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25 UNITED STATES DISTRICT COURT  
26 DISTRICT OF ARIZONA

27 Maria M. Gonzalez, et al.,  
28 Plaintiffs,

vs.

State of Arizona, et al.,  
Defendants.

)  
) No. CV06-01268-PHX-ROS (Lead)  
) CV06-01362-PHX-ROS (Cons)

)  
) **ITCA PLAINTIFFS' PROPOSED**  
) **FINDINGS OF FACT AND**  
) **CONCLUSIONS OF LAW**

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29 Pursuant to Fed R. Civ. P. 52(a) and this Court's July 18, 2008 Order,  
30 plaintiffs the Inter Tribal Council of Arizona, Inc., the Hopi Tribe, Arizona Advocacy  
31 Network, the League of Women Voters of Arizona, the League of United Latin  
32 American Citizens and Rep. Steve Gallardo (collectively, the "ITCA Plaintiffs") hereby

1 submit Proposed Findings of Fact and Conclusions of Law based on the evidence  
2 admitted at the trial held July 9-18, 2008.

### 3 FINDINGS OF FACT

#### 4 A. Proposition 200

5 1. The Arizona Taxpayer and Citizen Protection Act (“Proposition  
6 200”), a citizen’s initiative, was approved by Arizona voters in the November 2, 2004  
7 general election. Three sections of Proposition 200 related to voting amended A.R.S. §§  
8 16-152, 16-166 and 16-579.

9 2. As amended by Proposition 200, A.R.S. § 16-166(F) requires that  
10 “[t]he County Recorder shall reject any application for registration that is not  
11 accompanied by satisfactory evidence of United States citizenship” (“Registration ID”)  
12 The statute defines “satisfactory evidence of citizenship” as:

- 13 • The number of the applicant’s driver license or nonoperating  
14 identification license issued after October 1, 1996 by the department of  
15 transportation or the equivalent governmental agency of another state  
16 within the United States if the agency indicates on the applicant's  
17 driver license or nonoperating identification license that the person has  
18 provided satisfactory proof of United States citizenship.
- 19 • A legible photocopy of the applicant's birth certificate that verifies  
20 citizenship to the satisfaction of the county recorder.
- 21 • A legible photocopy of pertinent pages of the applicant's United States  
22 passport identifying the applicant and the applicant's passport number  
23 or presentation to the county recorder of the applicant's United States  
24 passport.
- 25 • A presentation to the county recorder of the applicant's United States  
26 naturalization documents or the number of the certificate of  
27 naturalization. If only the number of the certificate of naturalization is  
28 provided, the applicant shall not be included in the registration rolls  
until the number of the certificate of naturalization is verified with the  
United States immigration and naturalization service by the county  
recorder.
- Other documents or methods of proof that are established pursuant to  
the immigration reform and control act of 1986.
- The applicant's bureau of Indian affairs card number, tribal treaty card  
number or tribal enrollment number.

A.R.S. § 16-166(F).

1           4.     The Registration ID requirement was pre-cleared by the  
2 Department of Justice and took effect on January 25, 2005. [Trial Tr. at 648:3-7]

3           5.     A.R.S. § 16-579(A), as amended by Proposition 200, requires  
4 voters voting at a polling place on election day to “present one form of identification  
5 that bears the name, address and photograph of the elector or two different forms of  
6 identification that bear the name and address of the elector” (“Polling ID”).

7           6.     Anyone who registered to vote in Arizona before January 25, 2005  
8 need not provide Registration ID unless he or she is re-registering in another Arizona  
9 county. A.R.S. § 16-166(G). All new applicants for voter registration must provide  
10 Registration ID. A.R.S. § 16-166(F). There are no provisions that permit waiver of the  
11 Registration ID requirement for any reason.

12           7.     The Secretary of State has promulgated a “Procedure for Proof of  
13 Identification at the Polls” (the “Polling Place Procedures”). [See Ex. 4] The Polling  
14 Place Procedures were initially precleared by the Department of Justice and took effect  
15 on September 6, 2005. The Polling Place Procedures were amended in 2008, and  
16 precleared by the Department of Justice on May 22, 2008. [See Trial Tr. at 680:18-  
17 681:7]

18           8.     The Polling Place Procedures list the acceptable forms of Polling  
19 ID. Pursuant to the Procedures, a voter will be provided a regular ballot if he presents  
20 one of the following bearing his photograph, name and current address: (a) a valid  
21 Arizona driver license (b) a valid Arizona nonoperating identification license, (c) a tribal  
22 enrollment card or other form of tribal identification or a valid United States federal,  
23 state or local government issued identification. [See Ex. 4, at 128]

24           9.     Under the Procedures, a voter who presents two forms of non-photo  
25 identification that bear his name and address will receive a regular ballot. Acceptable  
26 forms of non-photo identification are: (a) a utility bill (for electric, gas, water, solid  
27 waste, sewer, telephone, cellular phone, or cable television) that is dated within ninety  
28 days of the date of the election, (b) a bank or credit union statement that is dated within

1 ninety days of the date of the election, (c) a valid Arizona Vehicle Registration, (d) an  
2 Indian census card, (e) a property tax statement of the voter's residence, (f) a tribal  
3 enrollment card or other form of tribal identification, (g) a Recorder's Certificate or (h) a  
4 valid United States federal, state, or local government issued identification, including a  
5 voter registration card issued by the county recorder. [*Id.*]

6 10. The Procedures permit counties to add other forms of Polling ID  
7 that "establish the identity of the elector in accordance with the requirements of A.R.S. §  
8 16-579(A)." [*Id.*] Some, but not all, Arizona counties have added "official election  
9 mail" sent by the County, addressed to individual voters, to the list of acceptable non-  
10 photo identification. [Trial Tr. at 748:16-749:5; Ex. 530\*]<sup>1</sup>

11 11. The Polling ID requirements do not apply to voters who vote by  
12 mail or at early voting sites. [See Trial Tr. at 689:2-6] An elector who is dropping off  
13 his or her early ballot at a precinct voting location is not required to show Polling ID.  
14 [See Ex. 4, at 133]

15 12. A voter seeking to cast a ballot at his polling place on election day  
16 cannot obtain a waiver of the Polling ID requirement for any reason. [See *id.*]

17 13. Under the Polling Place Procedures, a voter's ballot can be  
18 processed one of the three ways depending upon the form of the elector's Polling ID.  
19 [See *id.* at 129-31, 135-36] The Polling Place Procedures include a separate  
20 "Identification Requirement for Native American Electors." [*Id.* at 135]

21 **B. Proposition 200 Has Disenfranchised Arizona Voters.**

22 14. Arizona elections officials believe that there are U.S. citizens in  
23 Arizona who are eligible to register to vote, but have been unable to do so because they  
24 lack Registration ID. [7/31/06 Osborne Dep. at 43:12-43:17; Justman Dep. at 30:14-  
25 30:19; Hansen Dep. at 38:20-38:23; 8/2/06 Rodriguez Dep. at 131:9-131:14; 1/14/08

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26 <sup>1</sup> The Court has taken under advisement the parties' various motions for the admission  
27 of certain trial exhibits. Exhibits marked with an asterisk herein are those on which the Court  
28 has not yet ruled.

1 Osborne Dep. at 95:17-96:16; Marin Dep. at 74:24-75:22; Wayman-Trujillo Dep. at  
2 66:10-68:13]

3 15. From January 2005 through the Fall of 2007, 14 of Arizona's 15  
4 counties rejected approximately 38,000 voter registration applications from at least  
5 31,550 individuals for failure to provide Registration ID, as defined by A.R.S. § 16-  
6 166(F). [Trial Tr. at 243:3-5; see Ex. 883, Table 1] Those 31,550 voter registration  
7 applications were submitted by individuals who attested under penalty of perjury that  
8 they are citizens of the United States. [See, e.g., Ex. 1357]

9 16. From July 1, 2006 to June 30, 2007, Coconino County rejected 260  
10 voter registration forms because they were submitted without "satisfactory evidence of  
11 citizenship." [Ex. 1193] Of those 260 rejected registrants, only 59 later provided  
12 "satisfactory evidence of citizenship." [Id.] As such, 201 registrants were *not* added to  
13 the voter registration rolls. [Id.] This 77 percent failure rate is substantially higher than  
14 the 61.2 percent registration failure rate that Coconino County experienced between  
15 January 24, 2005 and June 30, 2006. [See Hansen Dep. Ex. 5 (rejected registration  
16 forms from individuals who later successfully registered), Ex. 6 (rejected registration  
17 forms from individuals who did not later successfully register)]

18 17. During the November 7, 2006 general election, the County  
19 Defendants were ordered to "track the number of prospective voters that do not have  
20 appropriate identification and choose to leave the polling location rather than cast a  
21 conditional provisional ballot." [Doc. 241] At least 2,548 voters exited polling places  
22 without casting any type of ballot at all after being asked to present Polling Place ID.  
23 [Ex. 1172-73\*]

24 18. According to Defendants, from 2006, when Arizona implemented  
25 its Polling Place ID procedure, through elections in the Spring of 2007, at least 4,243  
26 conditional provisional ballots have been cast, but only 1,532 of those conditional  
27 provisional ballots were counted. [Ex. 1174-87, (No. 3(f), excluding Mohave, Pima and  
28 Pinal Counties, which did not provide the number of uncounted conditional provisional

1 ballots in response to the ITCA Plaintiffs’ Interrogatory No. 3(f)] Based on  
2 Defendants’ discovery responses, more than 63 percent of voters who cast conditional  
3 provisional ballots in these twelve counties did *not* return to provide Polling Place ID.  
4 [*Id.*] When ordered to produce their uncounted conditional provisional ballot envelopes,  
5 however, the counties provided 4,194 uncounted ballots – 1,483 *more* uncounted ballots  
6 than they reported to the ITCA Plaintiffs. [Trial Tr. at 249:24-25]

7           19. The Polling Place ID procedures are confusing for elections  
8 officials and poll workers. [7/31/06 Osborne Dep. at 80:23-81:17; Hansen Dep. at 86:3-  
9 86:9; Ex. 1122\*, ¶¶ 8-11; *compare* Hoyos Dep. 22:21-23:17 (Pinal County does not  
10 accept out-of-state driver’s licenses) *with* Wayman-Trujillo Dep.127:19-128:12  
11 (Yavapai County accepts out-of-state driver’s licenses)] This confusion has led to  
12 voters with sufficient Polling Place ID to obtain a regular ballot or regular provisional  
13 ballot to be given a conditional provisional ballot or be denied a ballot altogether. [Ex.  
14 967-68] One of the most common problems was poll workers giving a voter a  
15 conditional provisional ballot, or no ballot at all, even though the voter presented a valid  
16 Arizona driver’s license, that only lacked the voter’s current address. [*Id.*]

17           **C. Thousands of Arizonans Lack “Satisfactory Evidence of Citizenship.”**

18           20. A person cannot obtain “satisfactory evidence of citizenship”  
19 without paying a fee of at least \$10. [Doc. 219, at 9] The fees for “satisfactory  
20 evidence of citizenship” can be as high as \$220 for a replacement Certificate of  
21 Naturalization. [*See* Ex. 1146\*]

22           21. From July 1, 2004 to July 1, 2007, Arizona’s population *increased*  
23 by more than 650,000 people: from 5,845,250 to 6,500,194 – more than 11 percent.  
24 [Ex. 1216] From January 1, 2005 until March 1, 2008, however, voter registration  
25 *declined*. Indeed, on January 1, 2005, 2,706,223 individuals were registered to vote in  
26 Arizona, but as of March 1, 2008, only 2,694,974 individuals are registered to vote – a  
27 *decrease* of more than 11,000 voters. [*See* Ex. 1217]

1           22.     Approximately 12.6 percent of Arizonans registered to vote do *not*  
2 possess an Arizona driver’s license or non-operating identification license. [Ex. 678\*]  
3 As of August 3, 2006, 12.12 percent of Arizona driver’s licenses and non-operating  
4 identification licenses were issued before October 1996, and as such do not constitute  
5 Registration ID. [Ex. 575\*] Assuming that individuals eligible to register to vote but  
6 not registered possess driver’s licenses or non-operating IDs at the same rate as those  
7 already registered, approximately 23.19 percent of eligible, but unregistered individuals  
8 cannot use an Arizona driver’s license or non-operating ID to register to vote, either  
9 because they did *not* possess a license or held one issued before October 1, 1996. [See  
10 Ex. 575\*, 678\*]

11           23.     Many Native Americans over age 40 were not born in hospitals and  
12 do not have birth certificates, nor can they obtain a delayed birth certificate because  
13 those adults in attendance at their births are deceased. [Trial Tr. at 472:9-21, 474:7-15;  
14 *see also* Hansen Dep. at 23:1-23:18; 8/2/06 Rodriguez Dep. at 41:21-41:24, 90:12-  
15 90:14] Assuming the age distribution of Native Americans is substantially similar to  
16 that of the overall population in Arizona, 42.7 percent, or 99,641 Native Americans are  
17 over age 40. [Ex. 1198, at 48]

18           24.     Bureau of Indian Affairs cards, with or without numbers are not in  
19 use in Arizona. [Trial Tr. at 474:19-475:2]

20           25.     Only the Navajo Nation and four Apache Tribes in Arizona have  
21 formal treaties with the United States. Even so, Tribal Treaty cards, with or without  
22 numbers, are not in use in Arizona. [Trial Tr. at 475:6-11; Ex. 1340, at 4]

23           26.     Some Arizona Native American Tribes – including the Navajo  
24 Nation and the Havasupai Tribe – do not issue Tribal identification cards or enrollment  
25 cards. [Ex. 1325, at 15-18, Ex. 1340, at 4; *see also* 8/30/06 Hr’g Tr. at 112:21-113:9  
26 (Supai Tribe does not issue identification)] At least three Arizona tribes charge a fee for  
27 updated, replacement or initial tribal enrollment or identification cards. [Ex. 1325, at  
28 15-18]

1           27. The distance to Arizona MVD offices, the limited opening hours of  
2 such offices, the expense and required documentation make it very difficult or  
3 impossible for Native Americans residing on reservations to obtain Arizona driver's  
4 licenses or non-operating identification licenses. [See Trial Tr. at 456:9-458:8; Ex.  
5 1138]

6           28. For some, Registration ID is impossible to obtain. Shirley Preiss  
7 was born in Kentucky in 1910 and not issued a birth certificate. [Trial Tr. at 82:13-83:6]  
8 She has attempted to obtain a delayed birth certificate, but has been unsuccessful. [*Id.*  
9 at 83:20-24] She does not possess any other forms of Registration ID and has been  
10 unable to register to vote in Arizona. [*Id.* at 87:21-24]

11           29. Implementation of the Registration ID requirement has led  
12 organizations that conduct voter registration activities to reduce or stop such activities  
13 altogether. [8/30/06 Hr'g Tr. at 121:10-124:9; *see also* Marin Dep. at 12:13-12:21;  
14 Dean-Lytle Dep. at 22:8-22:17] Those that continue to work to register voters must  
15 devote double or triple the resources they would have needed to expend before  
16 Proposition 200 to register the same number of voters. [Trial Tr. at 586:16-587:11; Ex.  
17 1223]

18           30. Many people are reluctant to provide the information contained in  
19 "satisfactory evidence of citizenship" documents to those conducting voter registration  
20 activities, even county employees. [Marin Dep. at 32:17-32:25; 8/30/06 Hr'g Tr. at  
21 123:4-123:11]

22           **D. Alternatives to Purchasing Polling ID Are Insufficient to Protect all**  
23           **Voters.**

24           31. Elections officials have expressed concern that some segments of  
25 the community may not possess Polling ID. [7/25/06 Kanefield Dep. at 27:12-28:5;  
26 Wayman-Trujillo Dep. at 106:12-106:16]

27           32. Under A.R.S. § 16-579, government-issued photo identification  
28 must contain a voter's current name and address to permit that person to vote a regular

1 ballot at the polls on election day. Arizona law does not require an individual to obtain  
2 a new driver's license or non-operating identification license with updated address  
3 information when that individual moves. [See Ex. 1136] Once issued, an Arizona  
4 driver's license is valid until the driver's 65th birthday. A.R.S. § 28-3171(A)(1).

5 33. Excluding "Official Election Mail" addressed to an individual voter  
6 and some forms of identification issued by some Native American tribal governments,  
7 Polling Place ID cannot be obtained without payment of a fee for the identification itself  
8 or for a service such as a bank account or utility service. [See Ex. 4, at 128]

9 34. Arizona counties are not required by law to send "Official Election  
10 Mail" individually addressed to any registered voter. [See 7/31/06 Osborne Dep. at  
11 62:4-63:8, 63:25-64:10; Hansen Dep. at 57:5-57:17; ITCA Ex. 18; 7/25/06 Kanefield  
12 Dep. at 139:1-3; Dastrup Dep. at 21:23-21:25; Pew Dep. at 22:20-23:18] Not all  
13 Arizona counties send official election mail, addressed to all individual voters, which  
14 voters may use as Polling Place ID. [See, e.g., Trial Tr. at 748:22-749:5; ; Stallworth  
15 Dep. at 32:15-32:25; Ex. 4, at 128 (listing forms of Polling Place ID); Ex. 530\* (limiting  
16 Polling Place ID to "those specifically noted in the Manuel [sic]"), Ex. 1118-19]

17 35. Indeed, most Arizona counties do not send Official Election Mail to  
18 "inactive" registered voters. [See 7/31/06 Osborne Dep. at 59:21-60:18; Hansen Dep. at  
19 50:2-50:4, 57:2-57:9; 8/30/06 Hr'g Tr. at 111:12-111:20]

20 36. Even if a county sent official election mail or voter registration  
21 cards that such county accepted as polling place identification in the 2006 primary or  
22 general election, the record does not establish that any county will send such items to  
23 voters or accept them as polling place identification for future elections. [Cf. Ex. 4, at  
24 128 (official election mail *not* listed as Polling Place ID); Stallworth Dep. at 33:6-33:9]

25 37. Indeed, Maricopa County, will *not* send Official Election Mail  
26 addressed to individual voters for elections in 2008. [Ex. 1218; *see also* 1/14/08  
27 Osborne Dep. at 83:20-84:11, 86:1-86:4 (discussing cost of sending sample ballots to  
28 individual voters and potential for not doing so in 2008 to meet County-mandated

1 budget reduction); Wayman-Trujillo Dep. at 108:16-109:10 (Yavapai County may not  
2 send official election mail in 2008, and did not do so for the February 5, 2008  
3 Presidential Preference Election)] Accordingly, more than 56 percent of the active  
4 voters in Arizona will *not* receive this form of free identification to use at the polls on  
5 election day. [See ITCA Ex. 1217 (listing number of registered voters by county)]

6 38. Even if Arizona counties issue “Official Election Mail” to  
7 individual voters, they are not required by law to accept “Official Election Mail” as  
8 Polling Place ID, and some Arizona counties do not. [See Trial Tr. at 748:22-749:5;  
9 Dastrup Dep. at 22:1-22:12; Pew Dep. at 23:10-23:18; Ex. 4, at 128; Ex. 530\*]

10 39. A Recorder’s Certificate is only available to a voter whose name  
11 does *not* appear on the precinct register due to the Recorder’s error. [7/31/06 Osborne  
12 Dep. at 56:3-58:14; 8/2/06 Rodriguez Dep. at 41:25-45:8; Hoyos Dep. at 29:24-30:22]  
13 At least one County Recorder did not know when she should issue a Recorder’s  
14 Certificate. [Dean-Lytle Dep. at 85:18-86:2]

15 40. In-person early voting is one method by which Arizona registered  
16 voters can vote. See A.R.S. § 16-541(A). Procedures for in-person early voting are  
17 exactly the same as in-person voting on election day, except that voters need not present  
18 Polling Place ID to vote early. [Doc. 219, at 3-4] However, counties do not provide as  
19 many early voting sites as election day polling places. [Marin Dep. at 112:14-112:20;  
20 8/30/06 Hr’g Tr. at 106:10-106:12, 109:5-109:8; Hoyos Dep. at 82:3-82:12; Wayman-  
21 Trujillo Dep. at 137:10-138:16] In Yuma County, for example, which covers  
22 5,519 square miles, in-person early voting is only conducted at the County Recorder’s  
23 office in the City of Yuma. [Marin Dep. at 112:14-112:20]

24 41. Pursuant to sections 4(f)(4) and 203 of the Voting Rights Act,  
25 Arizona counties must provide language assistance to voters. See 42 U.S.C. §§  
26 1973b(f), 1973aa-1a; 28 C.F.R. Part 55, App. Language assistance is not always  
27 available to early voters. [See 8/30/06 Hr’g Tr. at 107:25-108:9; Hoyos Dep. at 74:15-  
28 75:9]

1           42. Counties provide far fewer sites for post-election day ID  
2 verification than polling places. [*See* Wayman-Trujillo Dep. at 97:18-99:13] In Yuma  
3 County, for example, which covers 5,519 square miles, a voter who cast a conditional  
4 provisional ballot must go to the County Recorder's office in the City of Yuma to  
5 present sufficient identification or his ballot will not be counted. [Marin Dep. at 108:13-  
6 108:20]

7           **E. Plaintiffs Have Been Harmed by Proposition 200.**

8           43. The Arizona Advocacy Network (AzAN) is a not-for-profit  
9 membership organization whose mission includes leading efforts for electoral justice  
10 and increased civic participation. [Trial Tr. at 581:18-20]

11           44. AzAN contracts with USAction Education Fund to conduct voter  
12 registration, and is compensated based on the number of successful voter registrations it  
13 submits. [*Id.* at 584:18-24] AzAN will only be compensated for confirmed  
14 registrations, requiring that it keep records of all newly registered voters. [*Id.* at 586:13-  
15 15]

16           45. In 2008, AzAN's goal is to register 5,000 low-income voters, and  
17 follow up with them to make sure they succeed in voting. [*Id.* at 585:21-22]

18           46. To register voters, AzAN staff and/or volunteers must convince  
19 strangers to provide them with a great deal of personal information. In a state that leads  
20 the nation in identity theft, many people are reluctant to give out such information to  
21 someone they do not know. [Marin Dep. at 32:17-32:25; 8/30/06 Hr'g Tr. at 123:4-  
22 123:11] The increased demands for information as a result of Proposition 200 make it  
23 more difficult for AzAN to register voters. [Trial Tr. at 586:1-6] Although they may  
24 choose to complete the voter registration form and mail it in on their own, AzAN will  
25 not receive credit for that registration. [*Id.* at 586:13-15]

26           47. In 2006, AzAN attempted to assist Eva Steele in registering to vote.  
27 [*Id.* at 583:18-21] Ms. Steele, a native-born citizen of the United States, lived in an  
28 assisted living facility in Mesa, Arizona. [*Id.*] Ms. Steele did not have access to

1 Registration ID and therefore was unable to register to vote. [*Id.*] Though she is now  
2 registered to vote, Ms. Steele was only able to register when the Registration ID  
3 requirement was not in effect between October 5 and October 20, 2006. [*Id.* at 583:22-  
4 594:5]

5 48. AzAN staff have met with Shirley Preiss, a 97-year-old native-born  
6 citizen of the United States. [*Id.* at 584:6-13] Ms. Preiss wishes to register to vote in  
7 Arizona, where she now lives with her son, but does not possess and cannot obtain  
8 “satisfactory evidence of citizenship.” [*Id.* at 84:2-3, 87:7-24] Due to the Proposition  
9 200 ID Requirements, AzAN has not been able to assist Ms. Preiss in registering to vote.  
10 [*Id.* at 584:9-13]

11 49. Due to the Registration ID requirement, AzAN will need to contact  
12 approximately two to three times as many eligible registrants for each successful  
13 registration than will be necessary in other states that have no such requirement. [*Id.* at  
14 586:18-25] This will cost AzAN \$11,000 to \$22,000 more than it would cost an  
15 organization registering voters in other states. [*Id.* at 587:9-11; Ex. 1223]

16 50. During the 2006 elections, the first in which the Polling ID  
17 requirement was in effect, AzAN engaged in the following activities that it had not  
18 undertaken before the law’s implementation: (a) educating voters about the new Polling  
19 ID requirement at 20 public forums, (b) training volunteers so that they understood what  
20 constituted acceptable Polling ID, and how voters were to be treated if they were barred  
21 from voting regular ballots due to the Polling ID requirement, (c) distributed “Voter’s  
22 Bill of Rights” leaflets listing voters’ rights under the law and what constituted  
23 acceptable Polling ID, (d) deploying volunteers to polling places to survey voters  
24 coming out of the polls about whether they had had difficulties voting due to the Polling  
25 ID requirements, and (e) assisting voters to make sure they were able to vote when they  
26 were wrongly turned away from the polls. [Trial Tr. at 587:19-588:3, 588:19-589:17;  
27 Ex. 1223]

1           51.     Because of the number of problems voters encountered at the polls  
2 in 2006, AzAN staff has determined that it will be necessary to dramatically increase the  
3 number of volunteers it trains and deploys in future elections in order to ensure that  
4 more voters are not erroneously turned away from the polls as a result of Proposition  
5 200. [Trial Tr. at 594:19-595:6; Ex. 1223]

6           52.     AzAN incurred costs in 2006 that it would not have incurred absent  
7 Proposition 200. AzAN incurred an additional \$19,025 in 2006 to recruit, train, deploy  
8 and supervise volunteers, print “Voters Bill of Rights” handouts and travel to polling  
9 places on election days. [Ex. 1223]

10          53.     For the 2008 elections, AzAN has the goal of recruiting, training  
11 and deploying five hundred volunteers at a projected cost of \$40,440.00. [*Id.*] None of  
12 the costs associated with this staff and volunteer effort would be necessary but for the  
13 implementation of Proposition 200. [*Id.* at 601:1-3]

14          54.     The League of Women Voters of Arizona (“LWV”) is a  
15 nonpartisan, non-profit political membership organization dedicated to improving  
16 systems of government, increasing voter participation and impacting public policies  
17 through citizen education and advocacy. By preventing eligible individuals who lack  
18 voting identification from voting, Proposition 200 harms LWV’s ability to increase  
19 voter participation. [8/30/06 Hr’g Tr. at 116:6-116:20]

20          55.     Before the implementation of Proposition 200’s proof of citizenship  
21 requirement, LWV devoted substantial time and resources to registering eligible voters.  
22 Specifically, LWV conducted voter registration drives by setting up tables at fairs,  
23 school parents’ nights and other community events. In the past, LWV has also gone  
24 door-to-door registering voters. At such voter registration events, LWV would provide  
25 voter registration forms to be filled out, then deliver them to the county recorder.  
26 [8/30/06 Hr’g Tr. at 119:1-121:9]

27          56.     LWV has limited resources available to register voters. It is  
28 impossible for LWV to set up photocopying equipment at its voter registration events to

1 meet Arizona's proof of citizenship requirement. Moreover, the cost of equipping LWV  
2 employees and volunteers with mobile scanners or photocopying machines to create  
3 copies of registrants' Registration ID (for those who lack a driver's or non-operator's  
4 license issued after October 1, 1996, alien registration number or tribal enrollment  
5 number) is prohibitively expensive, and would preclude LWV from registering voters.  
6 LWV does not have the financial resources to purchase such equipment. Even if LWV  
7 had sufficient financial resources to purchase mobile photocopying equipment, such  
8 purchases would require LWV to divert financial resources from current voter education  
9 and registration activities. [8/30/06 Hr'g Tr. at 122:1-123:3]

10           57. Because LWV lacks the ability to copy documents that serve as  
11 Registration under Proposition 200, it has ceased its voter registration drives, except to  
12 distribute registration forms. As such, LWV is unable to ensure that any registration  
13 forms it distributes are being delivered to the county recorders. Before Propostion 200  
14 took effect, LWV registered at least 300 voters a year. It now can confirm no voter  
15 registrations. Consequently, LWV's efforts to register voters are harmed by Proposition  
16 200. [8/30/06 Hr'g Tr. at 121:10-121:25]

17           58. The purpose of the Inter Tribal Council of Arizona, Inc. ("ITCA")  
18 is to provide its Member Tribes with the means to take action on matters that affect them  
19 collectively and individually, to promote tribal sovereignty, and to strengthen tribal  
20 governments. Supporting tribal governments in their efforts to promote voter  
21 participation among their individual members is an integral part of this purpose. As of  
22 2003, there were approximately 112,790 individual members of the ITCA Member  
23 Tribes in Arizona. [Ex. 1311, at 3; Ex. 1340, at 3]

24           59. Voter education and outreach for Member Tribes of ITCA is central  
25 to ITCA's mission. In light of the burdensome and complicated requirements of the  
26 voter identification provisions of Proposition 200, ITCA has intensified its voter  
27 outreach and education efforts at additional cost to ITCA. These efforts have included,  
28 but are not limited to, printing a special voter information pamphlet, attending various

1 meetings at Reservations throughout Arizona to educate Member Tribes, and devoting  
2 additional ITCA meeting time and resources to such efforts. In 2006, ITCA expended  
3 287 hours in staff time and \$30,783 for voter education and outreach related to  
4 Proposition 200. [Ex. 1340, at 6 and attachments]

5           60. ITCA is not aware of the existence of the “bureau of Indian affairs  
6 card number” or “tribal treaty card number” referenced in A.R.S. § 16-166(F)(6).  
7 Moreover, certain ITCA Member Tribes do not provide their members with “enrollment  
8 numbers.” A.R.S. § 16-166(F)(6). Furthermore, some of ITCA’s Member Tribes do not  
9 provide Tribal enrollment or identification cards at all. Many Member Tribes also lack  
10 or have limited financial resources to keep enrollment/tribal identification cards current  
11 for their tribal members. [Ex. 1340, at 4]

12           61. Some ITCA Member Tribes have attempted to change or update  
13 their enrollment or tribal identification cards in an effort to meet the Registration ID  
14 requirements. Such efforts required use of funds from already limited tribal budgets.  
15 [*Id.* at 4]

16           62. Plaintiff Steve Gallardo is a member of both the Arizona House of  
17 Representatives and the Phoenix Union High School District Governing Board. Before  
18 he became an elected official, he worked for 14 years in the Office of the Maricopa  
19 County Recorder in a variety of roles including the conduct of voter registration. As an  
20 elected official, he has personal experience in campaigning for election, supervising  
21 paid and volunteer campaign staff and constituent service and outreach. [Defs’ Ex.  
22 1313, at 6-7]

23           63. Plaintiff Rep. Steve Gallardo’s strongest supporters and likely  
24 supporters also are concentrated in neighborhoods in which members of racial and  
25 ethnic minority groups make up the predominant share of the eligible voters. [*Id.* at 5-6]

26           64. Relative to communities in which white, non-Hispanic residents are  
27 in the majority, his supporters and likely supporters in such heavily-minority  
28 communities are (a) less likely to possess the voting identification required by

1 Proposition 200, (b) less likely to possess a birth certificate and/or other proof of  
2 citizenship required by the voter registration requirements of Proposition 200, (c) less  
3 likely to have access to motor vehicles or other means of transportation that would assist  
4 them in obtaining documentation to satisfy the requirements of Proposition 200; and (d)  
5 less likely to have access to telephones, the Internet and other mass communication  
6 resources that would assist them in meeting the requirements of Proposition 200. [*Id.*]

7           65. For these reasons, candidates whose supporters are predominantly  
8 residents of affluent communities and/or predominantly white, non-Hispanic  
9 neighborhoods will be placed at an advantage relative to Rep. Gallardo because their  
10 supporters will be more likely than his to have their votes counted notwithstanding the  
11 requirements of Proposition 200. [*Id.*] In order to remain competitive with such  
12 candidates, Rep. Gallardo will be forced to divert a disproportionate share of his  
13 resources toward voter education and other efforts to ensure that his supporters are not  
14 frustrated by the requirements of Proposition 200. [*Id.*] This is of particular concern for  
15 Rep. Gallardo's 2008 reelection to the Phoenix Union High School District, in which he  
16 plans to seek one of the two at-large seats. [*Id.*]

17           66. Rep. Gallardo is harmed by the voting identification requirement of  
18 Proposition 200 due to: (a) his need to expend additional effort in educating his potential  
19 supporters and campaign workers as to how to satisfy the Registration and Polling ID  
20 requirements before elections, (b) his need to expend additional effort in mobilizing his  
21 supporters (that is, "get out the vote" activities) during elections, (c) the likelihood that  
22 despite his best efforts, some of his potential supporters who are eligible to vote will  
23 have their registration applications rejected because they lack Registration ID, (d) the  
24 likelihood that despite his best efforts, some of his supporters will not attempt to register  
25 or vote at all due to their lack of Registration or Polling ID, or their belief that they will  
26 be prevented from voting by the identification requirements, (e) the likelihood that  
27 despite his best efforts, some of his supporters will be required to cast conditional  
28 provisional ballots that will not be counted because the voters lack Polling ID, (f) the

1 likelihood that despite his best efforts, some of his supporters will not have their  
2 conditional provisional ballots counted because they are unable to visit an ID  
3 verification site in person after the election in order to present their identification, (g) the  
4 likelihood that poll workers will provide mistaken and incorrect information to his  
5 potential supporters that will lead to their ballots not being counted, and the need to  
6 expend additional resources to train poll watchers to ensure that poll workers correctly  
7 apply the identification requirements, and (h) the disadvantage that Rep. Gallardo will  
8 suffer relative to other candidates whose supporters are better able to satisfy the  
9 Registration and Polling ID requirements of Proposition 200. [*Id.* at 3-5]

10           67. It is central to the mission of the Hopi Election Office, an agency of  
11 the Hopi Tribal government, to encourage tribal members to become active participants  
12 in state and federal elections and thereby in the United States democracy, which  
13 includes registering citizens to vote. [Ex. 1312, at 3]<sup>2</sup>

14           68. There are approximately 12,512 Hopi tribal members. Of those  
15 enrolled members, approximately 9,235 are over 18 years of age. There are substantial  
16 numbers of Hopi individuals who lack a Hopi enrollment card and thus do not have an  
17 enrollment number to provide as Registration ID. These individuals, who lack even a  
18 form of tribal ID, usually also lack other forms of Registration ID, such as passports,  
19 driver's licenses or nonoperating identification licenses. As of July 2006, there were  
20 4,348 Hopi individuals who had not received a Hopi enrollment card. [*Id.* at 5]

21           69. The Hopi Tribal Registrar has engaged in voter registration drives  
22 since the effective date of Proposition 200, but has been unable to register voters in  
23 nearly the same numbers as she had before Proposition 200 went into effect. [*Id.* at 4]

24           70. The Hopi Tribe has discussed with Navajo County the placement of  
25 a new, additional precinct on a rather remote part of the reservation (an area in which

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26  
27           <sup>2</sup> Ex. 1312 and 1316, Interrogatory Responses of the Hopi Tribe and LULAC, were  
28 marked for trial by Defendants, but their admission has not been moved.

1 certain Hopi voters have to walk six miles to cast their votes). Hopi was informed by  
2 Navajo County that new precincts are determined based on the number of voters who  
3 turn out to vote. Because the Registration ID requirement has caused a decrease in Hopi  
4 voter turnout, Hopi has been unsuccessful in obtaining this additional precinct. [*Id.*]

5           71. The League of United Latin American Citizens (“LULAC”) is a  
6 membership organization dedicated to advancing the economic condition, educational  
7 attainment, political influence, health and civil rights of the Hispanic population of the  
8 United States. A key component of LULAC’s mission is to empower the Latino  
9 community by means of civic engagement through voter registration and participation.  
10 By preventing eligible individuals who lack Registration or Polling ID from voting,  
11 Proposition 200 harms LULAC’s ability to increase voter participation. [Defs’ Ex.  
12 1316, at 3]

13           72. Specifically, the community that LULAC serves is very mobile and  
14 includes many people who change residences often. Often, these individuals use a P.O.  
15 box and cannot readily obtain voting identification with their current residence address.  
16 In addition, many members of the community that LULAC serves live in apartments  
17 that provide utility service and do not receive utility bills. Moreover, many of the older  
18 members of the community that LULAC serves live with their children or in nursing  
19 homes or other assisted living facilities. Consequently, the community that LULAC  
20 serves includes many people who are less likely than others to possess Polling ID. [*Id.*]

21           73. Before the implementation of Proposition 200’s proof of citizenship  
22 requirement, LULAC devoted substantial time and resources to registering eligible  
23 voters. Specifically, LULAC conducted three types of voter registration drives:  
24 canvassing (going door-to-door), event (setting up tables at fairs and other community  
25 events) and site (setting up tables outside grocery stores, etc.). At such voter registration  
26 events, LULAC would provide voter registration forms to be completed, then deliver the  
27 completed forms to the county recorder. [*Id.* at 4]

1           74. The community that LULAC serves includes many naturalized  
2 citizens, who seldom carry their certificates of naturalization with them. Furthermore,  
3 because of fears about identity theft, many people decline to provide LULAC volunteers  
4 with the documents or numbers that constitute “satisfactory evidence of citizenship”  
5 under Proposition 200, further hampering LULAC’s voter registration efforts. [*Id.*]

6           75. Even if potential registrants have Registration ID with them when  
7 they come into contact with a LULAC voter registration drive, it is impossible for  
8 LULAC to set up photocopying equipment at its voter registration events. Moreover,  
9 the cost of equipping LULAC employees and volunteers with mobile scanners or  
10 photocopying machines to copy Registration ID is prohibitively expensive, and would  
11 preclude LULAC from registering voters. LULAC does not have the financial resources  
12 to purchase such equipment. Even if LULAC had sufficient financial resources to  
13 purchase mobile copying equipment, such purchases would require LULAC to divert  
14 financial resources from other voter outreach, and registration activities. [*Id.* at 4-5]

15           **F. The Record is Devoid of Evidence of Fraudulent Registration or**  
16           **Voting by Undocumented Immigrants – the Harm Proposition 200**  
17           **Was Designed to Remedy.**

18           76. Proposition 200’s supporters championed the initiative as a way to  
19 stop illegal immigration. [Ex. 1] Yet defendants have disclosed no evidence that any  
20 illegal immigrant has registered to vote or voted in Arizona.

21           77. The State Elections Director testified that the Secretary of State’s  
22 election fraud hotline has received no calls that have resulted in prosecution. [Trial Tr.  
23 at 745:4-7]

24           78. Court records offered into evidence by defendants do not establish  
25 that the nine individuals prosecuted have been found not to be United States citizens.  
26 [See Ex. 1349a-g\*, 1349y-z\*] The factual bases for the convictions for misdemeanor  
27 “Presentment of a False Instrument” or “Unsworn Falsification” do not appear in the  
28 court records offered. [*Id.*] Moreover, all the charges of “Illegal Voting” have been  
dismissed. [*Id.*]

1           79. A very small number of voter registration forms rejected for failure  
2 to provide “satisfactory evidence of citizenship” list a birthplace outside the United  
3 States. [7/31/06 Osborne Dep. at 22:11-22:24; Ex. 885, Table 3] Indeed, most rejected  
4 registrants were born in U.S. – 86.6 percent of Hispanics and 92.9 percent of non-  
5 Hispanics were reportedly U.S.-born. [Ex. 885, Table 3]

6           80. Maricopa County receives notification from the Maricopa County  
7 Superior Court Jury Commissioner of persons who have indicated on a juror affidavit  
8 that they are not U.S. citizens. Yet some individuals who attest to the jury  
9 commissioner that they are not citizens, in fact, are United States citizens. [7/31/06  
10 Osborne Dep. at 91:4-91:9; 1/23/08 Altaha Dep. at 7:20-8:14]

11           81. There is no evidence that any non-citizen has registered, attempted  
12 to register to vote or voted in 12 of Arizona’s 15 counties. [ITCA Ex. 5-7, 9-14, 17, 24,  
13 72, at No. 1; *see also* Justman Dep. at 11:15-11:25; Hansen Dep. at 86:13-87:12;  
14 Johnson Dep., at 11:10-12:9; 1/11/08 Kanefield Dep. at 31:22-34:9; Dean-Lytle Dep. at  
15 87:17-88:12, 89:19-90:16; Wayman-Trujillo Dep. at 29:15-29:17, 34:5-34:13]

16           82. Yuma County had only one instance in which a non-citizen was  
17 alleged to have registered. [Marin Dep. at 98:1-00:25, 101:17-102:19] That individual  
18 did not know that she had completed a voter registration form. [*Id.*] Moreover, she  
19 never voted, and requested that her voter registration be canceled when she learned of  
20 the error. [*Id.*]

21           83. Maricopa County Elections Director Karen Osborne testified about  
22 only two non-U.S. citizen, legal residents who had been induced to register to vote by  
23 others who persuaded them they were permitted to do so over a ten-plus-year period.  
24 [7/31/06 Osborne Dep. at 18:18-20:1, 94:17-95:1 (calling registration “inadvertent”);  
25 1/23/08 Osborne Dep. at 15:13-16:10, 40:7-41:12]

26           84. County elections officials believe that the pre-Proposition 200  
27 requirement that a registrant check a box stating that he or she is a U.S. citizen and sign  
28 the voter registration form under penalty of perjury was sufficient to prevent non-U.S.

1 citizens from registering to vote. [Dean-Lytle Dep. at 31:22-32:23; Wayman-Trujillo  
2 Dep. at 28:2-30:9]

3 85. The record contains no evidence of fraudulent voting at the polls by  
4 ineligible voters. Indeed, Arizona counties have not reported a single instance of  
5 imposter voting on election day or during in-person early voting. [*E.g.*, Justman Dep. at  
6 12:22-13:4; Hansen Dep. at 87:13-87:20; 1/14/08 Osborne Dep. at 89:3-89:6; 8/30/06  
7 Hr’g Tr. at 101:23-102:1; Dastrup Dep. at 29:5; Stallworth Dep., at 20:18-20:23;  
8 1/23/08 Osborne Dep. at 6:10-6:24, 31:13-31:17; Hoyos Dep. at 40:3-41:1; Wayman-  
9 Trujillo Dep. at 128:13-128:15] Imposter voting, however, has occurred by mail-in  
10 ballot. [1/14/08 Osborne Dep. at 89:7-90:12; 1/23/08 Osborne Dep. at 7:1-7:22]

11 **G. Proposition 200 Does Not Prevent Registration by Non-Citizens or**  
12 **Imposter Voting, but Alternatives to the Identification Requirements**  
13 **of Proposition 200 Can Prevent Voter Fraud.**

14 86. County Recorders do not take any steps to verify the authenticity of  
15 birth certificates, photocopies of passport pages, Bureau of Indian Affairs card numbers,  
16 Tribal Treaty card numbers or Tribal enrollment numbers. [1/14/08 Osborne Dep. at  
17 50:10-51:25; Marin Dep. at 45:18-46:23; Johnson Dep. at 20:22-22:4; Dean-Lytle Dep.  
18 at 49:21-51:19; Wayman-Trujillo Dep. at 63:8-66:9]

19 87. The driver’s license matching process does not assure that  
20 registrants are United States citizens. The Arizona MVD does *not* verify citizenship.  
21 [Yanofsky Dep. at 12:24-13:25] Instead, MVD determines only authorized presence in  
22 Arizona. [*Id.*, at 13:10-13:13, 57:8-57:15]

23 88. A non-citizen with authorized presence in Arizona can possess a  
24 regular “D” type Arizona driver’s license. [*Id.*, at 35:10-35:16, 37:8-37:19, 63:19-64:9]  
25 If that individual’s alien registration card had no expiration date, he could have received  
26 a regular, extended license that does not expire until his 65th birthday. [*Id.* at 21:18-  
27 22:7]

28 89. Arizona issued driver’s licenses and non-driver identification  
licenses before 1996 without verifying citizenship or authorized presence in the United

1 States. [*Id.* at 23:7-23:25] Such licenses included extended licenses that do not expire  
2 until the holder’s 65th birthday [*See* Gage Dep. at 62:2-62:7 (MVD began issuing  
3 extended licenses in 1993)]

4 90. Even if MVD originally issued a license to an individual before  
5 October 1, 1996, if the license holder replaced a lost license, or updated his photo or  
6 address and obtained a duplicate license after October 1, 1996, the “issue date” of the  
7 license would be the date that the new license was provided. [Yanofsky Dep. at 48:11-  
8 49:10, 59:19-60:25] As such, it would serve as “satisfactory evidence of citizenship”  
9 under Proposition 200. A.R.S. § 16-166(F). This is so, even if the person never  
10 established “lawful presence” in the United States. [Yanofsky Dep. at 25:23-29:15]

11 91. An individual possessing an “F” type (or “foreign”) driver’s license  
12 may be a United States citizen. [Marin Dep. at 71:19-72:4; Yanofsky Dep. at 63:23-  
13 64:1]

14 92. Use of regular provisional ballots, which are subject to the same  
15 signature matching procedure used for early and mail-in ballots, is sufficient to guard  
16 against voter fraud. [7/31/06 Osborne Dep. at 50:24-52:9, 75:7-76:15; Justman Dep. at  
17 35:10-35:23; Hansen Dep. at 70:11-70:14; 8/2/06 Rodriguez Dep. at 75:17-77:9; Marin  
18 Dep. at 109:1-109:9; 7/25/06 Kanefield Dep. at 56:14-56:20; Dastrup Dep., at 28:23-  
19 29:1; Pew Dep., at 19:5-19:7; Hoyos Dep. at 42:21-44:20; Wayman-Trujillo Dep. at  
20 113:6-113:16]

21 93. Arizona elections officials believe that performing signature  
22 comparisons for conditional provisional ballots would not impose a significant burden  
23 on them. [1/14/08 Osborne Dep. at 76:23-77:16; Marin Dep. at 108:7-108:12; Hoyos  
24 Dep. at 49:9-49:15; Wayman-Trujillo Dep. at 124:22-126:1]

25 **H. Hispanic and Native American Citizens Have Faced a History of**  
26 **Discrimination in Arizona and Are Less Likely than White Citizens to**  
27 **Possess Documents that Meet Proposition 200’s ID Requirements.**

28 94. Official Discrimination against Hispanic and Native American  
citizens began long before Arizona statehood and has continued well into the present

1 day. [Trial Tr. at 354:2-25; 448:10-450:7] Indeed, the debate over the boundaries of the  
2 future state was influenced by the desire to minimize Hispanic political influence. [*Id.* at  
3 355:1-7]

4 95. From 1909 until banned by the Voting Rights Act Amendments of  
5 1970, Arizona had a literacy test for voting. [*Id.* at 354:11-25] Arizona held English-  
6 only elections until the state became covered by the language minority provisions of the  
7 Voting Rights Act. [*Id.*] In the 1960s, the Republican Party's Operation Eagle Eye  
8 targeted Latinos and other minorities in South Phoenix for challenges at the polls on  
9 election day. [*Id.* at 355:15-17]

10 96. Another example of official discrimination against Latino and  
11 Native Americans in Arizona is the 1988 amendment to the Arizona Constitution  
12 imposed an English-only requirement for the State and its political subdivisions, which  
13 was held unconstitutional in *Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998). The English-only  
14 amendment harmed the ability of both Hispanic and Native American citizens to  
15 participate in the political process. *Id.* at 997.

16 97. Latinos faced both de jure and de facto segregation in education  
17 throughout the twentieth century. [*Id.* at 356:18-357:14]

18 98. Latinos also faced discrimination in employment throughout the  
19 twentieth century up to the present day. [*Id.* at 359:22-362:3]

20 99. Arizona's funding for education of students with limited English  
21 proficiency is insufficient to comply with federal law. *See Flores v. Arizona*, 172 F.  
22 Supp. 2d 1225, 1239 (D. Ariz. 2000). Despite the passage of eight years and a contempt  
23 Order, the State still has not complied with the District Court's Order to adequately fund  
24 limited English proficiency education. *See Flores v. Arizona*, 480 F. Supp. 2d 1157,  
25 1167 (D. Ariz. 2007), *affirmed* 516 F.3d 1140 (9th Cir. 2008); [*see also* Trial Tr. at  
26 358:15-359:18]

27 100. Native Americans did not earn the right to vote in Arizona until  
28 1948. [Trial Tr. at 445:19-446:5 (citing *Harrison v. Laveen*, 196 P.2d 456 (Ariz. 1948));

1 Ex. 1190, 1192] The history of discrimination against Native American voters is well  
2 documented in court opinions. *E.g.*, *Arizonans for Fair Representation v. Symington*,  
3 828 F.Supp. 684 (D.Ariz. 1992) (invalidating redistricting plans approved by Arizona  
4 Legislature for discrimination against Native Americans and Hispanics); *Goddard v.*  
5 *Babbitt*, 536 F. Supp. 538, 543 (D. Ariz. 1982) (stipulated remedy for malapportioned  
6 congressional redistricting united San Carlos Apache Reservation into one district);  
7 *Goodluck v. Apache County*, 417 F. Supp. 13 (D. Ariz. 1975) (invalidating supervisorial  
8 districts that discriminated against Navajo citizens); *Klahr v. Williams*, 339 F. Supp.  
9 922, 927 (D. Ariz. 1972) (striking down redistricting plan that intentionally  
10 discriminated against the Navajo Nation); *United States v. Ariz.*, No. 88-1989-PHX-  
11 EHC (D. Ariz.) (consent decrees settling Indian-language claims under the Voting  
12 Rights Act for Navajo and Apache Counties); *Shirley v. Superior Court*, 513 P.2d 939  
13 (Ariz. 1973) (reversing injunction that wrongfully prohibited duly elected Native  
14 American candidate from taking office).

15           101. Hispanic individuals are less likely than Anglo individuals to have  
16 bank accounts. As such, Hispanic voters are far less likely to possess a bank statement  
17 to use as polling place identification. [7/31/06 Osborne Dep. at 78:3-78:12]

18           102. Among all households in Arizona in 2000, 7.4 percent had no  
19 vehicle available. Among white households the rate was 5.6 percent without a vehicle,  
20 while Hispanic and Indian households had rates of 11.2 percent and 20.3 percent,  
21 respectively. [ITCA Ex. 1198] Of 62,750 American Indian households in Arizona,  
22 12,730 have no access to a vehicle. [*Id.* at 74] Of 62,547 Indian workers age 16 and  
23 older, 4,804 walked or used other means of transportation (not car, truck, public  
24 transportation, motorcycle or bicycle) to travel to work. [*Id.* at 69] Those without  
25 vehicles are less likely to possess forms of Registration or Polling ID such as driver's  
26 licenses, vehicle registrations or vehicle insurance cards. Moreover, they face greater  
27 difficulty traveling to obtain such documents or to early voting or ID verification sites.  
28 [Trial Tr. at 457:25-458:3, 459:10-20]

1           103. Among those 18 and over in Arizona, in 2000, 7.6 percent had not  
2 completed ninth grade. The rate was 2.3 percent for the white population, while the  
3 rates were 24.4 percent and 30.2 percent for the Hispanic and Indian populations,  
4 respectively. [Trial Tr. at 461:3-8; Ex. 1197-98; Ex. 862, Table 6a, 6b]

5           104. 13.9 percent of Arizona residents lived below the poverty line in  
6 2000. The rate for the white population was 7.8 percent, while the rate for the Hispanic  
7 and Indian population were 24.5 percent and 38 percent, respectively. [Trial Tr. at  
8 461:9-14; Ex. 1197-98]

9           105. In 2000, the median household income for all Arizonans was  
10 \$40,388. The median income for white households was \$43,913, while for Hispanic and  
11 Indian households, the medians were \$31,419 and \$23,709, respectively. [Trial Tr. at  
12 461:15-21; Ex. 862, Table 7; Ex. 1197]

13           106. U.S.-born Hispanics in Arizona lag far behind white non-Hispanics  
14 in voter registration and voting. [Ex. 862, Table 8]

15           107. The existence of racially polarized voting means that new election  
16 laws with a racial disparity in impact will dilute minority voting strength. [Trial Tr. at  
17 129:4-7]

18           108. Analysis of data from elections in 2002, 2004 and 2006 shows that  
19 Arizona has racially-polarized voting. Latino voters have been cohesive in their support  
20 for Latino candidates. [*Id.* at 116:23-117:9, Ex. 866, at 7] Only in the case of U.S.  
21 House incumbents Ed Pastor and Raul Gijalva have non-Latinos provided a majority of  
22 their votes. [Trial Tr. at 121:11-122:13] In particular, among the elections outside of  
23 majority-Hispanic districts, non-Latino voters do not prefer Latino candidates. [Trial Tr.  
24 at 121:15-19]

25           109. There has been a statistically significant decrease in the number of  
26 Hispanic Arizonans registering to vote since Proposition 200's registration requirement  
27 became effective. [*Id.* at 431:2-8; Def's Imp. Ex. 2, Table 1] This represents a greater  
28

1 percentage drop in registration rate than occurred for non-Hispanics. [Trial Tr. at 263:8-  
2 21, 431:15-432:1, 433:4-7; Def's Imp. Ex. 2, Table 3]

3 110. Hispanic registrants were less likely than non-Hispanic registrants  
4 to successfully register to vote after having a voter registration application denied for  
5 failure to provide Registration ID. [Trial Tr. at 243:17-244:5; Ex. 883, Table 2]  
6 Hispanic registrants constituted 19.8 percent of rejected applicants who have not  
7 successfully registered, while they are only 11 percent of those who were ultimately  
8 successful in registering after being rejected. [*Id.*]

9 111. Hispanics (as reflected by Spanish-surnamed applicants),  
10 comprised 13.8 percent of the overall voter registration applicants after January 1, 2005.  
11 [Ex.883, Table 5] However, Hispanics comprised a disproportionately large share –  
12 16.7 percent – of the rejected applicants, and Hispanics were an even more  
13 disproportionate share – 19.8 percent – of the rejected applicants who did not eventually  
14 go on to register. [*Id.*]

15 112. Both Hispanics and non-Hispanics (which category includes Native  
16 Americans) have experienced decreased levels of registration post-Proposition 200,  
17 although Hispanics were disproportionately affected. [Trial Tr. at 431:1-432:1; Def's  
18 Imp. Ex. 2, Table 3] The Latino share of new voter registrations had declined  
19 significantly in three counties since the implementation of Proposition 200. [Trial Tr. at  
20 384:10-385:15; Ex. 874, Figure 2]

## 21 CONCLUSIONS OF LAW

### 22 A. Jurisdiction

23 1. This case arises under the Constitution, laws, or treaties of the  
24 United States.

25 2. This Court has subject matter jurisdiction over this action under 28  
26 U.S.C. §§ 1331, 1343(a)(3)-(4), 1361 and 1367(a) and 42 U.S.C. §§ 1971(d), 1973j(f)  
27 and 1983.

1           3.     This Court has jurisdiction to grant both declaratory and injunctive  
2 relief under 28 U.S.C. §§ 2201 and 2202.

3           4.     Venue is proper in this Court under 28 U.S.C. § 1391(b).

4           **B.     Standing**

5           5.     Standing involves “both constitutional limitations on federal-court  
6 jurisdiction and prudential limitations on its exercise.” *Kowalski v. Tesmer*, 543 U.S.  
7 125, 128-29 (2004); *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The elements of  
8 standing are indispensable to a plaintiff’s case and must be supported at each stage of  
9 the litigation just as any other essential element of a case. *Warren v. Fox Family*  
10 *Worldwide, Inc.*, 328 F.3d 1136, 1140 (9th Cir. 2003).

11          6.     The constitutional aspect of standing for an individual plaintiff  
12 inquires whether the plaintiff has made out a case or controversy between himself and  
13 the defendant within the meaning of Article III by demonstrating a sufficient personal  
14 stake in the outcome. *Warth*, 422 U.S. at 498. The constitutional requirements are for a  
15 litigant to allege “(1) a threatened or actual distinct and palpable injury to [himself]; (2)  
16 a fairly traceable causal connection between the alleged injury and the . . . challenged  
17 conduct; and (3) a substantial likelihood that the requested relief will redress or prevent  
18 the injury.” *Hong Kong Supermarket v. Kizer*, 830 F.2d 1078, 1081 (9th Cir. 1987)  
19 (citations omitted). Proof of the required injury requires a showing of “an invasion of a  
20 legally protected interest” that “affect[s] the plaintiff in a personal and individual way.”  
21 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The prudential aspect of  
22 standing concerns the grounds a plaintiff may put forward in seeking to vindicate his  
23 personal stake. *Warth*, 422 U.S. at 499.

24          7.     The potential loss of an election is an injury in fact for a candidate.  
25 *Owen v. Mulligan*, 640 F.2d 1130, 1132-33 (9th Cir. 1981).

26          8.     An organization has standing to sue in its own right by showing  
27 harm to its ability to achieve its organizational objectives and by a drain on its resources.  
28 *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). An organization may satisfy the

1 Article III requirement of injury in fact if it can demonstrate: (1) frustration of its  
2 organizational mission; and (2) diversion of its resources to combat the particular  
3 housing discrimination in question. *Smith v. Pac. Properties & Dev. Corp.*, 358 F.3d  
4 1097, 1105 (9th Cir. 2004) (citing *Fair Housing of Marin v. Combs*, 285 F.3d 899, 905  
5 (9th Cir. 2002)); *El Rescate Legal Services, Inc. v. Executive Office of Immigration*  
6 *Review*, 959 F.2d 742, 745 (9th Cir. 1991) (concerning refugee assistance organization);  
7 *see also Crawford*, 128 S. Ct. at 1615 n.7 (“We also agree with the unanimous view of  
8 those [Court of Appeals] judges that the Democrats have standing to challenge the  
9 validity of SEA 483.”) (citing *Crawford v. Marion County Election Bd.*, 472 F.3d 949,  
10 952 (7th Cir. 2007) (“the law may require the Democratic Party and the other  
11 organizational plaintiffs to work harder to get every last one of their supporters to the  
12 polls.”).

13           9. Under the doctrine of “associational” or “representational” standing  
14 an organization may bring suit on behalf of its members whether or not the organization  
15 itself has suffered an injury from the challenged action. *Hunt v. Wash. State Apple*  
16 *Adver. Comm’n*, 432 U.S. 333, 342-44 (1977). To demonstrate associational standing,  
17 the entity must show that (1) at least one of its members would have standing to sue in  
18 his own right, (2) the interests the suit seeks to vindicate are germane to the  
19 organization's purpose, and (3) neither the claim asserted nor the relief requested  
20 requires the participation of individual members in the lawsuit. *United Food &*  
21 *Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 553 (1996)  
22 (citing *Hunt*, 432 U.S. at 343). Organizations are not required to show specific instances  
23 of injury to their members where it is otherwise clear that their members would be  
24 adversely affected. *California Rural Legal Assistance, Inc. v. Legal Services Corp.*, 917  
25 F.2d 1171, 1174-5 (9th Cir. 1990). *See Pennell v. City of San Jose*, 485 U.S. 1, 7 (1988)  
26 (“The likelihood of enforcement, with the concomitant probability that a landlord’s rent  
27 will be reduced below what he or she would otherwise be able to obtain in the absence  
28 of the Ordinance, is a sufficient threat of actual injury to satisfy Art. III’s requirement

1 that “[a] plaintiff who challenges a statute must demonstrate a realistic danger of  
2 sustaining a direct injury as a result of the statute's operation or enforcement.”) (quoting  
3 *Babbitt v. Farm Workers*, 422 U. S. 289, 298 (1979)); *see also Sandusky County*  
4 *Democratic Party v. Blackwell*, 387 F.3d 565, 574 (6th Cir. 2004) (“Appellees have not  
5 identified specific voters who will seek to vote at a polling place that will be deemed  
6 wrong by election workers, but this is understandable; by their nature, mistakes cannot  
7 be specifically identified in advance. Thus, a voter cannot know in advance that his or  
8 her name will be dropped from the rolls, or listed in an incorrect precinct, or listed  
9 correctly but subject to a human error by an election worker who mistakenly believes  
10 the voter is at the wrong polling place. It is inevitable, however, that there will be such  
11 mistakes. The issues Appellees raise are not speculative or remote; they are real and  
12 imminent.”).

13           10. Plaintiffs AzAN and ITCA have associational and organizational  
14 standing. Plaintiff LWV has organizational standing. Plaintiff Steve Gallardo has  
15 standing as a Mexican-American citizen and candidate. The Court need not decide  
16 whether the remaining plaintiffs, the Hopi Tribe and LULAC, have established standing  
17 because an action involving multiple plaintiffs may go forward if at least one plaintiff  
18 has standing. *See Harris v. Bd. Of Supervisors, Los Angeles County*, 366 F.3d 754, 761  
19 (9th Cir. 2004) (*citing Pub. Citizen v. Dep't of Transp.*, 316 F.3d 1002, 1014-15 (9th Cir.  
20 2003); *Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981)); *see also*  
21 *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610, 1615 n.7 (2008) (finding “no  
22 need to decide whether the other petitioners also have standing” after finding standing  
23 for Democratic Party).

### 24           **C. Equal Protection Claims**

25           11. The Equal Protection Clause of the Fourteenth Amendment protects  
26 the fundamental right to vote from undue burden by States. The basic analysis for such  
27 claims is set forth in *Burdick v. Takushi*, 504 U.S. 428 (1992). Under *Burdick* the  
28 asserted injury to the right to vote must be weighed against the State’s justifications for

1 the burden imposed. *Id.* at 434. Electoral practices that severely burden the right to  
2 vote are subject to strict scrutiny. *Id.*; *Norman v. Reed*, 502 U.S. 279, 288-89 (1992).

3 12. In *Crawford*, the Supreme Court reiterated that *Burdick* did not  
4 limit equal protection review only to severe burdens:

5 In neither *Norman* nor *Burdick* did we identify any litmus test for  
6 measuring the severity of a burden that a state law imposes on a political  
7 party, an individual voter, or a discrete class of voters. However slight that  
8 burden may appear, as *Harper* demonstrates, it must be justified by  
9 relevant and legitimate state interests “sufficiently weighty to justify the  
10 limitation.”

11 128 S. Ct. at 1616. Courts must identify and evaluate the interests put forward by the  
12 State as justifications for the burden imposed by challenged election rules. *Anderson v.*  
13 *Celebrezze*, 460 U.S. 780 (1983).

14 13. States have a general interest in preventing vote fraud that can be  
15 sufficient to defeat a pre-enforcement facial challenge to an election-day photo ID  
16 requirement that provides for no-cost exceptions. *Crawford*, 128 S. Ct. at 1621-22.

17 14. Preconditions to voting are invidious, even if they are rational, if  
18 they are irrelevant to voters’ qualifications. *Crawford v. Marion County Election Bd.*,  
19 128 S. Ct. at 1616; *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

20 15. The Registration ID requirement is a substantial burden on the right  
21 to vote. Relevant evidence of that burden comes not only from the number of rejected  
22 voter registration applications, but also from the increased – in some cases prohibitive –  
23 costs of conducting voter registration campaigns as a direct consequence of that  
24 requirement.

25 16. The substantial burden indicated by the number of rejected voter  
26 registration applications directly attributable to Proposition 200 – at least 31,000 –  
27 requires heightened scrutiny under *Burdick v. Takushi* and *Crawford v. Marion County*  
28 *Bd. Elections*.

17. The Registration ID requirement is invidious because its relevance  
to the State’s asserted interest in preventing registration by non-citizens is tenuous.

1 Registration ID fails to uniformly establish the citizenship of applicants. The principal  
2 means of satisfying the “satisfactory evidence of citizenship” requirement – via drivers  
3 license – does not establish that individuals in fact are citizens and therefore is not  
4 relevant to the question of citizenship.

5 18. The State has no legitimate interest in preventing voter registration  
6 by eligible and qualified citizens who merely lack Registration ID. The State’s general  
7 interest in preventing voter registration by non-citizens and the handful of documented  
8 instances in which non-citizens registered to vote do not outweigh the burden imposed  
9 by the Registration ID requirement.

10 19. The Registration ID requirement is a severe burden on the right to  
11 vote as applied to those qualified individuals who through no fault of their own are  
12 unable to register to vote because it is not possible for them to obtain sufficient  
13 documentary evidence of citizenship. The fact that no free alternative is available  
14 further enhances the burden. *See Crawford*, at 1620-21 (noting that absent a no-cost  
15 alternative the Indiana photo ID law would fail under *Harper*).

16 20. The Polling ID requirement is a substantial burden on the right to  
17 vote. Relevant evidence of the burden comes not only from the number of uncounted  
18 conditional provisional ballots, but also from the travel burden on conditional  
19 provisional voters, from polling place confusion due to poll workers who are unable to  
20 correctly apply the requirement, and from the fact that adequate no-cost identification is  
21 not required to be made available to voters.

22 21. The substantial burden indicated by the number of uncounted  
23 conditional provisional ballots directly attributable to Proposition 200 – nearly 4,200 –  
24 requires heightened scrutiny under *Burdick v. Takushi* and *Crawford v. Marion County*  
25 *Bd. Elections*.

26 22. The State has no legitimate interest in preventing voting by eligible  
27 and qualified registered voters who merely lack particular forms of identification. The  
28 State’s general interest in preventing voter impersonation fraud does not outweigh the

1 burden imposed by the Polling ID requirement, in particular due to the absence of any  
2 documented instance of voter impersonation fraud in Arizona.

3 **D. Section 2 of the Voting Rights Act**

4 23. Section 2 of the Voting Rights Act of 1965 provides:

5 (a) No voting qualification or prerequisite to voting or standard, practice,  
6 or procedure shall be imposed or applied by any State or political  
7 subdivision in a manner which results in a denial or abridgement of the  
8 right of any citizen of the United States to vote on account of race or color,  
9 or in contravention of the guarantees set forth in section 1973b(f)(2) of  
10 this title, as provided in subsection (b) of this section.

11 (b) A violation of subsection (a) of this section is established if, based on  
12 the totality of circumstances, it is shown that the political processes  
13 leading to nomination or election in the State or political subdivision are  
14 not equally open to participation by members of a class of citizens  
15 protected by subsection (a) of this section in that its members have less  
16 opportunity than other members of the electorate to participate in the  
17 political process and to elect representatives of their choice. The extent to  
18 which members of a protected class have been elected to office in the State  
19 or political subdivision is one circumstance which may be considered:  
20 Provided, That nothing in this section establishes a right to have members  
21 of a protected class elected in numbers equal to their proportion in the  
22 population.

23 42 U.S.C. § 1973.

24 24. The 1982 Senate Report identified the following factors as relevant  
25 to the “results” analysis under amended § 2: (1) the extent of any history of official  
26 discrimination in the state or political subdivision that touched the right of the members  
27 of the minority group to register, to vote, or otherwise to participate in the democratic  
28 process, (2) the extent to which voting in the elections of the state or political  
subdivision is racially polarized, (3) the extent to which the state or political subdivision  
has used unusually large election districts, majority vote requirements, anti-single shot  
provisions, or other voting practices or procedures that may enhance the opportunity for  
discrimination against the minority group, (4) if there is a candidate slating process,  
whether the members of the minority group have been denied access to that process, (5)

1 the extent to which members of the minority group in the state or political subdivision  
2 bear the effects of discrimination in such areas as education, employment and health,  
3 which hinder their ability to participate effectively in the political process, (6) whether  
4 political campaigns have been characterized by overt or subtle racial appeals, and (7) the  
5 extent to which members of the minority group have been elected to public office in the  
6 jurisdiction. Additional factors . . . are whether there is a significant lack of  
7 responsiveness on the part of elected officials to the particularized need of the members  
8 of the minority group; whether the policy underlying the state or political subdivision's  
9 use of such voting qualification, prerequisite to voting, or standard, practice, or  
10 procedure is tenuous. *Smith v. Salt River Project Agr. Imp. and Power Dist.*, 109 F.3d  
11 586, 594 n.6 (9th Cir. 1997) ("*Salt River*") (citing S. Rep. No. 97-417, 97th Cong., 2d  
12 Sess. (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206-07).

13           25. A Section 2 claim based upon the denial of the right to vote focuses  
14 on whether a causal connection exists between the discriminatory impact of a challenged  
15 voting practice and racial discrimination in the surrounding social and historical  
16 circumstances. "[S]ection 2 plaintiffs must show a causal connection between the  
17 challenged voting practice and [a] prohibited discriminatory result." *Smith*, 109 F.3d at  
18 595 (citing *Ortiz v. City of Philadelphia Office of the City Comm'rs*, 28 F.3d 306, 312  
19 (3d Cir. 1994)). "[U]nder *Salt River* and consistent with both Congressional intent and  
20 well-established judicial precedent, a causal connection may be shown where the  
21 discriminatory impact of a challenged voting practice is attributable to racial  
22 discrimination in the surrounding social and historical circumstances." *Farrakhan v.*  
23 *Washington*, 338 F.3d 1009, 1019 (9th Cir. 2003); see *Mississippi State Chapter,*  
24 *Operation Push, Inc. v. Mabus*, 932 F.2d 400 (5th Cir. 1991).

25           26. Congress amended Section 2 in 1982 with the express purpose of  
26 clarifying that discriminatory intent was not required to establish a Section 2 violation.  
27 *Farrakhan*, 338 F.3d at 1016 n.10. "Section 2 requires proof only of a discriminatory  
28 result, not of discriminatory intent." *Salt River*, 109 F.3d at 594.

1           27. A history of official discrimination in Arizona against Hispanic and  
2 Indian citizens touching upon their right to vote, a pattern of racially polarized voting  
3 and significant socioeconomic disparities between white citizens and Hispanic and  
4 Indian citizens combine to make the Registration ID requirement discriminatory against  
5 Indian and Hispanic citizens. The policy justification for the Registration ID  
6 requirement is tenuous. Under the totality of the circumstances the Registration ID  
7 requirement violates Section 2 of the Voting Rights Act.

8           28. A history of official discrimination in Arizona against Hispanic  
9 citizens touching upon their right to vote, a pattern of racially polarized voting and  
10 significant socioeconomic disparities between white citizens and Hispanic citizens  
11 combine to make the election-day Polling ID requirement discriminatory against  
12 Hispanic citizens. The policy justification for the election-day Polling ID requirement is  
13 tenuous. Under the totality of the circumstances the election-day Polling ID  
14 requirement violates Section 2 of the Voting Rights Act.

15           **E. Relief**

16           29. The ITCA Plaintiffs are entitled to a declaratory judgment pursuant  
17 to 28 U.S.C. § 2201 declaring that A.R.S. §§ 16-152, 16-166, 16-579 as amended by the  
18 Arizona Taxpayer and Citizen Protection Act, is unconstitutional under the Equal  
19 Protection Clause of the Fourteenth Amendment: (a) on its face as an undue burden on  
20 voter registration, (b) on its face as it constitutes an undue burden on in-person voting on  
21 election day, (c) as applied to qualified citizens who lack the required proof of  
22 citizenship, and (d) as applied to registered voters who lack the required voter  
23 identification on election day.

24           30. The ITCA Plaintiffs are entitled to a declaratory judgment pursuant  
25 to 28 U.S.C. § 2201 declaring that A.R.S. §§ 16-152, 16-166, 16-579 as amended by the  
26 Arizona Taxpayer and Citizen Protection Act, denies or abridges the right to vote of  
27 Hispanic citizens on account of race, color or membership in a language minority group  
28 in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973a.



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I further certify that I caused a copy of the attached document to be mailed  
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