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25 UNITED STATES DISTRICT COURT

26 DISTRICT OF ARIZONA

27 Maria M. Gonzalez, et al.,  
28 Plaintiffs,

vs.

State of Arizona, et al.,  
Defendants.

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

)  
) **ITCA PLAINTIFFS' RESPONSE**  
) **TO DEFENDANTS' SEPARATE**  
) **STATEMENT OF FACTS**

)  
) **- AND -**

)  
) **SUPPLEMENTAL**  
) **STATEMENT OF FACTS**

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26 Pursuant to Fed R. Civ. P. 56(e), plaintiffs the Inter Tribal Council of  
27 Arizona, Inc., the Hopi Tribe, Arizona Advocacy Network, the League of Women  
28 Voters of Arizona, People for the American Way Foundation, the League of United

1 Latin American Citizens and Rep. Steve Gallardo (collectively, the “ITCA Plaintiffs”)  
2 hereby submit their Response to Defendants’ Separate Statement of Facts and  
3 Supplemental Statement of Facts in support of their Response in Opposition to  
4 Defendants’ Motions for Partial Summary Judgment.

5 **ITCA PLAINTIFFS’ RESPONSES TO THE STATE’S STATEMENT OF FACTS**

6 1. On November 2, 2004, Arizona voters adopted by ballot initiative  
7 Proposition 200 (“Prop 200”).

8 **ITCA Plaintiffs’ Response:** For purposes of the Motion for Partial  
9 Summary Judgment by Defendants the State of Arizona and the Arizona Secretary of  
10 State and the Thirteen County Defendants’ Joinder and Motion for Summary Judgment  
11 (collectively, the “Motions”), and without waiving their evidentiary objections, the  
12 ITCA Plaintiffs do not dispute paragraph 1.

13  
14 2. Sections 3, 4 and 5 of Prop 200 amended Arizona’s voting laws in  
15 two substantive ways: (1) applicants to register to vote were required to submit proof of  
16 U.S. citizenship; and (2) voters who choose to vote in-person at the polls on election day  
17 (as opposed to early voters) would be required to present identification.

18 **ITCA Plaintiffs’ Response:** For purposes of the Motions, and without  
19 waiving their evidentiary objections, the ITCA Plaintiffs do not dispute paragraph 2.

20  
21 3. On December 9, 2004, the Arizona Attorney General submitted to  
22 the U.S. Department of Justice (“DOJ”) a request for preclearance of Sections 3, 4 and 5  
23 of Prop 200.

24 **ITCA Plaintiffs’ Response:** For purposes of the Motions, and without  
25 waiving their evidentiary objections, the ITCA Plaintiffs do not dispute paragraph 3.

1           4.     The request for preclearance expressly stated, among other things,  
2 that Prop 200’s amendments would “require applicants registering to vote to provide  
3 evidence of United States citizenship with the application.”

4           **ITCA Plaintiffs’ Response:** For purposes of the Motions, and without  
5 waiving their evidentiary objections, the ITCA Plaintiffs do not dispute paragraph 4.

6  
7           5.     The preclearance request letter also included an “Analysis by  
8 Legislative Council” of Prop 200’s amendments to Arizona’s voting laws, which  
9 analysis expressly stated that the amendments “would require that evidence of United  
10 States citizenship be presented by every person to register to vote,” and which set forth  
11 the forms of identification specified by Prop 200 that would constitute satisfactory  
12 evidence of U.S. citizenship.

13           **ITCA Plaintiffs’ Response:** For purposes of the Motions, and without  
14 waiving their evidentiary objections, the ITCA Plaintiffs do not dispute paragraph 5.

15  
16           6.     The submission package to the DOJ comprised many pages and  
17 attached numerous exhibits of information about Prop 200, including copies of the  
18 initiative, the laws to be amended by Prop 200, and articles and other public information  
19 relating to its passage.

20           **ITCA Plaintiffs’ Response:** For purposes of the Motions, and without  
21 waiving their evidentiary objections, the ITCA Plaintiffs do not dispute paragraph 6,  
22 except to the extent that the “articles and other public information” identified in the  
23 letter from Ms. Funkhouser to Mr. Rich as Exhibits C-M were not included as  
24 attachments to the Declaration of Counsel in Support of Motion for Partial Summary  
25 Judgment by Defendants State of Arizona and the Arizona Secretary of State (the  
26 “Counsel Decl.”). As such, the ITCA Plaintiffs cannot judge the accuracy of paragraph  
27 6.

28

1           7.     The DOJ precleared (*i.e.*, the voting-related amendments) Sections  
2 3, 4 and 5 of Prop 200 on January 24, 2005.

3           **ITCA Plaintiffs’ Response:** For purposes of the Motions, and without  
4 waiving their evidentiary objections, the ITCA Plaintiffs do not dispute paragraph 7.

5  
6           8.     Since the inception of the National Voter Registration Act in 1995,  
7 Arizona has used and accepted for voter registration the Federal Mail Voter Registration  
8 Form (Federal Form), which was developed by the U.S. Election Assistance  
9 Commission (“EAC”).

10           **ITCA Plaintiffs’ Response:** The ITCA Plaintiffs dispute paragraph 8 to  
11 the extent that, until 2002, the Federal Form was developed by the Federal Election  
12 Commission. *See* 42 U.S.C. § 1973gg-7, Historical and Statutory Notes, Amendments.  
13 In addition, the ITCA Plaintiffs dispute that defendants “ha[ve] used and accepted” the  
14 Federal Form since implementation of Proposition 200 in January 2005, because  
15 defendants *reject* Federal Forms that are not accompanied by “satisfactory evidence of  
16 citizenship” as defined in A.R.S. § 16-166(F). [Counsel Decl., Tab 3 (Affidavit of  
17 Joseph Kanefield (“Kanefield Aff.”), ¶ 3] To the extent that defendants rely on this  
18 assertion in support of the Motions, this disputed fact precludes the entry of partial  
19 summary judgment for defendants.

20  
21           9.     Following the implementation of Prop 200, Arizona has continued  
22 to accept both the Federal Form and Arizona’s form for voter registration purposes,  
23 although the State requires submissions of proof of U.S. citizenship along with  
24 whichever application form the registrant submits.

25           **ITCA Plaintiffs’ Response:** The ITCA Plaintiffs dispute paragraph 9 to  
26 the extent that defendants “accept the Federal Form . . . for voter registration purposes,”  
27 because defendants *reject* Federal Forms that are not accompanied by “satisfactory  
28 evidence of citizenship” as defined in A.R.S. § 16-166(F). [Kanefield Aff. ¶ 3] To the

1 extent that defendants rely on this assertion in support of the Motions, this disputed fact  
2 precludes the entry of partial summary judgment for defendants.

3  
4 10. The Arizona Secretary of State makes the Federal Form available to  
5 anyone who requests it, and the form is available for downloading and printing on the  
6 EAC's website.

7 **ITCA Plaintiffs' Response:** For purposes of the Motions, and without  
8 waiving their evidentiary objections, the ITCA Plaintiffs do not dispute paragraph 10.

9  
10 11. Most individuals who are eligible to register to vote already possess  
11 a driver's license or nonoperating identification card, and thus do not require any other  
12 identification to vote.

13 **ITCA Plaintiffs' Response:** The ITCA Plaintiffs dispute paragraph 11  
14 for several reasons. First, approximately 12.6 percent of Arizonans do *not* possess an  
15 Arizona driver's license or non-operating identification license. [*See* Declaration of  
16 Karen J. Hartman-Tellez ("Hartman-Tellez Decl."), Ex. B-C (attached hereto)] Second,  
17 as of August 3, 2006, 12.12 percent of Arizona driver's licenses and non-operating  
18 identification licenses were issued before October 1996, and as such do not constitute  
19 "satisfactory evidence of citizenship," under A.R.S. § 16-166(F). [*Id.*, Ex. D] As such,  
20 approximately 331,000 individuals who were eligible to register to vote in August 2006,  
21 could not use an Arizona driver's license or non-operating identification license as  
22 "evidence of citizenship," either because they did *not* possess a license or held one  
23 issued before October 1, 1996. [*Id.*, Ex. B-D] Third, under A.R.S. § 16-579,  
24 government-issued photo identification must contain a voter's current name and address  
25 to permit that person to vote a regular ballot at the polls on election day. Arizona law  
26 does not require an individual to obtain a new driver's license or non-operating  
27 identification license with updated address information when that individual moves. [*Id.*,  
28 Ex. E] Once issued, an Arizona driver's license is valid until the driver's 65th birthday.

1 A.R.S. § 28-3171(A)(1). To the extent that defendants rely on paragraph 11 in support  
2 of the Motions, this disputed fact precludes the entry of partial summary judgment for  
3 defendants.

4 12. Many counties send official election mail and voter registration  
5 cards and inform voters that they may use those items as identification at the polls.  
6 Those items are free.

7 **ITCA Plaintiffs' Response:** The ITCA Plaintiffs dispute paragraph 12 to  
8 the extent that not all Arizona counties send official election mail or voter registration  
9 cards, addressed to all individual voters, which voters may use as Polling ID. [*See, e.g.,*  
10 *Hartman-Tellez Decl., Ex. F; Ex. G* (limiting Polling ID to “those specifically noted in  
11 the Manuel [sic]”), *Ex. H* (listing forms of Polling ID)] In addition, even if a county  
12 sent official election mail or voter registration cards that such county accepted as polling  
13 place identification in the 2006 primary or general election, the record does not establish  
14 that any county will send such items to voters or accept them as polling place  
15 identification for future elections. [*Cf. id., Ex. H* (official election mail *not* listed as  
16 Polling ID)] To the extent that defendants rely on paragraph 12 in support of the  
17 Motions, this disputed fact precludes the entry of partial summary judgment for  
18 defendants.

19  
20 **ITCA PLAINTIFFS' SUPPLEMENTAL STATEMENT OF FACTS**

21 1. From January 2005 to July 2006, defendants rejected 20,713 voter  
22 registration forms because they were submitted without “satisfactory evidence of  
23 citizenship.” [*Id., Ex. B, at 5*]

24 2. From July 14, 2006 to June 19, 2007, 8,318 Maricopa County  
25 residents were not added to the voter registration list because they submitted voter  
26 registration applications without “satisfactory evidence of citizenship.” [*Id., Ex. I, at 2*]

27 3. From July 1, 2006 to June 30, 2007, Coconino County rejected 260  
28 voter registration forms because they were submitted without “satisfactory evidence of

1 citizenship.” [Id., Ex. J] Of those 260 rejected registrants, only 59 later provided  
2 “satisfactory evidence of citizenship.” [Id. ¶ 13] As such, 201 registrants were *not*  
3 added to the voter registration rolls. [Id.] This 77 percent failure rate is substantially  
4 higher than the 61.2 percent registration failure rate that Coconino County experienced  
5 between January 24, 2005 and June 30, 2006. [See id., Ex. B, at 5]

6 4. From July 2006 through June 2007, 267 Yavapai County residents,  
7 88 Graham County residents and one Greenlee County resident were not added to the  
8 voter registration list because they submitted voter registration applications without  
9 “satisfactory evidence of citizenship.” [Id., Ex. K-M]

10 5. In sum, since July 2006, five Arizona counties have rejected 8,875  
11 voter registration applications. [Id., Ex. I-M] Since January 24, 2005, no fewer than  
12 29,588 voter registration applications have been rejected -- nearly 30,000 rejected  
13 registration forms, with two-thirds of the counties still to report their rejections since  
14 July 2006.

15 6. As of July 2006, an estimated 28,540 Arizonans eligible to register  
16 to vote, but not yet registered, lacked “satisfactory evidence of citizenship” [Id. Ex. B,  
17 at 2]

18 7. A person cannot obtain “satisfactory evidence of citizenship”  
19 without paying a fee of at least \$10. [Oct. 11 Order, at 9]

20 8. From July 1, 2004 to July 1, 2006, Arizona’s population *increased*  
21 by almost five hundred thousand people: from 5,845,250 to 6,305,210 (7.87 percent).  
22 [Hartman-Tellez Decl., Ex. N] From January 1, 2005 until April 1, 2007, however,  
23 voter registration *declined* by almost 100,000. Indeed, on January 1, 2005, 2,706,223  
24 individuals were registered to vote in Arizona, but as of April 1, 2007, only 2,609,585  
25 individuals are registered to vote -- a 3.57 percent *decrease*. [Id., Ex. O]

26 9. Excluding “Official Election Mail” addressed to an individual voter  
27 and some forms of identification issued by Native American tribal governments, Polling  
28

1 ID cannot be obtained without payment of a fee for the identification itself or for a  
2 service such as a bank account or utility service. [*See id.*, Ex. H]

3 10. Arizona counties are not required by law to send “Official Election  
4 Mail” individually addressed to every registered voter. [*See id.*, Ex. F] Indeed, most  
5 Arizona counties do not send Official Election Mail to “inactive” registered voters. [*See*  
6 *id.*, Ex. P, at 111:12-20]

7 11. Arizona counties are not required by law to accept “Official  
8 Election Mail” as Polling ID, and some Arizona counties do not. [*See id.*, Ex. F-H]

9 12. In-person early voting is one method by which Arizona registered  
10 voters can vote. *See* A.R.S. § 16-541(A). Procedures for in-person early voting are  
11 exactly the same as in-person voting on election day, except that voters need not present  
12 Polling ID to vote early. [Oct. 11 Order, at 3-4]

13 13. Counties do not provide as many early voting sites as election day  
14 polling places. [*See* Hartman-Tellez Decl., Ex. P, at 106:10-12, 109:5-8]

15 14. Pursuant to sections 4(f)(4) and 203 of the Voting Rights Act,  
16 Arizona counties must provide language assistance to voters. *See* 42 U.S.C. §§  
17 1973b(f), 1973aa-1a; 28 C.F.R. Part 55, App. Language assistance is not always  
18 available to early voters. [*See* Hartman-Tellez Decl., Ex. P, at 107:25-108:9]

19 15. Mail delivery is not available to all voters. [*Id.*, at 109:20-110:2]  
20 Only approximately 17 percent of households on Indian Reservations receive home mail  
21 delivery. [*Id.*, Ex. B, at 13]

22 16. During the November 7, 2006 general election at least 2,422 voters  
23 exited polling places without casting any type of ballot at all after being asked to present  
24 Polling ID. [*Id.*, Ex. Q]

25 17. Since Arizona implemented its Polling ID procedure, 1,962 voters  
26 in just three Arizona counties (Maricopa, Greenlee and Yavapai) cast conditional  
27 provisional ballots, but did not return to an ID verification site to provide Polling ID --  
28 as such, their ballots were not counted. [*Id.*, Ex. I, K, M] More than 60 percent of

1 voters who cast conditional provisional ballots in these three counties did not return to  
2 provide Polling ID. [*Id.*]

3 18. The record contains no evidence of fraudulent voting by ineligible  
4 voters. Indeed, Arizona counties have not reported a single instance of imposter voting  
5 on election day. [*E.g., id.*, Ex. P, at 101:23-102:1] Moreover, eight of the ten Maricopa  
6 County prosecutions against non-citizens who allegedly registered to vote have been  
7 dismissed. [*See id.*, Ex. R] Neither of the two individuals who pleaded guilty to  
8 misdemeanor presentment of a false instrument charges is alleged to have ever voted in  
9 Arizona. [*See id.*, Ex. S]

10 RESPECTFULLY SUBMITTED this 12th day of July, 2007.

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I further certify that I caused a copy of the attached document to be hand-  
delivered on the 12th day of July, 2007 to:

Honorable Roslyn O. Silver  
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s/ Carole Hauser  
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