R	235 CHOB	202-225-4876	Appropriations
5	Brooks, Mo	R	1230 LHOB	202-225-4801	Armed Services Foreign Affairs Science, Space, and Technology
6	Palmer, Gary	R	206 CHOB	202-225-4921	Oversight and Government Science, Space, and Technology the Budget
7	Sewell, Terri A.	D	1133 LHOB	202-225-2665	Financial Services Intelligence (Permanent)

Alaska

District	Name	Party	Room	Phone	Committee Assignment
At Large	Young, Don	R	2314 RHOB	202-225-5765	Natural Resources Transportation

American Samoa

District	Name	Party	Room	Phone	Committee Assignment
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Arizona

District	Name	Party	Room	Phone	Committee Assignment
1	Kirkpatrick, Ann	D	201 CHOB	202-225-3361	Agriculture Transportation
2	McSally, Martha	R	1029 LHOB	202-225-2542	Armed Services Homeland Security
3	Grijalva, Raul	D	1511 LHOB	202-225-2435	Education and the Workforce Natural Resources
4	Gosar, Paul A.	R	504 CHOB	202-225-2315	Natural Resources Oversight and Government
5	Salmon, Matt	R	2349 RHOB	202-225-2635	Education and the Workforce Foreign Affairs
6	Schweikert, David	R	409 CHOB	202-225-2190	Financial Services
7	Gallego, Ruben	D	1218 LHOB	202-225-4065	Armed Services Natural Resources
8	Franks, Trent	R	2435 RHOB	202-225-4576	Armed Services the Judiciary
9	Sinema, Kyrsten	D	1530 LHOB	202-225-9888	Financial Services

Arkansas

District	Name	Party	Room	Phone	Committee Assignment
1	Crawford, Rick	R	1711 LHOB	202-225-4076	Agriculture Transportation
2	Hill, French	R	1229 LHOB	202-225-2506	Financial Services
3	Womack, Steve	R	1119 LHOB	202-225-4301	Appropriations the Budget
4	Westerman, Bruce	R	130 CHOB	202-225-3772	Natural Resources Science, Space, and Technology the Budget

California

District	Name	Party	Room	Phone	Committee Assignment
1	LaMalfa, Doug	R	322 CHOB	202-225-3076	Agriculture Natural Resources
2	Huffman, Jared	D	1630 LHOB	202-225-5161	Natural Resources Transportation
3	Garamendi, John	D	2438 RHOB	202-225-1880	Armed Services Transportation
4	McClintock, Tom	R	2331 RHOB	202-225-2511	Natural Resources the Budget
5	Thompson, Mike	D	231 CHOB	202-225-3311	Ways and Means
6	Matsui, Doris O.	D	2311 RHOB	202-225-7163	Energy and Commerce
7	Bera, Ami	D	1535 LHOB	202-225-5716	Foreign Affairs Science, Space, and Technology
8	Cook, Paul	R	1222 LHOB	202-225-5861	

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<i>Ed Ableser</i>	26	D	<i>Resigned on 9/30/2015</i>			
Sylvia Allen	6	R	Send Email	303	926-5409	417-3105
President Pro Tempore						
Nancy Barto	15	R	Send Email	307	926-5766	417-3261
Carlyle Begay	7	R	Send Email	308	926-5862	417-3099
Andy Biggs	12	R	Send Email	205	926-4371	417-3248
President						
David Bradley	10	D	Send Email	315	926-5262	926-3429
Judy Burges	22	R	Send Email	302	926-5861	417-3104
Olivia Cajero Bedford	3	D	Send Email	314	926-5835	417-3262
Lupe Contreras	19	D	Send Email	305	926-5284	417-3106
Minority Whip						
Andrea Dalessandro	2	D	Send Email	312	926-5342	417-3169
Jeff Dial	18	R	Send Email	306	926-5550	417-3120
Susan Donahue	5	R	Send Email	304	926-4138	417-3067
Adam Driiggs	28	R	Send Email	309	926-3016	417-3007
Steve Farley	9	D	Send Email	213	926-3022	417-3128
Assistant Minority Leader						
David C. Farnsworth	16	R	Send Email	304	926-3020	417-3119
Gail Griffin	14	R	Send Email	212	926-5895	417-3025
Majority Whip						
Katie Hobbs	24	D	Send Email	213	926-5325	417-3149
Minority Leader						
John Kavanagh	23	R	Send Email	303A	926-5170	417-3108
Debbie Lesko	21	R	Send Email	302	926-5413	417-3109
Barbara McGuire	8	D	Send Email	314	926-5836	417-3131
Robert Meza	30	D	Send Email	311	926-3425	417-3114
Catherine Miranda	27	D	Send Email	311	926-4893	417-3116
Lynne Pancrazi	4	D	Send Email	315	926-3004	417-3179
Steve Pierce	1	R	Send Email	301	926-5584	417-3101
Martin Quezada	29	D	Send Email	313	926-5911	417-3113
Minority Whip						
Andrew C. Sherwood	26	D	Send Email	313	926-3028	417-3038
Don Shooter	13	R	Send Email	200	926-4139	417-3024
Steve Smith	11	R	Send Email	303	926-5685	417-3167
<i>Kelli Ward</i>	5	R	<i>Resigned on 12/15/2015</i>			
Bob Worsley	25	R	Send Email	310	926-5760	417-3091

Steve Yarbrough	17	R	Send Email	212	926-5863	417-3121
Majority Leader						
Kimberly Yee	20	R	Send Email	300	926-3024	417-3110
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J. Christopher Ackerley	2	R	Send Email	127	926-3077	417-3277
John M. Allen	15	R	Send Email	131	926-4916	417-3150
Lela Alston	24	D	Send Email	330	926-5829	417-3115
Richard C. Andrade	29	D	Send Email	125	926-3130	417-3292
Brenda Barton	6	R	Send Email	114	926-4129	417-3010
Jennifer D. Benally	7	D	Send Email	121	926-3079	417-3278
Reginald Bolding Jr.	27	D	Send Email	116	926-3132	417-3274
Sonny Borrelli	5	R	Send Email	113	926-5051	417-3153
Russell "Rusty" Bowers	25	R	Send Email	309	926-3128	417-3290
Paul Boyer	20	R	Send Email	129	926-4173	417-3153
Kate Brophy McGee	28	R	Send Email	304	926-4486	417-3170
Noel W. Campbell	1	R	Send Email	345	926-3124	417-3287
Mark A. Cardenas	19	D	Send Email	122	926-3014	417-3048
Heather Carter	15	R	Send Email	303	926-5503	417-3107
Ken Clark	24	D	Send Email	115	926-3108	417-3285
Regina Cobb	5	R	Send Email	335	926-3126	417-3289
Doug Coleman	16	R	Send Email	306	926-3160	417-3151
Diego Espinoza	19	D	Send Email	118	926-3134	417-3273
Karen Fann	1	R	Send Email	316	926-5874	417-3001
Eddie Farnsworth	12	R	Send Email	224	926-5735	417-3122
Charlene R. Fernandez	4	D	Send Email	126	926-3098	417-3281
Mark Finchem	11	R	Send Email	337	926-3122	417-3286
Randall Friese	9	D	Send Email	325	926-3138	417-3272
Rosanna Gabaldón	2	D	Send Email	117	926-3424	417-3129
Sally Ann Gonzales	3	D	Send Email	331	926-3278	417-3127
David M. Gowan Sr.	14	R	Send Email	223	926-3312	417-3130
Speaker of the House						
Rick Gray	21	R	Send Email	224	926-5993	417-3225
Albert Hale	7	D	Send Email	323	926-4323	417-3160
Anthony Kern	20	R	Send Email	341	926-3102	417-3282
Matthew A. Kopec	9	D	Send Email	324	926-5683	417-3147
Jonathan R. Larkin	30	D	Send Email	318	926-5058	417-3015
Jay Lawrence	23	R	Send Email	339	926-3095	417-3280
Vince Leach	11	R	Send Email	342	926-3106	417-3284

David Livingston	22	R	Send Email	207	926-4178	417-3154
Majority Whip						
Phil Lovas	22	R	Send Email	110	926-3297	417-3004
Stefanie Mach	10	D	Send Email	329	926-3398	417-3126
Debbie McCune Davis	30	D	Send Email	333	926-4485	417-3014
Juan Jose Mendez	26	D	Send Email	120	926-4124	417-3017
Javan D. "J.D." Mesnard	17	R	Send Email	308	926-4481	417-3152
Eric Meyer	28	D	Send Email	320	926-3037	417-3111
Minority Leader						
Darin Mitchell	13	R	Send Email	313	926-5894	417-3012
Steve Montenegro	13	R	Send Email	208	926-5955	417-3168
Majority Leader						
Jill Norgaard	18	R	Send Email	128	926-3140	417-3265
Justin Olson	25	R	Send Email	204	926-5288	417-3161
Lisa A. Otondo	4	D	Send Email	123	926-3002	417-3124
Warren H. Petersen	12	R	Send Email	312	926-4136	417-3222
Celeste Plumlee	26	D	Send Email	119	926-4334	417-3009
Franklin M. Pratt	8	R	Send Email	226	926-5761	417-3023
Rebecca Rios	27	D	Send Email	322	926-3073	417-3288
Minority Whip						
Tony Rivero	21	R	Send Email	344	926-3104	417-3283
Bob Robson	18	R	Send Email	222	926-5549	417-3157
Speaker Pro Tempore						
Macario Saldate	3	D	Send Email	332	926-4171	417-3162
<i>Andrew C. Sherwood</i>	<i>26</i>	<i>D</i>	<i>Fill the vacancy in the Senate on 11/5/2015</i>			
Thomas "T.J." Shope	8	R	Send Email	112	926-3012	417-3123
<i>Victoria Steele</i>	<i>9</i>	<i>D</i>	<i>Resigned on 1/11/2016</i>			
David W. Stevens	14	R	Send Email	205	926-4321	417-3146
Bob Thorpe	6	R	Send Email	130	926-5219	417-3118
Kelly Townsend	16	R	Send Email	302	926-4467	417-3018
Michelle B. Ugenti-Rita	23	R	Send Email	111	926-4480	417-3155
Ceci Velasquez	29	D	Send Email	124	926-3144	417-3245
Jeff Weninger	17	R	Send Email	338	926-3092	417-3279
Bruce Wheeler	10	D	Send Email	321	926-3300	417-3028
Assistant Minority Leader						

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EXHIBIT 17

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1 Dr. Berman's report. If you like, we can go over
2 them again; and I will.

3 BY MR. DRISCOLL-MacEACHRON:

4 Q Did you identify any policy of official
5 housing discrimination in Arizona?

6 A I don't believe that I did.

7 Dr. Berman may have. As I said, he went
8 into this much more deeply than I did; and I can't
9 speak for him.

10 So my examples are not inclusive of all
11 the examples. So, that doesn't mean there wasn't
12 housing discrimination.

13 There certainly was segregation in
14 schools, issues with employment, issues with the
15 funding of schools that I talk about at some length.

16 I don't -- the one area I don't recall
17 talking about is housing, but that may well be in
18 Dr. Berman's report.

19 But all these other things affect
20 housing, as well. Obviously, the income you have
21 available affects housing.

22 Q In your report, do you draw a specific

EXHIBIT 18

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

LESLIE FELDMAN, et al.,)	
)	
)	
Plaintiffs,)	
)	
)	
vs.	)	No. CV-16-1065-PHX-DLR
)	
)	
ARIZONA SECRETARY OF)	
STATE'S OFFICE, et al.,)	
)	
)	
Defendants.)	
_____)	

DEPOSITION OF SHEILA HEALY

Phoenix, Arizona
July 14, 2016
9:01 a.m.

Prepared by:
MICHAELA H. DAVIS
Registered Professional Reporter
Certified Realtime Reporter
Certified LiveNote Reporter
AZ CR No. #50574

CARRIE REPORTING, LLC
Certified Reporters
4032 North Miller Road
Suite A-100
Scottsdale, AZ 85251
(480) 429-7573

(COPY)

1 which is on page 10.

2 A. Yes.

3 Q. You in this paragraph describe the confusion
4 that voters have because their polling places change
5 often. Do you think that accurately summarizes this
6 paragraph?

7 A. Yes.

8 Q. So would you say that regularly changing polling
9 places is a feature of elections in Arizona?

10 MS. CALLAIS: Objection; form.

11 BY MS. HARTMAN-TELLEZ:

12 Q. You can answer if you understand the question.

13 A. Yes, I would say that polling places in Arizona
14 change frequently, and it adds to voter confusion.

15 Q. Isn't it -- because of this, because of the
16 common changes in polling places, isn't it reasonable for
17 a voter to check before each election where their polling
18 place is?

19 MR. GORDON: Object to foundation.

20 MS. CALLAIS: Objection.

21 BY MS. HARTMAN-TELLEZ:

22 Q. You can still answer the question.

23 A. Is it reasonable? Yes. Is it always possible?

24 No.

25 Q. Does the Arizona Democratic Party provide

1 polling place locator services to voters?

2 A. Yes.

3 Q. And are you aware if any government agencies in
4 the state provide polling place locator information to
5 voters?

6 A. Yes.

7 Q. Do you know what those are?

8 A. I know that the Maricopa County elections
9 website has a polling place locator. And I believe the
10 secretary of state's website does as well.

11 Q. Do counties provide notice of polling place
12 locations when they send out early -- not early ballots,
13 sample ballots?

14 MS. CALLAIS: Objection; form.

15 THE WITNESS: I can't speak to how that
16 process has worked in past election cycles. And I don't
17 know what their plan is to roll that out this year.

18 BY MS. HARTMAN-TELLEZ:

19 Q. HB2023 has not prohibited the Arizona Democratic
20 Party from talking to people about issues and candidates
21 for the upcoming elections, has it?

22 A. No.

23 Q. And it won't prohibit you from doing that in the
24 future?

25 A. No, it won't prohibit us from talking to people

EXHIBIT 19

supervisors shall also furnish each polling place with ballot boxes, equipped with locks, large enough to properly receive and hold the ballots cast. The arrangement of the polling place shall be such that neither the ballot boxes nor the voting booths are hidden from the view of persons immediately outside the voting area.

B. No person other than the election officers, voters, party representatives, and challengers shall be permitted within six feet of the ballot boxes or voting booths except by authority of the election officers for the purpose of keeping order and enforcing the law.

Sec. 62. Sec. 16-864, Arizona Revised Statutes, is amended to read:

16-864. HOURS POLLS OPENED AND CLOSED; PROCLAMATION OF OPENING AND CLOSING POLLS

A. The polls shall be opened in every precinct at six o'clock a.m. on the day of election, and shall be closed at seven o'clock p.m.

B. The election marshal shall proclaim the opening of the polls, and shall proclaim the closing of the polls one hour and thirty minutes before closing, fifteen minutes before closing and at the moment of closing. The inspector and two judges shall determine when the hour for closing the polls has arrived.

C. Any qualified voter who at the moment of closing is in the line of waiting voters shall be allowed to prepare and deposit his ballot.

Sec. 63. Sec. 16-894, Arizona Revised Statutes, is amended to read:

16-894. PROCEDURE FOR OBTAINING BALLOT BY ELECTOR

A. Every qualified voter, before receiving his ballot, shall announce his name and place of residence in a clear, audible tone of voice to the election official in charge of the signature roster, or present his name and residence in writing. If the name is found upon the precinct register by the election officer having charge thereof, or the voter presents a certificate from the county recorder showing that he is entitled by law to vote in the precinct or has not applied for an absentee ballot, unless he surrenders a current absentee ballot, the election official in charge of the signature roster shall repeat the name and the voter shall be allowed within the voting area.

B. Each voter's name shall be numbered consecutively by the clerks, with the number upon the stub of the ballot delivered to him, and in the order of applications for ballots. The election judge having charge of the ballots shall also write his initials upon the stub and

the number of the voter as it appears upon the precinct register. The judge shall give the voter only one ballot, and his name shall be immediately checked on the precinct register.

C. Each voter shall sign his name in the signature roster prior to receiving his ballot, but an inspector or judge may sign the roster for an elector who is unable to sign because of physical disability and in that event the name of the elector shall be written with red ink, and no attestation or other proof shall be necessary. The provisions of this subsection relating to signing the signature roster shall not apply to absentee, sick, or disabled electors.

D. Only one person per voting booth or machine shall be permitted at any one time to sign for the receipt of a ballot and to wait for an opportunity to vote.

Sec. 64. Sec. 16-895, Arizona Revised Statutes, is amended to read:

16-895. MANNER OF VOTING; ASSISTANCE FOR BLIND ELECTOR

A. On receiving his ballot the voter shall forthwith and without leaving the voting area, retire alone, except as provided in subsection E, to one of the voting booths not occupied, prepare his ballot and vote in the manner and substantial form as required by the instruction to voters.

B. Before leaving the voting booth the voter shall fold his ballot lengthwise and crosswise, or place his card in the ballot envelope, but in such a way that the contents of the ballot shall be concealed and the stub can be removed without exposing the contents of the ballot, and shall keep the ballot folded until he has delivered it to the inspector, or judge acting as such.

C. The election board official shall receive the ballot from the voter and in the presence of the election board, remove the stub without opening the ballot, deposit the ballot in the ballot box and string the stub upon a string provided therefor.

D. After delivery of the ballot to the election board official, the voter shall then proceed outside the voting area, and shall not again enter the voting area unless he is an authorized election official.

E. Any registered voter whose visual defect falls within the scope of those defined in section 46-272 may, at his option, be accompanied and assisted by a sighted person of his own choice or shall be assisted by two election officials, one from each major political party, during any process relating to voting or during the actual process of voting on a paper ballot, machine or electronic voting system.

ARIZONA REVISED STATUTES

ANNOTATED

1974

Supplementary Pamphlet

Replacing 1973 Supplementary Pamphlet

For Use With Main Volume

Volume 6

Titles 14 to 16

ST. PAUL, MINN.

WEST PUBLISHING CO.

permit reinstatement of op-
tate's literacy test as a re-
r voter registration, Indians
tervene as of right on ground
y to protect their private
ere no decree could have ef-
ally binding or concluding
any action to enforce their
or private rights. Apache
J. S. (D.C.1966) 256 F.Supp.

by Arizona and three coun-
for declaratory judgment to
statement of state's literacy
ce presented by Indians at-
o intervene in the action,
ed high Indian registration
xico where there was ap-
literacy test, might support
of greater Indian interest in
a past low registration in
did suggest, but such was not
discriminatory use of Ari-
cy tests. Id.

by Arizona and three coun-
for declaratory judgment to
statement of operation of
cy test as a requirement for
ration, Indians were not en-
ervene as a matter of right
Rights Act of 1965 made no
vision for intervention but
mpleted that Attorney Gen-
protect the public interest
g such actions. Apache
J. S. (D.C.1966) 256 F.Supp.

Indians residing on a reser-
vations. Op.Atty.Gen.No.60-6.
Indians residing on their
are citizens of the United
of the state in which they re-
ty.Gen.No.60-5.

by Arizona and three coun-
for declaratory judgment
permit reinstatement of
cy test, evidence was suffi-
establish that Attorney Gen-
igation was fair and ade-
fully supported his conclu-
izona's literacy test had not
immediately applied against
ache County v. U. S. (D.C.
pp. 903.

rights Act
by Arizona and three coun-
for declaratory judgment to
statement of operation of
cy test, discrimination in
convenience of registration
eged by Indians attempting
e would not operate as a
evice" within meaning of
nts Act; such words were
apply mainly to literacy
elief against other laws and
must be obtained through
ies. Apache County v. U. S.
56 F.Supp. 903.

of registration used to reg-
could include statement that
was able to read the federal
in the English language or
istrant was unable to do so
: " Op.Atty.Gen.No.

e ballots
ballots may only be cast at a
ary, general election, or
vided by Const. art. 21, § 1,
a amendment of the Consti-
therefore, absentee voting is

not permitted in a special bond election.
Op.Atty.Gen.No.62-17-C.

11. Junior college board elections

Those who are entitled to vote in a
junior college board election must be
persons who are subject to taxation on
reality and who regularly pay the taxa-
tion thereon, who are 21 years of age or
older at date of election, and have been
residents of state for one year and coun-
ty or precinct for 30 days. Op.Atty.
Gen.No.62-17-C.

12. Age requirement

An unemancipated minor attending
college in Arizona whose parents are
nonresidents of the state may register
to vote in Arizona when he reaches the
age of 18. Op.Atty.Gen. No. 72-1.

Person who is twenty years of age at
time of registering to vote but who will
become twenty-one years of age after
registration period is closed, either prior
to primary election or after primary
election but before general election, is
authorized to register; he cannot partic-
ipate as a voter in a state-wide elec-
tion until he is twenty-one, and, there-
fore, if he is twenty-one at time of pri-
mary, he may vote in primary but may
not vote at primary election but vote at
general election if he becomes twenty-
one in time intervening between primary
and general election. Op.Atty.Gen.No.
60-4.

13. Zoning ordinances

Governing body of a city or town may
refer a zoning ordinance to a vote of the
people, and the qualifications for elec-
tors at such an election are governed by
qualifications of voter at special election
set forth in § 16-101 et seq. Op.Atty.
Gen.No.56-49.

14. Ability to read or understand the constitution

When person demonstrates sixth
grade primary schooling, this demon-
stration replaces necessity for inquiry
into his ability to read or understand
Constitution or to write his name, and,
therefore, registration forms used in
Apache county could still be used after
passage of Voting Rights Act of 1965, 42
U.S.C.A. §§ 1971, 1973 to 1973p. Op.
Atty.Gen.No.65-19.

This section and § 16-921, are modified
by Voting Rights Act of 1965, 42 U.S.C.
A. §§ 1971, 1973 to 1973p. to effect that,
where one can demonstrate that he has
gone through the sixth grade, such dem-
onstration takes place of subsec. A(4, 5)
of this section and § 16-921(7). Id.

15. Federal elections

A "federal election" in state would
have to conform with Civil Rights Act of

1964, 5 U.S.C.A. §§ 2204, 2205; 28 U.S.C.
A. § 1447; 42 U.S.C.A. §§ 1971, 1975a-
1975d, 2000a to 2000h-6, and application
of this section would have to be modifi-
ed by federal act to provide for a writ-
ten literacy test with a copy of test and
individual's answers made available to
him upon request if any such test was
given, and § 16-921 would have to be
read as modified by federal act which
specifies that any voting literacy test
must be equally applied to each and ev-
ery voter in writing; legislature could
create off-year state election thus separ-
ating federal and state elections, but
congress could continue to legislate the
"time, places, and manner" of state
elections if federal and state elections
remain the same election. Op.Atty.
Gen.No.64-21.

16. Jury lists

Requirement that all members of
grand jury be able to read and write
English did not invalidate defendant's
indictment for selling heroin by virtue
of asserted discriminatory exclusion
from grand jury of persons not so qual-
ified. State v. Cordova (1973) 109 Ariz.
439, 511 P.2d 621.

Delay in implementing requirement
that 18-year-olds and over be placed on
the voter registration list did not invali-
date jury list taken from voter rolls
prior to the time voters 18 to 21 were
allowed to register and did not give rise
to intentional, arbitrary or systematic
discrimination against 18 to 21-year-olds
from serving on the jury. State v. Tay-
lor (1973) 109 Ariz. 267, 508 P.2d 731.

17. Grand jurors

In determining age and residency
qualifications of prospective grand
jurors, empaneling judge may not rely
solely on fact that prospective jurors
were drawn from a list of electors and
thereby dispensed with questioning on
electors' qualifications. State v. Jack-
son (1974) 110 Ariz. 383, 519 P.2d 848.

Since literacy requirements have been
removed as part of qualifications of
electors, they are no longer part of
qualifications for grand jurors. Id.

Although inquiry of prospective grand
jurors regarding their qualifications as
to age and residency were more re-
strictive than required by this section
and § 21-201, in that inquiries were
based on jurors' qualifications at time
of inquiry rather than at time of next
preceding general election, such defi-
ciencies did not require that indict-
ment be quashed absent showing of
prejudice. Id.

§ 16-102. Registration and records prerequisite to voting

No person shall be permitted to vote unless his or her name appears as a
qualified elector in both the general county register and in the precinct reg-
ister or list of the precinct in which such person resides, except as provided
in §§ 16-109 and 16-895.01. As amended Laws 1970, Ch. 151, § 2; Laws 1973,
Ch. 183, § 8; Laws 1974, Ch. 134, § 1.

Laws 1970, Ch. 151, amending this sec-
tion, provides in section 88 that the
amendment shall become effective from
and after Nov. 4, 1970.

Supplementary Index to Notes

Affidavit 5
Validity of election 4

1. In general

Under § 15-406, a "school elec-
tor" must be eligible to vote in county
and precinct for which he has resided
for six months and person though for-
mally registered to vote in state and
resident in school district six months
immediately preceding election may not
vote if he is not registered in county and
precinct of his residence. Webb v. Dix-
on (1968) 8 Ariz.App. 453, 447 P.2d 268.

§ 16-102 ELECTIONS AND ELECTORS

2. Construction and application

This section and §§ 16-101 and 16-109 which set out registration requirements, qualifications of electors, and procedure for voting when voter no longer lives in precinct in which he is registered govern general elections and were not intended to apply to school elections. *Webb v. Dixon* (1969) 104 Ariz. 473, 455 P.2d 447.

4. Validity of election

Showing that ballots cast by unqualified voters in special school bond election exceeded number by which election carried did not present case for invalidating election in absence of showing of

how any of the assumed illegal voters voted. *Millet v. Board of Sup'rs of Maricopa County* (1967) 6 Ariz.App. 16, 429 P.2d 508.

5. Affidavit

Requiring voters in school bond election to sign affidavit that voter was registered and a real property taxpayer of district constituted a reasonable compliance with school bond election laws notwithstanding fact that voter registration lists and lists of property owners were not used. *Millet v. Board of Sup'rs of Maricopa County* (1967) 6 Ariz.App. 16, 429 P.2d 508.

§ 16-103. Qualifications of elector for special elections

A person whose name appears on the general register of voters for the last preceding general state and county election and who has not been canceled out for failure to vote, or a person who voted in the last preceding general election for presidential electors only and has subsequently met the residency requirements for voting in all elections, or a person who has registered on or before the fiftieth day preceding a special primary, special general, special recall or other special election, shall, if otherwise qualified, be entitled to vote at any such special election authorized by law. As amended Laws 1972, Ch. 218, § 2.

Effective May 24, 1972.

Index to Notes

Failure to vote 1
Validity 1/2

1/2. Validity

This section and section 16-151 providing for cancellation of registration of an elector who did not vote in the general election and directing that those who did not vote at the last general election and had their registration cancelled must either reregister in person or return postcard sent to them by the recorder do not violate Const. art. 8, pt. 1, § 1 U.S.C.A. Const. Amend. 14. *Citizens' Committee for Recall of Jack Wil-*

Hams v. Marston (1973) 109 Ariz. 188, 507 P.2d 113.

1. Failure to vote

Electors whose registrations were cancelled because of their failure to vote in general election were not constitutionally entitled to vote in recall election without reregistration. *Citizens' Committee for Recall of Jack Williams v. Marston* (1973) 109 Ariz. 188, 507 P.2d 113.

Complaint of citizens' committee challenging constitutionality of this section and section 16-151 providing for cancellation of registration of voters who failed to vote in the last general election did not set forth a justiciable controversy. *Id.*

§ 16-104. Qualified elector defined

A person whose name appears on the register for the last preceding general election and whose registration has not been subsequently canceled, or a person who has registered under a subsequent registration, shall, if he is eighteen years of age and has been a resident of the state fifty days, be deemed a qualified elector for any purpose for which such qualification is required by law, except as provided in §§ 16-171 and 16-172. As amended Laws 1972, Ch. 118, § 3, eff. May 24, 1972; Laws 1973, Ch. 183, § 9; Laws 1974, Ch. 134, § 2.

Cross References

Voters, qualifications, see § 9-822.

1. In general

Provision of section 16-150 that, on day immediately following 1970 general election and at ten-year intervals thereafter, the county recorder shall cancel all voter registrations in his county did not unconstitutionally deprive petitioner of his right to circulate initiative petitions for the 1972 general election, where it was apparent that petitioner could rely upon voter registration list used for 1970 general election and listing being prepared for general election of 1972. *Stillman v. Marston* (1971) 107 Ariz. 208, 484 P.2d 628.

Qualified elector entitled to sign recall petition is one who has complied with voter registration law and is qualified to vote, and requirements that

petitioner be a registered voter at time he affixed his name to petition and that genuineness of signature be verified by comparison with affidavit of registration are reasonable antecedents to validating signatures on petition. *Op. Atty. Gen. No. 73-15.*

Voters who appeared on register for the last preceding general election and who had not been cancelled out for failure to vote would not have to re-register for purpose of voting at junior college district bond election where new precincts had been created out of old precincts, new precincts were established by consolidating old precincts, and boundaries of a new precinct was not changed but a voting precinct was designated by a new name. *Op. Atty. Gen. No. 62-44-L.*