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23 UNITED STATES DISTRICT COURT  
24 DISTRICT OF ARIZONA

25 Maria M. Gonzalez, et al.,  
26  
27 Plaintiffs,

28 vs.

State of Arizona, et al.,  
Defendants.

)  
) No. CV06-01268-PHX-ROS (Lead)  
) CV06-01362-PHX-ROS (Cons)  
) CV06-01575-PHX-ROS (Cons)

)  
) **EMERGENCY MOTION**  
) **PURSUANT TO FRCP 34 TO**  
) **PERMIT OBSERVERS AT**  
) **POLLING PLACES ON**  
) **ELECTION DAY**

1 Pursuant to Fed. R. Civ. P. 34(a), plaintiffs Inter Tribal Council of  
2 Arizona, Inc., *et al.* (“ITCA Plaintiffs”) seek an Order allowing entrance to polling  
3 places on November 7, 2006, for the purpose of observing the implementation of  
4 Proposition 200’s voter identification requirements (“Polling ID”).

5 The Supreme Court’s recent guidance makes clear that, in analyzing this  
6 matter on remand, this Court should give “careful consideration” to “the possibility that  
7 qualified voters might be turned away from the polls.” *Purcell v. Gonzalez*, 549 U.S.  
8 \_\_\_\_ (2006); *see also id.* (Stevens, J., concurring: “the scope of the disenfranchisement  
9 that the novel identification requirements will produce” is an “important factual  
10 issue[.]”). The presence of observers in the polling place will further the discovery of  
11 information relevant to the trial on the merits of this lawsuit, particularly the manner in  
12 which poll workers are implementing Proposition 200’s requirements, and the extent to  
13 which individuals without acceptable Polling ID leave the polling place without casting  
14 a conditional provisional ballot (and for whom no records are kept). Anecdotal  
15 information from poll workers in the September 2006 primary election indicates that an  
16 unknown but significant number of voters without Polling ID left the polling place  
17 without casting a conditional provisional ballot. Because the ITCA Plaintiffs’ request is  
18 related to discovery of evidence for the trial on the merits, not to its Motion for  
19 Preliminary Injunction, this Court retains jurisdiction to enter the requested Order. *See*  
20 *Plotkin v. Pacific Tel. & Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982) (“[I]t is firmly  
21 established that an appeal from an interlocutory order does not divest the trial court of  
22 jurisdiction to continue with other phases of the case.”); *see also United States v. Pitner*,  
23 307 F.3d 1178, 1183 n.5 (9th Cir. 2002) (“[D]uring an interlocutory appeal, the district  
24 court retains jurisdiction to address aspects of the case that are not the subject of the  
25 appeal.”).

26 Fed. R. Civ. P. 34 permits entry upon designated property in the control of  
27 an opposing party in litigation, such as the polling places in control of the county  
28 election officials here, for the purpose of observing operations relevant to the subject

1 matter involved in the lawsuit. It cannot be disputed that the implementation of the  
2 Polling ID requirements at polling places on Election Day is relevant to the subject  
3 matter of this lawsuit.

4 A court order is necessary because A.R.S. § 16-515 permits only election  
5 officials, challengers and political party representatives to remain inside the polling  
6 places during voting hours. Thus, although the Defendant election officials and their  
7 designees can observe the implementation of the Polling ID requirements, the ITCA  
8 Plaintiffs and their counsel would be shut out of the polling place absent an Order from  
9 this Court. The statutory exception for political party representatives does not provide  
10 viable relief, because the ITCA Plaintiff organizations (such as the ITCA, the League of  
11 Women Voters of Arizona, and the Arizona Advocacy Network), as well as their  
12 organizational counsel (such as the Lawyers' Committee for Civil Rights Under Law,  
13 the People for the American Way Foundation, the ACLU and the AARP Foundation),  
14 are non-partisan groups.

15 If this Court were to grant the requested relief, the observers designated by  
16 the ITCA Plaintiffs would observe polling place operations in an unobtrusive manner,  
17 and would not interfere with the conduct of the election. The rules that the ITCA  
18 Plaintiffs propose for observers are set forth in the Proposed Order submitted herewith.

19 Pursuant to Local Rule 7.2(j), the parties, through their counsel, conferred  
20 regarding this issue on October 24 and 26, 2006 in a sincere attempt to reach a  
21 resolution, but were unable to satisfactorily resolve this matter. In particular, on  
22 October 24, counsel for the ITCA Plaintiffs sent a letter to counsel for Defendants  
23 requesting consent to the present motion. *See* Ex. A. Coconino County has agreed to  
24 permit observers in its polling places under the conditions set forth in the Proposed  
25 Order, but the State and the remaining counties (except Navajo County) have not  
26 agreed. *See* Ex. B-C.

27 Given the short time before Election Day, the ITCA Plaintiffs respectfully  
28 request expedited consideration of their motion.

1                   WHEREFORE, the ITCA Plaintiffs request that this Court enter an Order  
2 permitting their designees to enter polling places on November 7, 2006, for the purpose  
3 of observing the implementation of Proposition 200's voter identification requirements.

4                   RESPECTFULLY SUBMITTED this 27th day of October 2006.

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I further certify that I caused a copy of the attached document to be mailed on the  
27th day of October, 2006 to:

Honorable Roslyn O. Silver  
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/s/ Michele L. Galvez  
Michele L. Galvez, Legal Secretary