

1 **OSBORN MALEDON, P.A.**  
2 2929 North Central Avenue, 21<sup>st</sup> Floor  
3 Phoenix, AZ 85012-2793  
4 Telephone: (602) 640-9000

5 David B. Rosenbaum (009819)  
6 [drosenbaum@omlaw.com](mailto:drosenbaum@omlaw.com)  
7 Thomas L. Hudson (014485)  
8 [thudson@omlaw.com](mailto:thudson@omlaw.com)  
9 Sara S. Greene (022706)  
10 [sgreene@omla.com](mailto:sgreene@omla.com)

11 **STEPTOE & JOHNSON, L.L.P.**  
12 Collier Center  
13 201 East Washington Street, Suite 1600  
14 Phoenix, AZ 85004-2382  
15 Telephone: (602) 257-5200  
16 Facsimile: (602) 257-5299

17 David J. Bodney (006065)  
18 [dbodney@steptoe.com](mailto:dbodney@steptoe.com)  
19 Karen J. Hartman-Tellez (021121)  
20 [khartman@steptoe.com](mailto:khartman@steptoe.com)

21 Attorneys for The Inter Tribal Council of Arizona, Inc., et al.

22 **IN THE UNITED STATES DISTRICT COURT**  
23 **DISTRICT OF ARIZONA**

24 Maria M. Gonzalez, et al.,

25 Plaintiffs,

26 vs.

27 State of Arizona; Jan Brewer, in her official  
28 capacity as Secretary of State of the State of  
Arizona, et al.,

Defendants.

The Inter Tribal Council of Arizona, Inc., et  
al.,

Plaintiffs,

vs.

Jan Brewer, in her official capacity as  
Secretary of State of Arizona,

Defendant.

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

**RESPONSE OF THE ITCA PLAINTIFFS  
TO MOTION TO INTERVENE**

1 **I. INTRODUCTION**

2 Pursuant to this Court’s Clarified Order, dated July 6, 2006, Plaintiffs, the Inter-Tribal  
3 Council of Arizona, Inc., the League of Women Voters of Arizona, the Hopi Tribe, the League of  
4 United Latin American Citizens Arizona, the Arizona Advocacy Network, People for the American  
5 Way Foundation, and Representative Steve M. Gallardo (collectively “ITCA Plaintiffs”) submit  
6 this Response to the Motion for Intervention filed by Yes on Proposition 200 and Randall Pullen  
7 (“Applicants”). Applicants have failed to meet their burden to demonstrate all of the requirements  
8 for intervention as a matter of right or permissive intervention, as required by Rule 24 of the  
9 Federal Rules of Civil Procedure. Their Motion should be denied.

10 **II. DISCUSSION**

11 On May 24, 2006, ITCA Plaintiffs filed suit against the Secretary of State challenging the  
12 constitutionality of the voter identification requirements of Proposition 200. On June 1, 2006,  
13 ITCA Plaintiffs’ challenge was consolidated with a similar suit filed by the Gonzalez Plaintiffs.  
14 The Gonzalez Plaintiffs previously filed suit against the Secretary of State and the individual  
15 County Recorders and Election Directors for each county in Arizona on May 9, 2006.

16 Plaintiffs’ Complaints have met with a vigorous defense by the State of Arizona, the  
17 Counties and the Election Directors (collectively the “State”). Applicants nevertheless now seek to  
18 intervene in these proceedings arguing that the Complaints raise questions of law that are “vital to  
19 Applicants” and that “Applicants’ interests, as sponsors of the Proposition, include protection of  
20 the Proposition itself and differ from the interests of Defendants in their levels of support and  
21 enthusiasm for the Proposition.”<sup>1</sup>

22 Applicants have failed to meet their burden to demonstrate that each of the requirements for  
23 intervention have been met in this case. *See United States v. Alisal Water Corp.*, 370 F.3d 915,  
24 919 (9<sup>th</sup> Cir. 2004). Both parties (the Applicants and the State) have the same ultimate objective in  
25 this case, that is, to defend the constitutionality of the voter identification requirements of  
26 Proposition 200. Applicants have neither shown that their intervention will offer greater

27

---

28 <sup>1</sup> Motion to Intervene at 3, lines 7-10.

1 “protections” for the voter identification requirements of Proposition 200, nor have they shown  
2 (beyond mere allegations) how their participation will provide increased levels of “enthusiasm” for  
3 Proposition 200, over and above the State. In addition, given the expedited nature of these  
4 proceedings, and the impending September primaries, the October voter registration deadline, and  
5 the November general election, Applicants’ Motion to Intervene is also untimely. The Motion  
6 should be denied.

7 **A. Applicants are Not Entitled to Intervene As A Matter of Right**

8 Intervention as a matter of right under Fed. R. Civ. P. 24(a)<sup>2</sup> requires Applicants to  
9 demonstrate that (1) their motion to intervene is timely; (2) they have a “significant protectable  
10 interest” in defending the legality of the voter identification requirements of Proposition 200; (3)  
11 an adverse decision of this Court may, as a practical matter, impair the interests of Applicants; and  
12 (4) the State will not adequately represent the Applicants’ interests in defending the identification  
13 requirements of Proposition 200. *See, e.g., League of United Latin American Citizens v. Wilson,*  
14 *131 F.3d 1297, 1302 (9<sup>th</sup> Cir. 1997); Northwest Forest Resource Council v Glickman, 82 F.3d 825,*  
15 *836 (9<sup>th</sup> Cir. 1990).* Applicants are unable to meet this test.

16 **1. Applicants’ Motion to Intervene is Untimely**

17 Timeliness is a “threshold requirement” for intervention as a matter of right. *See League of*  
18 *United Latin American Citizens, 131 F.3d at 1302.* If the motion to intervene is found untimely,  
19 there is no need to review any of the remaining elements for intervention under Rule 24(a). *Id.*

20 Circumstances to determine timeliness include (1) the state of the proceeding at which an  
21 applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of

---

22  
23 <sup>2</sup> Rule 24(a) provides in relevant part:

24 Upon timely application, anyone shall be permitted to intervene in an action:

- 25 (1) when a statute of the United States Confers an unconditional right to intervene;  
26 or (2) when the applicant claims an interest relating to the property or transaction  
27 which is the subject of the action and the applicant is so situated that the  
28 disposition of the action may as a practical matter impair or impede the applicant’s  
ability to protect that interest, unless that applicant’s interest is adequately  
represented by existing parties.

1 delay. See *Alisal Water Corp.*, 370 F.3d at 921 (citing *Cal. Dep't of Toxic Substances Control v.*  
2 *Commercial Realty Projects, Inc* , 309 F.3d 1113, 1119 (9<sup>th</sup> Cir. 2002)). When examining these  
3 circumstances, “any substantial lapse of time weighs heavily against intervention.” See *League of*  
4 *United Latin American Citizens*, 131 F.3d at 1302.

5 Applicants make little effort to establish that their Motion to Intervene is timely. Instead,  
6 they offer only a conclusory statement (without substantive discussion or support) that their Motion  
7 is timely because it was filed approximately one month after ITCA Plaintiffs had filed their  
8 Complaint, and one day after “responses” from State Defendants were due, and as such, no  
9 “additional discovery will be necessary and the proceeding will not be delayed.”<sup>3</sup>

10 Applicants ignore the expedited schedule of this proceeding, in which both the Court and  
11 the parties are striving to resolve the challenges to the voter identification requirements in time for  
12 the September primaries. While Applicants undoubtedly were aware of the May 24, 2006, filing of  
13 the Complaint by ITCA Plaintiffs,<sup>4</sup> they nevertheless delayed filing their Motion to Intervene for  
14 more than a month.

15 Thus, by the time Applicants sought to intervene in these rapidly developing proceedings, a  
16 hearing on the temporary restraining order (“TRO”) had already been held, an order denying the  
17 TRO had been issued, and an initial date for the preliminary injunction had been set. Given the  
18 compressed nature of these proceedings and the necessity to obtain an expedited decision from the  
19 Court to protect the fundamental Constitutional right to vote, Applicants allowed an unreasonable  
20 and unnecessary lapse of time to occur before they filed their Motion to Intervene.

21 Applicants’ untimely intervention in these expedited proceedings will also prejudice the  
22 current parties to this action, while on the contrary, denying Applicants’ Motion to Intervene would  
23 *not* prejudice Applicants because (as discussed below) they are adequately represented by the State.

24

---

25 <sup>3</sup> Motion to Intervene at 4, lines 20-21.

26 <sup>4</sup> The filing was accompanied by a press conference which was covered extensively by  
27 media throughout Arizona. It is also the understanding of ITCA Plaintiffs that Mr. Pullen  
28 attended the Court’s May 17, 2006, Status Conference and its hearing on Plaintiffs’ Application  
for Temporary Restraining Order on June 9, 2006.

1 Acting under the urgency created by the impending voter registration deadlines and  
2 upcoming election season, attorneys for the ITCA Plaintiffs, Gonzalez Plaintiffs, the State, and  
3 Counties conferred and agreed upon a stipulated discovery and hearing schedule that was entered  
4 by the Court on July 11, 2006. This stipulated schedule is the product of several meetings and  
5 discussions between attorneys for Plaintiffs and the State. It represents a difficult and delicate  
6 balance between Plaintiffs' right to obtain sufficient discovery from the State and Counties in order  
7 to provide information crucial to the Court's consideration of the Plaintiffs' request for a  
8 preliminary injunction, and the concerns of the State and Counties that resources needed to prepare  
9 for the upcoming elections will be diverted to prepare and produce the discovery sought by  
10 Plaintiffs. The stipulated schedule also seeks to conserve the resources of the Court and the current  
11 parties to these consolidated actions.

12 Allowing the Applicants to intervene at this point will upset the delicate balance achieved  
13 in the joint stipulation for a number of reasons. As a threshold matter, it is possible that the joint  
14 stipulation, so recently achieved by the parties and entered by the Court, will have to be modified  
15 upon motion by Applicants to accommodate their concerns and scheduling needs should they be  
16 permitted to intervene. It is unclear from Applicants' Motion to Intervene whether they would  
17 abide by the stipulated discovery and hearing schedule, or if they would seek leave of Court to  
18 change the schedule. At this late date, any changes to the schedule or delay in these expedited  
19 proceedings will prejudice the current parties' ability to draft upcoming briefing, initiate and  
20 respond to discovery, and prepare for a Preliminary Injunction Hearing currently scheduled for  
21 August 30, 2006.<sup>5</sup>

22 Moreover, it is unclear whether Applicants will aggressively seek to expand the scope of  
23 discovery in this proceeding to pursue their purportedly "personal" and "distinct" interests. If they  
24 do, this will also upset the stipulated scheduling order, and increase the burden on both sides. In

---

25  
26 <sup>5</sup>If Applicants' proposed intervention results in even a short postponement of the August  
27 30, 2006, Preliminary Injunction Hearing, it is possible that the Court will be unable to render a  
28 decision on Plaintiffs' preliminary injunction request in time for the September 12, 2006, primary  
election, leaving the voter identification requirements of Proposition 200 in place, and thereby  
violating the fundamental right to vote for a significant number of Arizonans.

1 light of the quickly approaching September primaries, October voter registration deadlines, and the  
2 November general election, it would be highly prejudicial to both Plaintiffs and Defendants to  
3 allow Applicants to intervene now.<sup>6</sup>

4 On the other hand, the Applicants will not be greatly prejudiced if they are denied  
5 intervention, because their interests are squarely protected by the State, which is charged with  
6 supporting, executing, and defending the voter identification requirements enacted by Proposition  
7 200. Applicants' Motion should be denied as untimely.

8 **2. Applicants Do Not Have a Protectable Interest in this Action Which is**  
9 **Distinct or Unique from the Position of the State**

10 An applicant has a significantly protectable interest if (1) the interest asserted is protected  
11 under some law, and (2) a relationship exists between the plaintiff's claims and the legally  
12 protected interest. An applicant seeking intervention may be determined to have a "sufficient  
13 interest for intervention purposes if it will suffer a practical impairment of its interest as a result of  
14 pending litigation." *See State ex rel. Lockyer v. United States*, 450 F.3d 436, 441, (9<sup>th</sup> Cir. 2006).  
15 Here, however, Applicants have failed to demonstrate that they have a protectable interest in this  
16 case which is differentiated and unique from that of the State. *See id.* (citing *Alisal Water Corp.*,  
17 370 F.3d at 920).<sup>7</sup>

18 While Applicants may generally be said to have at least some "protectable interest" as  
19

---

20 <sup>6</sup>If allowed to intervene, Applicants will likely seek to submit their own briefing on these  
21 matters, imposing increased burdens upon the Court. It would also increase the burden to the  
22 ITCA Plaintiffs and Gonzalez Plaintiffs, as they would have to respond to three separate briefs  
submitted by the State, the Counties, and the Intervening Defendants. Such additional and  
burdensome briefing is unnecessary and without sound justification in this case.

23 <sup>7</sup> Applicant, Mr. Pullen, speculates that his vote might be "fraudulently diluted" in the  
24 absence of Proposition 200, and he urges that this allegation makes his interest, and that of Yes on  
25 Proposition 200, "discrete" from the interests of the State and Counties that are charged to defend  
26 Proposition 200. *See, e.g.*, Motion to Intervene at 6, lines 16-23. As an initial matter, Mr  
27 Pullen's interest in honest elections is no different than that of any other registered voter in  
28 Arizona. Moreover, Applicants offer the Court no substantive proof that alleged voter fraud will  
occur in the absence of the voter identification requirements of Proposition 200. Even assuming  
*arguendo* that Applicants' concerns regarding voter fraud were valid (which they are not), the  
State's interest in enforcing the law and defending the voter identification requirements of  
Proposition 200 will adequately protect the interests expressed by Mr. Pullen and Yes on  
Proposition 200. Applicants' intervention in this matter is therefore not necessary.

1 sponsors of Proposition 200, this alone is insufficient to establish they are entitled to intervene as a  
2 matter of right in these proceedings.

3 Applicants first suggest that because Yes on Proposition 200 was recognized as a defendant  
4 in *No on 200 v. Brewer*, No. CV2004- 020468 (Ariz. Sup. Court, Maricopa Cty., October 2004),  
5 and was permitted to intervene in *Friendly House v. Napolitano*, No. 04cv649 (D. Ariz., December  
6 15, 2004), this demonstrates that Applicants also have a protectable interest in intervening as a  
7 matter of right in this case under Rule 24(a). This misstates the scope of these decisions.

8 In *No on 200 v. Brewer*, Applicant was deemed to be an “interested party” in the action. It  
9 was not permitted to intervene. This would not seem to be inappropriate since this case challenged  
10 certain aspects of the petition circulating process for Proposition 200 which was conducted, in part,  
11 by Applicants. While Applicants were permitted to intervene in *Friendly House*, the challengers in  
12 *Friendly House* did not focus solely on the voter identification requirements of Proposition 200, as  
13 here, but rather offered a number of challenges to the constitutionality of the Proposition, including  
14 to the standards of eligibility verification for public benefits, and the reporting requirements of  
15 violations to federal immigration law. The challengers also argued that Proposition 200 violated  
16 the due process rights of persons who apply for state and local benefits and that the Proposition  
17 itself is impermissibly vague and fails to give adequate notice of what would constitute criminal  
18 conduct.

19 Unlike in this proceeding where the State and Counties plainly support and have evidenced  
20 every intent to defend the voter identification requirements of Proposition 200, in *Friendly House*,  
21 it was determined that the State and the applicants for intervention, in fact, had widely different  
22 interpretations regarding the scope and application of the “benefits” portion of Proposition 200,  
23 calling the State’s adequacy of representation into question. Applicants have failed to demonstrate  
24 this same shortcoming on the part of the State here.

25 Applicants also rely heavily upon the Ninth Circuit’s decision in *Yniguez v. Arizona*, 939  
26 F.2d 727 (9<sup>th</sup> Cir. 1991), in urging that they should be granted leave to intervene as a matter of  
27 right. Applicants do not explain, however, that this decision was vacated by the United States  
28

1 Supreme Court in *Arizonans for Official English v. Arizona*, 520 U.S. 43, 65, 117 S. Ct. 1055  
2 (1997), and that it is therefore without precedential authority. *See League of United Latin*  
3 *American Citizens*, 131 F.3d at 1305 (citing *Durning v. Citibank, N.A.*, 950 F.2d 1419, 1424 n.2  
4 (9<sup>th</sup> Cir. 1991) (“A decision may be reversed on other grounds, but a decision that has been vacated  
5 has no precedential authority whatsoever.”)).

6 While *Yinguez* was not vacated on the “protectable interest” prong of intervention, it is  
7 significant that the Supreme Court in *Arizonans for Official English* made a point to express in  
8 their decision that it had “grave doubts” as to whether a ballot initiative group had standing under  
9 Article III of the Constitution to pursue appellate review of the decision below. The Court  
10 observed that the ballot initiative group “was not an elected representative, nor did any Arizona  
11 state law appoint initiative sponsors as agents ‘to defend, in lieu of public officials, the  
12 constitutionality of initiatives made law of the State.’” *Arizonans for Official English*, 520 U.S. at  
13 65.

14 Applicants also rely on *Washington State Bldg. & Constr. Trades Council v. Spellman*, 684  
15 F.2d 627, 630 (9<sup>th</sup> Cir. 1982), for the apparent proposition that as a sponsor of Proposition 200,  
16 Applicants are essentially *ipso facto* entitled to intervene in this proceeding as a matter of right.<sup>8</sup>  
17 However, in *Spellman*, the Ninth Circuit merely determined, without discussion, that the supporter  
18 of the ballot initiative at issue in the case should have been permitted to intervene by the trial court.  
19 *Id.* at 630. It did not address the burdens and standards for intervention as a matter of right  
20 required by Rule 24(a). *Id.* Moreover, the Ninth Circuit went on to affirm the lower courts’  
21 decision that the ballot initiative at issue was unconstitutional. *Id.*

22 Since the issuance of *Spellman*, the test for intervention by ballot initiative groups has been  
23 explained and further defined by the Ninth Circuit. *See, e.g., League of United Latin America*  
24 *Citizens*, 131 F.3d 1297; *Prete v. Bradbury*, 438 F.3d 949, 954 (2006). In both of these cases, the  
25 ballot initiative proponents were not permitted to intervene as a matter of right simply because they  
26

---

27 <sup>8</sup> See Motion to Intervene at 5, lines 16-18.  
28

1 sponsored the initiative in issue. Rather, they were required to address each of the elements for  
2 intervention under Rule 24(a), including the requirement that their issues and goals will not be  
3 adequately represented by the other parties to the action. Because Applicants cannot meet this test,  
4 as discussed below, their Motion to Intervene should be denied.

### 5 3. Applicants' Interests Are Adequately Represented by the State

6 In deciding whether the existing parties will adequately represent an applicant for  
7 intervention, several factors must be considered. These factors include whether an existing party  
8 will make all of the applicant's arguments, whether an existing party is willing and capable of  
9 making those arguments, and whether the applicant offers a crucial element to the action that  
10 would otherwise be neglected. *Prete*, 438 F.3d at 956. While the burden of showing inadequacy  
11 may be minimal under certain circumstances, the Ninth Circuit warned in *Prete*, 438 F.3d at 956,  
12 that this requirement is not "without teeth", noting:

13 The most important factor in determining the adequacy of representation  
14 is how the interest compares with the interests of existing parties. When an  
15 applicant for intervention and an existing party have the same ultimate  
16 objective, a presumption of adequacy of representation arises. If the applicant's  
17 interest is identical to that of one of the present parties, a compelling showing  
18 should be required to demonstrate inadequate representation.

19 Significantly, the burden on Applicants in this case is even greater than that described  
20 above because Proposition 200 is already being defended by the State and Counties as existing  
21 parties to the action. Where the government is acting on behalf of its constituency, as is the case in  
22 this proceeding, applicants for intervention as a matter of right are required to show by "very  
23 compelling evidence" that the State will not adequately represent their interests in the action. *See*  
24 *id.* at 956-57.<sup>9</sup> Indeed, in *State ex rel Lockyer*, the Court held that such an applicant must  
25 "demonstrate a likelihood that the government will abandon or concede a potentially  
26 meritorious reading of the statute." 450 F.3d at 444 (emphasis added).<sup>10</sup>

---

27 <sup>9</sup> See also *State ex rel. Lockyer*, 450 F.3d at 443 (citing *Arakaki v. Cayetano*, 324 F.3d  
28 1078, 1086 (9<sup>th</sup> Cir. 2003)).

<sup>10</sup> This is precisely why Applicants' reliance on *Sagebrush Rebellion, Inc. v. Watt*, 713  
F.2d 525, 528 (9<sup>th</sup> Cir. 1983) is misplaced. In *Sagebrush Rebellion*, applicant for intervention was  
a public interest group who alleged that the Secretary of Interior would not adequately defend the

1 As explained above, Applicants in this case share the identical objective in this case as the  
2 State and the Counties; namely, to defend the voter registration requirements of Proposition 200  
3 from constitutional challenge. Although Applicants speculate that Secretary of State Brewer  
4 and/or the Arizona Attorney General may not agree with the full breadth and scope of Proposition  
5 200, they fail to make even a *de minimus* showing, let alone a “very compelling showing”, that the  
6 State has or will abandon or concede a meritorious reading of the voter identification requirements  
7 of Proposition 200.<sup>11</sup> The Court should presume the State will enforce the law.

8 Indeed, attorneys for the State and Counties have made all reasonable efforts to defend  
9 these requirements before this Court, including offering a vigorous presentation at the TRO  
10 Hearing. It also cannot be ignored that the Secretary of State has taken a strong position in defense  
11 of the voter identification requirements of Proposition 200, even in the face of opposition by the  
12 federal Elections Assistance Commission. She has also implemented broadly worded regulations  
13 to be used at the polls by election officials in order further outline those forms of identification  
14 required by Proposition 200.

15 Just as the Court determined in *League of United Latin Am. Citizens*, 131 F.3d at 1302,  
16 there is simply no evidence that the State will not adequately represent Applicants. Both the State  
17

---

18 intervening group’s interest because the Secretary, James Watt, had previously been the head of a  
19 foundation that maintained environmental values which were the very antithesis of the values  
20 espoused by the public interest group as intervening defendants. As explained in *Prete*, 438 F.3d  
21 at 956, the Ninth Circuit agreed that under such circumstances, the public interest group seeking  
22 intervention “might bring a perspective materially different from that of the present parties and  
23 was [therefore] entitled to intervene.” This, of course, is nothing like the situation presently  
before the Court where the State has made all reasonable efforts to implement and protect the  
voter identification requirements of Proposition 200, and Applicants (who seek the same result)  
can offer nothing that is “materially different” from that of the State.

24 <sup>11</sup>Applicants have also asserted that the State cannot adequately represent their interest  
25 because they contend that the Arizona Attorney General substantially narrowed the scope of the  
26 “benefits” portion of Proposition 200 from that which was intended by the Applicants. This  
27 contention does not meet the “very compelling interest” burden necessary to overcome the State’s  
presumption of adequate representation. Further, Applicants allege only that the Attorney  
General attempted to narrow the “benefits” portion of Proposition 200, which is not at issue in  
this case. This does not, by any measure, show that the State will abandon or concede its  
heretofore maintained position that the voter identification provisions of Proposition 200 are  
constitutional and enforceable.

1 and the Applicants share the same ultimate objective of defending the constitutionality of the voter  
2 identification requirements of Proposition 200, and the State has been vigorously defending these  
3 requirements of the Proposition, both in the past and today. Further, there is no evidence that the  
4 State will cease to do so in the future. Applicants' Motion to Intervene should be denied.

5 **B. APPLICANTS ARE NOT ENTITLED TO PERMISSIVE INTERVENTION**

6 Applicants insist that *if* they are not entitled to intervene as a matter of right pursuant to  
7 Rule 24(a), the Court should permit them to intervene under the standard for permissive  
8 intervention set forth at Rule 24(b).<sup>12</sup> In the exercise of the Court's discretion, the Court should  
9 decline to permit intervention in this case for the same reasons discussed at Section II(A)(1),  
10 above. The prejudice to the existing parties and the undue delay that such intervention will cause,  
11 together with the additional burden on the Court, weigh heavily against intervention. Applicants  
12 have not demonstrated that their participation in the case will provide any material assistance to the  
13 Court in its consideration of the issues before it.

14 Applicants' interests are adequately protected and their intervention will only slow down  
15 and overburden these expedited proceedings. ITCA Plaintiffs urge the Court to deny permissive  
16 intervention by Applicants under Rule 24(b).

17 **III. CONCLUSION**

18 For the foregoing reasons ITCA Plaintiffs respectfully request that Applicants' Motion to  
19 Intervene be denied.

---

22 <sup>12</sup> Rule 24(b) provides:

23 Upon timely application anyone may be permitted to intervene in an action (1) when a  
24 statute of the United States confers a conditional right to intervene; or (2) when an  
25 applicant's claim or defense and the main action have a question of law or fact in common.  
26 When a party to an action relies for ground of claim or defense upon any statute or  
27 executive order administered by a federal or state governmental officer or agency or upon  
28 any regulation, order, requirement, or agreement issued or made pursuant to the statute or  
executive order, the officer or agency upon timely application may be permitted to  
intervene in the action. In exercising its discretion the court shall consider whether the  
intervention will unduly delay or prejudice the adjudication of the rights of the original  
parties.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of July, 2006.

STEPTOE & JOHNSON, L.L.P.

s/Karen J. Hartman-Tellez  
David J. Bodney  
Karen J. Hartman-Tellez  
Collier Center  
201 East Washington St., Suite 1600  
Phoenix, AZ 85004-2382

OSBORN MALEDON, P.A.  
David B. Rosenbaum  
Thomas L. Hudson  
Sara S. Greene  
2929 North Central Ave., 21<sup>st</sup> Fl.  
Phoenix, AZ 85012-2793

Attorneys for Inter Tribal Council of Arizona, Inc., et al.

LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS UNDER LAW  
Jon Greenbaum  
Benjamin Blustein  
1401 New York Avenue, Suite 400  
Washington, D.C. 20005  
Telephone: (202) 662-8315  
Facsimile: (202) 628-2858  
Email:  
[igreenbaum@lawyerscommittee.org](mailto:igreenbaum@lawyerscommittee.org)  
[bblustein@lawyerscommittee.org](mailto:bblustein@lawyerscommittee.org)  
Admitted Pro Hac Vice

THE LEAGUE OF UNITED LATIN  
AMERICAN CITIZENS  
Luis Roberto Vera, Jr.  
(TX SBN 20546740)  
111 Soledad, Suite 1325  
San Antonio, TX 78205-2260  
Telephone: (210) 225-3300  
Facsimile: (210) 225-2060  
Email: [Irvlaw@sbeglobal.net](mailto:Irvlaw@sbeglobal.net)  
Pro Hac Vice Application to be filed

ACLU Southern Regional Office  
Neil Bradley  
2600 Marquis One Tower  
245 Peachtree Center Avenue  
Atlanta, GA 30303  
Telephone: (404) 653-0331  
Fax: (404) 653-0331  
Email: [nbradley@aclu.org](mailto:nbradley@aclu.org)  
Admitted Pro Hac Vice

AARP FOUNDATION LITIGATION  
Daniel B. Kohrman (DCBN 394064)  
601 E Street, N.W., Suite A-4-240  
Washington, D.C. 20049  
Telephone: (202) 434-2064  
Fax: (202) 434-6424  
Email: [dkohrman@aarp.org](mailto:dkohrman@aarp.org)  
Admitted Pro Hac Vice

PEOPLE FOR THE AMERICAN WAY  
FOUNDATION  
Elliot M. Minceberg  
2000 M Street, N.W. Suite 400  
Washington, D.C. 20036  
Telephone: (202) 467-4999  
Facsimile: (202) 293-2672  
Email: [emineberg@pfaw.org](mailto:emineberg@pfaw.org)  
Admitted Pro Hac Vice

THE INTER TRIBAL COUNCIL OF  
ARIZONA, INC.  
Joe P. Sparks (002383)  
Susan B. Montgomery (020595)  
Sparks, Tehan & Ryley, P.C.  
7503 First Street  
Scottsdale, AZ 85251  
Telephone: (480) 949-1339  
Facsimile (480) 949-7587

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 12<sup>th</sup> day of July, 2006, I caused the attached document to be  
3 electronically transmitted to the Clerk's Office using the CM/ECF System for filing and  
transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

4 Daniel R. Ortega, Jr. ([danny@rmgmoinjurylaw.com](mailto:danny@rmgmoinjurylaw.com))  
5 Roush, McCracken, Guerrero, Miller & Ortega  
6 650 North Third Avenue  
Phoenix, AZ 85003

7 Nina Perales ([nperales@maldef.org](mailto:nperales@maldef.org))  
8 Mexican American Legal Defense and Education Fund  
110 Broadway, Suite 300  
San Antonio, TX 78205

9 Attorneys for Plaintiffs

10 Peter Alex Silverman ([peter.silverman@azag.gov](mailto:peter.silverman@azag.gov))  
11 Office of the Attorney General  
1275 West Washington Street  
Phoenix, AZ 85007-2926

13 Attorney for Defendants State of Arizona, and Jan Brewer in her official capacity as the  
Secretary of State of the State of Arizona

14 M. Colleen Connor ([connorc@mcao.maricopa.gov](mailto:connorc@mcao.maricopa.gov))  
15 MCAO Division of County Counsel  
222 North Central Avenue, Suite 1100  
Phoenix, AZ 85003

16 Dennis I. Wilenchik ([diw@wb-law.com](mailto:diw@wb-law.com))  
17 Kathleen Rapp ([kathleenr@wp-law.com](mailto:kathleenr@wp-law.com))  
18 Wilenchik and Bartness, P.C.  
The Wilenchik & Bartness Building  
2810 North Third Street  
Phoenix, AZ 85004

20 Attorneys for County Defendants

21 I further certify that I caused a copy of the attached documents to be mailed on the 12<sup>th</sup> day  
22 of July, 2006, to:

23 The Honorable Roslyn O. Silver  
Sandra Day O'Connor U.S. Courthouse  
Suite 624  
24 401 West Washington, SPC 59  
Phoenix, AZ 85003-2158

26 s/Michele L. Galvez