

No. 08-17094, 08-17115

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MARIA M. GONZALEZ, et al.,	)	
	)	
Plaintiffs- Appellants,	)	
	)	
v.	)	On Appeal from the United States
	)	District Court for the District of
	)	Arizona
STATE OF ARIZONA, et al.,	)	No. CV-06-1268-PHX-ROS
	)	No. CV-06-1362-PHX-ROS
Defendants- Appellees.	)	
_____	)	
	)	
THE INTER TRIBAL COUNCIL	)	
OF ARIZONA, INC., et al.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	
	)	
STATE OF ARIZONA, et al.,	)	
	)	
Defendants-Appellees.	)	
_____	)	

**RESPONSE OF APPELLANTS INTER TRIBAL COUNCIL OF ARIZONA  
ET AL. TO APPELLEES' PETITION FOR REHEARING EN BANC**

**Table of Contents**

	<u>Page</u>
Table of Authorities .....	ii
I. Arizona’s Proof of Citizenship Requirement Is Invalid Under the NVRA .....	2
A. NVRA Preemption .....	2
B. Appellees’ and Dissent’s Arguments Misconstrue the NVRA.....	6
II. Law of the Case Permitted the Panel to Reconsider the Earlier Panel’s NVRA Decision.....	9
A. Law of the Circuit Does Not Bar One Panel in the Ninth Circuit From Reconsidering a Decision by an Earlier Panel in the Same Case .....	9
1. Jeffries V dictates the result in this case.....	9
2. <i>Washington IV</i> did not reverse <i>Jeffries V</i> .....	12
B. The Panel Correctly Applied an Exception to Law of the Case .....	16
Conclusion.....	16
Certificate of Compliance Pursuant to Circuit Rules 35-4 and 40-1 .....	18
Certificate of Service.....	19

## Table of Authorities

	<u>Page</u>
<b>Cases</b>	
<i>Gonzalez v. Ariz.</i> , 485 F.3d 1041 (9th Cir. 2007) .....	1
<i>Gonzalez v. Ariz.</i> , 624 F.3d 1162 (9th Cir. 2010) .....	passim
<i>Jeffries v. Wood</i> , 114 F.3d 1484 (9th Cir. 1997).....	1, 10, 11
<i>Old Person v. Brown</i> , 312 F.3d 1036 (9th Cir. 2002).....	13
<i>Ross Island Sand &amp; Gravel v. Matson</i> , 226 F.3d 1015 (9th Cir. 2000).....	14
<i>United States v. Washington</i> , 593 F.3d 790 (9th Cir. 2010) .....	2, 13, 14, 15
<b>Statutes</b>	
42 U.S.C. § 1973gg .....	5
42 U.S.C. § 1973gg-2.....	2, 4
42 U.S.C. § 1973gg-4.....	4, 7
42 U.S.C. § 1973gg-5.....	4
42 U.S.C. § 1973gg-7.....	3, 5, 7

Plaintiffs-Appellants Inter-Tribal Council of Arizona (“ITCA”) *et al.* urge this Court to deny Appellees’ Petition for Rehearing En Banc.

First, the decision by the panel majority (“Panel”) – that the National Voter Registration Act (“NVRA”) preempts Arizona’s documentary proof-of-citizenship requirement – is fully supported by the Panel’s exhaustive analysis of the law of preemption and its detailed review of the provisions of the NVRA. The Panel concluded that the Arizona requirement “conflicts with the NVRA’s text, structure, and purpose,” *Gonzalez v. Ariz.*, 624 F.3d 1162, 1181 (9th Cir. 2010), and thus is not permitted by the NVRA. The Panel identified no aspect of the NVRA which supports Appellees’ position, and unequivocally concluded that the Arizona requirement conflicts with federal law. The Panel’s holding, accordingly, does not merit en banc review.

Second, the Panel correctly concluded that the Ninth Circuit’s “law of the circuit” doctrine did not preclude the Panel from reconsidering and reversing the earlier decision in this case, *Gonzalez v. Ariz.*, 485 F.3d 1041, 1050-51 (9th Cir. 2007), under a well-recognized exception to law of the case. As the Panel explained, in the Ninth Circuit “a panel cannot overturn prior published opinions in different cases, [but] may overturn a prior published opinion in the same case if the exceptions to the law of the case are applicable.” 624 F.3d at 1190, *citing Jeffries v. Wood*, 114 F.3d 1484 (9th Cir. 1997) (en banc) (“*Jeffries V*”).

The Panel correctly determined that the rule established by the en banc court in *Jeffries V* was not reversed *sub silentio* by *United States v. Washington*, 593 F.3d 790 (9th Cir. 2010) (en banc) (*Washington IV*). *Washington IV* was not a case in which either law of the circuit or law of the case was at issue; indeed, *Washington IV* mentioned these two doctrines only in passing in a footnote to explain why that case had been taken en banc. Appellees' unsupported claim that *Washington IV* overruled *Jeffries V* provides no basis for granting their petition for en banc review, either to consider whether the Panel properly adhered to *Jeffries V* or to consider any purported conflict between these two en banc decisions.

I. Arizona's Proof of Citizenship Requirement Is Invalid Under the NVRA

A. NVRA Preemption

The Panel's preemption holding is fully supported by the NVRA and its considered analysis of the statute.<sup>1</sup>

The Panel began by examining the statutory text. It determined that the NVRA's "centerpiece," 624 F.3d at 1181, is the provision that the federal government establish a national voter registration application form ("Federal

---

<sup>1</sup> The Panel concluded that the NVRA preempts the State's proof of citizenship requirement for voter registration for all elections conducted by the State. Although the NVRA, by its terms, is limited to "establish[ing] procedures to register to vote in elections for Federal office," 42 U.S.C. § 1973gg-2 (a), Arizona "presented its system of voter registration . . . as concurrently registering voters for state and federal elections," and thus did not indicate that it planned "to establish a separate state registration system" if Plaintiffs prevailed on their NVRA claim. 624 F.3d at 1192 n.20.

Form”). 42 U.S.C. § 1973gg-7. Congress sought “to increase federal registration by streamlining the registration process and eliminating complicated state-imposed hurdles to registration, which it determined were driving down voter turnout rates.” 624 F.3d at 1191. Accordingly, the establishment of a simple, easy-to-use form that citizens anywhere in the country may use for voter registration is central to Congress’ statutory scheme and purpose. *Id.*

To ensure the success of the Federal Form, Congress provided for “comprehensive regulation of [its] development,” *id.* at 1181, including specification of how the form should be used in determining voter eligibility, and the procedures for its promulgation by the federal Election Assistance Commission (“EAC”).<sup>2</sup> In light of these provisions, the Panel concluded that “there is no room for Arizona to impose sua sponte an additional identification requirement as a prerequisite to federal voter registration for registrants using that form.” *Id.* In other words, the NVRA precludes Arizona from imposing a registration requirement that the State developed independent of, and without regard for, the NVRA’s scheme for promulgation of the Federal Form.

---

<sup>2</sup> The NVRA requires that the EAC “develop” the Federal Form, and authorizes the EAC to “prescribe such regulations as are necessary” to carry out this responsibility. 42 U.S.C. § 1973gg-7(a). The dissent argues that Congress did not grant the EAC “much authority,” 624 F.3d at 1208, but clearly the EAC was granted the authority to promulgate the Federal Form.

This conclusion is confirmed by “specific statutory language in the NVRA.” *Id.* at 1182. The NVRA requires States to “accept and use” the Federal Form. 42 U.S.C. § 1973gg-4(a). It also requires that States establish procedures for “acceptance” of the Federal Form at state offices designated as voter registration agencies, 42 U.S.C. § 1973gg-5(a)(4)(A)(iii), and that States comply with the NVRA-mandated registration methods “notwithstanding any other Federal or State law.” 42 U.S.C. § 1973gg-2(a). As the Panel explained, “the value of the Federal Form . . . would be lost, and Congress’s goal to eliminate states’ discriminatory or onerous registration requirements vitiated, if we were to agree with Arizona that states could add any requirements they saw fit to registration for federal elections through the Federal Form.” 624 F.3d at 1181.<sup>3</sup>

Arizona’s attempt to unilaterally implement a voter registration requirement also directly conflicts with the NVRA’s structure. Congress recognized, in establishing a national registration form, that it was important to prescribe a process by which appropriate state-specific requirements could be incorporated into the Federal Form. Congress thus provided that States may submit

---

<sup>3</sup> In relying on the text of the NVRA, the ITCA Plaintiffs-Appellants do not contend that another provision of the NVRA, which prohibits “any requirement for notarization or other formal authentication” of the Federal Form 42 U.S.C. § 1973gg-7(b)(3), itself bars Arizona from implementing the documentary proof of citizenship requirement. The Panel noted this prohibition, but did so only in discussing its conclusion that other provisions of the NVRA preclude States from bypassing the EAC and sua sponte establishing their own requirements for completion of the Federal Form. 624 F.3d at 1181.

recommendations regarding the Federal Form to the EAC, while giving “the EAC ultimate authority to adopt or reject those suggestions.” *Id.* at 1182, *citing* 42 U.S.C. § 1973gg-7(a). Acting pursuant to this authority, the EAC rejected Arizona’s request that the EAC include the State’s proof of citizenship requirement in the Federal Form. Arizona then undertook an “end-run around the EAC’s consultative process” by implementing its proof of citizenship requirement notwithstanding the EAC’s negative determination. 624 F.3d at 1182. A holding that validates this action would “cripple[]” the carefully designed EAC approval process established by the NVRA. *Id.*

Lastly, Arizona’s proof of citizenship requirement “is not in harmony with the intent behind the NVRA, which is to reduce state-imposed obstacles to federal registration” while also protecting “the integrity of the electoral process.” *Id.*, *quoting* 42 U.S.C. § 1973gg(b). Congress delegated responsibility for balancing these objectives to the EAC, and the EAC determined that the appropriate means for allowing state election officials to verify eligibility is to require “applicants to attest to their citizenship under penalty of perjury,” without requiring “the presentation of documentary proof.” 624 F.3d at 1182. Arizona’s “additional [registration] requirement is not consistent with this balance.” *Id.*<sup>4</sup>

---

<sup>4</sup> In addition to the text, structure, and purpose of the NVRA, the Panel also examined the EAC’s administrative interpretation of the NVRA and the NVRA’s legislative history. The Panel concluded that both support the conclusion that the

B. Appellees' and Dissent's Arguments Misconstrue the NVRA

Appellees and the dissent make two principal arguments against preemption. Their construction of the statute, however, would strip the Federal Form of its essential function as a national, legally sufficient means to register to vote, thus undermining “a centerpiece” of Congress’ effort to expand the opportunity to register to vote.

They first argue that the “accept and use” requirement of the NVRA allows States to independently append their own registration requirements to the Federal Form. The dissent notes that, in other contexts, “it’s entirely possible to accept and use something for a particular purpose, yet not have it be sufficient to satisfy that purpose.” *Id.* at 1206. According to this logic, States could adhere to Congress’ requirement that they “accept and use” the Federal Form for voter registration by treating the form as insufficient for voter registration. *Id.*

This analysis fails for two reasons. First, “accept and use,” “when read in an unstrained and natural manner,” *id.* at 1182, cannot be understood to actually mean “reject, but use if augmented.” Furthermore, as the Panel held, “accept and use” must be read “[i]n the context of the NVRA” and, in that context, these terms “can only mean one thing: the states must ‘accept and use’ the Federal Form as a fully

---

NVRA preempts the Arizona provision. However, the Panel concluded that it was unnecessary to rely on these additional sources of statutory interpretation. 624 F.3d at 1183 n.15.

sufficient means of registering to vote in federal elections.” *Id.* at 1188.

Specifically, “accept and use” must be read in the context of the NVRA procedure for EAC development of the form, which does not contemplate that States will impose registration requirements not approved by the EAC.

Appellees’ and the dissent’s second argument relies on a provision of the NVRA that specifies that voter registration forms may include “such identifying information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 42 U.S.C. § 1973gg-7(b)(1). From this, they assert that the NVRA authorizes States to independently establish their own “identifying information” for registration eligibility determinations. 624 F.3d at 1207. But, as the Panel observed, *id.* at 1187, this provision, by its terms, is directed at the EAC, for purposes of the EAC’s development of the Federal Form. 42 U.S.C. § 1973gg-7(b). Thus, this provision does not grant any authority to the States.

The argument based on § 1973gg-7(b)(1) is not strengthened by the fact that the NVRA allows States to develop their own mail registration form which States may use “in addition to” the Federal Form. 42 U.S.C. § 1973gg-4(a)(2). The dissent notes that the NVRA specifies that any separate state form shall “meet[] all of the criteria stated in section [1973gg-7(b)],” 42 U.S.C. § 1973gg-4 (a)(2), and that § 1973gg-7(b) includes the aforementioned provision that registration

applications may include “such identifying information [regarding voter eligibility] . . . as is necessary.” 624 F.3d at 1205. But the crux of the Panel’s preemption ruling is that States cannot sua sponte amend the Federal Form and, as the Panel observed, there is nothing in the NVRA’s grant of authority to States to develop additional registration forms that gives “the states any authority over or discretion to modify the Federal Form.” *Id.* at 1187.<sup>5</sup>

Finally, contrary to Appellees’ and the dissent’s suggestion, the Panel’s holding does not pose any threat to “the voter registration procedures of many states in addition to Arizona.” *Id.* at 1207. They note that States other than Arizona utilize, as part of their voter registration procedures, certain data requirements (not related to proof of citizenship) which the EAC has accommodated by including in the Federal Form. The Panel’s holding, however, is premised on the fact that the EAC has *not* included the Arizona requirement in the Federal Form, and so there is nothing in the Panel’s decision which calls into question the supplemental provisions that the EAC *has* determined may be so accommodated.

---

<sup>5</sup> At most, the fact that the NVRA applies § 1973gg-7(b) to the promulgation of any additional state forms might, as a matter of logic, lead one to argue that Arizona could establish a dual system of voter registration for federal elections, one that utilizes a Federal Form that does not require proof of citizenship and a state-prescribed form that does require such proof. But neither the Appellees nor the dissent take their argument to this nonsensical extreme.

In conclusion, Appellees and the dissent provide no basis for questioning the Panel's conclusion that Arizona's proof of citizenship requirement "conflicts with the NVRA's text, structure, and purpose." *Id.* at 1181. Accordingly, this Court should deny Appellees' request for en banc review.

## II. Law of the Case Permitted the Panel to Reconsider the Earlier Panel's NVRA Decision

The Panel correctly held that law of the circuit did not preclude it from reconsidering the decision by the earlier panel in this case that the NVRA does not preempt Arizona's proof of citizenship requirement. The Panel also correctly determined that, under an established exception to law of the case, it could reconsider and reverse the earlier decision.<sup>6</sup>

### A. Law of the Circuit Does Not Bar One Panel in the Ninth Circuit From Reconsidering a Decision by an Earlier Panel in the Same Case

1. *Jeffries V* dictates the result in this case.

The governing precedent in the Ninth Circuit regarding application of law of the circuit to separate panels addressing the same legal issue in the same case is this Court's en banc decision in *Jeffries V*. The Panel correctly applied *Jeffries V*

---

<sup>6</sup> Regardless of the law of the circuit and law of the case issues, the result in this case ultimately will depend on the Court's resolution of the NVRA issue. Should this Court decide to undertake en banc review because of the Panel's application of law of the circuit or law of the case, the en banc Court would not be constrained by these doctrines, and the ultimate result would depend on the merits. Because, for the reasons stated above, Arizona's registration provision is clearly preempted by the NVRA, Appellees' petition for en banc review should be denied.

to the instant case, and thus did not err in concluding that law of the circuit did not preclude it from reconsidering the earlier panel's NVRA preemption decision.

In *Jeffries V*, the Ninth Circuit convened en banc to specifically determine the rule in this Circuit as to whether one Circuit panel may reconsider and reverse a ruling of law made by an earlier panel in the same case. The particular legal question was whether the panel in the previous *Jeffries IV* decision had appropriately reconsidered and reversed a constitutional ruling made by an earlier panel in the same case, the *Jeffries III* panel.

This Court held that the panel in *Jeffries IV* was authorized to overrule the panel in *Jeffries III* if that result was permitted by law of the case, and thus the Court concluded that law of the circuit does not supplant law of the case when two panels are addressing the same legal issue in the same case. *Jeffries V*, accordingly, undertook a detailed review of the doctrine of law of the case and the manner in which the doctrine applied to the previous panel decisions. 114 F.3d at 1488-93. The Court ultimately concluded that law of the case did not permit the *Jeffries IV* panel to overrule *Jeffries III*.

In so ruling, the en banc Court emphasized that when two panels in different cases are presented with the same legal issue, law of the circuit does bar the later panel from reversing the earlier panel's holding. *Id.* at 1492. The Court noted that one of the difficulties with concluding that law of the case enabled *Jeffries IV* to

overrule *Jeffries III* was that, after the *Jeffries III* decision was issued but before *Jeffries IV*, two panels of the Ninth Circuit in other cases “relied and expanded on *Jeffries III*.” *Id.* Thus, in order for the panel in *Jeffries IV* to endorse a constitutional rule contrary to the one announced in *Jeffries III*, the *Jeffries IV* panel had to reject the holdings of the panels in two other cases, which was not permissible under law of the circuit.

The en banc majority declined to adopt the approach to law of the circuit urged by the dissent in that case, which argued that the doctrine should not only apply to panels deciding different cases but also to successive panels in the same case:

As the law of the circuit operates in our court, no three-judge panel may reconsider a rule of law embodied in a prior published opinion; that can only be done by the court sitting en banc. [Citations omitted.] The fact that it happens to be the same panel in the same case doesn’t make a difference. . . . [T]he majority weakens the law of the circuit doctrine by holding that a panel does, in fact, have discretion to overrule its own published opinions, so long as the law of the case balancing is satisfied.

*Id.* at 1511-12 (Kozinski, J. dissenting). As the dissent also expressed its preferred rule, “whenever law of the case and law of the circuit problems arise in the same case, the law of the circuit principle supplants any law of the case considerations.”

*Id.* at 1511 n.16.<sup>7</sup>

---

<sup>7</sup> The en banc majority did not explain its policy reasons for rejecting the dissent’s more expansive approach. However, implicit in its holding is the view that, within

The question presented here is the same as in *Jeffries V*: whether law of the circuit barred a second panel from reconsidering a legal ruling made by an earlier panel in this same case. Given the holding in *Jeffries*, the Panel clearly was correct in concluding that the answer must be “no.” In addition, as the Panel noted, the law of the circuit concern that was presented in *Jeffries* is not present here since “no other panel of this court has relied upon the prior panel’s decision for the proposition that the NVRA does not supersede additional state requirements for federal voter registration.” 624 F.3d at 1190.

Appellees and the dissent argue that the Ninth Circuit should apply law of the circuit to panel decisions in the same case, as was urged by the dissent in *Jeffries V*. That question, however, already has been resolved by this Court en banc, and should not be addressed en banc again.

2. *Washington IV* did not reverse *Jeffries V*.

Appellees and the dissent argue that the recent en banc decision in *Washington IV* effectively overruled *Jeffries V*, in a single sentence included in a footnote in that case. *Id.* at 1200. As the Panel correctly concluded, however,

---

the confines of a single case, the doctrine of law of the case provides the necessary balance between the desire to afford substantial justice and the requirements of sound judicial administration, allowing for an appropriate level of flexibility in seeking an ultimate result that is correct on both the law and the facts. Applying law of the circuit within the same case would eliminate that flexibility, leaving the inefficient and cumbersome mechanism of en banc review as the only option for correcting an earlier mistaken ruling of law.

there is nothing about the passing reference to law of the circuit and law of the case in *Washington IV* that has either the appearance or the substantive content of a decision by this Court overruling its own prior en banc decision. *Id.* at 1190-91.

First, the Court in *Washington IV* did not even say that it was overruling *Jeffries V*, although *Washington IV* mentioned that decision. *Washington IV*, 593 F.3d at 798 n.9. Surely, if and when this Court decides to overrule a prior en banc decision it would say that this is what it is doing.

Second, neither law of the circuit nor law of the case was at issue in *Washington IV*, and so *Washington IV* could not possibly have overruled *Jeffries V*. *Id.* at 792 (the issue presented concerned “Indian treaty fishing rights in the Pacific Northwest”). The only reason that *Washington IV* referred to these doctrines was to explain why this Court took the appeal en banc without first allowing a panel to consider whether the panel in *Washington III* should be reversed. *Id.* at 798 n.9. Thus, at most, *Washington IV*’s reference to these doctrines is dicta.

Third, precisely because the doctrines were not at issue, *Washington IV* included no analysis of these doctrines. The entirety of *Washington IV*’s reference to the doctrines is contained in the following sentence:

This step [– *i.e.*, immediately taking the case en banc –] was necessary because, even if the panel [– *i.e.*, the panel which was not convened because the case was taken en banc – ] could have revisited *Washington III* under one of the exceptions to law of the case, *see Jeffries [V]*, it still would have been bound by that published opinion as the law of the circuit, *see, e.g., Old Person v. Brown*, 312 F.3d

1036, 1039 (9th Cir. 2002) (“[W]e have no discretion to depart from precedential aspects of our prior decision in *Old Person I*, under the general law-of-the circuit rule.”).

*Id.* Significantly, nothing in this footnote suggests a new rule, change of law, or resolution of any legal issue. Instead, the Court simply indicated that the law of the circuit question had been resolved by the prior Ninth Circuit panel decision in *Old Person II*.

Fourth, *Old Person II* provides no precedential basis on which to conclude that *Jeffries V* was wrongly decided. Although *Old Person II* was handed down after *Jeffries V*, as a panel decision it did not alter the holding in *Jeffries V*. Furthermore, *Old Person II* contained no analysis of law of the circuit; the panel’s only passing reference to that doctrine was in the one conclusory sentence quoted parenthetically in *Washington IV*. *Old Person II*, instead, relied entirely on yet another panel decision, *Ross Island Sand & Gravel v. Matson*, 226 F.3d 1015, 1018 (9th Cir. 2000). But the *Ross Island* panel cited law of the circuit solely for the commonplace proposition that a panel in one case may not reverse a panel decision in a different case. Thus, if the line of precedent that ended in *Washington IV* is traced back to its origin, the precedential basis for concluding that the en banc decision in *Jeffries V* is not good law is a decision, by a panel, that addressed an entirely different issue than the issue addressed in *Jeffries*.

Fifth, and finally, the tangled precedent that necessitated en banc review in *Washington IV* did not simply involve a potential legal conflict between different panels in the same case. Rather, as was noted at the beginning of that opinion, en banc review was required to “resolve a conflict in our precedent between *Washington III* . . . and [other] cases” in which a contrary legal holding was reached. 593 F.3d at 793. Here, on the other hand, no such conflict requiring en banc review, or precluding application of law of the case, exists between the panel decision and panel decisions in other Ninth Circuit cases.

In sum, as the Panel explained, “statements made in passing [in a court decision], without analysis, are not binding precedent” in the Ninth Circuit. 624 F.3d at 1190 (internal quotation marks omitted). That is an entirely accurate and fitting description of *Washington IV* insofar as that case addressed law of the circuit, and thus the Panel correctly “decline[d] to hold that [the *Washington IV*] footnote overruled *sub silentio* the reasoned analysis of the en banc court in *Jeffries V*.” *Id.* at 1191.

For these reasons, the Panel did not err in adhering to this Court’s en banc ruling in *Jeffries V*, and any inadvertent tension between the holding in *Jeffries V* and the sentence in *Washington IV* does not provide a basis on which the issue decided in *Jeffries V* should be revisited, again, en banc.

B. The Panel Correctly Applied an Exception to Law of the Case

The Panel concluded that the prior panel decision was clearly erroneous and that allowing that decision to stand would produce manifest injustice. *Id.* at 1188. The Panel therefore concluded, under a well-established exception to law of the case, that it was authorized to reconsider and reverse the prior panel decision. For the reasons set forth above, the Panel's conclusion that the NVRA preempts Arizona's proof of citizenship requirement is well supported and does not merit en banc review. Likewise, the Panel's application of law of the case presents no special issue, and is unlikely to affect this Circuit's application of law of the case in the future. Accordingly, the Panel's decision regarding law of the case also does not merit en banc review.

Conclusion

For these reasons, the ITCA Plaintiffs-Appellants urge this Court to deny Arizona's petition for en banc review.

January 31, 2011

*s/ Jon M. Greenbaum*  
LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS UNDER LAW  
Jon M. Greenbaum  
Robert A. Kengle  
Mark A. Posner  
Elizabeth Cochran  
1401 New York Avenue, NW  
Suite 400  
Washington, DC 20005  
(202) 662-8389

STEPTOE & JOHNSON LLP  
David J. Bodney  
Collier Center  
201 East Washington Street  
Suite 1600  
Phoenix, Arizona 85004-2382  
(602) 257-5212

OSBORN MALEDON, P.A.  
David B. Rosenbaum  
Thomas L. Hudson  
2929 North Central Avenue  
Suite 2100  
Phoenix, Arizona 85012-2793  
(602) 640-9000

The Sparks Law Firm, P.C.  
Joe P. Sparks  
7503 First Street  
Scottsdale, Arizona 85251  
(480) 949-1339

ACLU Voting Rights Project  
Laughlin McDonald  
230 Peachtree Street, NW  
Suite 1440  
Atlanta, Georgia 30303  
(404) 523-2721

AARP  
Daniel B. Kohrman  
AARP Foundation Litigation  
601 E Street, NW  
Washington, DC 20049  
(202) 434-2060

**Certificate of Compliance Pursuant to Circuit Rules 35-4 and 40-1**

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached response is:

Proportionately spaced, has a typeface of 14 points or more and contains  
4,109 words.

*s/ Jon M. Greenbaum*

Jon M. Greenbaum

Attorney for ITCA Appellants

### **Certificate of Service**

I hereby certify that on January 31, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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

Bradley Carlyon  
Navajo County Attorney's Office  
Jason Moore  
Navajo County Attorney's Office  
P.O. Box 668  
Holbrook, AZ 86025

Richard M. Romley  
Maricopa County Attorney  
M. Colleen Connor  
MCAO Division of County Counsel  
222 N. Central Avenue, Suite 1100  
Phoenix, Arizona 85003

David W. Rozema  
Coconino County Attorney  
Jean E. Wilcox  
Deputy County Attorney  
110 East Cherry Avenue  
Flagstaff, Arizona 86001

James P. Walsh  
Pinal County Attorney  
Chris M. Roll  
Nicole Weber  
30 North Florence Street, Bldg. D  
Florence, Arizona 85232

s/ Jon M. Greenbaum  
Jon M. Greenbaum