

# EXHIBIT 52



REED OSBORN MALEDON P.A.

JUL 31 2006

**TERRY GODDARD**  
ATTORNEY GENERAL

**Office of the Attorney General**  
State of Arizona

**William A. Richards**  
Senior Litigation Counsel  
Civil Division  
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July 27, 2006

**Via Facsimile and US Mail**

Dave Rosenbaum, Esq.  
Osborn Maledon, P.A.  
2929 N. Central Ave., 21<sup>st</sup> Floor  
Phoenix, Arizona 85012

**Re: Inter Tribal Council of Arizona, Inc. v. Brewer, Case No. CV06-01268-  
PHX-ROS**

Dear Dave:

As a follow-up to the objections of the Arizona Secretary of State ("Secretary") to the Plaintiffs' requests for production of personal data concerning Arizona voters and whether they possess an Arizona driver's license or Arizona non-operating identification card, the Secretary has calculated the total number of active, registered Arizona voters listed in the Secretary's database, along with the number of those same voters whom the Secretary's staff have previously identified also possessed an Arizona driver's license or Arizona identification card per the records of the Motor Vehicle Division of the Arizona Department of Transportation ("MVD"). The relevant numbers are as follows:

Total Arizona registered voters listed on the database maintained by the Arizona Secretary of State as of July 25, 2006: 2,972,214

Total number of registered voters appearing on the database maintained by the Arizona Secretary of State as of July 25, 2006 for which the database reflects an identification number from an Arizona driver's license or Arizona non-operating identification card: 2,597,619

It is important that all parties share an understanding of how the foregoing data is compiled. First, the Secretary's database of active, registered voters is compiled from data supplied by the Arizona counties. By approximately December, 2003, the Secretary's staff completed a "back-fill" exercise whereby they electronically compared

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the names appearing in the Secretary's database of active, registered voters to data appearing in the electronic records of the MVD. The exercise searched the MVD data on holders of Arizona driver's licenses and non-operating identification cards using the last name, first three letters of the first name, and date of birth of each voter in the Secretary's database. When a match on all three items was made, the Secretary's database was updated to indicate the number of the Arizona driver's license or non-operating identification card associated with that voter. When the three categories of voter information matched data of more than one person in the MVD database, the Secretary's staff attempted to confirm which, if any, of the matched persons was the same as the voter by comparing social security information where available. If no further confirmation could be made of the match between a voter and a particular person on the MVD database using the foregoing method, the Secretary's staff made no indication on the voter records that the voter in question had an Arizona driver's license or non-operating identification card number.

Since the "back-fill" exercise was completed, the Secretary's office has attempted to place in its database the Arizona driver's license number or non-operating identification card number of each new registrant who supplied such information to the county as part of their registration. For new registrants where the data the Secretary received did not include such information, the Secretary's office has run a comparison of the new voter record to the MVD records using the same methodology used in the "back-fill" exercise outlined above. Thus, it is possible that the number of active, registered voters possessing an Arizona driver's license or non-operating identification card number is higher than the number provided above from the Secretary's records for several reasons.

First, a voter might have registered to vote using information different from the information they used to obtain a license or i.d. card. For example, a voter who changed their last name after marriage or a divorce may have a previously issued driver's license or identification card that uses a last name different than the name they registered to vote under. Thus, the comparison of databases would not result in a match. Also, the Secretary has not included in her office's count any voters who matched multiple records in the MVD database, but for whom no confirmation of identity could be made using the Secretary's comparison methodology. Obviously, some of those matches could involve a voter who has a license or identification card. At this time, the Secretary's office believes it very unlikely that the number of active, registered Arizona voters who possess an Arizona driver's license or Arizona identification card number could be less than the number outlined above.


Moreover, the Secretary's office believes that a further comparison by anyone else would not likely result in a more reliable number than calculated here. First, such comparison would, at best, hope to further identify those voters who matched multiple

MVD records during the Secretary's comparison with a particular MVD license or identification card holder. Given the methods already used by the Secretary's office, such further comparison would require use of address information, which is particularly difficult to use for electronic comparison. There is no assurance of uniformity in the manner of recording address information. Terms like "boulevard," "avenue" and "street" might be spelled out completely, abbreviated, or omitted entirely from one or the other database. Thus, addresses would have to first be recorded in uniform formats to ensure an efficient and accurate comparison. Given the foregoing, the Secretary is prepared to go on record with the numbers supplied here, along with an explanation of the methodology by which those numbers were calculated. The Secretary cannot, as previously suggested by Plaintiffs, stipulate that the number of Arizona active, registered voters with Arizona driver's licenses or Arizona non-operating identification cards is no higher than the number calculated here, as the Secretary has no way of knowing whether that representation is true or not. The number provided here is the most accurate number that the Secretary can provide at this time (and at the time of the preliminary injunction hearing), recognizing that the real possibility exists that the number of Arizona active, registered voters with an Arizona's driver's license or Arizona identification card could be higher given the current practical limitations on the Secretary's ability to confirm the relevant data.

We previously offered to make Mr. Bill Maaske of the Secretary's office available for a brief telephonic discussion (with counsel present) to confirm the foregoing explanation of the Secretary's comparison methods. Please let me know if you still wish to arrange such a call.

Lastly, Sara, Ben, Tom and I discussed Tuesday the request made by Plaintiffs that the Secretary identify how many of the active, registered Arizona voters in her database have Arizona driver's licenses or Arizona identification cards issued after October 1, 1996. I raised the concern that such information is irrelevant in that it only captures data regarding people who have already successfully registered to vote - whereas the request appears to be aimed at Arizona citizens who are not registered. I discussed the possibility of seeking an alternative count from MVD of the number of Arizona driver's licenses or non-operating identification cars issued since October 1, 1996. We remain willing to explore if we can help supply that information. Please let me know the results of your discussions on that point.

Sincerely,

  
William A. Richards  
Senior Litigation Counsel

Dave Rosenbaum, Esq.

Page 4 of 4

7/27/2006

cc: Nina Perales, Esq.  
Karen J. Hartman-Tellez, Esq. (via e-mail)  
Ben Blustein, Esq. (via e-mail)

WAR/rvc

# EXHIBIT 53

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2005-011818-001 DT

10/19/2005

HONORABLE CHRIS E. WOTRUBA

CLERK OF THE COURT  
T. Gaulke  
Deputy

FILED: 10/21/2005

STATE OF ARIZONA

CYNTHIA L GIALKETSIS

v.

FRANCISCO GARIBO (001)

WM T FISCHER

DISPOSITION CLERK-CSC  
VICTIM SERVICES DIV-CA-CCC

PRELIMINARY HEARING / CASE DISMISSED

2:00 p.m.

State's Attorney:	Tophas Anderson
Defendant's Attorney:	William Fischer
Defendant:	Present
Court Reporter:	Blanche Paulsen

The Defendant is advised of the charges in the Complaint.

Witness Cave Golding is sworn and testifies.

The Court finds that the State has not presented sufficient evidence, therefore;

IT IS ORDERED dismissing without prejudice the charges in the Direct Complaint.

2:03 p.m. Matter concludes.

# EXHIBIT 54

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2005-011820-001 DT

01/11/2006

COMMISSIONER JAMES T. BLOMO

CLERK OF THE COURT  
T. Gaulke  
Deputy

FILED: 01/13/2006

STATE OF ARIZONA

TOPHAS ANDERSON

v.

RENATE ETHAN (001)

WENDY REASONS

DISPOSITION CLERK-CSC  
VICTIM SERVICES DIV-CA-CCC

CASE DISMISSED

9:25 a.m.

State's Attorney:	Tophas Anderson
Defendant's Attorney:	Wendy Reasons
Defendant:	Present

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Pursuant to State's Motion to Dismiss,

IT IS ORDERED dismissing without prejudice the above-entitled cause as to this defendant, quashing the Warrant/Summons, and exonerating any bond set.

THE COURT FINDS that the Defendant is not required to contribute any sum toward reimbursement for legal services provided by appointed counsel.

9:35 a.m. Matter concludes.

# EXHIBIT 55

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON ASSOCIATION OF )  
CHURCHES, *et al.*, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SAM REED, )  
 )  
Defendant. )

CASE NO. C06-0726RSM  
ORDER GRANTING MOTION  
FOR PRELIMINARY  
INJUNCTION

**I. INTRODUCTION**

This matter comes before the Court on plaintiffs' Motion for Preliminary Injunction. (Dkts. #6 and #43). Plaintiffs ask this Court to enjoin Washington State's new "matching" statute, RCW 29A.08.107, which essentially requires the state to match a potential voter's name to either the Social Security Administration ("SSA") database or to the Department of Licensing ("DOL") database before allowing that person to register to vote. Plaintiffs argue that the statute will disenfranchise a large percentage of eligible Washington voters from voting in the upcoming primary and general elections. Specifically, plaintiffs argue that the matching statute violates the federal Help America Vote Act ("HAVA") because HAVA does not require matching as a precondition to registering to vote. Plaintiffs also argue that the Washington statute violates the Voting Rights Act and the U.S. Constitution.

Defendant argues that the statute was enacted specifically to comply with HAVA, the statute does not violate the Voting Rights Act or the federal Constitution, and that, in any

1 event, an injunction is not necessary, as plaintiffs are really complaining about the  
2 implementation of the new statute which the State can remedy without an injunction. (Dkts.  
3 #37 and #49).

4 For the reasons set forth below, the Court disagrees with defendant and GRANTS  
5 plaintiffs' motion for preliminary injunction.

## 6 II. DISCUSSION

### 7 **A. Standard of Review for Preliminary Injunction**

8 To obtain a preliminary injunction, plaintiffs must demonstrate either: (1) probable success  
9 on the merits and the possibility of irreparable harm; or (2) that serious questions have been  
10 raised and the balance of hardships tips in their favor. *A&M Records, Inc. v. Napster, Inc.*, 239  
11 F.3d 1004, 1013 (9th Cir. 2001). The Ninth Circuit Court of Appeals has explained that each of  
12 these two prongs "requires an examination of both the potential merits of the asserted claims  
13 and the harm or hardships faced by the parties. We have held that 'these two formulations  
14 represent two points on a sliding scale in which the required degree of irreparable harm  
15 increases as the probability of success decreases.' Additionally, 'in cases where the public  
16 interest is involved, the district court must also examine whether the public interest favors the  
17 plaintiff.'" *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 965 (9th Cir. 2002)  
18 (citations omitted).

19 Accordingly, the Court will address each of these elements – likelihood of success on the  
20 merits, irreparable harm and the public interest – in turn below.

### 21 **B. Proper Defendant**

22 As a threshold matter, the Court first addresses defendant's argument that he is not the  
23 proper defendant to this action. Defendant initially asserted that, while he maintains the voter  
24 statewide registration list, the counties actually register voters, and therefore he has no direct  
25 control over the 39 separately-elected county auditors. Defendant further asserted that these  
26 county auditors are not his "agents," such that he could somehow order the counties to register  
mismatched applicants.

1 Plaintiffs responded that defendant had undersold his authority, and that he indeed is the  
2 proper defendant. Faced with that response, defendant has apparently abandoned his  
3 argument.<sup>1</sup> The Court agrees with plaintiffs.

4 Under Washington State law, the Secretary of State is the chief elections officer of the  
5 state, and he has supervisory control over local elections officials, including the power and  
6 responsibility to issue instructions and promulgate rules to ensure that elections are conducted  
7 in a uniform manner. He also has the authority to instruct and compel county elections officials  
8 to comply with the laws, rules and guidelines governing elections. RCW 29A.04.230, 610-611,  
9 and 530. Indeed, the matching regulation directing the counties what to do with unmatched  
10 registrations, WAC 434-324-040, was promulgated pursuant to that authority. Furthermore,  
11 defendant's representative, Paul Miller, testified at deposition that the separate counties act as  
12 the Secretary of State's "agents" for registering voters. (Dkt. #44, Ex. 12 at 125).<sup>2</sup> Thus, the  
13 Court finds that plaintiffs have properly named Secretary of State Sam Reed as the defendant to  
14 this action.

15 **C. Analysis of the Instant Motion for Injunctive Relief**

16 *1. Likelihood of Success on the Merits*

17 At the outset, it is important to note exactly what relief plaintiffs seek in this Court. As  
18 has been made clear from their briefing and during oral argument, plaintiffs do not seek to  
19 enjoin defendant from matching applications at all. Rather, they seek to enjoin defendant from  
20 enforcing RCW.29A.09.107, which requires an application to be matched *before* that applicant  
21 can be registered to vote. As a result of such injunction, the counties of Washington State  
22

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23 <sup>1</sup> While it appears that defendant abandoned the argument in his supplemental reply brief,  
24 during oral argument on July 28, 2006, defense counsel again suggested that defendant did not  
25 have the authority to impose instructions for handling voter registration forms on the separate  
26 county auditors. Accordingly, the Court will address the issue.

<sup>2</sup> For ease of reference, when referring to specific page numbers within a deposition  
exhibit, the Court cites to the page number of the deposition transcript located in the upper right  
hand corner as opposed to the exhibit page number located in the bottom left hand corner.

1 would simply register voters as they had been doing prior to January 1, 2006, the date the  
2 statute became effective.

3 Plaintiffs argue that HAVA, the Voting Rights Act, and the U.S. Constitution prohibit  
4 state laws like Washington's that make matching a requirement for registration. For the reasons  
5 discussed below, the Court agrees that plaintiffs have demonstrated a strong likelihood of  
6 success on the merits of their claims.

7 a. Help America Vote Act ("HAVA"), 42 U.S.C. § 15301, et seq.

8 Congress passed HAVA in the aftermath of the 2000 Presidential Election. The statute  
9 was passed in large part to ensure that eligible voters would not be left off the voting rosters or  
10 turned away from the polls. HAVA seeks to ensure that voting and election administration  
11 systems will "be the most convenient, accessible, and easy to use for voters" and "will be  
12 nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and  
13 have that vote counted." 42 U.S.C. § § 15381(a)(1) and (3).

14 HAVA requires the states to create reliable registration rolls by implementing a uniform,  
15 regularly updated computerized statewide voter registration list. 42 U.S.C. § 15483(a). The  
16 statute requires all applicants to provide a unique identifying number – their driver's license  
17 number or the last four digits of their social security number – on the application. HAVA then  
18 requires states to match those numbers with the SSA database or DOL database. Applicants  
19 who do not have one of those numbers are assigned a unique identifying number by the state.  
20 Those applicants need not be matched prior to registration.

21 Plaintiffs argue that Washington's matching precondition violates, and is therefore  
22 preempted by, HAVA because (1) it is impossible to comply with both state and federal  
23 requirements and (2) the state law stands as an obstacle to the accomplishment and execution of  
24 the full purpose and objectives of Congress. *See Williamson v. Gen. Dynamics Corp.*, 208 F.3d  
25 1144, 1152 (9th Cir. 2000).

26 It is clear from the language of the statute and by looking at legislative history that  
HAVA's matching requirement was intended as an administrative safeguard for "storing and

1 managing the official list of registered voters,” and not as a restriction on voter eligibility. *See*  
2 42 U.S.C. § 15483(a)(1)(A)(i). This is evidenced by the requirement that a person who has no  
3 driver’s license or social security number be given a unique identifying number, but not be  
4 matched, prior to registering to vote. § 15483(a)(1)(A)(ii). Legislative history confirms that it  
5 is the assignment of some kind of unique identifying number to the voter that is the requirement  
6 of § 15483(a)(1)(A)(i), not the “match.” 148 Cong. Rec. S10488-02, \*S10490 (daily ed. Oct.  
7 16, 2002); *see also* H.R. Rep. 107-329(I), at 36 (2001).

8 In addition, requiring a match prior to registration directly conflicts with 42 U.S.C.  
9 § 15483(b). That section of HAVA requires that a first-time voter who registered by mail must  
10 verify his or her identity before voting. To vote, the applicant may show some form of  
11 identification either at the time of registration or when he or she actually votes. 42 U.S.C.  
12 § 15483(b)(2)(A) and 3(A). However, such identification is *not required* if the information on  
13 the voter registration application has been matched. 42 U.S.C. § 15483(b)(3)(B). In other  
14 words, “matching” serves as a substitute for voter ID. Thus, the language of this section makes  
15 clear that HAVA requires matching for the purpose of verifying the identity of the voter before  
16 casting or counting that person’s vote, but not as a prerequisite to registering to vote.

17 That intent is revealed in defendant’s flawed argument that § 15483(b)(3)(B) merely  
18 requires additional obligations on voters who have registered by mail, including the requirement  
19 that those voters show identification at the time they cast their ballots, unless they have already  
20 been matched. That assertion cannot be correct if HAVA also requires the state to match  
21 names prior to registration. If that were true, and HAVA required matching as a precondition  
22 to voting, the language of 42 U.S.C. § 15483(b)(3)(B) would become mere surplusage. For  
23 example, if matching is required in order to register, and section 154383(b)(3)(B) simply states  
24 additional obligation for those voters who have already registered by mail – which by  
25 Washington law would require that they also be matched prior to registration – then there  
26 would be no need for HAVA to provide any additional means of identification verification as set  
forth in this section. Indeed, by virtue of having been “matched” as a function of registering by

1 mail, the voter's identity would be verified and no further ID would be required. As a result,  
2 RCW 29A.08.107 directly conflicts with HAVA.

3 RCW 29A.08.107 also conflicts with HAVA's "fail-safe" provisional ballot provision.  
4 Under HAVA, a first-time, mail-in registrant who fails to provide ID, and has not been matched,  
5 must still be allowed to vote using a provisional ballot. 42 U.S.C. § 15483(b)(2)(B). Likewise,  
6 under § 15482 of HAVA, any person whose name does not appear on the voting roster, but  
7 declares that he or she is a registered voter, may vote by provisional ballot. 42 U.S.C. § 15482.  
8 These sections of HAVA would be rendered moot if matching was a prerequisite to registering.

9 The Supreme Court has explained that federal law will preempt a state law when:

10 it actually conflicts with federal law. Thus, the Court has found pre-emption  
11 where it is impossible for a private party to comply with both state and federal  
12 requirements, or where state law 'stands as an obstacle to the accomplishment  
13 and execution of the full purposes and objectives of Congress.'

14 *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990) (citations omitted); *Motus v. Pfizer*  
15 *Inc.*, 127 F. Supp. 2d 1085, 1091-1092 (D. Cal. 2000). The party asserting that a claim is  
16 preempted bears the burden of establishing preemption. *Jimeno v. Mobil Oil Corp.*, 66 F.3d  
17 1514, 1526 n. 6 (9th Cir. 1995).

18 For the reasons set forth above, the Court finds that plaintiffs have demonstrated a strong  
19 likelihood of success on the merits of their argument that RCW 29A.08.107 stands as an  
20 obstacle to achieving the purposes and objectives of HAVA, and is therefore preempted by  
21 federal law.

22 b. Voting Rights Act of 1870, as amended, 42 U.S.C. § 1971

23 Similarly, the Court finds that plaintiffs have demonstrated a likelihood of success on the  
24 merits of their claim that RCW 29A.08.107 violates section 1971 of the Voting Rights Act, also  
25 known as the "materiality" section. That section provides:

26 No person acting under the color of law shall . . . deny the right of any  
individual to vote in any election because of an error or omission on any  
record or paper relating to any application, registration, or other act requisite  
to voting if such error or omission is not material in determining whether such  
individual is qualified under State law to vote in such election.

1 42 U.S.C. § 1971(a)(2)(B).

2 Under Washington State's Constitution, certain factors bear on a person's eligibility to  
3 vote. To vote, a person must: (1) have U.S. citizenship; (2) be 18 years of age or older;  
4 (3) have been a resident of the State, county and precinct in which he or she seeks to vote for  
5 the 30 days prior to the election; (4) have not been convicted of an infamous crime without  
6 restoration of his or her civil rights; and (5) have not been judicially declared incompetent.  
7 WASH. CONST. art. VI, § 1, 3. Plaintiffs argue that the types of errors or inconsistencies that  
8 preclude a successful match under Washington's statute do not provide material information  
9 about any of these factors. Defendant simply responds, without authority, that the information  
10 the State uses for matching purposes, such as a person's driver's license, social security number,  
11 address, and date of birth, is material.

12 In *Schwier v. Cox*, 439 F.3d 1285 (11th Cir. 2006), the Eleventh Circuit Court of Appeals  
13 considered "whether the disclosure of a potential voter's [SSN] is 'material' in determining  
14 whether he or she is qualified to vote under Georgia law for purposes of section 1971 of the  
15 Voting Rights Act." *Schwier*, 439 F.3d at 1286 (citation omitted) (alteration in original).  
16 Adopting the reasoning of the district court, the court of appeals affirmed the decision that  
17 "Georgia cannot mandate disclosure of SSNs because such information is not 'material' to a  
18 voter registration system under § 1971(a)(2)(B) of the Voting Rights Act." *Id.*

19 Before the district court, the *Schwier* plaintiffs presented an argument similar to that  
20 advanced by plaintiffs in the instant case. They argued that an individual is qualified to vote  
21 under Georgia law if he is a United States citizen, a Georgia resident, at least 18 years of age,  
22 not incompetent, and not a felon, and, therefore, disclosing one's social security number could  
23 not be material in determining whether one is qualified to vote under Georgia law. *Schwier v.*  
24 *Cox*, 412 F. Supp. 2d 1266, 1276 (D. Ga. 2005). Defendant, Georgia's Secretary of State, had  
25 argued, as does the instant defendant, that requiring an applicant's social security number was  
26 material because it would help prevent registration and voter fraud. *Id.* While the district court  
agreed that requiring the disclosure of a social security number could help prevent fraud, the

1 court also concluded that such number could not be material in determining whether an  
2 applicant is qualified to vote under Georgia law.

3 Similarly, defendant has failed to demonstrate how an error or omission that prevents  
4 Washington State from matching an applicant's information is material in determining whether  
5 that person is qualified to vote under Washington law. Thus, at this time, the Court finds that  
6 plaintiffs have demonstrated a strong likelihood of success on the merits of their claim that  
7 RCW 29A.08.107 is in direct conflict with the "materiality" provision of section 1971 of the  
8 Voting Rights Act.

9 c. Constitutional Violations

10 Defendant has failed to address plaintiffs' arguments that the matching statute violates  
11 several provisions of the U.S. Constitution. However, because the Court finds that plaintiffs  
12 have demonstrated a likelihood of success on its HAVA and Voting Rights Act arguments, the  
13 Court need not address their federal Constitutional arguments.

14 *2. Irreparable Harm*

15 The Court finds that plaintiffs have adequately demonstrated irreparable harm. The  
16 number of applicants cancelled, deleted or otherwise rejected is 178 as of June 22, 2006.  
17 Plaintiffs identify specific people whose applications have been rejected simply because the  
18 identification number provided by the applicant could not be matched. (*See* Dkt. #52 at 3-4).  
19 Plaintiffs also identify several other eligible voters who have been rejected because of problems  
20 using married versus maiden names. (*See* Dkt. #52 at 4).

21 Moreover, discovery has revealed that many counties are hesitant to comply with the strict  
22 matching requirements, and this had led to absurd results around the state. It appears that no  
23 county is approaching the statute in the same way. (*See* Dkt. #43 at 11-14).

24 Defendant dismisses this evidence as "theoretical," and asserts that many of the problems  
25 identified by plaintiffs are just details that can be easily cured. However, as plaintiff's evidence  
26 demonstrates, such harm is not theoretical, it is actual. More importantly, the Court does not  
consider a person's right to vote a mere "detail" to be so easily dismissed.



# EXHIBIT 56

<b>Apache</b>	<b>Coconino</b>	<b>Maricopa</b>	<b>Navajo</b>
Non-Arizona driver's license acceptable as polling place ID, voter gets a regular ballot if address correct, provisional if address incorrect. [Pew depo., at 17-18]	Non-Arizona driver's license with correct, Arizona address, voter gets a regular ballot, if address is out of state, voter gets a conditional provisional ballot. [Hansen depo., at 82-83]	Non-Arizona driver's licenses are not acceptable polling place photo ID, voter gets a conditional provisional ballot [Osborne depo., at 64-65]	
Voter with student ID with name and photo but no address gets a regular provisional ballot. [Pew depo., at 29]	Voter with student ID with a name and photo but no address gets a conditional provisional ballot. [Hansen depo., at 83]	Voter with student ID with a name and photo but no address gets a conditional provisional ballot. [Osborne depo., at 82]	Voter with student ID with a name and photo but no address gets a conditional provisional ballot. [Dastrup depo., at 27]
Voter with two utility bills from different utilities, with the same incorrect address gets a conditional provisional ballot. [Pew depo. at 31]	Voter with two utility bills from different utilities, with the same incorrect address receives a regular provisional ballot. [Hansen depo., at 84]	Voter with two utility bills from different utilities, with the same incorrect address receives a regular provisional ballot. [Osborne depo., at 85]	Voter with two utility bills from different utilities, with the same incorrect address gets a conditional provisional ballot. [Dastrup depo., at 27]

# EXHIBIT 57

VALLEY & STATE

B2 THURSDAY, MARCH 28, 2002 • THE ARIZONA REPUBLIC

# Candidate admits fraud, quits race

By Monica Alonso-Dunsmoor  
The Arizona Republic

An El Mirage City Council candidate withdrew from the election Monday after admitting to county election investigators that she was not a U.S. citizen when she voted in two previous city elections.

Romelia Calderon's voting history surfaced during an investigation into what county officials say could be the worst case of voter fraud in at least 10 years.

A stream of election improprieties was reported to City Hall after the city's March 12 primary election. Among the charges:

- Seven blank ballots taken from a home by a campaign worker.

- Misrepresentation by a campaign worker picking up ballots from homes.

- Ballot signatures that did not match registration signatures on file.

More than 1,600 ballots cast in the all-mail election are being scrutinized, according to county election officials.

County and city attorneys are expected to meet in executive session tonight during an El Mirage City Council meeting for legal advice concerning the election.

Election officials suspended the tabulation of ballots and indefinitely postponed the canvass of the election in which three candidates were running for mayor and nine candidates were vying for three open council seats.

Non-documented people get registered left and right. Some people know they can't, but they get convinced to do it.

Romelia Calderon  
Former El Mirage City Council candidate

Bill FitzGerald, a spokesman for the County Attorney's Office, said the case was under review and that further investigation has been requested.

Although the city's last reported case of vote tampering was in 1992, many residents say the city's elections are fraught with wrongdoing as factions battle for power in a small town founded 50 years ago by mostly migrant workers.

Residents say there's a history of registering undocumented immigrants and "helping" illiterate and elderly residents fill out their ballots.

"The county is going about it like this is the first time it happened," mayoral candidate Robert Robles said. "This has been going on for years."

In May 1992, allegations of ballot tampering were lodged against council members. Fol-

lowing an investigation, the County Attorney's Office concluded that "violations may have occurred in the election process" but declined to press charges.

In the course of the March 12 election investigation, Calderon said she told investigators that she was registered to vote in the 1989 and 1995 elections, even though she did not become a legal citizen until September 1998.

Calderon has lived in Arizona since she was 9 months old.

Earlier this week, the county gave her a form to use to voluntarily withdraw from the election, she said. She signed it.

"Non-documented people get registered left and right," Calderon said. "Some people know they can't, but they get convinced to do it. Others don't understand."

According to state law, knowingly registering someone who is not qualified to vote or allowing yourself to be registered when you are not qualified is a Class 6 felony, which is punishable by up to 1 1/2 years in jail for a first offense.

Calderon points the finger at Councilwoman Alice Ortiz for registering her.

Ortiz, who won her first seat on the council in 1996, denied the allegations.

"I wasn't even involved in politics at that time," she said.

The other cases being investigated involve Mary Falcon and six members of her family.

Falcon said a 7-year-old child at home at the time handed over seven unvetted, unsigned ballots to a woman who came to the house asking for the ballots.

Falcon gave investigators information to help them trace the ballots.

In another case, Sandra Salinas accused Lydia Aguirre of misrepresenting herself when she came to her house to pick up her ballot.

"She told me she was running with Esther's group and they sent her to pick up the ballot," Salinas said, referring to write-in council candidate Esther Flores. "She told me where to make the lines and then took it."

Salinas said she later learned that Flores had not sent anyone to retrieve the ballot.

Aguirre, whose daughter is council candidate Tensi Reed, declined to comment.

Yvonne Reed, a spokeswoman for the Maricopa County Elections Department, said there is no law prohibiting a person from picking up someone else's ballot.

Ben Miranda, who represents Aguirre and her husband, George, said a county investigator informed him that his clients were cleared of any wrongdoing.

"We consider the case closed," Miranda said.

Reach the reporter at [monica.dunsmoor@arizonarepublic.com](mailto:monica.dunsmoor@arizonarepublic.com) or (602) 444-6925.

# Exhibit 58

AFFIDAVIT OF JOHN LEWIS

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

I, John Lewis, under oath, state the following:

1.     My name is John R. Lewis.
2.     I am an enrolled member of the Colorado River Indian Tribe.
3.     I was born in the United States and reside in Arizona, and therefore I am a citizen of the United States under the Fourteenth Amendment to the Constitution of the United States, and I am of voting age pursuant to the Twenty-sixth Amendment to the Constitution of the United States.
4.     I am the Executive Director of the Inter Tribal Council of Arizona, Inc., an Arizona non-profit corporation (ITCA), which represents twenty Indian Tribes, Nations and Communities in Arizona ("Tribes").
5.     The purpose of ITCA is to provide the Member Tribes with the means for action on matters that affect them collectively and individually, to promote tribal sovereignty and to strengthen tribal governments.
6.     The Inter Tribal Council of Arizona was established in 1952 to provide a united voice for tribal governments located in the State of Arizona to address common issues of concerns. On July 9, 1975, the Council established a private, non-profit corporation, Inter Tribal Council of Arizona, Inc., under the laws of the State of Arizona to promote Indian self-reliance through public policy development. ITCA provides an independent capacity to obtain, analyze and disseminate information vital to Indian community self-development.
7.     The members of ITCA are the highest elected tribal officials: tribal chairpersons, presidents and governors. These representatives are in the best position to have a comprehensive view of the conditions and needs of the Indian communities they represent. As a group, the tribal leaders represent governments that have a shared historical experience. Consequently, the tribes have a common governmental status as well as similar relationships with federal and state governments. ITCA is governed by a Board of Directors composed of: Presidents, First Vice President, Section Vice President, and Secretary/Treasurer. The work of ITCA staff and consultants is carried out under the direction and

supervision of John R. Lewis, Executive Director and Alberta C. Tippeconnic, Assistant Director.

8. **ITCA's mission is to provide its Member Tribes with a united voice and the means for united action on matters that affect them collectively or individually; to be the voice of the Member Tribes in bringing about Indian involvement and self-determination in order to improve the general welfare; to eliminate prejudice and discrimination against Indians and to improve the image of Indians held by non-Indians; to promote community development and enhance the quality of life for our Tribal members living in our communities; to empower our youth to be healthy in body, mind, and spirit and to make positive contributions for the well being of our communities; to defend human and civil rights as protected by law; to educate Indians and non-Indians about matters of concern to the Indians in Arizona through such means as public discussion groups, forums, panels, lectures, or any means possible and appropriate. ITCA's members include 20 Arizona Indian Tribes, Nations, and Communities, and each Tribe is represented in ITCA by its highest elected official.**
9. **The ITCA Council has authorized and directed me to manage and supervise the employees of ITCA, and the contracts, agreements, grants to further the purpose of the Council to strengthen Tribal governments; to improve the health and welfare of tribal members, to address tribal government programs and services disparities; to develop and implement strategies to access resources, to maximize information exchange, to develop model policies for tribal governments use, to provide training and technical assistance to improve tribal environments and natural resources, to advocate for the needs to tribal peoples at the direction of the members of the council.**
10. **My responsibilities as Executive Director include management of the day to day activities of ITCA under the direction and authorization of the members of the Council who are the chief elected officer for each Tribe.**
11. **The ITCA operates projects and facilitates the formulation of public policy designed to strengthen the self-determination of Indian Tribal governments. For decades, ITCA has been involved in promoting Native American voting rights in Arizona and providing voter education programs for its Members.**
12. **ITCA operates more than 20 projects and employs a staff of 50 to provide on-going technical assistance and training to tribal governments in program planning and development, research and data collection, resource development, management and evaluation. In addition, the staff of ITCA organizes and conducts seminars, workshops, conferences and public hearings to facilitate participation of tribal leaders in the formulation of**

public policy at all levels. The goal of ITCA and its commitment to the Member Tribes is to ensure the self-determination of Indian tribal governments through their participation in the development of the policies and programs which affect their lives.

13. I am personally familiar with the facts related to Indian Tribes, Reservation and urban Indian populations in Arizona, their members, their Reservations, and the conditions on the Reservations, including transportation, housing, access to utilities, employment, health and dental care, services to the poor and general information related to the difficulties and the experiences of Indians in their effort to register and vote in Arizona.
14. The Tribes in Arizona are recognized by the United States under the Constitution by Treaties, Statutes, Executive Orders, the Secretary of the Interior and other actions by the United States.
15. ITCA Member Tribes occupy Reservations with land areas (including the Navajo Nation) of approximately a third of Arizona, or about 27 million acres. Indians were recognized as citizens of the United States by the Act of June 2, 1924, 43 Stat. 253, 8 U.S.C. § 3.
16. Some Reservations are located within several counties. For example, the Navajo Nation Reservation is in Coconino, Navajo and Apache Counties; White Mountain Apache Reservation is in Gila, Navajo and Apache Counties; San Carlos Apache Reservation is in Gila, Pinal and Graham Counties; Tohono O'odham Reservation is in Maricopa, Pinal and Pima Counties; the Gila River Indian Community Reservation is in Maricopa and Pinal Counties; Kaibab-Paiute Tribe Reservation is in Mohave and Coconino Counties; and Hualapai Tribe Reservation is located in Mohave, Coconino and Yavapai Counties.
17. Some Reservations are located in more than one State. For example, the Navajo Nation is in Arizona, New Mexico, and Utah; Quechan Reservation is in Arizona and California; Colorado River Indian Reservation is in Arizona and California; and the Fort Mohave Reservation is in Arizona, California and Nevada.
18. The Reservations range in size from 85 acres on the Tonto Apache Reservation to 18,119.2 square miles of the Navajo Nation Reservation (in Arizona only).
19. The Reservations were originally located in locations remote from non-Indian cities. They are often great distances from the State Capitol in Phoenix, major cities or county seats. Only four Reservations are within

100 miles of Phoenix. Seven Reservations are more than 200 miles from Phoenix. Two are more than 300 miles from Phoenix.

20. Unemployment is very high on Indian Reservations in Arizona. Unemployment as a % of the Reservation Labor Force in 2004 was:

Agency, Tribe, and Reservation Names	Unemployed Labor Force
Colorado River Indian Tribes	15%
Fort Mohave Indian Tribe	32%
White Mountain Apache Tribe	51%
Hopi Tribe	62%
Tohono O'odham Nation	74%
San Carlos Apache Tribe	81%
Fort McDowell Yavapai Nation	46%
Pascua Yaqui Tribe	19%
Kaibab Band of Paiute Indians	33%
San Juan Southern Paiute Tribe	82%
Havasupai Tribe	76%
Hualapai Indian Tribe	74%
Tonto Apache Tribe	61%
Yavapai-Apache of Camp Verde	68%
Yavapai-Prescott of Prescott.	9%

21. Those who were employed on the Reservation, but below the United States Poverty Guidelines as a % of the Reservation Labor Force in 2004 were:

Agency, Tribe, and Reservation Names	Employed/Below Poverty
Colorado River Indian Tribes	11%
Fort Mohave Indian Tribe	18%
White Mountain Apache Tribe	50%
Hopi Tribe	22%
Tohono O'odham Nation	23%
San Carlos Apache Tribe	25%
Fort McDowell Yavapai Nation	NR
Pascua Yaqui Tribe	60%
Kaibab Band of Paiute Indians	21%
San Juan Southern Paiute Tribe	17%
Havasupai Tribe	44%
Hualapai Indian Tribe	24%
Tonto Apache Tribe	0%
Yavapai-Apache of Camp Verde	4%
Yavapai-Prescott of Prescott	0%

22. In 2004, there were 5,246 Indians in Arizona over age 65.

23. In 2004, there were 48,717 Indians in Arizona between the ages of 16 and 64 in 2004.
24. Residential housing on Reservations is severely inadequate. Several families often occupy a house barely in Arizona adequate for one family. Thousands of residences are needed to accommodate Reservation Indians in Arizona.
25. Hundreds of Reservation homes in Arizona lack running water, inside plumbing, electricity, natural gas, phone services, cellular phone or cable television. Therefore many Indians have no utility bills.
26. Reservation homes in Arizona are unlikely to be located on paved, named or numbered streets. Indian homes with street addresses are by far the exception, not the rule.
27. There are no United States Post Offices on some Reservations in Arizona. Post offices are few and at great distances from the residences of most Indians, if they exist at all.
28. Where post offices do exist, "general delivery" is the address used by the majority of Reservation Indians. Post office boxes are limited. The rental fee for a post office box is beyond the means of a substantial number of Reservation Indians.
29. Due to poverty, unemployment, the costs, the scarcity, or great distances to banks on or near Reservation in Arizona residences, many Indians do not have bank accounts.
30. Documentation which requires notarization is very difficult. Notaries which may be available on most Reservations are limited and at great distances. Notary services frequently cost money and require transportation. It is difficult to accurately determine the actual number of Notaries Public Licensed on or near a Reservation. There are only 10 shown in the zip code for the Fort Mohave Tribe; 21 shown in the zip code for the Hopi Tribe; 4 shown in the zip code of the Hualapai Tribe, and 20 shown in the zip code of the Kaibab- Band of Paiute Indians.
31. Many Indians in Arizona over age 40 were born at home and do not have birth certificates. The necessary affidavits from those in attendance at birth is frequently impossible, because those who were present are deceased. The costs and subsequent elements of documentary proof are also costly, sometimes impossible to obtain, or greatly burdensome for older Indians living in poverty.

32. Public transportation on Reservations is practically non-existent. The limited exceptions are commercial busses on major highways, or in some instances where Reservations are located near major metropolitan areas.
33. Thousands of Reservation Indians in Arizona are too poor to own a car, and do not have an Arizona Driver's license.
34. The distance to State automobile registration offices in Arizona, the limited times they are open, the expense and the required documentation make the "non-operating" Identification License very difficult, if not, impossible to obtain.
35. The 2000 Census count for Indians in Arizona was 233,370. Indians are typically under counted in Arizona for a number of reasons.
36. Thousands of Indians in Arizona require language assistance to fill out forms, applications, voter registration documents and to read, and understand voting ballots, and the machines or other devices necessary to cast a vote. Currently Indians as a percent of all Arizona citizens in an age group who need language assistance are as follows: 18 to 24=11.4%; 25 to 34=14.4%; 35 to 44=20.1%; 45 to 54=23.9%; 55 to 64=35.9%; 65 to 74=44.9%; 75+ years=49.4%, for a total of 38,457. See: 2000 Census, Summary Tape Files 3 and 4.
37. Bureau of Indian Affairs Cards, with or without numbers, are not in use in Arizona.
38. Although the Navajo Nation and the four Apache Tribes in Arizona have formal treaties with the United States, "Tribal Treaty cards", with or without numbers, are not in use in Arizona.
39. Three Tribes in Arizona have no Tribal identification cards or enrollment cards. Those include the Navajo Nation, the Zuni Pueblo and the Havasupai Tribe. Yavapai Prescott will issue Tribal identification cards only upon request to enrolled members.
40. There are hundreds of Indians in Arizona who are not enrolled, or cannot enroll as a member of the Tribe on the Reservation in Arizona where they live.

DATED this 4<sup>th</sup> day of August, 2006.

John R. Lewis  
John R. Lewis

STATE OF ARIZONA     )  
                                  ) ss.  
County of Maricopa    )

SUBSCRIBED AND SWORN TO before me this 4<sup>th</sup> day of August, 2006, by  
John R. Lewis.

Kari Colananni  
Notary Public

My Commission Expires:

4/14/2008

