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 12 Recorder; Patty Hansen, Coconino County Election Director

Nos. 08-17094, 08-17115

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**UNITED STATES COURT OF APPEALS  
 FOR THE NINTH CIRCUIT**

**MARIA M. GONZALEZ; et al.,**  
 Plaintiffs-Appellants,  
 v.  
**STATE OF ARIZONA; et al.,**  
 Defendant-Appellees

On appeal from the United States District Court for the District of Arizona

No. CV06-01268-PHX-ROS  
No. CV06-01362-PHX.ROS

**CANDACE OWENS  
AND PATTY  
HANSEN’S RESPONSE  
TO ITCA AND  
GONZALEZ  
PLAINTIFFS’  
MOTIONS FOR  
ATTORNEY’S FEES  
AND EXPENSES**

**THE INTER TRIBAL COUNCIL OF  
 ARIZONA; et al.,**  
 Plaintiffs-Appellants,

**DAVID W ROZEMA**  
 110 E. CHERRY AVENUE  
 FLAGSTAFF, ARIZONA 86001-4627  
 (928) 679-8200

v.

**STATE OF ARIZONA; et al.,**

Defendants-Appellees

Candace Owens and Patty Hansen (the “Coconino County Parties”) respond to the ITCA and Gonzalez Plaintiffs’ Motions for Attorney’s Fees as follows:

- 1.) As mere nominal parties in this action, an award of attorney’s fees against the Coconino County Parties would be unjust and contrary to the purposes of 42 U.S.C. §1988; and
- 2.) The Coconino County Parties take no position on the remaining issues raised by the Motions.

The Motions for Attorney’s Fees filed by the ITCA and Gonzalez Plaintiffs fails to clearly identify the parties from whom it is seeking to collect costs and fees. Undersigned counsel contacted counsel for the Gonzalez Plaintiffs, but was unable to reach an agreement regarding attorney’s fees. The Coconino County Parties hope to be able to reach such an agreement as this Motion proceeds. In the meantime, the Coconino County Parties file this response to ensure that their objection is noted in the record.

An award of attorney’s fees against the Coconino County Parties should be denied under the Ninth Circuit’s construction of 42 U.S.C. §1988. A

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1 prevailing party in a §1988 action ordinarily recovers attorney's fees unless  
2 special circumstances render such an award unjust. *Gilbrook v. City of*  
3 *Westminster*, 77 F.3d 839, 878 (1999). The test for determining when special  
4 circumstances exist is: (1) whether allowing attorney's fees would further the  
5 purposes of §1988; and (2) whether the balance of the equities favors or  
6 disfavors the denial of fees. *Id.*

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9 Assessing attorney's fees against the Coconino County Parties would not  
10 further the purpose of §1988, which is to allow access to the judicial system for  
11 those with civil-rights grievances. *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103  
12 S.Ct. 1933, 76 L.Ed.2d 40 (1983). The Coconino County Parties had no part in  
13 enacting the legislation that is the subject of this litigation. The Coconino  
14 County Parties are joined in this lawsuit solely because they have the  
15 responsibility of enforcing laws adopted by the Arizona State Legislature and  
16 they are bound by the Court's decision in this matter. Coconino County has  
17 taken no position in this litigation either at the trial court level or at the appellate  
18 level, has made no effort to defend the law in question, and has not taken any  
19 position adverse to that of the ITCA and Gonzalez Plaintiffs. In other words, the  
20 ITCA and Gonzalez Plaintiffs did not have a civil rights grievance that arose  
21 from the actions of the Coconino County Parties. Therefore, an award against  
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1 the Coconino County Parties would not further the purposes of §1988 and would  
2 be inequitable.

3 The Coconino County Parties ask that if costs or attorney's fees in this  
4 matter are awarded to any party that Coconino County be excluded from the  
5  
6 Judgment.

7  
8 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of May, 2012.

9 DAVID ROZEMA  
10 Coconino County Attorney

11 By: /s/ Michelle N. D'Andrea  
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**CERTIFICATE OF COMPLIANCE FOR CASE NO. 08-17115**

I hereby certify that this Response complies with the page limitation of Fed. R. App. P. 27(d)(2) because it does not exceed 20 pages. I further certify that the foregoing Response complies with the type style and typeface requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in a proportionately spaced typeface using MS Word in 14-point Times New Roman.

By: /s/ Michelle D'Andrea  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2012, I electronically transmitted the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I further certify that some of the participants in this case are not registered CM/ECF users. I have mailed a copy of the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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