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9
10 **IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

11
12 Maria M. Gonzalez, et al.,
13 Plaintiffs,
14
15 v.
16 State of Arizona, et al.,
17 Defendants.

No. CV06-1268 PHX ROS
No. CV06-1362 PCT JAT (Cons)
No. CV06-1575 PHX EHC (Cons)

**RESPONSIVE BRIEF BY THE
ARIZONA SECRETARY OF STATE
REGARDING NAVAJO
PLAINTIFFS' CLAIMS**

(Assigned to the Honorable Roslyn O.
Silver)

18
19 Pursuant to the Court's Order dated September 11, 2006, the Arizona Secretary of
20 State (the "State"), through counsel, respectfully responds to the supplemental briefing
21 provided by Plaintiffs Agnes Laughter and the Navajo Nation (collectively, the "Navajo
22 Plaintiffs"). This brief is supported by the Memorandum of Points and Authorities that
23 follows, by the accompanying exhibits, and by the record in this matter.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION.**

26 Arizona is far from alone in requiring identification from voters who cast a ballot
27 at the polls. Basically half of all states in the nation now employ similar safeguards
28 when it comes to voting. With the Help America Vote Act ("HAVA"), Congress also

1 required certain first-time voters to present identification to confirm their identity when
2 voting.¹

3 Unlike in other states, Arizona's is an extremely flexible law. Any number of
4 documents, from a utility bill to election mail, gains a voter entry to the polling booth.
5 Indeed, Arizona law does not deprive any registered voter of the ability to vote, in part
6 because every registered voter may cast an early ballot and avoid the identification
7 requirements of Proposition 200 altogether.

8 The Navajo Plaintiffs claim that a law as flexible as Proposition 200 nonetheless
9 may not be applied within the Navajo Nation. The Court correctly ruled in its
10 September 11 Order that the State may continue to implement its new law statewide.
11 Voters in precincts within the Navajo Nation just had their first election under the
12 identification requirements. The results show that voters in and outside of the Navajo
13 Nation already are complying with Proposition 200 in very large numbers.

14 The Court requested additional briefing with regard to the Civil Rights Act and
15 Voting Rights Act claims asserted by the Navajo Plaintiffs. The facts of this case do not
16 at all fit these Plaintiffs' claims under the Civil Rights Act. The returns from the
17 primary election also do not provide a basis under Section 2 of the Voting Rights Act to
18 enjoin Arizona's new law as to the Navajo voters.

19 **II. BACKGROUND FOR THE NAVAJO PLAINTIFFS' CLAIMS.**

20 **A. Arizona Law Provides A Mechanism For Every Registered Voter To** 21 **Cast A Ballot.**

22 The Navajo Plaintiffs use phrasing throughout their brief that the identification
23 requirements of Proposition 200 deny Navajo voters the right to vote. *See* Navajo
24 Plaintiffs' Br. at 4, 6, 7, 8, 13, 14 and 15. The State does not dismiss the concerns of
25 Navajo voters when it comes to policies that affect voting. The imprecision of the

26 ¹ Under section 303(b) of HAVA, these voters meet HAVA's requirements by
27 presenting a current and valid photo ID, or a copy of a current utility bill, bank
28 statement, government check, paychecks or other document showing the name and
address of the voter. *See* 42 U.S.C. § 15483(b)(2)(A).

1 Navajo Plaintiffs' language, however, suggests that Proposition 200 does something that
2 it does not do.

3 Proposition 200 and the Secretary of State's Procedure for Identification at the
4 Polls (the "Procedure") provide a range of options for voters who wish to vote in person
5 to comply. Voters are not limited to presenting government-issued photo ID like in
6 other states. Anything from a voter registration card, to a utility bill, to tribal
7 identification may be used to satisfy Proposition 200's requirements.²

8 In fact, election officials in counties statewide have been sending election mail to
9 registered voters that the counties are also accepting as a form of identification on
10 election day. The record confirms that this practice of sending election mail included
11 the voters of Apache, Navajo and Coconino counties. *See* Penny Pew Depo. Annot. at
12 21:13-22:1, Patty Hansen Depo. Annot. at 53:10-56:11, Kelly Dastrup Depo. Annot. at
13 11:7-14:1, Prel. Inj. Tr. Ex. 403.

14 We also know that leaders in the Navajo Nation considered providing every
15 Navajo member with identification that could be used under Proposition 200 to register
16 to vote and to cast a ballot at the polls. *See* Testimony of Leonard Gorman, Prel. Inj.
17 Trial Tr. vol. 1, 75-79, Aug. 30, 2006, State's Ex. 1, hereto. The Navajo Nation is in the
18 unique position of being able to supply its own members with identification. So far, the
19 Navajo Nation has decided not to move forward on this proposal, which is its
20 independent choice.

21 Early voting is an option available to Navajo voters who do not have
22 identification or who for one reason or another prefer not to present their identification
23 when voting. *See* A.R.S. § 16-541. Early voting begins 33 days before the election, and
24

25 ² The Navajo Plaintiffs state that they do not consider a Certificate of Indian Blood that
26 Navajo Nation members possess to be identification. *See* Navajo Plaintiffs' Br. at 4.
27 Documents like a utility bill also may not be considered as identification, but they serve
28 that function for purposes of Proposition 200. Under the Secretary of State's Procedure,
moreover, a Native American voter who presents one form of tribal identification may
cast a provisional ballot.

1 may be done by mailing in the ballot or by appearing in-person at early voting locations.
2 *See* A.R.S. § 16-351(A). Voters may even drop off their early ballot on election day.
3 *See* A.R.S. § 16-547. Unlike other states, Arizona does not require hardship or absence
4 from the state to vote early. Any registered voter may cast an early ballot.

5 Leonard Gorman is a Navajo Nation official who testified at the hearing. Mr.
6 Gorman stated that he did not believe that language assistance was available to Navajo
7 voters who voted early. *See* Testimony of Leonard Gorman, Prel. Inj. Trial Tr. vol. 1,
8 84-85, State’s Ex. 1, hereto. Mr. Gorman also stated in cross examination that he had
9 never voted early, and upon further examination Mr. Gorman appeared to be unfamiliar
10 with some of the early voting process. *See id.*

11 The testimony from Coconino County’s Recorder at the hearing and the
12 declarations from the election officials in Navajo and Apache counties that accompany
13 this brief confirm that language assistance is available to Navajo voters at designated
14 early voting sites, and upon request. *See* Testimony of Candace Owens, Prel. Inj. Trial
15 Tr. vol 1, 106-108, State’s Ex. 2, hereto; Affidavits of Kelly Dastrup and Steve Kizer,
16 State’s Ex. 3 and 4, hereto. Indeed, Section 203 of the Voting Rights Act and its
17 implementing regulations call for language assistance for minority language voters like
18 the Navajos in various stages of the election process, including early voting.³ *See* 42
19 U.S.C. § 1973aa; 28 C.F.R. § 55.15.

20 The final paragraph in the affidavit of Candace Owens, the Recorder for
21 Coconino County, states that Navajo voters may interpret the meaning of the term
22 “residence” to be that of their parents or their clan, and not the voter’s mailing address or
23 residence address. She expresses concern, echoed in the Navajo Plaintiffs’ brief, that the
24 address on a Navajo voter’s identification may not correspond to the address found in

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26 ³ The Amended Consent Agreement that the Navajo Plaintiffs attached as Exhibit 5 to
27 their Complaint also specifically required the State to make language assistance
28 available to Navajo voters during the early voting process. Any change in that policy
would demand preclearance under Section 5 of the Voting Rights Act by the Department
of Justice.

1 the voter's registration records. Under these circumstances, she appears to claim, the
2 voter "cannot vote."

3 If a comparison between the address on a voter's identification and the voter's
4 registration records do not reasonably match, the voter may vote a regular provisional
5 ballot. See Secretary of State's Procedure at 3-4, Prel. Tr. Ex. 3; Secretary of State
6 Procedures Manual at 114-115, Prel. Tr. Ex. 301. That ballot will then be verified, and
7 the voter does not have to take any other action. As for the address that appears on a
8 voter's registration record, that is something that each voter controls.⁴ If there exists a
9 discrepancy of the type Ms. Owens appears to describe, it can and should be corrected.
10 The voter, however, is not deprived by law of the right to vote.

11 A voter who shows up at the polls with no identification still may cast a
12 conditional provisional ballot. With an eye toward maximizing the ability of voters to
13 comply with Proposition 200, the counties have been working to provide appropriate
14 locations on and off the Navajo Reservation for voters to return with the identification
15 that the law requires.

16 Coconino County provided 18 verification sites for conditional provisional
17 ballots during the primary election, including 10 chapter houses. See State's Ex. 5,
18 hereto. Navajo County opened more than 35 satellite receiving offices, including more
19 than 15 chapter houses and other locations within Native American Reservations. See
20 *id.* Each of these procedures is precleared by the Department of Justice. Each of these
21 procedures also shows that the counties are working to assist all voters to successfully
22 comply with Proposition 200.

23 The Navajo Plaintiffs' brief disregards all of the ways in which Arizona is
24 successfully implementing Proposition 200. Indeed, in the first election under Arizona's
25 new law in precincts within the Navajo Nation, the great majority of voters successfully

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27 ⁴ The State voter registration form requires voters to provide their residence address and,
28 if different, their mailing address as well. If the residence may not be described by a
traditional address, the form provides a place for the voter to illustrate its location.

1 participated.

2 **B. The Vast Majority Of Voters In Navajo Precincts Participated**
3 **Successfully In the Primary Elections.**

4 The Navajo Plaintiffs argue that the Court should immediately enjoin Proposition
5 200 because of some disparity with regard to the percentage of conditional provisional
6 ballots that were cast and counted between voters in precincts on and off the Navajo
7 Reservation. What the Navajo Plaintiffs do not explain is that the vast majority of
8 people who voted in precincts within the Navajo Nation did so successfully in this first
9 election under Proposition 200.

10 In Apache County, .8% of all ballots cast in Navajo precincts were conditional
11 provisional ballots not counted because the voter did not supply the required ID. In
12 Navajo County, 2.2% of the votes cast in Navajo precincts were conditional provisional
13 ballots that were not counted. In Coconino County, conditional provisional ballots that
14 were not counted consisted of 3.1% of all ballots cast in Navajo precincts.⁵ Thus in
15 Apache, Navajo and Coconino counties, no fewer than 96.9% of voters in precincts on
16 the Navajo Nation cast early ballots or supplied identification required by Proposition
17 200.

18 For those individuals who did not produce identification at the polling site, it is
19 not known if those voters did not possess identification, or if they simply did not bring
20 identification with them to the polls that day. We also do not know why individuals
21 who cast a conditional provisional ballot did not return, or if they were even qualified to
22 vote in the first place.

23 ⁵ For these statistics, the State is relying on information provided to the Navajo Plaintiffs
24 by Apache, Coconino and Navajo Counties, and which is attached as Exhibits 124
25 (Coconino), 125 (Apache) and 126 (Navajo) of the Navajo Plaintiffs' brief. For
26 Coconino County, which did not break down statistics for Navajo precincts, the State
27 attempted to calculate the total number of ballots cast in these precincts by taking their
28 number of early, provisional and polling ballots cast as set forth in the Statement of
Votes Cast (Ex. 124 to the Navajo Pl. Br.), and adding the number of regular and
conditional provisional ballots that were not counted according to the document entitled
Accepted and Rejected Provisional Ballots (also part of Ex. 124).

1 The Navajo Plaintiffs state that Plaintiff Agnes Laughter was denied the right to
2 vote, but there appears to be a factual dispute about this claim. An affidavit supplied by
3 Leila Help-Tully with the Navajo Plaintiffs' brief states that Ms. Laughter arrived at the
4 polling place in Chilchinbeto Chapter, that she arrived without identification, and that
5 she was not permitted to vote even a conditional provisional ballot. The State does not
6 know what occurred, but information from Navajo County indicates that a ballot
7 corresponding to Ms. Laughter may have been cast and counted. *See* State's Ex. 3.

8 The affidavit supplied by Ms. Laughter before the preliminary injunction hearing
9 stated that she maintained a bank account. Her bank statement would have allowed Ms.
10 Laughter to vote a regular provisional ballot, but she stated that she preferred not to use
11 her bank statement as identification at the polls. She also stated that she misplaced her
12 voter registration card, which she could replace for free. Thus, if Ms. Laughter did not
13 arrive at the polls on September 12 with any identification, her own affidavit prepared
14 before the election suggests that she could have.

15 Most voters at precincts located in and outside of the Navajo Nation were able to
16 comply with the new law. The statistical difference estimated by the Navajo Nation
17 Plaintiffs following the first election ever on the Navajo Reservation under Proposition
18 200 is not enough to enjoin the law. The disparity is not enough for the Navajo
19 Plaintiffs' Section 2 claim under the Voting Rights Act, and the facts do not add up to a
20 violation of the Civil Rights Act.

21 **III. SECTION 2 OF THE VOTING RIGHTS ACT DOES NOT PROHIBIT**
22 **THIS LAW.**

23 The Navajo Plaintiffs seek to enjoin Arizona's policy of requiring identification
24 at the polls after one election on the grounds that it deprives Navajos of the right to vote
25 on account of race or color in violation of Section 2 of the Voting Rights Act, 42 U.S.C.
26 § 1973(a). State law, however, provides an avenue for every voter to cast a ballot.

27 As noted in the Navajo Plaintiffs' brief, the Supreme Court identified a non-
28 exclusive list of factors that a court may consider in reviewing Section 2 claims. *See*

1 *Thornburg v. Gingles*, 478 U.S. 30, 45 & n.10 (1986).⁶ A violation requires a showing
2 “based on the totality of the circumstances . . . that members [of protected racial
3 minorities] have less opportunity than other members of the electorate to participate in
4 the political process and to elect representatives of their choice.” 42 U.S.C. § 1973(b).
5 Courts are to examine whether the challenged practice “interacts with social and
6 historical conditions to cause an inequality in the opportunities enjoyed by . . . [minority]
7 voters to elect their preferred representatives.” *Farrakhan*, 338 F.3d at 1016 (quoting
8 *Gingles*, 478 U.S. at 47.

9 The Navajo Plaintiffs assert their Section 2 claim based on the “social and
10 historical conditions of the Navajo Nation and the statistical disparity between the
11 effects of the Voter Identification Requirements on Navajo voters as compared to non-
12 Indian voters.” Navajo Plaintiffs’ Br. at 11. The statistics from what was the Navajo
13 Nation’s first election under Proposition 200 and the historical and social conditions
14 within the Nation are not enough to establish a Section 2 claim. *See Johnson v.*
15 *Governor of Florida*, 405 F.3d 1214, 1230 n.31 (11th Cir. 2005) (en banc); *Ortiz v. City*
16 *of Philadelphia Office of the City Comm. Voter Registration Div.*, 28 F.3d 306 (3rd Cir.
17 1994) (noting that disproportionate impact of voter purge law on minority voters did not

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19 ⁶ The relevant factors in the Section 2 analysis are typically: (1) extent of history of official
20 discrimination in the state or political subdivision that touched the right of the members of the
21 minority group to register, vote, or otherwise participate in the democratic process; (2) extent to
22 which voting is racially polarized; (3) extent to which the state or political subdivision has used
23 unusually large election districts, majority vote requirements, anti-single shot provisions or
24 other voting practices or procedures that may enhance the opportunity for discrimination; (4) if
25 there is a candidate slating process, whether the members of the minority group have been
26 denied access to the process; (5) extent to which members of the minority group bear the effects
27 of discrimination in such areas as education, employment and health, which hinder their ability
28 to participate effectively in the political process; (6) whether political campaigns have been
characterized by overt or subtle racial appeals; (7) extent to which members of the minority
group have been elected to public office; (8) whether there is a significant lack of
responsiveness on the part of elected officials to the particularized needs of the minority group;
(9) whether the policy underlying the state or political subdivision’s use of the voting
qualification, prerequisite to voting, or standard, practice or procedure is tenuous. *See*
Farrakhan v. Washington, 338 F.3d 1009, 1015 (9th Cir. 2003) (citing S.Rep. No. 97-417, at 28-
29 (1982)).

1 establish a *per se* violation of Section 2).

2 The State does not dispute the historical, social and economic challenges that
3 affect life and politics within the Navajo Nation. However, they do not invalidate this
4 law. The record here describes outreach efforts by county officials with the Navajo
5 Nation to educate voters about the identification at the polls requirement. Counties that
6 include the Navajo Nation also are providing voters with election mail to serve as
7 identification, and the Secretary of State's Procedure permits tribal identification to
8 receive a provisional ballot at the polls.

9 The Navajo Plaintiffs claim that they are less likely to possess acceptable forms
10 of identification. They cite statistics in their brief regarding utilities, vehicle ownership,
11 and other sources of acceptable identification, but seemingly no statistics that establish
12 how many members that are registered have no identification at all, or may not obtain
13 it.⁷ Indeed, the record so far from the primary election shows that most voters within the
14 Navajo Nation complied with the identification requirements.

15 The counties have worked to provide appropriate locations within the Navajo
16 Nation where voters can return with identification so their conditional provisional ballots
17 will count. *See* State's Ex. 6, hereto. Plus, State law also permits every registered voter
18 to cast an early ballot. If identification at the polls is an issue for a voter, he or she has
19 the option of casting an early ballot, and avoiding the identification requirements
20 altogether.

21 Some precincts within the Navajo Nation may have had a partially higher
22 percentage of voters who cast conditional provisional ballots and did not supply
23 identification. But those statistics, particularly after only a single election, do not justify
24 enjoining the identification requirement. There is also nothing in the record that
25 identification at the polls had any effect on the opportunity for Navajo voters to elect the

26 ⁷ The plaintiffs in *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1374 (N.D.
27 Ga. 2005), also cited socio-economic data to argue that Georgia's law deprived minority
28 voters of the right to participate. The court denied the injunction, ruling it was
premature to grant such relief on a Section 2 claim. *See id.*

1 candidates of their choice in the primary election.

2 The implementation of Proposition 200 shows efforts of outreach and flexibility,
3 and because Arizona and its counties are subject to Section 5 of the Voting Rights Act,
4 all procedures are scrutinized by the Department of Justice before they are implemented.
5 The totality of circumstances does not support a finding that requiring identification at
6 the polls discriminates on account of race and does not justify enjoining implementation
7 of the requirement within the Navajo Nation.

8 **IV. ARIZONA’S IDENTIFICATION REQUIREMENTS DO NOT VIOLATE**
9 **THE CIVIL RIGHTS ACT, 42 U.S.C. § 1971(A).**

10 The Navajo Nation Plaintiffs do not assert viable claims under the Civil Rights
11 Act. Their arguments stretch these provisions of federal law too far, and collide with the
12 cases that rejected these types of claims in the context of state laws that were far more
13 stringent than Proposition 200 in requiring identification from voters at the polls.

14 **A. The Navajo Nation Plaintiffs Do Not Have A Claim Under 42 U.S.C. §**
15 **1971(a)(2)(A).**

16 Congress provided under the Civil Rights Act that “[n]o person acting under
17 color of state law shall” when

18 determining whether any individual is qualified under State law or laws to
19 vote in any election, apply any standard, practice, or procedure different
20 from the standards, practices, or procedures applied under such law or laws
21 to other individuals within the same county, parish, or similar political
22 subdivision who have been found by State officials to be qualified to vote.

23 42 U.S.C. § 1971(a)(2)(A).

24 The Navajo Plaintiffs argue that this section “prohibits differential treatment of
25 voters within the same county or political subdivision,” Navajo Plaintiffs’ Br. at 12, but
26 the only difference in any standard, practice or procedure that they claim exists is
27 between electors who vote in person and those who vote an early ballot. In-person
28 voters must present identification under Proposition 200; early voters do not. These
differences do not give rise to a claim under § 1971(a)(2)(A) of the Civil Rights Act.

Two cases that receive no mention from the Navajo Plaintiffs reviewed this type

1 of claim in the context of a state law that requires identification from voters at the polls.
2 See *Common Cause/Georgia v. Billups*, 439 F. Supp. 2d 1294 (N.D. Ga. 2006); *Indiana*
3 *Democratic Party v. Rokita*, No. 1:05-CV-0634-SEB-VSS, 2006 WL 1005037 (S.D.
4 Ind. April 14, 2006). In those cases, both courts agreed that the inherent differences
5 between absentee voting and in-person voting did not suggest a viable claim:

6 [A]bsentee voting is an inherently different procedure from voting in
7 person, requiring a state which allows both in person and absentee voting to
8 apply different “standards, practices, or procedures” to these two groups of
9 voters . . . The only “difference” to which Plaintiffs seemingly object is the
10 photo identification requirements, but in doing so they proceed without
11 distinguishing this requirement from the plethora of other “standards,
12 practices, and procedures” applicable to either absentee or in-person voters
13 . . . Plaintiffs’ proposed construction of §1971(a)(2)(A) would compel the
14 invalidation of vast portions of the Indiana Election Code. We will not
15 bring about such a radical departure from settled law by our decision here.

16 *Billups*, 439 F. Supp. 2d at 1356 (quoting in full from *Rokita*, 2006 WL 1005037 at
17 *47).

18 The Navajo Nation Plaintiffs explain that Navajo voters “much prefer” to vote in
19 person, Navajo Plaintiffs’ Br. at 12, and therefore are more likely to be subject to the
20 identification requirements of Proposition 200. The fact that Navajo voters may not
21 avail themselves of the opportunity to cast an early ballot—which also may be done in
22 person—does not mean that the State is applying a different standard, practice of
23 procedure to Navajo voters than everybody else.

24 The Navajo Plaintiffs cite *Brown v. Post*, 279 F. Supp. 60 (W.D. La. 1968), as
25 their authority for this claim. In *Brown*, county officials offered opportunities to white
26 voters to vote by absentee ballot while intentionally withholding the same opportunity
27 from African American voters. The court enjoined this behavior under § 1971(a),
28 though the court used a different subsection than the one the Navajo Plaintiffs are
attempting to apply here.

Unlike in *Brown*, all registered voters in Arizona are provided by law with the
opportunity to vote in person or by early ballot. On the facts of this case, the Navajo

1 Plaintiffs do not present a viable claim under § 1971(a)(2)(A).

2 **B. The Voter Identification Requirements Also Do Not Support These**
3 **Plaintiffs' Claims Under § 1971(a)(2)(B).**

4 The Navajo Plaintiffs also overreach on their claim under § 1971(a)(2)(B). The
5 first indication is that they seriously pare down the language of that statute. The Navajo
6 Plaintiffs say that § 1971(a)(2)(B) “prohibits the denial of the right to vote for an act or
7 omission that is not material to determining whether a voter is qualified to vote under
8 state law.” Navajo Pl. Br. at 14.

9 The statute actually prohibits “deny[ing] the right of any individual to vote in any
10 election because of an error or omission on any record or paper relating to any
11 application, registration, or other act requisite to voting, if such error or omission is not
12 material to determining whether such individual is qualified under State law to vote in
13 such election.” 42 U.S.C. § 1971(a)(2)(B). That statute does not apply here.

14 In the *Billups* case, the district court concluded that requiring identification from
15 voters who appear at the polls “is not” an error or omission on any record or paper
16 relating to any application, registration or other act requisite to voting. 439 F. Supp. 2d
17 at 1357. The *Billups* court followed the cue of the court in *Rokita*, which also concluded
18 that “the act of presenting photo identification in order to prove one’s identity is by
19 definition not an ‘error or omission on any record or paper’ and, therefore, §
20 1971(a)(2)(B) does not apply.” 2006 WL 1005037 at *48.

21 After stating that § 1971(a)(2)(B) “prohibits the denial of the right to vote for an
22 act or omission that is not material to determining whether a voter is qualified to vote
23 under state law,” Navajo Pl. Br. at 14, the Navajo Plaintiffs argue that a voter’s identity
24 is not material to his or her qualifications.⁸ They cite *Schwier v. Cox*, 340 F.3d 1284

25 ⁸ On the contrary, a voter’s identity is material as to whether he or she is entitled to cast
26 a ballot. The Navajo Plaintiffs implicitly concede that a voter’s identity is material,
27 because they also argue that the State should simply verify a voter’s identity by applying
28 the procedures used to verify early ballots rather than ask for identification at the polls.
See Navajo Pl. Br. at 15. Similarly, they argue that pollworkers could personally verify
the identity of voters on the Navajo Reservation. *See id.*

1 (11th Cir. 2003), but *Schwier* does not support the Navajo Plaintiffs’ claim.

2 In *Schwier*, Georgia voters could not vote without providing their social security
3 numbers on a voter registration form. The court observed that Congress enacted §
4 1971(a)(2)(B) to stop the practice of requiring unnecessary information on voter
5 registration forms with the purpose of increasing the number of errors or omissions and
6 creating an excuse to disqualify voters. *See id.* at 1294.

7 The practice that the Navajo Plaintiffs challenge under § 1971(a)(2)(B) does not
8 require applicants to provide their social security number on a voter registration form.
9 The law at issue here simply requires voters who appear at the polls to present
10 identification. Indeed, under the Navajo Plaintiffs’ theory, 24 states and Congress have
11 all run afoul of § 1971(a)(2)(B) by requiring voters to confirm their identity at the polls.

12 The Navajo Plaintiffs also cite *U.S. v. Cartwright*, 230 F. Supp. 873 (M.D. 1964).
13 In *Cartwright*, the evidence established that election officials used Alabama’s voter
14 registration form as a strict application for African American voters, but not for white
15 voters. This resulted in the denial of registration of African Americans “because of
16 technical and inconsequential errors and omissions.” *Id.* at 876. The *Cartwright* case,
17 like the *Schwier* case, concerned a different kind of law.⁹ The Navajo Plaintiffs simply
18 are not entitled to relief on this claim.

19 **V. CONCLUSION.**

20 The Navajo Plaintiffs are not entitled to relief on their claims asserted under the
21 Civil Rights Act and Voting Rights Act, and the Court correctly denied a preliminary
22 injunction in its September 11, 2006 Order

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27 ⁹ The Navajo Plaintiffs also cite to *Lake v. Perdue*, 2006CV119207 (Ga. Super. Ct.
28 September 19, 2006). *Lake* did not consider a challenge under § 1971(a)(2)(B) to a state
law requiring identification at the polls.

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RESPECTFULLY SUBMITTED this 4th day of October, 2006.

TERRY GODDARD
Arizona Attorney General

s/Peter A. Silverman
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Attorneys for the State of Arizona and the
Arizona Secretary of State

ORIGINAL of the foregoing filed
electronically this 4th day of October, 2006.

COPY of the foregoing mailed with a Notice of
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The Honorable Roslyn O. Silver
United States District Court
Sandra Day O’Connor U.S. Courthouse, Suite 624
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