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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)

**STATE’S RESPONSE TO  
MOTION TO PERMIT  
OBSERVERS AT POLLING  
PLACES**

(Assigned to the Honorable Roslyn O.  
Silver)

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19 The motion by the ITCA Plaintiffs to insert their designees inside polling places  
20 in Arizona during the November 7 general election “for the purpose of observing the  
21 implementation of Proposition 200’s voter identification requirements” violates Arizona  
22 law, represents a potentially significant intrusion into the process of voting, and is  
23 unjustified. The motion should be denied.

24 Arizona law is clear as to who may be present in a polling place, and private  
25 observers acting for the ITCA Plaintiffs are not among them. Only voters, election  
26 officials, one representative of each political party that is represented on the ballot who  
27 has been appointed by the county chairman of that political party, and challengers  
28 allowed by law may be present inside a polling place. *See* A.R.S. § 16-515(A).

1 In addition, state law allows a minor accompanying a voter and officials  
2 conducting a simulated election for minors to be inside a polling place. *See* A.R.S. § 16-  
3 515(B) and (E). For an election that is held by an Indian tribe and at a polling place at  
4 the same time and on the same date as any other election, an election official for the  
5 tribal election also may remain. *See* A.R.S. § 16-515(D).

6 These laws exist for good reason. State law limits activities in and around polling  
7 places to permit the efficient handling of voters and prevent voter intimidation and  
8 delay. *See City of Phoenix v. Superior Court*, 101 Ariz. 265, 267, 419 P.2d 49, 51 (Ariz.  
9 1966); *State v. Robles*, 88 Ariz. 253, 256, 355 P.2d 895, 897 (Ariz. 1960); *see also*  
10 *Burson v. Freeman*, 504 U.S. 191, 207 (1992) (noting that all states limit activity in and  
11 around polling places and upholding Tennessee’s restriction on electioneering within  
12 100 feet of voting areas as avoiding voter intimidation and promoting election integrity).

13 Allowing an untold number of private observers “recruited and trained by the  
14 ITCA Plaintiffs” to monitor implementation of the voter identification rules inside the  
15 voting areas departs from established voting procedures and carries a heavy risk of  
16 intimidating and confusing voters when asked to provide ID.<sup>1</sup> By providing the ITCA  
17 Plaintiffs’ requested relief, moreover, the Court may prompt requests from proponents of  
18 Proposition 200 who wish to monitor the monitors proposed in the motion.

19 This outcome can and should be avoided. In Arizona, election officials and  
20 pollworkers are trained to implement Proposition 200 and other State law under  
21 procedures precleared by the Department of Justice. The “rules” of conduct proposed by  
22 the ITCA Plaintiffs for their observers state simply that they will be recruited and trained  
23 in some undefined manner by these litigants, and that they will check in, wear common  
24 identification and will not engage in electioneering.

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26 <sup>1</sup> As the Court also may note, the ITCA Plaintiffs originally proposed that they even  
27 “may call any perceived infractions of law to the attention of the boardworkers.” Letter  
28 from Ben Blustein dated October 24, 2006, and attached to the motion as Ex. A. They  
omit this suggestion from their proposed order, but the possibility of such conduct  
remains a concern.



1 ORIGINAL of the foregoing filed  
2 electronically this 30<sup>th</sup> day of October, 2006.

3 COPY of the foregoing mailed with a Notice of  
4 Electronic Filing this 30<sup>th</sup> day of October, 2006 to:

5 The Honorable Roslyn O. Silver  
6 United States District Court  
7 Sandra Day O'Connor U.S. Courthouse, Suite 624  
8 401 West Washington Street, SPC 59  
9 Phoenix, AZ 85003-2158

By: s/Peter A. Silverman

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