

TAB 3

**Objections and Reply Points Regarding ITCA Plaintiffs Exhibits
on Summary Judgment**

Ex. No.	Description	Objection	Reply
15	Declaration of Linda Brown	<p>Paragraphs 6(b), 7, 8: Fed. R. Evid. (“Rule”) 602 (lack of personal knowledge). See Defendants’ Motion to Strike ITCA Factual Submission (“Motion to Strike”) at 2-3.</p> <p>Paragraph 9: Rule 802 (hearsay); Rule 402 (irrelevant to motion for summary judgment). See Motion to Strike at 3; Defendants’ Reply Supporting Motion to Strike ITCA Factual Submission (“Reply”) at n.3.</p> <p>Paragraphs 12-14, 17-19: Rule 602 (lack of personal knowledge); Rule 802 hearsay. See Motion to strike at 2, 3; Reply at n.3.</p> <p>Striking these paragraphs of Exhibit 15 also requires striking:</p> <p>Plaintiffs’ response to Defendants’ fact 8—reference to Exhibit 15;</p> <p>Plaintiffs’ supplemental facts 7 (except for first sentence);</p> <p>Citation to Exhibit 15 in Supplemental Fact 21;</p> <p>Pages 6, lines 14 through 22 of Plaintiffs’ response in opposition to summary judgment. This portion of the response relies on</p>	<p>Ms. Brown lacks personal knowledge about whether any other person has or does not have proof of citizenship or voting identification. Plaintiffs’ response does not provide any basis to conclude otherwise.</p> <p>Plaintiffs do not argue (nor could they) that Ms. Brown has personal knowledge about the activities at 19 different polling places on Election Day. They do not dispute that her testimony about those activities necessarily is based on hearsay.</p> <p>Moreover, Ms. Brown’s testimony is not objectionable to the extent it is limited to what her organization did (assuming she has personal knowledge of those activities). Her testimony is objectionable to the extent it purports to report what others said or whether or not others have or do not have proof of citizenship or voting identification.</p> <p>Plaintiffs concede that statements allegedly</p>

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		<p>supplemental fact 7 which relies on inadmissible evidence from Exhibit 15.</p>	<p>made to Ms. Brown by Senator Gould are hearsay and inadmissible.</p> <p>Finally, no hearsay exception has been established under Rule 803(1). There is plainly no foundation for a conclusion that the statements upon which Ms. Brown bases her testimony about activities at the polls on Election Day were statements “describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.” There is nothing in the record that even specifies what those statements were, who made them, or when.</p>
17	Report of Anthony Sissons	<p>Rule 802 (hearsay) See Motion to Strike at 1-2.</p> <p>Striking this Exhibit also requires striking:</p> <p>Citation to Exhibit 17 in Plaintiffs’ response to Defendants’ Fact 13;</p> <p>Plaintiffs’ citation to Exhibit 1 in supplemental fact 3 (last sentence);</p> <p>Plaintiffs’ supplemental fact 9;</p> <p>Citation to Exhibit 17 in supplemental fact 11;</p> <p>Plaintiffs’ supplemental</p>	<p>Plaintiffs do not dispute that the report of Anthony Sissons is hearsay, nor do they argue it is subject to a hearsay exception.</p> <p>Although Plaintiffs attach Mr. Sissons’ preliminary injunction hearing testimony to their Response, that testimony is not in the summary judgment record.</p> <p>Moreover, Plaintiffs have not argued that</p>

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		<p>facts 13 through 17, 32 (second sentence), 33 and 64 (first sentence).</p> <p>Citation to Plaintiffs' supplemental fact 33 and related parenthetical on page 9 line 8 of Plaintiffs' response in opposition to summary judgment.</p>	<p>they intend to call Mr. Sissons at trial, and he is not one of the three witnesses plaintiffs stated they will call at trial, in the parties' Joint Pretrial Order, dkt. 824, at 36.</p> <p>Finally, Mr. Sissons' report does not establish on its face any basis for reliability pursuant to Fed. R. Evid. 702 & 703.</p>
21	05/09/08 Fourth Supplemental Report of Louis R. Lanier, Ph.D.	<p>Rule 802 (hearsay). See Motion to Strike at 1-2.</p> <p>Rules 702, 703. See Reply at 1-5.</p> <p>Striking Exhibit 21 requires striking Plaintiffs' supplemental facts 4, 6 (final sentence), 38 (second sentence and citation to Exhibit 21 in first sentence).</p> <p>Page 11, line 21 through page 12, line 7 of Plaintiffs' response in opposition to summary judgment cite Exhibit 21 ("Lanier Fourth Supplemental Report"). Because Exhibit 21 is not admissible, this portion of the response in opposition to summary judgment should be stricken.</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
51	01/04/08 Report of Dr. Arturo Rosales	<p>Rule 802 (hearsay). Motion to Strike at 1-2.</p> <p>Striking Exhibit 51 requires striking Plaintiffs' supplemental</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs</p>

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		<p>facts 54 and 55.</p> <p>Plaintiffs' response in opposition to summary judgment does not cite Exhibit 51 or supplemental facts 54 or 55.</p>	<p>have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
52	01/04/08 Expert Report of Dr. Jorge Chapa	<p>Rule 802 (hearsay). See Motion to Strike at 1-2.</p> <p>Striking Exhibit 52 requires striking:</p> <p>Plaintiffs' citation to Exhibit 52 in supplemental facts 67 and 69, and striking supplemental fact 70.</p> <p>Page 15 of Plaintiffs' response in opposition to summary judgment, which relies on Exhibit 52.</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
53	01/04/08 Preliminary Report of Richard L. Engstrom, Ph.D.	<p>Rule 802 (hearsay). See Motion to Strike at 1-2.</p> <p>Striking Exhibit 53 requires striking:</p> <p>Plaintiffs' supplemental fact 71.</p> <p>Page 13, lines 15 through 20 of Plaintiffs' response in opposition to summary judgment, which rely on Exhibit 53 ("Engstrom Report").</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
54	01/04/08 Written Report of Dr. Rodolfo Espino with Respect to the Effects of Proposition 200 on the Navajo Nation	<p>Rule 802 (hearsay). See Motion to Strike at 1-2;</p> <p>Rules 702, 703. See Reply at 1-5.</p> <p>Striking Exhibit 54 requires striking Plaintiffs' supplemental</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the</p>

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		<p>fact 72.</p> <p>Exhibit 54 and Plaintiffs' supplemental fact 72 are not cited in Plaintiffs' response in opposition to summary judgment.</p>	<p>report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
55	<p>03/07/08 Rebuttal of Dr. Jeffrey Zax by Rodolfo Espino</p>	<p>Rule 802 (hearsay). See Motion to Strike at 1-2.</p> <p>Rules 702, 703. Reply at 1-5.</p> <p>Striking Exhibits 55, 56 and 57 requires striking Plaintiffs' supplemental fact 73.</p> <p>Page 12, lines 13 through 17 in Plaintiffs' response in opposition to summary judgment appear to rely on Exhibit 55 ("Espino Rebuttal Report") and should be stricken.</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
56	<p>01/04/08 Report of Louis R. Lanier, Ph.D. concerning the Effects of Proposition 200 on Voter Registration in Arizona</p>	<p>Rule 802 (hearsay). See Motion to Strike at 1-2.</p> <p>Rules 702, 703. See Reply at 1-5.</p> <p>Striking Exhibits 55, 56 and 57 requires striking Plaintiffs' supplemental fact 73.</p> <p>Plaintiffs' response in opposition to summary judgment does not cite supplemental fact 73 or Exhibit 56.</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
57	<p>03/07/08 Rebuttal Report of Louis R. Lanier, Ph.D. concerning the Effect of Proposition 200 on Voter Registration in Arizona</p>	<p>Rule 802 (hearsay). See Motion to Strike at 1-2.</p> <p>Rules 702, 703. Reply at 1-5.</p> <p>Striking Exhibits 55, 56 and 57 requires striking Plaintiffs' supplemental</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in</p>

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		<p>fact 73.</p> <p>Plaintiffs' response in opposition to summary judgment does not cite supplemental fact 73 or Exhibit 57.</p>	<p>Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
59	<p>01/04/08 Written Report of Dr. Rodolfo Espino with Respect to the Effects of Proposition 200 on Arizona's Hispanic Population</p>	<p>Rule 802 (hearsay). See Motion to Strike 1-2.</p> <p>Rules 702, 703. See Reply at 1-5.</p> <p>Exhibit 59 is not cited in Plaintiffs' response to Defendants' facts or Plaintiffs' supplemental facts.</p> <p>Plaintiffs' response in opposition to summary judgment cites Exhibit 59 ("Espino Report") to support information on page 12 lines 10 through 13, and this portion of the response should be stricken because it is not supported by admissible evidence.</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
60	<p>06/04/08 Fifth Supplemental Report of Louis R. Lanier, Ph.D. concerning the Effects of Proposition 200 on Voter Registration in Arizona</p>	<p>Rule 802 (hearsay). See Motion to Strike at 1-2.</p> <p>Rules 702, 703. See Reply at 1-5.</p> <p>Exhibit 60 is not cited in Plaintiffs' response to Defendants' facts or Plaintiffs' supplemental facts.</p> <p>Plaintiffs' response in opposition to summary judgment cites Exhibit 60 ("Lanier Fifth Supplemental Report") to support information on page 12 lines 23 through 25 and line 38 and page</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>

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		13 lines 1 and 2 and lines 7 through 10, and this portion of the response should be stricken because it is not supported by admissible evidence.	
61	Report prepared by Dr. Lisa Handley for the Arizona Redistricting Commission, titled Voting Patterns by Race/Ethnicity in Arizona Congressional and Legislative Elections 1996-2000	Rule 802 (hearsay). See Motion to Strike at 1-2; Rules 702, 703. See Reply at n. 3. Rule 402 (irrelevant to summary judgment because Exhibit 61 is not cited in Plaintiffs' response to Defendants' facts, Plaintiffs' supplemental facts, or in Plaintiffs' response in opposition to summary judgment).	Plaintiffs have not laid any foundation to conclude that the document is a record "setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report." See Fed. R. Evid. 803(8). The report states on its face it was prepared at the request of legal counsel. The statement is made by a non-party, not a party opponent, and therefore is not an admission under Rule 801(d)(2).
62	06/04/08 Supplemental Report of Richard L. Engstrom, Ph.D.	Rule 802 (hearsay). See Motion to Strike at 1-2. Exhibit 62 is not cited in Plaintiffs' response to Defendants' facts or Plaintiffs' supplemental facts. Plaintiffs' response in opposition to summary judgment cites to Exhibit 62 ("Engstrom June 4, 2008 Report") to support information on page 12 lines 25 through 27 and page 13 lines 15 through 21, and this portion of the	Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.

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		response should be stricken because it is not supported by admissible evidence.	
63	03/07/08 Rebuttal Report of Dr. Arturo F. Rosales	<p>Rule 802 (hearsay). See Motion to Strike at 1-2.</p> <p>Exhibit 63 is not cited in Plaintiffs response to Defendants' facts or Plaintiffs' supplemental facts.</p> <p>Exhibit 63 ("Rosales Rebuttal Report") is cited in Plaintiffs' response in opposition to summary judgment to support information at page 14 lines 2 through 14, and this portion of the response should be stricken because it is not supported by admissible evidence.</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
64	03/07/08 Rebuttal Report of Richard L. Engstrom, Ph.D.	<p>Rule 802 (hearsay). See Motion to Strike at 1-2.</p> <p>Exhibit 64 is not cited in Plaintiffs' response to Defendants' facts or Plaintiffs' supplemental facts.</p> <p>Plaintiffs' response in opposition to summary judgment cites Exhibit 64 (Engstrom Rebuttal Report") to support information on page 13 lines 15 through 23, and this portion of the response should be stricken because it is not supported by admissible evidence.</p>	<p>Plaintiffs concede that the report is hearsay. They have established no exception to hearsay inadmissibility. Moreover, plaintiffs have not addressed the unreliability of the report as set forth in Defendants' Reply in Support of Motion to Strike Portions of the ITCA Factual Submission.</p>
65	James Tucker and Rodolfo Espino,	Rule 802 (hearsay). Defendants' Motion to	Plaintiffs concede the

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	<p>“Voting Rights in Arizona 1982-2006” (March 2006)</p>	<p>Strike at 1-2; Reply at n.3.</p> <p>Rule 402 (irrelevant to summary judgment because Exhibit 65 is not cited in Plaintiffs’ response to Defendants’ facts, Plaintiffs’ supplemental facts, or in Plaintiffs’ response in opposition to summary judgment).</p>	<p>exhibit is hearsay.</p> <p>Exhibits not cited in a party’s statement of facts should be excluded. <i>E.g., Malec v. Sanford</i>, 191 F.R.D. 581, 583 (N.D. Ill. 2000).</p>
66	<p>“History of Indian Voting in Arizona,” Inter-Tribal Council of America, Inc. (2004)</p>	<p>Rule 802 (hearsay). Defendants’ Motion to Strike at 1-2; Reply at n.3.</p> <p>Rule 402 (irrelevant to summary judgment because Exhibit 66 is not cited in Plaintiffs’ response to Defendants’ facts, Plaintiffs’ supplemental facts, or in Plaintiffs’ response in opposition to summary judgment).</p>	<p>Plaintiffs concede the exhibit is hearsay. No foundation whatever to conclude that the document is a record “setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report.” See Fed. R. Evid. 803(8). Nor is there any foundation to conclude that the document is a record of regularly conducted activity under Rule 801(6).</p> <p>Exhibits not cited in a party’s statement of facts should be excluded. <i>E.g., Malec v. Sanford</i>, 191 F.R.D. 581, 583 (N.D. Ill. 2000).</p>
67	<p>Statement of the Inter-Tribal Council of America before the National Commission on the Voting Rights</p>	<p>Rule 802 (hearsay). Defendants’ Motion to Strike at 1-2; Reply at n.3.</p> <p>Rule 402 (irrelevant to</p>	<p>Plaintiffs concede the exhibit is hearsay. No foundation whatever to conclude that the document is a record</p>

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	Act (April 7, 2005)	summary judgment because Exhibit 67 is not cited in Plaintiffs' response to Defendants' facts, Plaintiffs' supplemental facts, or in Plaintiffs' response in opposition to summary judgment).	<p>“setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report.” See Fed. R. Evid. 803(8). Nor is there any foundation to conclude that the document is a record of regularly conducted activity under Rule 801(6).</p> <p>Exhibits not cited in a party's statement of facts should be excluded. <i>E.g., Malec v. Sanford</i>, 191 F.R.D. 581, 583 (N.D. Ill. 2000).</p>
68	Glenn A. Phelps, “Representation Without Taxation: Citizenship and Suffrage in Indian Population (October 9, 2007)	<p>Rule 802 (hearsay). Defendants' Motion to Strike at 1-2; Reply at n.3.</p> <p>Rule 402 (irrelevant to summary judgment because Exhibit 68 is not cited in Plaintiffs' response to Defendants' facts, Plaintiffs' supplemental facts, or in Plaintiffs' response in opposition to summary judgment).</p>	<p>Plaintiffs concede the exhibit is hearsay and do not argue any exception applies.</p> <p>Exhibits not cited in a party's statement of facts should be excluded. <i>E.g., Malec v. Sanford</i>, 191 F.R.D. 581, 583 (N.D. Ill. 2000).</p>
69	Norm DeWeaver, “Key Indicators of the Status of the Arizona On-Reservation Indian Population (October 9, 2007)	<p>Rule 802 (hearsay). Defendants' Motion to Strike at 1-2; Reply at n.3.</p> <p>Rule 402 (irrelevant to summary judgment because Exhibit 69 is not cited in Plaintiffs'</p>	<p>Plaintiffs concede the exhibit is hearsay and do not argue any exception applies.</p> <p>Exhibits not cited in a party's statement of facts should be excluded. <i>E.g., Malec</i></p>

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		response to Defendants' facts, Plaintiffs' supplemental facts, or in Plaintiffs' response in opposition to summary judgment).	v. <i>Sanford</i> , 191 F.R.D. 581, 583 (N.D. Ill. 2000).

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