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

13 MARIA M. GONZALEZ, et al.,  
14 Plaintiffs,  
15 v.  
16 STATE OF ARIZONA, et al.  
17 Defendants.

No. CV06-01268 PHX ROS  
No. CV06-1362 PCT ROS (Cons)  
No. CV06-1575 PCT ROS (Cons)

**SEPARATE STATEMENT OF  
FACTS IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT  
DIRECTED TO ITCA PLAINTIFFS  
BY DEFENDANT ARIZONA  
SECRETARY OF STATE**

(Assigned to the Honorable  
Roslyn O. Silver)

1 Pursuant to Fed. R. Civ. P. 56(b) and Ariz. Local R. 56.1(a), Defendant Arizona  
2 Secretary of State submits this Separate Statement of Facts in support of her Motion for  
3 Summary Judgment Directed to the ITCA Plaintiffs, which is filed herewith.

4 1. On November 2, 2004, Arizona voters adopted by ballot initiative  
5 Proposition 200 (“Prop 200”). [Decl. of Counsel in Supp. of Mot. for Partial Summ. J.  
6 by Defs. State of Arizona and the Arizona Secretary of State (dkt. 282-2) (Letter dated  
7 December 9, 2004, from Jessica Funkhouser to Joseph Rich, and exhibits A and B  
8 thereto)]

9 2. Sections 3, 4 and 5 of Prop 200 amended Arizona’s voting laws in two  
10 substantive ways: (1) applicants to register to vote were required to submit proof of U.S.  
11 citizenship; and (2) voters who choose to vote in-person at the polls on Election Day (as  
12 opposed to early voters) would be required to present identification. [Dkt. 282-2, ex. A  
13 (Proposition 200 Official Title, An Initiative Measure), at pp. 1-3]

14 3. When asked by interrogatory to identify the facts upon which plaintiffs  
15 rely for their assertion that the proof of citizenship requirement has a discriminatory  
16 impact on Latino citizens, plaintiffs pointed to the following: (1) the expected “study  
17 and expert report by Bruce Hernandez”; (2) the reports of Louis Lanier and Rodolfo  
18 Espino served on behalf of the Gonzalez and Navajo Nation plaintiffs. [Declaration of  
19 Counsel in Support of Defendant’s Motion for Summary Judgment Directed to the ITCA  
20 Plaintiffs (“Counsel Decl. (ITCA)”), Tab 2 (ITCA Second Interrogatory Responses,  
21 response no. 1; Hopi Tribe Second Interrogatory Responses, response no. 1; Gallardo  
22 Second Interrogatory Responses, response no. 1; Arizona Advocacy Network Second  
23 Interrogatory Responses, response no. 1; League of United Latin American Citizens  
24 Second Interrogatory Responses, response no. 1; League of Women Voters of Arizona  
25 Second Interrogatory Responses, response no. 1)]

26 4. The report of Dr. Espino served on behalf of the Navajo Nation plaintiffs  
27 purports to address only issues pertaining to Navajo voters in three northern counties.  
28 [Counsel Decl. (ITCA), Tab 3 (description of expert disclosure by Navajo Nation  
plaintiffs)]

1           5.     Neither Dr. Espino nor Dr. Lanier was disclosed by plaintiffs as a  
2     testifying expert in this case. [Counsel Decl. (ITCA) ¶ 8]

3           6.     Plaintiff Rep. Gallardo does not know of any citizens who lack proof of  
4     citizenship to register to vote. [Counsel Decl. (ITCA), Tab 1 (Gallardo First  
5     Interrogatory Responses, response no. 3)]

6           7.     All but one of the organizational plaintiffs lack knowledge of the number  
7     or identities of individuals lacking proof of citizenship; plaintiff Arizona Advocacy  
8     Network identified only one individual, Eva Steele, who lacks proof of citizenship.  
9     [Counsel Decl. (ITCA), Tab 1 (ITCA First Interrogatory Responses, response no. 4;  
10    Hopi Tribe First Interrogatory Responses, response no. 4; Arizona Advocacy Network  
11    First Interrogatory Responses, response no. 4; League of United Latin American  
12    Citizens First Interrogatory Responses, response no. 4; League of Women Voters of  
13    Arizona First Interrogatory Responses, response no. 4)]

14          8.     Ms. Steele is registered to vote in Maricopa County. [Counsel Decl.  
15    (ITCA), Tab 6 (Osborne Declaration)]

16          9.     In plaintiffs' collective supplemental disclosure statement, which was  
17    served on the last day of fact discovery, they identified only one other person who lacks  
18    proof of citizenship. [Counsel Decl. (ITCA), Tab 4 (ITCA Supplemental Disclosure  
19    Statement, p. 2)]

20          10.    With regard to voting identification, all but one plaintiff failed to identify  
21    any individual who lacks sufficient identification for voting at the polls on Election Day;  
22    plaintiff Arizona Advocacy Network identified only one person, Eva Steele, who  
23    allegedly lacks voting identification. [Counsel Decl. (ITCA), Tab 1 (ITCA First  
24    Interrogatory Responses, response no. 6; Hopi Tribe First Interrogatory Responses,  
25    response no. 6; Gallardo First Interrogatory Responses, response no. 6; Arizona  
26    Advocacy Network First Interrogatory Responses, response no. 3; League of United  
27    Latin American Citizens First Interrogatory Responses, response no. 3; League of  
28    Women Voters of Arizona First Interrogatory Responses, response no. 3)]

          11.    Apart from identifying only one individual who allegedly lacks voting  
          identification, the only other evidence identified by plaintiffs as support for their claim

1 of a discriminatory impact of the voting identification requirement is the expert report of  
2 Bruce Hernandez and (with regard to the Native American claims) the testimony of John  
3 Lewis and Leonard Gorman in connection with the preliminary injunction proceedings.  
4 Plaintiffs never produced any report of expert opinions from Mr. Hernandez. [Counsel  
5 Decl. (ITCA), Tab 2 (Gallardo Second Interrogatory Responses, response no. 2; Arizona  
6 Advocacy Network Second Interrogatory Responses, response no. 2; League of United  
7 Latin American Citizens Second Interrogatory Responses, response no. 2; League of  
8 Women Voters of Arizona Second Interrogatory Responses, response no. 2); Tab 5  
9 (letters from Karen Hartman-Tellez)]

10 12. Plaintiffs have not identified any Native American citizen who lacks proof  
11 of citizenship sufficient to comply with Prop 200. [Counsel Decl. (ITCA), Tab 1 (Hopi  
12 Tribe First Interrogatory Responses, response no. 4; ITCA First Interrogatory  
13 Responses, response no. 4)]

14 13. The only facts upon which plaintiffs rely for their assertion that the proof  
15 of citizenship requirement has a discriminatory impact on Native Americans are (1) the  
16 expected “study and expert report by Bruce Hernandez”; (2) the expert report of Rodolfo  
17 Espino filed on behalf of the Navajo Nation plaintiffs; (3) the affidavit of John Lewis;  
18 (4) Mr. Lewis’ testimony during the preliminary injunction hearing; and (5) the  
19 testimony of Leonard Gorman at the preliminary injunction hearing. [Counsel Decl.  
20 (ITCA), Tab 2 (ITCA Second Interrogatory Responses, response no. 1; Hopi Tribe  
21 Second Interrogatory Responses, response no. 1; Gallardo Second Interrogatory  
22 Responses, response no. 1; Arizona Advocacy Network Second Interrogatory  
23 Responses, response no. 1; League of United Latin American Citizens Second  
24 Interrogatory Responses, response no. 1; League of Women Voters of Arizona Second  
25 Interrogatory Responses, response no. 1)]

26 14. Each of the Arizona tribes represented by the ITCA, and for which  
27 discovery was provided, issues tribal enrollment or identification cards to their  
28 respective members, and all but one of those tribes issue such cards without charge.  
[Counsel Decl. (ITCA), Tab 2 (Hopi Tribe Second Interrogatory Responses, response  
no. 10; ITCA Second Interrogatory Responses, response no. 11)]

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RESPECTFULLY SUBMITTED this 6th day of June, 2008.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 6th day of June, 2008, I electronically transmitted  
3 the attached document to the Clerk's Office using the ECF System for filing, and  
4 transmittal of a Notice of Electronic Filing to the following ECF registrants:  
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**COPY** served the 6th day of June, 2008, by U.S. Mail with Notice of Electronic Filing, on:

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