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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**

29 Pursuant to Fed R. Civ. P. 52(a) and this Court's May 19, 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

1 American Citizens and Rep. Steve Gallardo (collectively, the “ITCA Plaintiffs”) hereby
2 submit their Proposed Findings of Fact and Conclusions of Law

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.

8 2. The three sections of Proposition 200 related to voting amended
9 A.R.S. §§ 16-152, 16-166 and 16-579.

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

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

1 A.R.S. § 16-166(F).

2 4. The Registration ID requirement was pre-cleared by the
3 Department of Justice and took effect on January 25, 2005.

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

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

13 7. The Secretary of State has promulgated a “Procedure for Proof of
14 Identification at the Polls” (the “Polling Place Procedures”). [See Defs’ Ex. 42]¹ The
15 Polling Place Procedures were initially precleared by the Department of Justice and took
16 effect on September 6, 2005. The Polling Place Procedures were amended in 2008, and
17 precleared by the Department of Justice on May 22, 2008.

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 *id.* 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
27 _____
28 ¹ References to Exhibits are to the Exhibit numbers appearing on the Exhibit lists
filed as Exhibits B-D to the parties’ Joint Proposed Pretrial Order. [Doc. 824]

1 forms of non-photo identification are: (a) a utility bill (for electric, gas, water, solid
2 waste, sewer, telephone, cellular phone, or cable television) that is dated within ninety
3 days of the date of the election, (b) a bank or credit union statement that is dated within
4 ninety days of the date of the election, (c) a valid Arizona Vehicle Registration, (d) an
5 Indian census card, (e) a property tax statement of the voter’s residence, (f) a tribal
6 enrollment card or other form of tribal identification, (g) a Recorder's Certificate or (h) a
7 valid United States federal, state, or local government issued identification, including a
8 voter registration card issued by the county recorder. [*Id.*]

9 10. The Procedures permit counties to add other forms of Polling ID
10 that “establish the identity of the elector in accordance with the requirements of A.R.S. §
11 16-579(A).” Some, but not all, Arizona counties have added “official election mail”
12 sent by the County, addressed to individual voters, to the list of acceptable non-photo
13 identification. [*See infra* ¶¶ 45-48]

14 11. The Polling ID requirements do not apply to voters who vote by
15 mail or at early voting sites. [*See Resp. to Gonzalez Plaintiffs’ RFA No. 16*] An elector
16 who is dropping off his or her early ballot at a precinct voting location is not required to
17 show Polling ID. [*See Defs’ Ex. 42, at 133*]

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

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

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

25 14. Arizona elections officials believe that there are U.S. citizens in
26 Arizona who are eligible to register to vote, but have been unable to do so because they
27 lack Registration ID. [7/31/06 Osborne Dep. at 43:12-43:17; Justman Dep. at 30:14-
28 30:19; Hansen Dep. at 38:20-38:23; 8/2/06 Rodriguez Dep. at 131:9-131:14; 1/14/08

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 (excluding Santa Cruz County) rejected approximately 38,000 voter
5 registration applications from at least 31,550 individuals for failure to provide
6 Registration ID, as defined by A.R.S. § 16-166(F). [ITCA Ex. 130, ¶ 5] Those 31,550
7 voter registration applications were submitted by individuals who attested under penalty
8 of perjury that they are citizens of the United States. [See *id.*; Defs' Ex. 51]

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." [ITCA Ex. 77] 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 *id.*, ITCA Ex. 21, at 5]

16 17. During the November 7, 2006 general election, the County
17 Defendants were ordered to "track the number of prospective voters that do not have
18 appropriate identification and choose to leave the polling location rather than cast a
19 conditional provisional ballot." [Doc. 241] At least 2,422 voters exited polling places
20 without casting any type of ballot at all after being asked to present Polling Place ID.
21 [ITCA Ex. 78]

22 18. According to Defendants, from 2006, when Arizona implemented
23 its Polling Place ID procedure, through elections in the Spring of 2007, at least 4,243
24 conditional provisional ballots have been cast, but only 1,532 of those conditional
25 provisional ballots were counted. [ITCA Ex. 79-94, No. 3(f) (this number excludes
26 Mohave, Pima and Pinal Counties, which did not provide the number of uncounted
27 conditional provisional ballots in response to the ITCA Plaintiffs' Interrogatory No.
28 3(f))] Based on Defendants' discovery responses, more than 63 percent of voters who

1 cast conditional provisional ballots in these twelve counties did *not* return to provide
2 Polling Place ID. [*Id.*] When ordered to produce their uncounted conditional
3 provisional ballot envelopes, however, the counties provided 4,194 uncounted ballots –
4 1,483 *more* uncounted ballots than they reported to the ITCA Plaintiffs. [ITCA Ex. 130,
5 at 5 n.5]

6 19. The Polling Place ID procedures are confusing for elections
7 officials and poll workers. [7/31/06 Osborne Dep. at 80:23-81:17; Hansen Dep. at
8 86:3-86:9; ITCA Ex. 128, ¶¶ 12-18; ITCA Ex. 23, ¶¶ 8-11; *compare* Hoyos Dep. 22:21-
9 23:17 (Pinal County does not accept out-of-state driver’s licenses) *with* Wayman-
10 Trujillo Dep.127:19-128:12 (Yavapai County accepts out-of-state driver’s licenses)]
11 This confusion has led to voters with sufficient Polling Place ID to obtain a regular
12 ballot or regular provisional ballot to be given a conditional provisional ballot or be
13 denied a ballot altogether. [ITCA Ex. 128, ¶¶ 12-17] One of the most common
14 problems was poll workers giving a voter a conditional provisional ballot, or no ballot at
15 all, even though the voter presented a valid Arizona driver’s license, that only lacked the
16 voter’s current address. [*Id.* at ¶ 14]

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 ITCA Ex. 47]

22 21. As of July 2006, an estimated 28,540 Arizonans eligible to register
23 to vote, but not yet registered, lacked Registration ID. [ITCA Ex. 21, at 2] As the
24 number of those eligible, but unregistered has risen, so too has the number of individuals
25 who need, but do not possess, Registration ID.

26 22. From July 1, 2004 to July 1, 2007, Arizona’s population *increased*
27 by more than 650,000 people: from 5,845,250 to 6,500,194 – more than 11 percent.
28 [ITCA Ex. 132] From January 1, 2005 until March 1, 2008, however, voter registration

1 *declined*. Indeed, on January 1, 2005, 2,706,223 individuals were registered to vote in
2 Arizona, but as of March 1, 2008, only 2,694,974 individuals are registered to vote – a
3 *decrease* of more than 11,000 voters. [See ITCA Ex. 133]

4 23. Approximately 12.6 percent of Arizonans do *not* possess an
5 Arizona driver’s license or non-operating identification license. [ITCA Ex. 21, 52]

6 24. As of August 3, 2006, 12.12 percent of Arizona driver’s licenses
7 and non-operating identification licenses were issued before October 1996, and as such
8 do not constitute Registration ID. [ITCA Ex. 59]

9 25. Approximately 331,000 individuals who were eligible to register to
10 vote in August 2006, could not use an Arizona driver’s license or non-operating
11 identification license as Registration ID, either because they did *not* possess a license or
12 held one issued before October 1, 1996. [ITCA Ex. 21, 52, 59]

13 26. 70.1 percent of voting-age citizens do not possess a United States
14 Passport. [ITCA Ex. 21, at 2, 6] As such, approximately one million eligible, but
15 unregistered individuals lack a United States Passport. [*Id.*]

16 27. 94.8 percent of voting-age citizens do not possess and are not
17 eligible to obtain a Certificate of Naturalization. [*Id.*] Approximately 1,354,000
18 eligible, but unregistered individuals lack a Certificate of Naturalization. [*Id.*]

19 28. 96.8 percent of voting-age citizens are not members of Native
20 American tribes. [*Id.* at 2, 7] At least 1,382,000 eligible, but unregistered individuals
21 do not possess and cannot obtain a Bureau of Indian affairs card number, tribal treaty
22 card number or tribal enrollment number. [*Id.*]

23 29. In July 2006, approximately 1,427,097 Arizona residents were
24 eligible to register to vote, but were not registered or would need to re-register in a new
25 Arizona county. [*Id.*, at 5] Annually, approximately 52,137 individuals eligible to
26 register to vote move from one Arizona county to another. [*Id.*, at 4] In addition,
27 approximately 202,475 individuals eligible to register to vote move to Arizona from
28 outside the state. [*Id.*, at 5] Based on the foregoing numbers, in July 2008,

1 approximately 1,936,321 individuals will be required to provide Registration ID to
2 register to vote. [*See id.*]

3 30. Many Native Americans over age 40 were not born in hospitals and
4 do not have birth certificates, nor can they obtain a delayed birth certificate because
5 those adults in attendance at their births are deceased. [ITCA Ex. 58, ¶ 31; *see also*
6 Hansen Dep. at 23:1-23:18; 8/2/06 Rodriguez Dep. at 41:21-41:24, 90:12-90:14]

7 31. Bureau of Indian Affairs cards, with or without numbers are not in
8 use in Arizona. [ITCA Ex. 58, ¶ 37]

9 32. Only the Navajo Nation and four Apache Tribes in Arizona have
10 formal treaties with the United States. Even so, Tribal Treaty cards, with or without
11 numbers, are not in use in Arizona. [*Id.*, ¶ 38]

12 33. Three Arizona Native American Tribes – the Navajo Nation, the
13 Zuni Pueblo and the Havasupai Tribe – do not issue Tribal identification cards or
14 enrollment cards. [ITCA Ex. 58, ¶ 39; *see also* 8/30/06 Hr’g Tr. at 112:21-113:9 (Supai
15 Tribe does not issue identification)] At least three Arizona tribes charge a fee for
16 updated, replacement or initial tribal enrollment or identification cards. [Defs’ Ex. 12,
17 at No. 11]

18 34. Hundreds of Native Americans reside on Arizona reservations but
19 are not eligible to become enrolled Tribal members. [ITCA Ex. 58, ¶ 40] Such
20 individuals would not possess a tribal enrollment number.

21 35. The distance to Arizona MVD offices, the limited opening hours of
22 such offices, the expense and required documentation make it very difficult or
23 impossible for Native Americans residing on reservations to obtain Arizona driver’s
24 licenses or non-operating identification licenses. [ITCA Ex. 58, ¶ 34]

25 36. The ITCA Plaintiffs have identified several individuals who do not
26 possess Registration ID. [*See* ITCA Ex. 22, 33, 34, 35, 36, 127] These individuals do
27 not have the financial means to obtain Registration ID. [ITCA Ex. 22, ¶ 9; ITCA Ex.
28 33, ¶ 9; ITCA Ex. 34, ¶ 10; ITCA Ex. 35, ¶ 5; ITCA Ex. 36, ¶ 6]

1 37. For some, regardless of cost, Registration ID is impossible to
2 obtain. Shirley Preiss was born in Kentucky in 1910 and not issued a birth certificate.
3 [ITCA Ex. 127, ¶¶ 1, 9] She has attempted to obtain a delayed birth certificate, but has
4 been advised by officials in Kentucky that they cannot issue one to her. [*Id.*, ¶ 10] She
5 does not possess any other forms of Registration ID and has been denied an Arizona
6 non-operating identification license because she does not possess a birth certificate or
7 other documents acceptable to the MVD. [*Id.*, ¶ 8]

8 38. Implementation of the Registration ID requirement has led
9 organizations that conduct voter registration activities to reduce or stop such activities
10 altogether. [8/30/06 Hr’g Tr. at 121:10-124:9; *see also* Marin Dep. at 12:13-12:21;
11 ITCA Ex. 128, ¶¶ 5-6; Dean-Lytle Dep. at 22:8-22:17] Those that continue to work to
12 register voters must devote double or triple the resources they would have needed to
13 expend before Proposition 200 to register the same number of voters. [ITCA Ex. 128, ¶
14 5]

15 39. Many people are reluctant to provide the information contained in
16 “satisfactory evidence of citizenship” documents to those conducting voter registration
17 activities, even county employees. [*Id.* Marin Dep. at 32:17-32:25; ITCA Ex. 128, ¶
18 6(b); 8/30/06 Hr’g Tr. at 123:4-123:11]

19 **D. Alternatives to Purchasing Polling ID Are Insufficient to Protect all**
20 **Voters.**

21 40. Elections officials have expressed concern that some segments of
22 the community may not possess Polling ID. [Wayman-Trujillo Dep. at 106:12-106:16]

23 41. Several of the individuals that the ITCA Plaintiffs identified who
24 lack Registration ID also do not possess sufficient Polling ID. [ITCA Ex. 22, ¶¶ 6-7;
25 ITCA Ex. 33, ¶¶ 6-7; ITCA Ex. 34, ¶¶ 7-8]

26 42. Under A.R.S. § 16-579, government-issued photo identification
27 must contain a voter’s current name and address to permit that person to vote a regular
28 ballot at the polls on election day. Arizona law does not require an individual to obtain

1 a new driver's license or non-operating identification license with updated address
2 information when that individual moves. [See ITCA Ex. 37] Once issued, an Arizona
3 driver's license is valid until the driver's 65th birthday. A.R.S. § 28-3171(A)(1).

4 43. Excluding "Official Election Mail" addressed to an individual voter
5 and some forms of identification issued by some Native American tribal governments,
6 Polling Place ID cannot be obtained without payment of a fee for the identification itself
7 or for a service such as a bank account or utility service. [See Defs' Ex. 42, at 128]

8 44. Arizona counties are not required by law to send "Official Election
9 Mail" individually addressed to any registered voter. [See 7/31/06 Osborne Dep. at
10 62:4-63:8, 63:25-64:10; Hansen Dep. at 57:5-57:17; ITCA Ex. 18; 7/25/06 Kanefield
11 Dep. at 139:1-3; Dastrup Dep. at 21:23-21:25; Pew Dep. at 22:20-23:18] Not all
12 Arizona counties send official election mail, addressed to all individual voters, which
13 voters may use as Polling Place ID. [See, e.g., Defs' Ex. 42, at 128 (listing forms of
14 Polling Place ID); ITCA Ex. 18; ITCA Ex. 20 (limiting Polling Place ID to "those
15 specifically noted in the Manuel [sic]"); Stallworth Dep. at 32:15-32:25]

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

19 46. Even if a county sent official election mail or voter registration
20 cards that such county accepted as polling place identification in the 2006 primary or
21 general election, the record does not establish that any county will send such items to
22 voters or accept them as polling place identification for future elections. [Cf. Defs' Ex.
23 42, at 128 (official election mail *not* listed as Polling Place ID); Stallworth Dep. at 33:6-
24 33:9]

25 47. Indeed, Maricopa County, will *not* send Official Election Mail
26 addressed to individual voters for elections in 2008. [ITCA Ex. 134; *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. 133 (listing number of registered voters by county)]

6 48. 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 Defs’ Ex. 42, at 128, Connor
9 email, *supra*; Dastrup Dep. at 22:1-22:12; Pew Dep. at 23:10-23:18; Rapier letter,
10 *supra*]

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

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

25 51. Pursuant to sections 4(f)(4) and 203 of the Voting Rights Act,
26 Arizona counties must provide language assistance to voters. *See* 42 U.S.C. §§
27 1973b(f), 1973aa-1a; 28 C.F.R. Part 55, App. Language assistance is not always
28

1 available to early voters. [*See* 8/30/06 Hr’g Tr. at 107:25-108:9; Hoyos Dep. at 74:15-
2 75:9]

3 52. Racial and ethnic Minority voters are at least three times less likely
4 than Anglo voters to vote by mail. [ITCA Ex. 21, at 8] Approximately 53 percent of
5 Anglo voters voted by mail in the November 2004 general election, while only 15
6 percent of Minority voters voted by mail in the November 2004 general election. [*Id.*]

7 53. Counties provide far fewer sites for post-election day ID
8 verification than polling places. [*See* Wayman-Trujillo Dep. at 97:18-99:13] In Yuma
9 County, for example, which covers 5,519 square miles, a voter who cast a conditional
10 provisional ballot must go to the County Recorder’s office in the City of Yuma to
11 present sufficient identification or his ballot will not be counted. [Marin Dep. at 108:13-
12 108:20]

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

14 54. The Arizona Advocacy Network (AzAN) is a not-for-profit
15 membership organization whose mission includes leading efforts for electoral justice
16 and increased civic participation. Central to this mission is encouraging citizens to
17 become active participants in our democracy by (a) registering citizens to vote, (b)
18 educating voters about issues, (c) turning out voters (getting them to the polls) and (d)
19 making sure they can vote effectively at the polls. [ITCA Ex. 128, ¶ 2]

20 55. AzAN contracts with USAction Education Fund to conduct voter
21 registration and get-out-the-vote campaigns. AzAN is compensated by USAction based
22 on the number of successful voter registrations it submits. AzAN will only be
23 compensated for confirmed registrations, requiring that it keep records of all newly
24 registered voters. [*Id.* ¶¶ 4, 6]

25 56. In 2008, AzAN’s goal is to register 5,000 low-income voters, and
26 follow up with them to make sure they succeed in voting. AzAN will focus its voter
27 engagement efforts in majority Latino communities. [*Id.* ¶ 5]

1 57. To register voters, AzAN staff and/or volunteers must convince
2 strangers to provide them with a great deal of personal information. In a state that leads
3 the nation in identity theft, many people are reluctant to give out such information to
4 someone they do not know. The increased demands for information as a result of
5 Proposition 200 make potential registrants more reluctant to register with AzAN.
6 Although they may choose to complete the voter registration form and mail it in on their
7 own, AzAN will not receive credit for that registration. [*Id.* ¶ 6]

8 58. AzAN staff or volunteers will also be unable to register most
9 people who could provide a passport or birth certificate to register, because they would
10 need to have a copy machine with them at the time the person wishes to register. This
11 group of eligible voters will not be available to AzAN as potential registrants, once
12 again necessitating that they interact with more citizens per actual registration achieved
13 than in other states. [*Id.*]

14 59. Eva Steele is a member of AzAN. Ms. Steele, a native-born citizen
15 of the United States, who spent most of her life in Missouri, moved to Mesa, Arizona in
16 January 2006 and resides in an assisted living facility. Ms. Steele does not have access
17 to Registration ID and therefore was unable to register to vote. Though she is now
18 registered to vote, Ms. Steele was only able to register when the Registration ID
19 requirement was not in effect between October 5 and October 20, 2006. [*Id.* ¶ 7]

20 60. AzAN staff have met with Shirley Preiss, a 97-year-old native-born
21 citizen of the United States. Ms. Preiss wishes to register to vote in Arizona, where she
22 now lives with her son, but does not possess and cannot obtain Documentary Evidence
23 of Citizenship. Due to the Proposition 200 ID Requirements, AzAN has not been able
24 to assist Ms. Preiss in registering to vote. [*Id.* ¶ 8]

25 61. Due to the Registration ID requirement, AzAN will need to contact
26 approximately twice as many eligible registrants for each successful registration than
27 will be necessary in other states that have no such requirement. [*Id.* ¶ 6]

1 62. During the 2006 elections, the first in which the Polling ID
2 requirement was in effect, AzAN engaged in the following activities that it had not
3 undertaken before the law's implementation: (a) educating voters about the new Polling
4 ID requirement at 20 public forums, (b) training volunteers so that they understood what
5 constituted acceptable Polling ID, and how voters were to be treated if they were barred
6 from voting regular ballots due to the Polling ID requirement, (c) distributed "Voter's
7 Bill of Rights" leaflets listing voters' rights under the law and what constituted
8 acceptable Polling ID, (d) deploying volunteers to polling places to survey voters
9 coming out of the polls about whether they had had difficulties voting due to the Polling
10 ID requirements, and (e) assisting voters to make sure they were able to vote when they
11 were wrongly turned away from the polls. [*Id.* ¶¶ 10-11]

12 63. AzAN's survey efforts in 2006 demonstrated that poll workers were
13 not applying the Polling Place ID provisions correctly and that voters erroneously were
14 being turned away from the polls. [*Id.* ¶ 12]

15 64. Because of the number of problems voters encountered at the polls
16 in 2006, AzAN staff has determined that it will be necessary to dramatically increase the
17 number of volunteers it trains and deploys in future elections in order to ensure that
18 more voters are not erroneously turned away from the polls as a result of Proposition
19 200. These volunteers would otherwise be available for traditional get-out-the-vote
20 activities of calling voters and transporting them to the polls. [*Id.* ¶ 19]

21 65. AzAN incurred costs in 2006 that it would not have incurred absent
22 Proposition 200. AzAN incurred an additional \$8,350 in 2006 to recruit, train, deploy
23 and supervise volunteers, print "Voters Bill of Rights" handouts and travel to polling
24 places on election days. [*Id.* ¶ 22]

25 66. For the 2008 elections, AzAN has the goal of recruiting, training
26 and deploying five hundred volunteers at a projected cost of \$17,254.00. None of the
27 costs associated with this staff and volunteer effort would be necessary but for the
28 implementation of Proposition 200. [*Id.* ¶ 20] AzAN estimates that the additional costs

1 associated with registering voters under Prop 200's proof-of-citizenship requirements are
2 \$44,000.00. [*Id.* ¶ 21]

3 67. It is central to the mission of the Hopi Election Office, an agency of
4 the Hopi Tribal government, to encourage tribal members to become active participants
5 in state and federal elections and thereby in the United States democracy, which
6 includes registering citizens to vote. [Defs' Ex. 13, at 3]

7 68. There are approximately 12,512 Hopi tribal members. Of those
8 enrolled members, approximately 9,235 are over 18 years of age. There are substantial
9 numbers of Hopi individuals who lack a Hopi enrollment card and thus do not have an
10 enrollment number to provide as Registration ID. These individuals, who lack even a
11 form of tribal ID, usually also lack other forms of Registration ID, such as passports,
12 driver's licenses or nonoperating identification licenses. As of July 2006, there were
13 4,348 Hopi individuals who had not received a Hopi enrollment card. [*Id.* at 5]

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

17 70. The Hopi Tribe has discussed with Navajo County the placement of
18 a new, additional precinct on a rather remote part of the reservation (an area in which
19 certain Hopi voters have to walk six miles to cast their votes). Hopi was informed by
20 Navajo County that new precincts are determined based on the number of voters who
21 turn out to vote. Because the Registration ID requirement has caused a decrease in Hopi
22 voter turnout, Hopi has been unsuccessful in obtaining this additional precinct. [*Id.*]

23 71. The League of Women Voters of Arizona ("LWV") is a
24 nonpartisan, non-profit political membership organization dedicated to improving
25 systems of government, increasing voter participation and impacting public policies
26 through citizen education and advocacy. By preventing eligible individuals who lack
27 voting identification from voting, Proposition 200 harms LWV's ability to increase
28 voter participation. [8/30/06 Hr'g Tr. at 116:6-116:20; Defs' Ex. 17, at 3]

1 72. Before the implementation of Proposition 200's proof of citizenship
2 requirement, LWV devoted substantial time and resources to registering eligible voters.
3 Specifically, LWV conducted voter registration drives by setting up tables at fairs,
4 school parents' nights and other community events. In the past, LWV has also gone
5 door-to-door registering voters. At such voter registration events, LWV would provide
6 voter registration forms to be filled out, then deliver them to the county recorder.
7 [8/30/06 Hr'g Tr. at 119:1-121:9; Defs' Ex. 17, at 3-4]

8 73. LWV has limited resources available to register voters. It is
9 impossible for LWV to set up photocopying equipment at its voter registration events to
10 meet Arizona's proof of citizenship requirement. Moreover, the cost of equipping LWV
11 employees and volunteers with mobile scanners or photocopying machines to create
12 copies of registrants' Registration ID (for those who lack a driver's or non-operator's
13 license issued after October 1, 1996, alien registration number or tribal enrollment
14 number) is prohibitively expensive, and would preclude LWV from registering voters.
15 LWV does not have the financial resources to purchase such equipment. Even if LWV
16 had sufficient financial resources to purchase mobile photocopying equipment, such
17 purchases would require LWV to divert financial resources from current voter education
18 and registration activities. [8/30/06 Hr'g Tr. at 122:1-123:3]

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

26 75. The League of United Latin American Citizens ("LULAC") is a
27 membership organization dedicated to advancing the economic condition, educational
28 attainment, political influence, health and civil rights of the Hispanic population of the

1 United States. A key component of LULAC’s mission is to empower the Latino
2 community by means of civic engagement through voter registration and participation.
3 By preventing eligible individuals who lack Registration or Polling ID from voting,
4 Proposition 200 harms LULAC’s ability to increase voter participation. [Defs’ Ex. 16,
5 at 3]

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

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

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

26 79. Even if potential registrants have Registration ID with them when
27 they come into contact with a LULAC voter registration drive, it is impossible for
28 LULAC to set up photocopying equipment at its voter registration events. Moreover,

1 the cost of equipping LULAC employees and volunteers with mobile scanners or
2 photocopying machines to copy Registration ID is prohibitively expensive, and would
3 preclude LULAC from registering voters. LULAC does not have the financial resources
4 to purchase such equipment. Even if LULAC had sufficient financial resources to
5 purchase mobile photocopying equipment, such purchases would require LULAC to
6 divert financial resources from other voter outreach, and registration activities. [*Id.* at 4-
7 5]

8 80. The purpose of the Inter Tribal Council of Arizona, Inc. (“ITCA”)
9 is to provide its Member Tribes with the means to take action on matters that affect them
10 collectively and individually, to promote tribal sovereignty, and to strengthen tribal
11 governments. Supporting tribal governments in their efforts to promote voter
12 participation among their individual members is an integral part of this purpose. As of
13 2003, there were approximately 112,790 individual members of the ITCA Member
14 Tribes in Arizona. [Defs’ Ex. 12, at 3; Defs’ Ex. 41, at 3]

15 81. Voter education and outreach for Member Tribes of ITCA is central
16 to ITCA’s mission. In light of the burdensome and complicated requirements of the
17 voter identification provisions of Proposition 200, ITCA has intensified its voter
18 outreach and education efforts at additional cost to ITCA. These efforts have included,
19 but are not limited to, printing a special voter information pamphlet, attending various
20 meetings at Reservations throughout Arizona to educate Member Tribes, and devoting
21 additional ITCA meeting time and resources to such efforts. In 2006, ITCA expended
22 287 hours in staff time and \$30,783 for voter education and outreach related to
23 Proposition 200. [Defs’ Ex. 41, at 6 and attachments]

24 82. ITCA is not aware of the existence of the “bureau of Indian affairs
25 card number” or “tribal treaty card number” referenced in A.R.S. § 16-166(F)(6).
26 Moreover, certain ITCA Member Tribes do not provide their members with “enrollment
27 numbers.” A.R.S. § 16-166(F)(6). Furthermore, some of ITCA’s Member Tribes do not
28 provide Tribal enrollment or identification cards at all. Many Member Tribes also lack

1 or have limited financial resources to keep enrollment/tribal identification cards current
2 for their tribal members. [Defs' Ex. 41, at 4]

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

7 84. Plaintiff Steve Gallardo is a member of both the Arizona House of
8 Representatives and the Phoenix Union High School District Governing Board. Before
9 he became an elected official, he worked for 14 years in the Office of the Maricopa
10 County Recorder overseeing voter registration. As an elected official, he has personal
11 experience in campaigning for election, supervising paid and volunteer campaign staff
12 and constituent service and outreach. [Defs' Ex. 14, at 6-7]

13 85. Plaintiff Rep. Steve Gallardo's strongest supporters and likely
14 supporters also are concentrated in neighborhoods in which members of racial and
15 ethnic minority groups make up the predominant share of the eligible voters. [*Id.* at 5-6]

16 86. Relative to communities in which white, non-Hispanic residents are
17 in the majority, his supporters and likely supporters in such heavily-minority
18 communities are (a) less likely to possess the voting identification required by
19 Proposition 200, (b) less likely to possess a birth certificate and/or other proof of
20 citizenship required by the voter registration requirements of Proposition 200, (c) less
21 likely to have access to motor vehicles or other means of transportation that would assist
22 them in obtaining documentation to satisfy the requirements of Proposition 200; and (d)
23 less likely to have access to telephones, the Internet and other mass communication
24 resources that would assist them in meeting the requirements of Proposition 200. [*Id.*]

25 87. For these reasons, candidates whose supporters are predominantly
26 residents of affluent communities and/or predominantly white, non-Hispanic
27 neighborhoods will be placed at an advantage relative to Rep. Gallardo because their
28 supporters will be more likely than his to have their votes counted notwithstanding the

1 requirements of Proposition 200. [*Id.*] In order to remain competitive with such
2 candidates, Rep. Gallardo will be forced to divert a disproportionate share of his
3 resources toward voter education and other efforts to ensure that his supporters are not
4 frustrated by the requirements of Proposition 200. [*Id.*] This is of particular concern for
5 Rep. Gallardo’s 2008 reelection to the Phoenix Union High School District, in which he
6 plans to seek one of the two at-large seats. [*Id.*]

7 88. Rep. Gallardo is harmed by the voting identification requirement of
8 Proposition 200 due to: (a) his need to expend additional effort in educating his potential
9 supporters and campaign workers as to how to satisfy the Registration and Polling ID
10 requirements before elections, (b) his need to expend additional effort in mobilizing his
11 supporters (that is, “get out the vote” activities) during elections, (c) the likelihood that
12 despite his best efforts, some of his potential supporters who are eligible to vote will
13 have their registration applications rejected because they lack Registration ID, (d) the
14 likelihood that despite his best efforts, some of his supporters will not attempt to register
15 or vote at all due to their lack of Registration or Polling ID, or their belief that they will
16 be prevented from voting by the identification requirements, (e) the likelihood that
17 despite his best efforts, some of his supporters will be required to cast conditional
18 provisional ballots that will not be counted because the voters lack Polling ID, (f) the
19 likelihood that despite his best efforts, some of his supporters will not have their
20 conditional provisional ballots counted because they are unable to visit an ID
21 verification site in person after the election in order to present their identification, (g) the
22 likelihood that poll workers will provide mistaken and incorrect information to his
23 potential supporters that will lead to their ballots not being counted, and the need to
24 expend additional resources to train poll watchers to ensure that poll workers correctly
25 apply the identification requirements, and (h) the disadvantage that Rep. Gallardo will
26 suffer relative to other candidates whose supporters are better able to satisfy the
27 Registration and Polling ID requirements of Proposition 200. [*Id.* at 3-5]

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

4 89. Proposition 200’s supporters championed the initiative as a way to
5 stop illegal immigration. [ITCA Ex. 51] Yet defendants have disclosed no evidence
6 that any illegal immigrant has registered to vote or voted in Arizona.

7 90. Rather, Maricopa County posits that 14 prosecutions for
8 registration or voting related crimes constitute proof of non-citizen registration and
9 voting. [See Separate Statement of Facts in Supp. of Mot. for Summ. J. by Def.
10 Maricopa County (“Maricopa SOF”), ¶ 3] According to charging and related pre-
11 conviction documents, at least nine of those individuals that Maricopa County has
12 prosecuted for registering or voting were legal permanent residents of the United States.
13 [See Defs’ Ex. 52] Moreover, the death certificate of Andre Gysberts shows him to be a
14 United States citizen. [*Id.*]

15 91. Contrary to Maricopa County’s contention, the records of the court
16 cases they cite do not establish that those 14 individuals have been “found not to be
17 United States citizens.” [See Maricopa SOF, ¶ 3] The factual bases for the 12
18 convictions the county has obtained for misdemeanor “Presentment of a False
19 Instrument” or “Unsworn Falsification” do not appear in the court records that the
20 County has disclosed or its Motion for Summary Judgment. [*Id.*; Defs’ Ex. 52]
21 Moreover, all the charges of “Illegal Voting” have been dismissed. [Maricopa SOF, ¶ 3]

22 92. A very small number of voter registration forms rejected for failure
23 to provide “satisfactory evidence of citizenship” list a birthplace outside the United
24 States. [7/31/06 Osborne Dep. at 22:11-22:24; ITCA Ex. 130, at 3] Indeed, most
25 rejected registrants were born in U.S.: “a large majority of the rejected applicants – 86.6
26 percent of Hispanics and 92.9 percent of non-Hispanics – were reportedly U.S.-born.”
27 [ITCA Ex. 130, at 3]

28 93. Maricopa County receives notification from the Maricopa County
 Superior Court Jury Commissioner of persons who have indicated on a juror affidavit

1 that they are not U.S. citizens. Yet some individuals who attest to the jury
2 commissioner that they are not citizens, in fact, are United States citizens. [7/31/06
3 Osborne Dep. at 91:4-91:9; 1/23/08 Altaha Dep. at 7:20-8:14]

4 94. There is no evidence that any non-citizen has registered, attempted
5 to register to vote or voted in 12 of Arizona's 15 counties. [ITCA Ex. 5-7, 9-14, 17, 24,
6 72, at No. 1; *see also* Justman Dep. at 11:15-11:25; Hansen Dep. at 86:13-87:12; Ex. 45,
7 at 11:10-12:9; Ex. 46, at 31:22-34:9; Dean-Lytle Dep. at 87:17-88:12, 89:19-90:16;
8 Wayman-Trujillo Dep. at 29:15-29:17, 34:5-34:13]

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

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

19 97. Voter registration forms that Maricopa County received from
20 Petition Partners were rejected for a variety of reasons. [1/23/08 Altaha Dep. at 5:23-
21 6:8; 1/14/08 Altaha Dep. at 42:22-43:8] The rejected registration forms received from
22 Petition Partners did not represent an unusually high percentage of individuals with "F"
23 type driver's licenses. [1/14/08 Altaha Dep. at 43:9-43:12] Defendants have produced
24 no evidence that any of the registration forms submitted by Petition Partners were
25 completed by non-U.S. citizens. [1/23/08 Altaha Dep. at 6:11-6:13, 7:3-7:11]

26 98. Like non-U.S. citizens, many felons are not entitled to register or
27 vote. Maricopa County produced evidence that many individuals with felony
28 convictions had registered or voted while ineligible to do so. [1/23/08 Osborne Dep. at

1 25:10-26:19] The Proposition 200 ID requirements do *not* prevent felons from
2 registering or voting. [*Id.*]

3 99. The pre-Proposition 200 requirement that a registrant check a box
4 stating that he or she is a U.S. citizen and sign the voter registration form under penalty
5 of perjury was sufficient to prevent non-U.S. citizens from registering to vote. [Dean-
6 Lytle Dep. at 31:22-32:23; Wayman-Trujillo Dep. at 28:2-30:9]

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

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

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

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

26 103. A non-citizen with authorized presence in Arizona can possess a
27 regular “D” type Arizona driver’s license. [*Id.*, at 35:10-35:16, 37:8-37:19, 63:19-64:9]
28 If that individual’s alien registration card had no expiration date, he could have received

1 a regular, extended license that does not expire until his 65th birthday. [*Id.* at 21:18-
2 22:7]

3 104. Arizona issued driver’s licenses and non-driver identification
4 licenses before 1996 without verifying citizenship or authorized presence in the United
5 States. [*Id.* at 23:7-23:25] Such licenses included extended licenses that do not expire
6 until the holder’s 65th birthday [*See* Gage Dep. at 62:2-62:7 (MVD began issuing
7 extended licenses in 1993)]

8 105. Even if MVD originally issued a license to an individual before
9 October 1, 1996, if the license holder replaced a lost license, or updated his photo or
10 address and obtained a duplicate license after October 1, 1996, the “issue date” of the
11 license would be the date that the new license was provided. [Yanofsky Dep. at 48:11-
12 49:10, 59:19-60:25] As such, it would serve as “satisfactory evidence of citizenship”
13 under Proposition 200. A.R.S. § 16-166(F). This is so, even if the person never
14 established “lawful presence” in the United States. [Yanofsky Dep. at 25:23-29:15]

15 106. An individual possessing an “F” type (or “foreign”) driver’s license
16 may be a United States citizen. [Marin Dep. at 71:19-72:4; Yanofsky Dep. at 63:23-
17 64:1]

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

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

1 **H. Hispanic and Native American Citizens Have Faced a History of**
2 **Discrimination in Arizona and Are Less Likely than White Citizens to**
3 **Possess Documents that Meet Proposition 200's ID Requirements.**

4 109. Official Discrimination against Hispanic citizens began long before
5 Arizona statehood and has continued well into the present day. Indeed, the debate over
6 the boundaries of the future state was influenced by the desire to minimize Hispanic
7 political influence. [ITCA Ex. 145, at 8]

8 110. From 1909 until banned by the Voting Rights Act Amendments of
9 1970, Arizona had a literacy test for voting. [ITCA Ex. 135, at 10-11]

10 111. Arizona held English-only elections until the state became covered
11 by the language minority provisions of the Voting Rights Act. [*Id.*, at 12-13]

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

18 113. Arizona's funding for education of students with limited English
19 proficiency is insufficient to comply with federal law. *See Flores v. Arizona*, 172 F.
20 Supp. 2d 1225, 1239 (D. Ariz. 2000). Despite the passage of eight years and a contempt
21 Order, the State still has not complied with the District Court's Order to adequately fund
22 limited English proficiency education. *See Flores v. Arizona*, 480 F. Supp. 2d 1157,
23 1167 (D. Ariz. 2007), *affirmed* 516 F.3d 1140 (9th Cir. 2008).

24 114. Native Americans did not earn the right to vote in Arizona until
25 1948. *See Harrison v. Laveen*, 196 P.2d 456 (Ariz. 1948). The history of
26 discrimination against Native American voters is well documented in court opinions.
27 *E.g., Goddard v. Babbitt*, 536 F. Supp. 538, 543 (D. Ariz. 1982) (stipulated remedy for
28 malapportioned congressional redistricting united San Carlos Apache Reservation into
 one district); *Goodluck v. Apache County*, 417 F. Supp. 13 (D. Ariz. 1975) (invalidating

1 supervisorial districts that discriminated against Navajo citizens); *Klahr v. Williams*, 339
2 F. Supp. 922, 927 (D. Ariz. 1972) (striking down redistricting plan that intentionally
3 discriminated against the Navajo Nation); *United States v. Ariz.*, No. 88-1989-PHX-
4 EHC (D. Ariz.) (consent decrees settling Indian-language claims under the Voting
5 Rights Act for Navajo and Apache Counties); *Shirley v. Superior Court*, 513 P.2d 939
6 (Ariz. 1973) (reversing injunction that wrongfully prohibited duly elected Native
7 American candidate from taking office).

8 115. Only 50 percent of Hispanic individuals have bank accounts, while
9 nearly 80 percent of Anglo individuals have bank accounts. [ITCA Ex. 21, at 9-10] As
10 such, Hispanic voters are far less likely to possess a bank statement to use as polling
11 place identification. [7/31/06 Osborne Dep. at 78:3-78:12]

12 116. Among all households in Arizona in 2000, 7.4 percent had no
13 vehicle available. Among white households the rate was 5.6 percent without a vehicle,
14 while Hispanic and Indian households had rates of 11.2 percent and 20.3 percent,
15 respectively. [ITCA Ex. 103] Those without vehicles are less likely to possess forms of
16 Registration or Polling ID such as driver's licenses, vehicle registrations or vehicle
17 insurance cards. Moreover, they face greater difficulty traveling to obtain such
18 documents or to early voting or ID verification sites.

19 117. Among those 18 and over in Arizona, in 2000, 7.6 percent had not
20 completed ninth grade. The rate was 2.3 percent for the white population, while the
21 rates were 24.4 percent and 30.2 percent for the Hispanic and Indian populations,
22 respectively. [*Id.*; see also ITCA Ex. 136, at 2]

23 118. 13.9 percent of Arizona residents lived below the poverty line in
24 2000. The rate for the white population was 7.8 percent, while the rate for the Hispanic
25 and Indian population were 24.5 percent and 38 percent, respectively. [Ex. 103]

26 119. In 2000, the median household income for all Arizonans was
27 \$40,388. The median income for white households was \$43,913, while for Hispanic and
28

1 Indian households, the medians were \$31,419 and \$23,709, respectively. [*Id.*; ITCA Ex.
2 136, at 2-3]

3 120. U.S.-born Hispanics in Arizona lag far behind white non-Hispanics
4 in voter registration and voting. [ITCA Ex. 136, at 3, Table 8]

5 121. Analysis of data from elections in 2002, 2004 and 2006 shows that
6 Arizona has racially-polarized voting. Latino voters have been cohesive in their support
7 for Latino candidates. [ITCA Ex. 1376, at 5] Only in the case of U.S. House
8 incumbents Ed Pastor and Raul Gijalva have non-Latinos provided a majority of their
9 votes. [*Id.*] Moreover, in the 2006 election, the majority of Rep. Grijalva's votes were
10 from non-white voters, a combination of Latinos and non-Latino Native Americans. [*Id.*
11 at 5-6] In particular, among the elections outside of majority-Hispanic districts, non-
12 Hispanic "crossover" never exceeded 50 percent. [ITCA Ex. 146, at 3]

13 122. Native Americans living in Apache, Coconino and Navajo Counties
14 have registered to vote at a lower rate after Proposition 200 than before its voter
15 registration provisions went into effect in January 2005. [*See* ITCA Ex. 138, at 2-4]

16 123. There has been a statistically significant decrease in the number of
17 Hispanic Arizonans registering to vote since Proposition 200's registration requirement
18 became effective. [ITCA Ex. 139, at 5; ITCA Ex. 140, at 5-6; ITCA EX. 141, at 13]
19 This represents a greater percentage drop in registration rate than occurred for non-
20 Hispanics. [ITCA Ex. 139, at 6; ITCA Ex. 140, at 5-6; ITCA EX. 141, at 13]

21 124. Hispanic registrants were less likely than non-Hispanic registrants
22 to successfully register to vote after having a voter registration application denied for
23 failure to provide Registration ID. [ITCA Ex. 130, at 3] Hispanic registrants
24 constituted 19.8 percent of rejected applicants who have not successfully registered,
25 while they are only 11 percent of those who were ultimately successful. [*Id.*]

26 125. Hispanics (as reflected by Spanish-surnamed applicants),
27 comprised 13.8 percent of the overall voter registration applicants after January 1, 2005.
28 [*Id.*, Table 5] However, Hispanics comprised a disproportionately large share – 16.7

1 percent – of the rejected applicants, and Hispanics were an even more disproportionate
2 share – 19.8 percent – of the rejected applicants who did not eventually go on to register.
3 [*Id.*]

4 126. On the other hand, Hispanics comprised a disproportionately small
5 share – 11.0 percent – of the rejected applicants who later went on to successfully
6 register to vote, as reflected by listing in the statewide voter registration database. [*Id.*,
7 Table 2]

8 127. Both Hispanics and non-Hispanics to have experienced decreased
9 levels of registration post-Proposition 200, although Hispanics were disproportionately
10 affected. [ITCA Ex. 139, at 16] the Latino share of new voter registrations had
11 declined significantly in two counties since the implementation of Proposition 200.
12 [ITCA Ex. 142, at 6]

13 128. The Hispanic share of overall turnout in the 2006 general election
14 was between 2.6 and 4.2 percent. [ITCA Ex. 144, at 3-4] This was significantly lower
15 than the Hispanic share of registered voters (12.3 percent). Hispanics comprised a much
16 higher share (10.3 percent) of the voters who cast uncounted conditional provisional
17 ballots in that election. [ITCA Ex. 143, at 2]

18 CONCLUSIONS OF LAW

19 A. Jurisdiction

20 1. This case arises under the Constitution, laws, or treaties of the
21 United States.

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

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

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

28

1 **B. Standing**

2 5. Standing involves “both constitutional limitations on federal-court
3 jurisdiction and prudential limitations on its exercise.” *Kowalski v. Tesmer*, 543 U.S.
4 125, 128-29 (2004); *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The elements of
5 standing are indispensable to a plaintiff’s case and must be supported at each stage of
6 the litigation just as any other essential element of a case. *Warren v. Fox Family*
7 *Worldwide, Inc.*, 328 F.3d 1136, 1140 (9th Cir. 2003).

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

21 7. An action involving multiple plaintiffs may go forward if at least
22 one plaintiff has standing. See *Harris v. Bd. Of Supervisors, Los Angeles County*, 366
23 F.3d 754, 761 (9th Cir. 2004) (citing *Pub. Citizen v. Dep't of Transp.*, 316 F.3d 1002,
24 1014-15 (9th Cir. 2003); *Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 160
25 (1981)); see also *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610, 1615 n.7
26 (2008) (finding “no need to decide whether the other petitioners also have standing”
27 after finding standing for Democratic Party).

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

3 9. An organization has standing to sue in its own right by showing
4 harm to its ability to achieve its organizational objectives and by a drain on its resources.
5 *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). A fair housing organization
6 may satisfy the Article III requirement of injury in fact if it can demonstrate: (1)
7 frustration of its organizational mission; and (2) diversion of its resources to combat the
8 particular housing discrimination in question. *Smith v. Pac. Properties & Dev. Corp.*,
9 358 F.3d 1097, 1105 (9th Cir. 2004) (citing *Fair Housing of Marin v. Combs*, 285 F.3d
10 899, 905 (9th Cir. 2002)); *El Rescate Legal Services, Inc. v. Executive Office of*
11 *Immigration Review*, 959 F.2d 742, 745 (9th Cir. 1991) (concerning refugee assistance
12 organization); see also *Crawford*, 128 S. Ct. at 1615 n.7 (“We also agree with the
13 unanimous view of those [Court of Appeals] judges that the Democrats have standing to
14 challenge the validity of SEA 483.”) (citing *Crawford v. Marion County Election Bd.*,
15 472 F.3d 949, 952 (7th Cir. 2007) (“the law may require the Democratic Party and the
16 other organizational plaintiffs to work harder to get every last one of their supporters to
17 the polls.”).

18 10. Under the doctrine of “associational” or “representational” standing
19 an organization may bring suit on behalf of its members whether or not the organization
20 itself has suffered an injury from the challenged action. *Hunt v. Wash. State Apple*
21 *Adver. Comm’n*, 432 U.S. 333, 342-44 (1977). To demonstrate associational standing,
22 the entity must show that (1) at least one of its members would have standing to sue in
23 his own right, (2) the interests the suit seeks to vindicate are germane to the
24 organization's purpose, and (3) neither the claim asserted nor the relief requested
25 requires the participation of individual members in the lawsuit. *United Food &*
26 *Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 553 (1996)
27 (citing *Hunt*, 432 U.S. at 343). Organizations are not required to show specific instances
28 of injury to their members where it is otherwise clear that their members would be

1 adversely affected. *California Rural Legal Assistance, Inc. v. Legal Services Corp.*, 917
2 F.2d 1171, 1174-5 (9th Cir. 1990). *See Pennell v. City of San Jose*, 485 U.S. 1, 7 (1988)
3 (“The likelihood of enforcement, with the concomitant probability that a landlord’s rent
4 will be reduced below what he or she would otherwise be able to obtain in the absence
5 of the Ordinance, is a sufficient threat of actual injury to satisfy Art. III’s requirement
6 that ‘[a] plaintiff who challenges a statute must demonstrate a realistic danger of
7 sustaining a direct injury as a result of the statute’s operation or enforcement.’”) (quoting
8 *Babbitt v. Farm Workers*, 422 U. S. 289, 298 (1979)); *see also Sandusky County*
9 *Democratic Party v. Blackwell*, 387 F.3d 565, 574 (6th Cir. 2004) (“Appellees have not
10 identified specific voters who will seek to vote at a polling place that will be deemed
11 wrong by election workers, but this is understandable; by their nature, mistakes cannot
12 be specifically identified in advance. Thus, a voter cannot know in advance that his or
13 her name will be dropped from the rolls, or listed in an incorrect precinct, or listed
14 correctly but subject to a human error by an election worker who mistakenly believes
15 the voter is at the wrong polling place. It is inevitable, however, that there will be such
16 mistakes. The issues Appellees raise are not speculative or remote; they are real and
17 imminent.”).

- 18 11. Plaintiff AzAN has associational and organizational standing.
- 19 12. Plaintiff Hopi Tribe has associational and organizational standing.
- 20 13. Plaintiff LWV has organizational standing.
- 21 14. Plaintiff LULAC has organizational standing.
- 22 15. Plaintiff ITCA has associational and organizational standing.
- 23 16. Plaintiff Steve Gallardo has standing as a Mexican-American
24 citizen and candidate.

25 **C. Equal Protection Claims**

26 17. The Equal Protection Clause of the Fourteenth Amendment protects
27 the fundamental right to vote from undue burden by States. The basic analysis for such
28 claims is set forth in *Burdick v. Takushi*, 504 U.S. 428 (1992). Under *Burdick* the

1 asserted injury to the right to vote must be weighed against the State’s justifications for
2 the burden imposed. *Id.* at 434. Electoral practices that severely burden the right to
3 vote are subject to strict scrutiny. *Id.*; *Norman v. Reed*, 502 U.S. 279, 288-89 (1992).

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

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

9 128 S. Ct. at 1616. Courts must identify and evaluate the interests put forward by the
10 State as justifications for the burden imposed by challenged election rules. *Anderson v.*
11 *Celebrezze*, 460 U.S. 780 (1983).

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

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

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

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

1 23. The Registration ID requirement is invidious because its relevance
2 to the State’s asserted interest in preventing registration by non-citizens is tenuous.
3 Registration ID fails to uniformly establish the citizenship of applicants. The principal
4 means of satisfying the “satisfactory evidence of citizenship” requirement – via drivers
5 license – does not establish that individuals in fact are citizens and therefore is not
6 relevant to the question of citizenship.

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

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

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

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

1 28. The State has no legitimate interest in preventing voting by eligible
2 and qualified registered voters who merely lack particular forms of identification. The
3 State’s general interest in preventing voter impersonation fraud does not outweigh the
4 burden imposed by the Polling ID requirement, in particular due to the absence of any
5 documented instance of voter impersonation fraud in Arizona.

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

7 29. Section 2 of the Voting Rights Act of 1965 provides:

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

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

26 42 U.S.C. § 1973.

27 30. The 1982 Senate Report identified the following factors as relevant
28 to the “results” analysis under amended § 2: (1) the extent of any history of official
discrimination in the state or political subdivision that touched the right of the members
of the minority group to register, to vote, or otherwise to participate in the democratic
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

1 provisions, or other voting practices or procedures that may enhance the opportunity for
2 discrimination against the minority group, (4) if there is a candidate slating process,
3 whether the members of the minority group have been denied access to that process, (5)
4 the extent to which members of the minority group in the state or political subdivision
5 bear the effects of discrimination in such areas as education, employment and health,
6 which hinder their ability to participate effectively in the political process, (6) whether
7 political campaigns have been characterized by overt or subtle racial appeals, and (7) the
8 extent to which members of the minority group have been elected to public office in the
9 jurisdiction. Additional factors . . . are whether there is a significant lack of
10 responsiveness on the part of elected officials to the particularized need of the members
11 of the minority group; whether the policy underlying the state or political subdivision's
12 use of such voting qualification, prerequisite to voting, or standard, practice, or
13 procedure is tenuous. *Smith v. Salt River Project Agr. Imp. and Power Dist.*, 109 F.3d
14 586, 594 n.6 (9th Cir. 1997) ("*Salt River*") (citing S. Rep. No. 97-417, 97th Cong., 2d
15 Sess. (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206-07).

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

28

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

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

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

19 **E. Relief**

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

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

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

11 38. The ITCA Plaintiffs are entitled to an injunction prohibiting the
12 enforcement of the Arizona Taxpayer and Citizen Protection Act with regard to
13 Registration ID, or in the alternative, an injunction requiring the Defendants to provide a
14 procedure for qualified citizens to register to vote if they are unable with reasonable
15 effort to obtain “satisfactory evidence of citizenship” as defined in the Arizona Taxpayer
16 and Citizen Protection Act.

17 39. The ITCA Plaintiffs are entitled to an injunction prohibiting the
18 enforcement of the Arizona Taxpayer and Citizen Protection Act with regard to election-
19 day voter identification, or in the alternative, an injunction requiring the Defendants to
20 provide a procedure for registered voters to cast ballots in person on election day and to
21 have those ballots counted if they are unable to provide identification pursuant to the
22 Arizona Taxpayer and Citizen Protection Act.

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RESPECTFULLY SUBMITTED this 18th day of June, 2008.

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I further certify that I caused a copy of the attached document to be mailed
on the 19th day of June, 2008 to:

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