

No. 12-71

IN THE
Supreme Court of the United States

THE STATE OF ARIZONA, ET AL.,
Petitioners,

v.

THE INTER TRIBAL COUNCIL OF ARIZONA, INC., AND
JESUS M. GONZALEZ, ET AL.,
Respondents.

**On Writ Of Certiorari To The United States
Court Of Appeals For The Ninth Circuit**

**BRIEF ON BEHALF OF COMMUNITY VOTER
REGISTRATION ORGANIZATIONS AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENTS**

BRENDA WRIGHT
LISA J. DANETZ
DEMOS
358 Chestnut Hill Ave.
Suite 303
Brighton, MA 02135
(617) 232-5885

WALTER DELLINGER
JONATHAN D. HACKER
(Counsel of Record)
jhacker@omm.com
LOREN L. ALIKHAN
JOANNA NAIRN
BETH FRANCE
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

Attorneys for Amici Curiae

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INTEREST OF *AMICI CURIAE*

This brief is submitted on behalf of organizations engaged in community-based voter registration activities as *amici curiae* in support of respondents.¹ Collectively, these organizations educate about, and assist with, voter registration for the population as a whole and for underrepresented portions of the electorate in particular. In that capacity, *amici* organizations have a special interest and an expertise concerning voter registration efforts and the detrimental effect of laws imposing burdensome documentation requirements on the ability of qualified citizens to register to vote.

Rock the Vote is a nonprofit, nonpartisan organization dedicated to engaging young people in our nation's democracy. Its principal activities include assisting young voters with registering to vote and getting young voters out to the polls. It also engages in widespread public education efforts, including public service announcements, voter information distribution led by community street teams, and a highly trafficked website at www.rockthevote.com that offers extensive voting and election information and online opportunities to register to vote using the federal voter registration form. Millions of young

¹ Pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amici curiae*, their members, or their counsel has made a monetary contribution to the preparation or submission of this brief. The parties have consented to the filing of this brief, and letters reflecting their consent have been filed with the Clerk.

Americans have registered to vote via Rock the Vote, and in 2012 nearly 15,000 Rock the Vote voter registration applications were submitted in Arizona alone.

The **National Association for the Advancement of Colored People (“NAACP”)** was founded in 1909 and is the nation’s oldest and largest civil rights organization. The principal objectives of NAACP are to ensure the political, educational, social and economic equality of all citizens; to achieve equality of rights and eliminate race prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state, and local laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; and to educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof.

Border Action Network is an Arizona-based human rights organization that focuses on border and immigrant communities. Through its Civic Engagement Campaign, it educates the public about their voting rights, assists individuals with voter registration applications, and takes part in poll monitoring at locations throughout the state.

Fair Share Alliance and the **Fair Share Alliance Education Fund** are national non-profits active in 24 states, including Arizona, where the organization does business as Arizona Fair Share. Through door-to-door community outreach and grassroots lobbying, it advocates for the economic

interests and democratic rights of working families. More than 165,000 voter registration applications from individuals in six different states were collected and submitted by Fair Share Alliance Education Fund in 2012.

Mi Familia Vota is a national non-profit organization headquartered in Arizona. It works to unite the Latino community and its allies to promote social and economic justice through increased civic participation. Mi Familia Vota engages in community-based voter registration activities in Arizona and several other states, with a focus on assisting Latino voters to register.

The **National Coalition on Black Civic Participation** is a non-profit, non-partisan organization dedicated to increasing civic engagement and voter participation in Black and underserved communities. Founded in 1976, it has spent over 37 years working at the local, state, and national level to address disenfranchisement of underserved and marginalized communities through voter empowerment organizing and training, young adult civic leadership development, women and girls empowerment, and grassroots organizing and issue education.

Nonprofit VOTE is a national non-partisan organization that partners with America's non-profits to help them integrate voter engagement into their ongoing activities and services. It provides education and guidance to non-profits through its webinars, online resource center, newsletter, and blog. Its national partners include Big Brothers Big Sisters, the Boys & Girls Clubs of America, the Nation-

al Association of Community Health Centers, and the Military Voter Protection Project.

People For the American Way Foundation is a non-partisan citizens' organization established in 1981 to promote and protect civil and constitutional rights, including the right to vote. Its Young People For program is a strategic long-term leadership development project that identifies, engages, and empowers the newest generation of leaders to create lasting change in their communities. Its civic engagement campus-organizing program aims to increase the participation and representation of young people in the electoral process while building the skills and leadership of Young People For Fellows to better prepare them to lead civic engagement campaigns beyond election cycles. Its members conducted voter registration campaigns in several states, including Arizona, during the 2012 election cycle.

Promise Arizona and **Promise Arizona in Action** are non-profit organizations dedicated to recruiting, training, and supporting a new generation of leaders in Arizona. Their volunteers have assisted more than 50,000 new voters to register over the past three years, and they have also engaged in extensive get out the vote efforts in Arizona.

Protecting Arizona's Family Coalition is a non-partisan alliance of health and human service groups throughout Arizona. Collectively, its members have an estimated 20,000 staff, board members, and volunteers who serve more than 1.5 million people. It provides voter engagement resources to assist its members in empowering the populations they serve to register and vote.

Virginia New Majority is the largest statewide grassroots civic engagement organization in Virginia. It engages underrepresented communities throughout the Commonwealth through voter registration drives, issue education, get out the vote activities, and election protection efforts. Since 2008, Virginia New Majority has contacted over 400,000 voters.

Voto Latino is a national non-partisan organization that focuses on the civic engagement of American Latinos. It is dedicated to bringing new and diverse voices into the political process by engaging youth, media, technology, and celebrities to promote positive change. Voto Latino has assisted more than 225,000 young Latinos to register to vote.

SUMMARY OF ARGUMENT

The exclusion of eligible citizens from the political process is one of the most serious and stubborn problems in our democracy. Census Bureau data show that less than two-thirds of adult citizens are registered to vote nationwide, compared to registration rates above 90% in Canada and in many European countries. More troublingly, the registration rate drops precipitously among particular groups: low-income persons, racial and ethnic minorities, the young, and naturalized citizens. Arizona is not an exception to the national picture: its registration rate, both overall and for racial and ethnic minorities and younger citizens, mirrors that of the United States as a whole.

The National Voter Registration Act (“NVRA”) was enacted in 1993 to increase the number of registered and participating voters. It expressly recog-

nizes the important role that registration drives and other community-based voter registration efforts play in broadening the electorate, and federal courts around the country have held that laws that unduly impair those efforts violate the NVRA. Community-based voter registration is important to the NVRA's aims for one simple reason: it works. By taking registration to prospective voters—holding registration drives in community gathering spots such as schools, churches, local festivals, and even movie theaters—it eliminates many of the commonly cited barriers to registration, including lack of time, mobility impairments, and lack of understanding of the registration process.

Arizona's Proposition 200 is an assault on community-based registration methods. By requiring that voter registration applications be accompanied by one of a specified list of documents proving the citizenship status of the applicant, the law makes it immensely more difficult for community-based registration to take place. A significant portion of Arizona's population does not have the necessary documentation to comply with Proposition 200, and many forms of acceptable documentation—birth certificates, passports, naturalization documents, and the like—are not commonly carried by individuals in their daily lives. Because community-based registration efforts overwhelmingly rely on approaching individuals who did not plan in advance to register at that time or location, the documentation requirement makes it impossible for groups engaged in those efforts to assist many otherwise eligible and willing citizens to register to vote. And even when a prospective registrant does happen to be carrying

one of the required documents, logistical hurdles—ranging from an inability to photocopy documents on the spot to an unwillingness to hand over sensitive identification documents to registration drive volunteers—greatly hinder community-based registration efforts.

Because the individuals most likely to be disenfranchised are also disproportionately likely to lack acceptable documentation of citizenship (or lack ready access to those documents when approached at a community-based registration event), previously effective efforts to reach these voters through community-based registration are stymied by Proposition 200. Groups engaged in community-based voter registration in Arizona have already felt these effects. Testimony at the trial in this case, as well as the experiences of the signatories to this brief, demonstrates that Proposition 200 makes registration efforts more difficult, less effective, and more expensive. Contrary to the command of the NVRA, Proposition 200 unduly impairs voter registration when tens of millions of eligible persons remain unregistered to vote. This Court must not countenance that result.

ARGUMENT

Congress enacted the NVRA to, *inter alia*, establish “procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.” 42 U.S.C. § 1973gg(b)(1). Congress further required that the law be implemented “in a manner that enhances the participation of eligible citizens as voters in elections for Federal office.” *Id.* § 1973gg(b)(2). The NVRA accomplishes these pur-

poses in part by facilitating community-based voter registration drives through the use of a uniform federal mail-in registration form, “with particular emphasis on making the[form] available for organized voter registration programs.” 42 U.S.C. § 1973gg-4(b); *see also* S. Rep. No. 103-6, at 12 (1993) (“Mail registration is an effective means for increasing the voter rolls because . . . it permits organizations to go to the voter with organized registration drives. Mail registration is convenient for the voter, for registration drive organizers and for voter registrars as well.”); H.R. Rep. No. 103-9, at 10 (1993).

Arizona’s Proposition 200 frustrates the purpose and operation of the NVRA because it interferes with the community-based voter registration efforts the NVRA aims to facilitate. The result is that many qualified citizens will not be able to register to vote, thereby depriving them of the ability to participate in our nation’s political process. This Court should reject Arizona’s attempts to encroach upon the NVRA and to hinder community-based voter-registration efforts.

I. MANY QUALIFIED CITIZENS ARE NOT REGISTERED TO VOTE, AND COMMUNITY-BASED REGISTRATION EFFORTS ARE A CRITICAL AND EFFECTIVE MECHANISM TO INCREASE VOTER PARTICIPATION

A. In Arizona And Across The United States, Voter Registration Rates Are Low And Some Groups Are Significantly Underrepresented In The Electorate

Arizona's registered voter population is substantially smaller than its qualified voter pool, and the problem is measurably worse among groups traditionally underrepresented in the electorate. In 2010, only 66% of citizens of voting age in Arizona were registered to vote. U.S. Census Bureau, *Voting and Registration in the Election of November 2010 – Detailed Tables* [hereinafter “*Voting and Registration*”], Table 4a (2010).² For Black and Hispanic citizens, registration rates were even lower: only 65.5% of Black citizens and 57.5% of Hispanic citizens were registered to vote, compared with 68.7% of White, non-Hispanic citizens. U.S. Census Bureau, *Voting and Registration*, Table 4b.³ Age also played a significant role. Among citizens of all races ages 18 to

² Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>.

³ Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>. All figures refer to voting-age citizens only.

24, the registration rate was a dismal 48%. U.S. Census Bureau, *Voting and Registration*, Table 4c.⁴

Nationally, the picture is similar. In 2010, 65.1% of voting-age citizens nationwide reported being registered to vote. Again, race and ethnicity were significant factors: 68.2% of White, non-Hispanic citizens were registered compared with 62.8% of Black citizens, 51.6% of Hispanic citizens, and 49.3% of Asian citizens. U.S. Census Bureau, *Voting and Registration*, Table 2.⁵ As in Arizona, registration rates were particularly low among young people—only 45.3% of citizens ages 18 to 24 years were registered to vote. U.S. Census Bureau, *Voting and Registration*, Table 1.⁶ And the effects of race and age compounded one another. Only 34.5% of Hispanic citizens ages 18 to 24 were registered to vote, compared with 46.4% of Black citizens and 48.3% of White, non-Hispanic citizens in the same age group. U.S. Census Bureau, *Voting and Registration*, Table 2.⁷

Income is also strongly associated with registration rates. Only 52.0% of voting-age citizens with a

⁴ Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>.

⁵ Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>. The biggest difference between Arizona and the national figures was the registration rate for Asian citizens, which is nearly 30% higher in Arizona than nationwide.

⁶ Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>.

⁷ Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>.

family income of \$10,000 or less were registered to vote, while 80.3% of those with a family income of \$150,000 or more were registered. U.S. Census Bureau, *Voting and Registration*, Table 7.⁸

Finally, there is a substantial disparity in registration rates of native-born versus naturalized citizens. Just over 66% of native-born citizens of voting age reported being registered in 2010, compared with only 54.2% of naturalized citizens. U.S. Census Bureau, *Voting and Registration*, Table 11.⁹ The exceptions were Asians and Hispanics, both of whom reported slightly higher rates of registration among naturalized citizens than among native-born members of those groups. *Id.* But in both cases, even among the naturalized population nearly half of voting-age citizens (49% of Asians and 47.1% of Hispanics) did not report being registered to vote. *Id.*

That the United States has a serious problem with voter registration is particularly clear when one considers the registration rates in other democracies. In Great Britain, for example, 97% of eligible voters were registered in 2008. Jennifer S. Rosenberg and Margaret Chen, *Expanding Democracy: Voter Registration Around the World*, 3 (June 2009).¹⁰ In Canada and Germany, 93% of eligible voters were regis-

⁸ Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>.

⁹ Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>.

¹⁰ Available at http://www.brennancenter.org/content/resource/expanding_democracy_voter_registration_around_the_world/.

tered, as were 92% in Australia and 91% in France. *Id.* And despite historical disenfranchisement of the majority of its population and continuing high rates of poverty and illiteracy, South Africa had a 77% registration rate in 2009. *Id.*; see also CIA, *The World Factbook* (reporting a poverty rate of 50% and a literacy rate of 86.4% in South Africa, compared with a poverty rate of 15.1% and a literacy rate of 99% in the United States).¹¹ The fact that the United States consistently experiences voter registration rates far below comparative national figures demonstrates that our country can ill afford to retrench on access to voter registration. To the contrary, additional barriers to registration absolutely must be avoided.

B. Community-Based Initiatives Play A Crucial Role In Increasing Voter Registration Rates

Difficulties with access to or education about registration play an important role in explaining why tens of millions of eligible Americans remain unregistered to vote. When asked by the Census Bureau in 2008 why they did not register, 14.7% of non-registrants reported that they had not met registration deadlines, 6% cited permanent illness or disability, 4.2% said that they did not know where or how to register, and 1.4% cited difficulty with English as the reason they had not registered. Thom File and Sarah Crissey, U.S. Census Bureau, *Voting and Registration in the Election of November 2008*, 14 (July

¹¹ Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html>.

2012).¹² Hispanic registrants were more likely to report that they did not register because they had not met registration deadlines, did not know where or how to register, or had difficulty with English, Black non-registrants disproportionately cited registration deadlines or a permanent illness or disability, and Asian non-registrants were far more likely to report difficulty with English as the reason they had not registered. *Id.*; see also Tova Wang and Youjin B. Kim, *From Citizenship to Voting: Improving Voter Registration for New Americans*, 10-11 (Dec. 2011).¹³

Similarly, in a 2006 survey conducted by the Pew Institute and the Associated Press, 19% of non-registrants said that they had not registered because they were too busy or just had not done it, 17% said they had recently moved, and 4% cited illness or disability as the reason. The Pew Research Center For The People & The Press, *Regular Voters, Intermittent Voters, and Those Who Don't: Who Votes, Who Doesn't, And Why*, 4 (Oct. 2006).¹⁴ These figures suggest that a significant portion of those individuals who have not registered to vote might do so if registration were more convenient.

Community-based voter registration efforts are designed to serve precisely that function. They aim to eliminate the most common barriers to registra-

¹² Available at <http://www.census.gov/prod/2010pubs/p20-562.pdf>.

¹³ Available at <http://www.demos.org/publication/citizenship-voting-improving-registration-new-americans>.

¹⁴ Available at <http://www.people-press.org/files/legacy-pdf/292.pdf>.

tion by going *to* potential voters and facilitating the registration process—including by explaining the requirements and providing assistance filling out forms. These efforts contrast with traditional registration methods, which require voters themselves to take the initiative to locate the correct forms or to identify and travel to one of the government offices that provides registration forms.

Community-based registration efforts have proven highly effective. “From 2000 to 2008, community-based groups registered tens of millions of new voters, including close to nine million in 2008 alone.” NAACP, *Defending Democracy: Confronting Modern Barriers to Voting Rights in America*, 15 (2012) (citing U.S. Census Bureau, Voting and Registration, Table 14).¹⁵ These efforts came from non-partisan groups as well as organizations across the political spectrum. Presidential campaigns, large national organizations, and small local groups—many targeting specific, underrepresented segments of the population—held voter registration drives at locations ranging from churches to senior citizen centers to farmers’ markets to school campuses. “Registration groups typically focus their resources on providing assistance to communities that face the greatest barriers to registration and voting.” *Id.*

A significant portion of voters have registered through these community-based methods. In 2010, less than half of voters reported that they had registered at their DMV or at a government registration

¹⁵ Available at http://naacp.3cdn.net/67065c25be9ae43367_mlbrsy48b.pdf.

office. U.S. Census Bureau, *Voting and Registration*, Table 12.¹⁶ In the electorate as a whole, 5.7% reported registering at a school, hospital, or on campus, while an additional 5.2% reported using a registration booth. *Id.* Moreover, 13.5% of registrants reported registering by mail. *Id.* Because community-based registration efforts overwhelmingly use mail-in applications, some number of the mail-in registrant group is likely attributable to a voter drive or other community-based voter registration effort.

Among groups with low registration rates, community-based registration methods played an even more important role. Black, Asian, and Hispanic citizens all reported higher than average use of school, hospital, and on campus registration methods (7.7%, 6.7%, and 7.5%, respectively), as well as higher than average use of registration booths (7.2%, 7.0%, and 8.9%, respectively). *Id.* Naturalized citizens also reported greater usage of community-based methods of registration than did native-born citizens. *Id.* And among people ages 18 to 24—the age group for which registration rates are lowest—13.6% of registered voters reported registering at a school, hospital, or on campus. *Id.*

A survey of the 2008 electorate revealed similar trends. Of those who remembered how they registered to vote, 16% reported registering either at a “registration drive” (8%) or at a school, hospital, or on campus (8%). Douglas R. Hess & Jody Herman,

¹⁶ Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>.

Representational Bias in the 2008 Electorate, PROJECT VOTE, Table 3 (Nov. 2009).¹⁷ An additional 5% reported registering somewhere other than at the Department of Motor Vehicles, a public assistance agency, a registration office, by mail, or on election or primary day. *Id.* Non-Whites were twice as likely as Whites to register at registration drives (12% versus 6%) and also registered at schools, hospitals, or on campus at a much higher rate (11% versus 7%). *Id.*

Federal law favors registration drives, as the federal courts have recognized:

[T]he NVRA encourages voter-registration drives; the NVRA requires a state to accept voter-registration applications collected at such a drive and mailed in to a voter-registration office; the NVRA gives a voter-registration organization like each of the plaintiffs here a ‘legally protected interest’ in seeing that this is done; and when a state adopts measures that have the practical effect of preventing an organization from conducting a drive, collecting applications, and mailing them in, the state violates the NVRA.

League of Women Voters of Fla. v. Browning, 863 F. Supp. 2d 1155, 1163 (N.D. Fla. 2012); *see also Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1353 (11th Cir. 2005) (“Nowhere does the NVRA prohibit or regulate voter registration drives;

¹⁷ Available at http://www.voterparticipation.org/wp-content/uploads/2011/10/Project_Vote_-_Representational_Bias_the_2008_Electorate.pdf.

rather, it impliedly encourages them.”). One court—noting the expressive and associational rights implicated by voter registration activities—applied intermediate scrutiny to efforts to curb them. *See Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700-01 (N.D. Ohio 2006). These decisions acknowledge that community-based voter registration efforts are an important mechanism of enfranchisement, and one that the NVRA itself has enshrined as an indispensable part of the electoral process.

II. PROPOSITION 200 IMPAIRS EFFORTS TO REGISTER VOTERS, ESPECIALLY EFFORTS BY COMMUNITY-BASED REGISTRATION ORGANIZATIONS

Proposition 200 substantially impedes community-based registration efforts because it requires potential new registrants to produce forms of identification—a driver’s license, a current U.S. passport, a birth certificate, naturalization documents, or selected Bureau of Indian Affairs and tribal identification documents—that many people do not carry on their persons and that many other people do not possess at all. Those documentation requirements are detailed in Part II.B., *infra*. This section begins in Part II.A., however, by elaborating the severe negative consequences those requirements already have had on efforts to make qualified potential voters full participants in our democratic community. Those consequences are tangible, and they are unacceptable.

A. The Documentation Requirements Of Proposition 200 Have Adversely Affected Community-Based Voter Registration

During the twenty months following the enactment of Proposition 200 in January 2005, at least 31,500 registration applications were denied because of a failure to meet the law's requirements. J.A. 263.¹⁸ That number, although alarmingly high, likely understates the problem because those figures are from the period just before a mid-term election took place, and voter turnout and voter registration rates are much higher during presidential election cycles. U.S. Census Bureau, *Voting and Registration – Historical Time Series*, Table A-1 (2012).¹⁹ Of those 31,500 individuals whose application for registration was initially denied, only approximately 11,000 were later able to register successfully—the remaining 20,000 individuals did not subsequently make it onto the rolls. See J.A. 264. The Hispanic population was overrepresented relative to its share of the population both in the group of individuals whose registration applications were initially denied and in the subset of individuals who did not subsequently register successfully. *Id.* at 263-64.

Proposition 200 had an especially pronounced effect on community-based voter registration efforts.

¹⁸ That figure likely underestimates the number of applications rejected because one of the fifteen counties did not produce any registration forms and a second county provided only a portion of its rejected forms. See J.A. 263 n.12.

¹⁹ Available at <http://www.census.gov/hhes/www/socdemo/voting/publications/historical/index.html>.

After the law went into effect, registration through community-based voter drives dropped 44% in Arizona's largest county. See Gonzalez Resps.' Br. 18; (citing Tr. Ex. 966, Record 741, 741); see also *The State of the Right to Vote After the 2012 Election Before the S. Comm. on the Judiciary*, 112th Cong. (Dec. 19, 2012) (statement of Nina Perales, MALDEF Vice President of Litigation).²⁰ Numerous individuals and groups involved in voter registration drives testified at trial that they encountered difficulty in registering individuals who did not have any of the acceptable forms of documentation or who did not have their documents with them when they attempted to register. Trial Tr. at 559:25-560:4; see also *id.* at 501:14-18; *id.* at 583:6-21; *id.* at 612:11-22. On some occasions, volunteers drove individuals without another means of transportation home to collect their documents or contacted the counties where they were born to try to obtain documentation that would satisfy Proposition 200. *Id.* at 560:17-25; see also *id.* at 501:22-502:1. Some voters who left to retrieve documentation did not return to complete their applications. *Id.* at 561:1-3.

Numerous organizations also testified that because Proposition 200 requires photocopies of certain types of documentation, effective registration requires the group to have a copier or scanner on site. Trial Tr. at 612:2-11. This requirement both restricts the types of locations where drives can be held and increases the cost of conducting such events. Some groups that engage in community-

²⁰ Available at <http://www.judiciary.senate.gov/pdf/12-12-19PeralesTestimony.pdf>.

based voter registration in Arizona testified that they “do[] not have the resources to equip canvassers with portable photocopy machines or scanners and printers in order to conduct voter registration campaigns in Arizona.” Camarillo Decl., ¶ 12. Others have reported bringing portable photocopiers or scanners and printers to registration drives but noted that generators were necessary to run the equipment. Trial Tr. at 612:25-613:4.

The costs of copying documents are compounded by the additional time—and therefore additional resources—needed to explain registration requirements, assist with filling out forms, track down or copy necessary documentation, and follow-up on applications. The Arizona Advocacy Network, for example, testified that Proposition 200 increased their cost of registering individuals from \$7.08-7.81 per voter to \$9.28-12.21 per voter, resulting in a total cost increase of \$11,000-22,000. J.A. at 278-79. Similarly, Chicanos Por La Causa testified that Proposition 200 increased the expense of their voter registration efforts because of commercial copying costs for registrants’ citizenship documents and because of the greater amount of time needed to register each voter. Trial Tr. at 554:15-555:5. Some groups encountered so many difficulties in registering individuals under Proposition 200 that they ceased their voter registration efforts in Arizona following its passage. *See* Prelim. Inj. H’rg Tr. at 122:1-22 (testimony that League of Women Voters of Arizona stopped registering voters because of Proposition 200); *see also* Trial Tr. at 608:17-609:1 (testimony that Project Vote stopped funding the Latino Vote Project in Arizona following the enactment of Propo-

sition 200). The League of Women Voters of Arizona, for example, stopped registering voters both because of the increased cost of registration and because it was unwilling to take responsibility for collecting and storing people's personal documents. *See* Prelim Inj. H'rg Tr. at 123:4-11.

A number of the signatories to this brief engaged in community-based registration efforts in Arizona during the period in which Proposition 200's citizenship documentation requirement was in effect. Their experiences were consistent with the trial evidence discussed above. During the 2012 election cycle, for example, the Border Action Network held registration drives at a variety of community gathering spots, including libraries, a swap meet, and a school. Some people who registered at those events were not planning to register at all, but decided to do so because they encountered the registration drive. Others had been thinking about registering but decided to do so only when they came across the event, because it was convenient there. As a result, many of those who tried to register were not carrying one of the forms of documentation acceptable under Proposition 200. Many of the individuals Border Action Network attempted to assist with registration used the bus as their means of transportation and did not have a driver's license or other form of documentation with them that they could use to register. And even when they did, the registration volunteers did not have a photocopier with them and could not make copies of individuals' documents. When Border Action Network provided registrants with the federal registration form, which does not require documentation of citizenship, it was significantly

easier for individuals to complete and submit their applications.

Rock the Vote conducts voter registration in every state but North Dakota (which does not have a voter registration requirement). It targets young people ages 18 to 29, who are less likely to be registered than older individuals. In Arizona alone, nearly 15,000 Rock the Vote voter registration applications were submitted in 2012. Most of Rock the Vote's registration occurs via the group's online tool, which applicants can access on a computer, a tablet, or a smartphone. That tool asks applicants to answer a series of questions and then uses the answers to automatically populate the federal voter registration form for them. In most states, after completing their forms, the applicants are prompted to print them out, sign them, and mail them in. They are also automatically emailed a reminder to print and mail the form, are sent a second reminder a few days later, and—if they do not appear on the registration roll within two weeks—they are added to a list for follow-up by telephone. In a few states, applicants can choose to submit their forms electronically directly to the state's online voter registration system; Rock the Vote is currently working to expand this electronic submission option to other states, including Arizona. If documentation of citizenship were necessary, then the online registration tool would need to include the additional steps of instructing applicants on how to obtain the necessary documentation, find a photocopier, and make copies of the necessary documents. Based on Rock the Vote's experience, additional documentation requirements would dramatically reduce the effectiveness of its

online registration tool, which targets young individuals who do most things electronically and whose everyday lives do not involve obtaining, printing, or mailing physical documents. If the additional hurdle of locating a photocopier and the required documentation is added to the process, it is less likely that applicants will follow through and complete their registrations.

Other signatories to this brief engage in community-based registration work in other states, but have not undertaken those efforts in states that require documentation of citizenship because of the numerous ways such requirements would reduce the effectiveness of their work. The Fair Share Alliance Education Fund, for example, does voter registration work in several states, including six states in 2012 (Colorado, North Carolina, Pennsylvania, Ohio, Wisconsin, and Florida). It deploys staff with clipboards to high-traffic public areas such as post offices, bus stops, and movie theater lines. It does not hold publicized events or work from tables or booths and cannot photocopy documents while assisting voters to register. Virtually all of the people who have registered through its efforts did not plan in advance to register at that time or location and thus would not have thought to carry the documents required by Proposition 200. And because the group targets its efforts at underrepresented communities and those of lower socioeconomic status, the organization's voter registration drives encounter many individuals who do not have any of the permissible forms of documentation. Moreover, the group would not be willing to take responsibility for collecting personal information such as birth certificates from registrants

for the purpose of copying them, nor does it think that most people would be comfortable turning over those documents. As a result, the Fair Share Alliance and its affiliate Fair Share Alliance Education Fund would be unlikely to begin voter registration work in a state that required documentation of citizenship, and it would likely end its programs in the states it currently works in if they adopted such a requirement.

B. Proposition 200 Requires Documents That Many People Do Not Carry On Their Persons And Indeed May Not Possess At All

As explained, the documentation requirements of Proposition 200 manifestly inhibit effective community-based registration efforts. It is easy enough to see why: Proposition 200 requires potential registrants to produce papers that many people do not carry with them as they conduct their day-to-day affairs—precisely when registration drives seek to reach them—and that many people do not possess at all.

Although many individuals carry their driver's licenses, far fewer keep a birth certificate, passport, naturalization documents, or tribal documentation on their persons on a regular basis. *See, e.g.*, Trial Tr. at 612:11-20 (testimony of life-long community-based voter registration activist and volunteer that she has “never experienced somebody actually having their birth certificate with them” and that, in her experience, potential registrants at community events do not carry their passports with them). Some people keep their birth certificates or pass-

ports in safe deposit boxes, necessitating a trip to the bank during regular business hours. Likewise, students who move for school may leave important paperwork at their parents' homes and be unable to register until they retrieve it. Even if an individual has the necessary documentation on his or her person when approached at a registration drive, he or she may be unwilling to provide a birth certificate or passport to a stranger, given very legitimate concerns that it will be lost or stolen or that identity theft will occur. *See* Pl.'s Ex-Parte Mot. for TRO, Ex. C ("Camarillo Decl."), ¶ 13.

Further compounding the problem is the fact that many citizens do not possess the types of documentation required by Proposition 200. The most common form of documentation is an Arizona driver's license.²¹ But approximately 10% of voting-age citizens in Arizona do not possess an Arizona driver's license. J.A. 257. Moreover, many citizens who do have driver's licenses cannot use them to satisfy Proposition 200. Before October 1, 1996, Arizona's Motor Vehicle Department ("MVD") did not require applicants for licenses to provide proof that they were lawfully present in the United States. *See* State of Ariz. Office of the Att'y Gen., Att'y Gen. Op. re: Identification Requirements for Voter Registra-

²¹ Proposition 200 also states that citizenship may be proven by a license issued by a different state, if that license indicates citizenship status on its face. But because no state issues licenses that indicate citizenship status on their faces, Trial Tr. at 733:9-18 (testimony of Arizona's State Election Director), only Arizona licenses may be used in practice.

tion [hereinafter AZ AG Op.], at 3 (2005).²² Accordingly, licenses issued prior to that date cannot be used to fulfill Proposition 200's documentation requirement. See A.R.S. § 16-166(F)(1). Similarly, citizens who obtained their driver's licenses before they were naturalized cannot use their licenses as documentation of citizenship because MVD records reflect citizenship status as of the date the license was issued, unless the licensee requests an updated license by providing their certificate of naturalization to the MVD and paying a fee. J.A. 262. Moreover, naturalized citizens are usually unaware that they need to update their licenses before registering to vote because, while licenses issued to non-citizens are internally coded "Type F" for "foreign" by the MVD, that designation does not appear on the license itself. AZ AG Op. at 3. These issues complicate the efforts of community-based organizations to register voters and lead to many applications being rejected.

The other acceptable forms of documentation under Proposition 200—a current U.S. passport, a birth certificate, naturalization documents, or selected Bureau of Indian Affairs and tribal identification documents—pose additional problems for community-based registration organizations because individuals are less likely to possess them or be able to use them to fulfill Proposition 200's requirements. With regard to U.S. passports, for example, the State Department reports that there were 113,431,943 in circulation in 2012. See U.S. Dep't of State, *Passport*

²² Available at <https://www.azag.gov/sites/default/files/sites/all/docs/Opinions/2005/I05-001.pdf>.

*Statistics.*²³ The total citizen population in 2010 was 286,904,283, meaning that only 39% of U.S. citizens (including an undetermined number of non-voting-age children) held passports. U.S. Census Bureau, *Selected Population Profile in the United States, 2009-2011 Am. Cmty. Survey 3-Year Estimates.*²⁴ Moreover, passport ownership is strongly correlated with both income and education level, meaning that the underrepresented populations targeted by community-based voter registration efforts are less likely to hold valid passports. See, e.g., Richard Florida, *America's Great Passport Divide*, *The Atlantic* (Mar. 15, 2011).²⁵

Birth certificates, though held by more individuals, pose their own problems. Some groups of citizens born outside of hospitals—including people born in rural areas or on Native American reservations—are less likely to have received birth certificates. See J.A. 243; see also Brennan Center for Justice, *Proof of Citizenship*, 1 (Sept. 2006).²⁶ Elderly individuals are also unlikely to be able to rely on a birth certificate to satisfy Proposition 200, because birth certificates were not consistently generated until sometime in the 1930s. Corey Dade, *Why New*

²³ Available at http://travel.state.gov/passport/ppi/stats/stats_890.html.

²⁴ Available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_3YR_S0201&prodType=table.

²⁵ Available at <http://www.theatlantic.com/national/archive/2011/03/americas-great-passport-divide/72399/>.

²⁶ Available at http://www.brennancenter.org/page/-/d/download_file_38263.pdf.

Photo ID Laws Mean Some Won't Vote, NPR (Jan. 28, 2012).²⁷ While some people born outside of hospitals before that time received birth certificates from the midwives who delivered them, frequent misspellings of names on those certificates often render them unacceptable for voter registration purposes. *Id.* And even after birth certificates became more common, they were distributed unevenly: one 1950 study found that 20% of Black Americans born in 1939-40 were not issued a birth certificate. S. Shapiro, *Development of Birth Registration and Birth Certificates in the United States*, 4 *Population Studies* 86, (1950), *cited in* Ira Rosenwaike and Mark E. Hill, *The Accuracy of Age Reporting Among Elderly African Americans: Evidence of a Birth Registration Effect*, 3 (Population Aging Research Center, Univ. of Penna., Working Paper No. 95-04, 1995).²⁸

Moreover, birth certificates are frequently unable to satisfy Proposition 200's documentation requirement even for individuals who do possess them—particularly for women. Nationwide, less than half of voting-age women who have ready access to their birth certificates have ones that reflect their current legal names. Brennan Center for Justice, *Citizens Without Proof*, 2 (Nov. 2006).²⁹ Assuming Arizona is similar to the United States as a whole on that score,

²⁷ Available at <http://www.npr.org/2012/01/28/146006217/why-new-photo-id-laws-mean-some-wont-vote>.

²⁸ Available at <http://parc.pop.upenn.edu/sites/parc.pop.upenn.edu/files/parc/PARCwps95-04.pdf>.

²⁹ Available at http://www.brennancenter.org/page/-/d/download_file_39242.pdf.

more than one and a half million female residents will be unable to use their birth certificates to fulfill Proposition 200's requirements. See U.S. Census Bureau, *Age and Sex Composition: 2010*, 7 (May 2011).³⁰

Community-based registration organizations also confront serious obstacles in assisting persons who might need to rely on a certificate of naturalization for documentation of their citizenship. Proposition 200 provides two means by which an individual can register to vote using naturalization documents: by providing the number on the certificate of naturalization or by presenting the certificate to a county recorder. A.R.S. § 16-166(F)(4). Where only the number is provided, Proposition 200 forbids the individual from being added to the registration rolls “until the number of the certificate of naturalization is verified with the United States immigration and naturalization service by the county recorder.” *Id.* After procedures to implement Proposition 200 were passed, Arizona realized that the “certificate of naturalization number” it asked applicants to provide could not be used to verify citizenship in the federal database. Accordingly, it amended its procedures to require the provision of the individual's alien registration number, which may also appear on the certificate of naturalization. J.A. 251. But individuals naturalized prior to approximately 1975 do not have an alien registration number on their certificates of naturalization. *Id.* at 251 n.5. Accordingly, they cannot register by mail—which is how many com-

³⁰ Available at <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf>.

munity-based organizations register voters—and must instead follow the second method of registration for which Proposition 200 provides: presentation of the certificate to the county recorder for inspection, which requires that the individual actually appear at the office in person during business hours.

Unlike birth certificates and passports, for which Proposition 200 specifically states that a photocopy mailed with the registration form is acceptable documentation, *see* A.R.S. § 16-166(F)(2) & (3), the statute does not make any mention of using photocopied certificates of naturalization to prove citizenship. And although some counties in Arizona say that they accept photocopies of naturalization documents, *see* J.A. 290, federal law criminalizes the photocopying of such documents, *see* 18 U.S.C. § 1426(h); *see also* J.A. 299. Accordingly, community-based registration organizations cannot register an individual whose certificate does not contain an alien registration number.

Finally, Proposition 200 permits the use of a “bureau of Indian affairs card number, tribal treaty card number or tribal enrollment number” as documentation of citizenship. A.R.S. § 16-166(F)(6). As the district court explained, however, the Bureau of Indian Affairs and tribal treaty cards are not in use in Arizona. J.A. 260. As a result, the only form of tribal documentation available to satisfy Proposition 200 is a tribal enrollment number. But at least two tribes in Arizona (the Navajo Nation and the Havasupai Tribe) do not issue tribal enrollment cards at all, and several others (the Hopi Tribe, the Yavapai-Apache Nation, and the Tonto Apache Tribe) do not have en-

rollment numbers on their tribal enrollment cards and thus members cannot use them as documentation of citizenship. *Id.* There were 292,552 Native Americans living in Arizona in 2005, *see* Ariz. Dep't of Health Services, *Demographics and Effective Risk Communication, Research Report*, 17 (Apr. 2005),³¹ and of them, 167,183 individuals—57% of Arizona's Native American population—belonged to one of the five tribes that do not issue documentation sufficient to comply with Proposition 200.³² And because many Native Americans also lack drivers licenses and birth certificates, *see* Trial Tr. at 187:19-188:18; 472:5-21, community-based organizations that focus on Native American voter registration are particularly impeded by Proposition 200.

In sum, Proposition 200 makes community-based registration less effective and more costly for groups

³¹ Available at <http://www.azdhs.gov/phs/edc/edrp/es/pdf/adhsspecialpopstudy.pdf>.

³² There were 152,159 members of the Navajo Nation, 679 members of the Havasupai Tribe, 12,213 members of the Hopi Tribe, 2,007 members of the Yavapai-Apache Nation, and 125 members of the Tonto Apache Tribe enrolled in Arizona in 2005. *See* U.S. Dep't of the Interior, Bureau of Indian Affairs, *2005 American Indian Population and Labor Force Report*, 10, 18, available at <http://www.bia.gov/cs/groups/public/documents/text/idc-001719.pdf>.

The 2005 figures are the most recent available; due to “methodology inconsistencies,” the Bureau of Indian Affairs did not release its 2010 Indian Population and Labor Force Report. *See* Letter of Donald E. Laverdure, Acting Assistant Secretary – Indian Affairs (Jul. 2, 2012), available at <http://www.bia.gov/cs/groups/public/documents/text/idc-019173.pdf>.

engaged in those efforts. Many eligible individuals cannot be registered through community-based registration drives, either because they do not have any acceptable form of documentation or because they do not have the documentation with them when approached at a registration drive. In the latter situation, some individuals need assistance to retrieve or copy their documents, while others leave to retrieve them and fail to return. Thus, Proposition 200 greatly increases the burdens on community-based registration organizations, from the additional time needed to assist each applicant to the cost of photocopying documents (either commercially or by bringing a generator and portable printer to a registration drive) while also substantially reducing the number of eligible voters who can be reached through registration drives conducted by such organizations.

CONCLUSION

For the foregoing reasons and those stated in respondents' briefs, the judgment below should be affirmed.

Respectfully submitted,

BRENDA WRIGHT
LISA J. DANETZ
DEMOS
358 Chestnut Hill Ave.
Suite 303
Brighton, MA 02135
(617) 232-5885

WALTER DELLINGER
JONATHAN D. HACKER
(Counsel of Record)
jhacker@omm.com
LOREN L. ALIKHAN
JOANNA NAIRN
BETH FRANCE
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

Attorneys for Amici Curiae

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