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October 15, 2009

Molly Dwyer
United States Court of Appeals
Ninth Circuit
95 Seventh Street
San Francisco, California 94119-3939

Re: *Gonzalez, et al. v. Arizona, et al.* (No. 08-17094)
The Inter Tribal Council of Arizona, Inc., et al. v. Bennett (No. 08-17115)

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28-6, State Appellees, State of Arizona and Arizona Secretary of State Ken Bennett, hereby submit as supplemental authority Chapter 173, HB 2627 (Ariz. Laws 2009), which amends Arizona Revised Statutes ("A.R.S.") § 16-579. State Appellees also submit the Secretary of State's revised Procedure for Proof of Identification and Provisional Ballot Processing at the Polls ("revised ID Procedure"). The revised ID Procedure reflects the amendments to Arizona law made by HB 2627 and replaces the corresponding portions of the ID procedure as contained in the Secretary's Elections Instructions and Procedures Manual. [See ER tab 30, at 127-130] The Department of Justice precleared the changes made by HB 2627 and the ID Procedure on October 1, 2009.

A.R.S. § 16-579 provides for the procedure for obtaining a ballot by an elector and sets forth Arizona's identification requirement for voting at the polls on election day. HB 2627 codifies the portion of the Arizona Secretary of State's procedure for identification at the polls that sets forth the particular forms of identification that an elector may use to obtain a ballot on election day. [See ER tab 30, at 128] In addition, HB 2627 specifies that "official election material" constitutes a sufficient form of non-photo identification. *See* HB 2627, § 2 (amending A.R.S. § 16-579(A)(1)(b)). HB 2627 also specifies that an elector who presents valid photo identification on which the address does not match the

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address on the precinct roster may nonetheless vote a regular ballot if that elector also presents a valid form of non-photo identification on which the name and address match that of the precinct roster. *See id.* (amending A.R.S. § 16-579(A)(1)(c)). In addition, HB 2627 provides that an elector may obtain a regular ballot by presenting a valid U.S. military identification card or passport, even if such documents do not contain the elector's address, if the elector also presents a valid form of non-photo identification on which the name and address match that of the precinct roster. *See id.*

The revised ID Procedure amends the procedure in the current Secretary of State's Elections Instructions and Procedures Manual regarding an elector's obtaining a ballot at the polls on election day to implement the changes to Arizona law made by HB 2627, as discussed above. [See ER tab 30, at 127-130]

Respectfully submitted,

/s Barbara A. Bailey

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2009, 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 sent a copy of the foregoing document by electronic mail and U.S. First-Class Mail, postage prepaid, to the following participants on the 15th day of October, 2009 to:

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By: Elizabeth A. Gordon

**Chapter 173, HB 2627
(Ariz. Laws 2009)**

Senate Engrossed House Bill

FILED

KEN BENNETT

SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 173

HOUSE BILL 2627

AN ACT

AMENDING SECTIONS 16-246 AND 16-579, ARIZONA REVISED STATUTES, AS AMENDED BY 2004 PROPOSITION 200, SECTION 5; REPEALING SECTION 16-579, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 260, SECTION 18; RELATING TO POLLING PLACE PROCEDURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 16-246, Arizona Revised Statutes, is amended to
3 read:

4 16-246. Early balloting; satellite locations; additional
5 procedures

6 A. Within ninety days preceding the Saturday before the presidential
7 preference election and not later than 5:00 p.m. on the eleventh day
8 preceding the election, any elector who is eligible to vote in the
9 presidential preference election may make a verbal or signed, written request
10 for an official early ballot to the county recorder or other officer in
11 charge of elections for the county in which the elector is registered to
12 vote. If the request is verbal, the requesting elector shall provide the
13 date of birth and birthplace or other information that if compared to the
14 voter registration records for that elector would confirm the identity of the
15 elector.

16 B. Absent uniformed services voters or overseas voters who are
17 otherwise eligible to vote in the election may vote as prescribed by sections
18 16-543, 16-543.01 and 16-543.02. The list of candidates that is sent as
19 prescribed by section 16-543.01 shall be a list of all candidates who have
20 qualified for the presidential preference ballot by the forty-sixth day
21 before the presidential preference election.

22 C. The county recorder or other officer in charge of elections may
23 establish on-site early voting locations at the office of the county recorder
24 or at other locations in the county deemed necessary or appropriate by the
25 recorder. Early voting shall begin within the time limits prescribed in
26 section 16-542 unless otherwise prescribed by this section.

27 D. The county recorder or other officer in charge of elections shall
28 send by nonforwardable mail that is marked with the statement required by the
29 postmaster to receive an address correction notification any early ballots
30 that are requested pursuant to subsections A and B of this section and shall
31 include a preaddressed envelope for the elector to return the completed
32 ballot.

33 E. The county recorder or other officer in charge of elections shall
34 provide to each election board an appropriate alphabetized list of voters who
35 have requested and have been sent an early ballot. Any person who is on that
36 list of voters and who was sent an early ballot shall not vote at the polling
37 place for that election precinct except as prescribed by section 16-579,
38 subsection ~~C~~ B.

39 F. The county recorder or other officer in charge of elections may
40 provide for any of the following in the same manner prescribed by law for
41 other elections:

- 42 1. Special election boards.
- 43 2. Emergency balloting for persons who experience an emergency after
44 5:00 p.m. on the Friday preceding the presidential preference election and

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1 before 5:00 p.m. on the Monday immediately preceding the presidential
2 preference election.

3 G. Sections 16-550, 16-551 and 16-552 govern the use of early
4 balloting for the presidential preference election.

5 Sec. 2. Subject to the requirements of article IV, part 1, section 1,
6 Constitution of Arizona, section 16-579, Arizona Revised Statutes, as amended
7 by 2004 proposition 200, section 5, is amended to read:

8 16-579. Procedure for obtaining ballot by elector

9 A. Every qualified elector, before receiving ~~his~~ A ballot, shall
10 announce ~~his~~ THE ELECTOR'S name and place of residence in a clear, audible
11 tone of voice to the election official in charge of the signature roster or
12 present ~~his~~ THE ELECTOR'S name and residence in writing. ~~and shall present~~
13 ~~one form of identification that bears the name, address and photograph of the~~
14 ~~elector or two different forms of identification that bear the name and~~
15 ~~address of the elector. If the name is found upon the precinct register by~~
16 ~~the election officer having charge thereof, or the qualified elector presents~~
17 ~~a certificate from the county recorder showing that he is entitled by law to~~
18 ~~vote in the precinct,~~ The election official in charge of the signature
19 roster shall ~~repeat the name~~ COMPLY WITH THE FOLLOWING and the qualified
20 elector shall be allowed within the voting area:

21 1. THE ELECTOR SHALL PRESENT ANY OF THE FOLLOWING:

22 (a) A VALID FORM OF IDENTIFICATION THAT BEARS THE PHOTOGRAPH, NAME AND
23 ADDRESS OF THE ELECTOR THAT REASONABLY APPEARS TO BE THE SAME AS THE NAME AND
24 ADDRESS IN THE PRECINCT REGISTER, INCLUDING AN ARIZONA DRIVER LICENSE, AN
25 ARIZONA NONOPERATING IDENTIFICATION LICENSE, A TRIBAL ENROLLMENT CARD OR
26 OTHER FORM OF TRIBAL IDENTIFICATION OR A UNITED STATES FEDERAL, STATE OR
27 LOCAL GOVERNMENT ISSUED IDENTIFICATION. IDENTIFICATION IS DEEMED VALID
28 UNLESS IT CAN BE DETERMINED ON ITS FACE THAT IT HAS EXPIRED.

29 (b) TWO DIFFERENT ITEMS THAT CONTAIN THE NAME AND ADDRESS OF THE
30 ELECTOR THAT REASONABLY APPEARS TO BE THE SAME AS THE NAME AND ADDRESS IN THE
31 PRECINCT REGISTER, INCLUDING A UTILITY BILL, A BANK OR CREDIT UNION STATEMENT
32 THAT IS DATED WITHIN NINETY DAYS OF THE DATE OF THE ELECTION, A VALID ARIZONA
33 VEHICLE REGISTRATION, AN ARIZONA VEHICLE INSURANCE CARD, INDIAN CENSUS CARD,
34 TRIBAL ENROLLMENT CARD OR OTHER FORM OF TRIBAL IDENTIFICATION, A PROPERTY TAX
35 STATEMENT, A RECORDER'S CERTIFICATE, A VOTER REGISTRATION CARD, A VALID
36 UNITED STATES FEDERAL, STATE OR LOCAL GOVERNMENT ISSUED IDENTIFICATION OR ANY
37 MAILING THAT IS "OFFICIAL ELECTION MATERIAL". IDENTIFICATION IS DEEMED VALID
38 UNLESS IT CAN BE DETERMINED ON ITS FACE THAT IT HAS EXPIRED.

39 (c) A VALID FORM OF IDENTIFICATION THAT BEARS THE PHOTOGRAPH, NAME AND
40 ADDRESS OF THE ELECTOR EXCEPT THAT IF THE ADDRESS ON THE IDENTIFICATION DOES
41 NOT REASONABLY APPEAR TO BE THE SAME AS THE ADDRESS IN THE PRECINCT REGISTER
42 OR THE IDENTIFICATION IS A VALID UNITED STATES MILITARY IDENTIFICATION CARD
43 OR A VALID UNITED STATES PASSPORT AND DOES NOT BEAR AN ADDRESS, THE
44 IDENTIFICATION MUST BE ACCOMPANIED BY ONE OF THE ITEMS LISTED IN SUBDIVISION
45 (b) OF THIS PARAGRAPH.

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1 2. IF THE ELECTOR DOES NOT PRESENT IDENTIFICATION THAT COMPLIES WITH
 2 PARAGRAPH 1 OF THIS SUBSECTION, THE ELECTOR IS ONLY ELIGIBLE TO VOTE A
 3 PROVISIONAL BALLOT AS PRESCRIBED BY SECTION 16-584 OR A CONDITIONAL
 4 PROVISIONAL BALLOT AS PROVIDED FOR IN THE SECRETARY OF STATE'S INSTRUCTION
 5 AND PROCEDURES MANUAL ADOPTED PURSUANT TO SECTION 16-452.

6 B. Any qualified elector who is listed as having applied for an early
 7 ballot but who states that ~~he~~ THE ELECTOR has not voted and will not vote an
 8 early ballot for this election or surrenders the early ballot to the precinct
 9 inspector on election day shall be allowed to vote pursuant to the procedure
 10 set forth in section 16-584.

11 C. Each qualified elector's name shall be numbered consecutively by
 12 the clerks, with the number ~~upon~~ ON the stub of the ballot delivered to ~~him~~
 13 THE ELECTOR, and in the order of applications for ballots. The election
 14 judge having charge of the ballots shall also write ~~his~~ THE ELECTOR'S
 15 initials ~~upon~~ ON the stub and the number of the qualified elector as it
 16 appears ~~upon~~ ON the precinct register. The judge shall give the qualified
 17 elector only one ballot, and ~~his~~ THE ELECTOR'S name shall be immediately
 18 checked on the precinct register.

19 D. Each qualified elector shall sign ~~his~~ THE ELECTOR'S name in the
 20 signature roster prior to receiving ~~his~~ A ballot, but an inspector or judge
 21 may sign the roster for an elector who is unable to sign because of physical
 22 disability, and in that event the name of the elector shall be written with
 23 red ink, and no attestation or other proof shall be necessary. The
 24 provisions of this subsection relating to signing the signature roster shall
 25 not apply to electors casting a ballot using early voting procedures.

26 E. A person offering to vote at a special district election for which
 27 no special district register has been supplied shall sign an affidavit
 28 stating ~~his~~ THE PERSON'S address and that ~~he~~ THE PERSON resides within the
 29 district boundaries or proposed district boundaries and swearing that ~~he~~ THE
 30 PERSON is a qualified elector and has not already voted at the election being
 31 held.

32 Sec. 3. Repeal

33 Section 16-579, Arizona Revised Statutes, as amended by Laws 2003,
 34 chapter 260, section 18, is repealed.

35 Sec. 4. Requirements for enactment: three-fourths vote

36 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
 37 this act is effective only on the affirmative vote of at least three-fourths
 38 of the members of each house of the legislature.

39 Sec. 5. Emergency

40 This act is an emergency measure that is necessary to preserve the
 41 public peace, health or safety and is operative immediately as provided by
 42 law.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Arizona Secretary of State's
revised Procedure for Proof
of Identification and
Provisional Ballot Processing
at the Polls

**ARIZONA SECRETARY OF STATE ELECTION PROCEDURES MANUAL
(OCTOBER 2007)**

PROPOSED CHANGE TO PGS. 128-129

**PROCEDURE FOR PROOF OF IDENTIFICATION AND
PROVISIONAL BALLOT PROCESSING AT THE POLLS**

Every qualified elector is required to show proof of identity at the polling place before receiving a ballot. The elector shall announce his/her name and place of residence or present the elector's name and residence in writing to the election official. The elector shall present acceptable identification that:

1. bears the name, address, and photograph of the elector (see List 1 below) or
2. two different forms of identification that bear the name and address of the elector (see List 2 below) or
3. one form of acceptable photo identification with one form of non-photo identification that bears the name and address of the elector (see List 3 below).

[A.R.S. § 16-579(A)]

An elector who does not provide acceptable proof of identification shall not be issued a regular ballot, but shall receive a conditional provisional ballot. If the elector identifies himself or herself as a Native American, the elector shall be processed under the section of this procedure titled "Identification Requirements for Native American Electors." All others shall be processed under the section of this procedure titled "Conditional Provisional Ballot for No Identification."

Acceptable proof of identification includes but is not limited to the sources listed below. Other forms of identification not on this list must be deemed acceptable by the county election official in charge of elections and must establish the identity of the elector in accordance with the requirements of A.R.S. § 16-579(A).

List 1 - Acceptable Forms of Identification with Photograph, Name, and Address of the Elector

- Valid Arizona driver license
- Valid Arizona nonoperating identification license
- Tribal enrollment card or other form of tribal identification
- Valid United States federal, state, or local government issued identification

An identification is "valid" unless it can be determined on its face that it has expired.

List 2 - Acceptable Forms of Identification Without a Photograph that Bear the Name and Address of the Elector (Two Required)

- Utility bill of the elector that is dated within 90 days of the date of the election. A utility bill may be for electric, gas, water, solid waste, sewer, telephone, cellular phone, or cable television
- Bank or credit union statement that is dated within 90 days of the date of the election
- Valid Arizona Vehicle Registration
- Indian census card
- Property tax statement of the elector's residence
- Tribal enrollment card or other form of tribal identification
- Arizona vehicle insurance card
- Recorder's Certificate
- Valid United States federal, state, or local government issued identification, including a voter registration card issued by the County Recorder
- Any mailing to the elector marked "Official Election Material".

An identification is "valid" unless it can be determined on its face that it has expired.

List 3 - Acceptable Forms of Identification, One Identification With Name and Photo of the Elector Accompanied By One Non-Photo Identification With Name and Address

- Any valid photo identification from List 1 in which the address does not reasonably match the precinct register accompanied by a non-photo identification from List 2 in which the address does reasonably match the precinct register.
- U.S. Passport without address and one valid item from List 2
- U.S. Military identification without address and one valid item from List 2

An identification is "valid" unless it can be determined on its face that it has expired.

Compare Identification to Announced Name

If the elector has provided the acceptable form of identification(s), the poll worker shall compare the information on the identification(s) with the information the elector *announced*. If the name on the identification(s) reasonably appears to be the same as the *announced* name, the poll worker shall compare the identification to the signature roster, inactive voter list, or add-on list. If the name

on the identification(s) does not reasonably appear to be the same as the *announced* name, the elector shall be provided a conditional provisional ballot to be processed under the section of this procedure titled "Conditional Provisional Ballot for No Identification." The poll worker shall provide the elector with instructions on how and where the elector can provide proof of identification in the timeframes specified in this procedure.

Compare Identification to Signature Roster, Inactive Voter List, or Add-On List

The poll worker shall compare the information on the identification(s) provided by the elector with the information on the signature roster, inactive voter list, or add-on list.

Polling Place Process for Elector Whose Name Appears on the Signature Roster, Inactive Voter List, or Add-On List

If the elector presents one form of identification from List 1 that bears the name, address, and photograph of the elector and the name and address on the identification and the signature roster, inactive voter list or add-on list reasonably appear to be the same and the photo reasonably appears to be the elector, then the elector shall be issued a regular ballot. If the name and address on the identification do not reasonably appear to be the same as the name and address on the signature roster or the photo does not reasonably appear to be the elector, then the elector shall not be issued a regular ballot, but shall be issued a provisional ballot.

If the elector presents two forms of identification from List 2 that bear the name and address of the elector without a photograph of the elector, the poll worker shall compare the name and address on the two pieces of identification with the name and address on the signature roster. If both pieces of identification reasonably appear to be the same as the name and address on the signature roster, inactive voter list or add-on list the elector shall be issued a regular ballot. If the name or address on either piece of provided identification does not reasonably appear to be the same as the name and address on the signature roster then the elector shall not be issued a regular ballot, but shall be issued a provisional ballot.

If an elector provides a photo identification from List 3 accompanied by a non-photo identification from List 2, the name on each form of identification must reasonably match the precinct register. The address from the non-photo identification must reasonably match the precinct register. If both pieces of identification reasonably appear to be the same as the signature roster, inactive voter list or add-on list the elector shall be issued a regular ballot. If the name or

address on either piece of provided identification does not reasonably appear to be the same as the name and address on the signature roster then the elector shall not be issued a regular ballot, but shall be issued a provisional ballot.

If the elector presents only one form of identification that bears the name and address of the elector without a photograph of the elector, the elector shall be issued a conditional provisional ballot to be processed under the section of this procedure titled "Conditional Provisional Ballot for No Identification."

If the elector has moved within the precinct and, therefore, his or her name is on the register but the address on the identification(s) are not the same as the signature roster, the elector shall be issued a provisional ballot.

[A.R.S. § 16-135]

If a person's name is on the inactive voter list, the person shall orally affirm that the voter resides at the address listed on the inactive voter list. The voter's signature shall be entered on the inactive voter signature roster page at the end of the signature roster.

If the voter says that he or she has moved to a different residence outside the precinct but within the county, the voter shall be directed to the polling place **for the new address**.

[A.R.S. §§ 16-122 & 16-583]

Polling Place Process for Elector Whose Name Does Not Appear on the Signature Roster, Inactive Voter List, or Add-On List

If the poll worker is unable to locate the elector's name on the signature roster, inactive voter list, or add-on list after the elector presents one form of identification that bears the name, address, and photograph of the elector or two different forms of identification that bear the name and address of the elector, the elector shall be permitted to vote a provisional ballot after the election official has:

- verified the voter's address on the precinct map to make sure it is within the precinct, and
- determined if the voter has recently moved within the county. If the voter has recently moved within the county, follow the section of the procedure named "The Voter Has Moved Within the County."

[A.R.S. §§ 16-135(B), 16-137, & 16-584(C)]

(Proposal - August 14, 2009)