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16 THE INTER TRIBAL COUNCIL OF) No.
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18 WOMEN VOTERS OF ARIZONA, THE)
19 HOPI TRIBE, THE LEAGUE OF) COMPLAINT FOR
20 UNITED LATIN AMERICAN CITIZENS) DECLARATORY AND
21 ARIZONA, THE ARIZONA) INJUNCTIVE RELIEF
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I. PRELIMINARY STATEMENT

This is an action to have the documentary proof of citizenship and polling place identification requirements of the “Arizona Taxpayer and Citizen Protection Act” (which appeared on the ballot in November 2004 as Proposition 200 and is referred to herein as “the Act”), amended Sections 16-152, 16-166, and 16-579 of the Arizona Revised Statutes, declared unconstitutional both facially and as applied, and to enjoin the further enforcement of these provisions of the Act on the ground that they impose an unauthorized and unnecessary burden on the fundamental right to vote in violation of the Fourteenth and Twenty-Fourth Amendments to the U.S. Constitution; the Civil Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(A) and (a)(2)(B); and Section 2 of the Voting Rights Act of 1965, 42.U.S.C. § 1983(a). In addition, this action seeks declaratory and injunctive relief to enforce compliance with the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-4(a), which mandates that states “shall use and accept” the Federal Mail Voter Registration Form to register voters.

II. PARTIES

A. Plaintiffs

1. Plaintiff **Hopi Tribe** is a federally recognized Indian Tribe exercising powers which the Tribe now has under existing law or which were recognized by Congress by the Act of June 18, 1934. The Tribal Council is the governing body of the Hopi Tribe, duly recognized by the Secretary of Interior. The Council represents and speaks for the Hopi Tribe on all matters for the benefit and general welfare of the

1 Tribe and its Members. The Board of Elections of the Hopi Tribe conducts voter
2 registration, educates Tribal Members about voter registration, encourages Tribal
3 Members to exercise their right to vote, and works to ensure the voting rights of Hopi
4 people in State, Federal and County elections. Voter registration is conducted in large
5 part on the Hopi reservation, which is in an isolated, rural area. Many Hopi Tribal
6 Members lack the identification required by the Act for registration and voting at the
7 polling place. Moreover, obtaining the necessary identification will cause financial
8 hardship because Tribal Members will have to expend time and money procuring the
9 identification from designated agencies, most of which are at a great distance from the
10 Hopi reservation. The Hopi Board of Elections uses the Federal Mail Voter
11 Registration Form required by the National Voter Registration Act.
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15 2. Plaintiff **League of Women Voters of Arizona** (“LWVAZ”) is a
16 nonpartisan political organization whose mission includes encouraging the informed
17 and active participation by citizens in government at all levels, including the
18 protection of the right of all citizens to vote and the education of voters about voting
19 rights and procedures. LWVAZ has engaged and will engage in registering voters in
20 Arizona. LWVAZ’s voter registration efforts include registering voters at public
21 events (such as street fairs), school events (such as parents’ night at schools) and
22 door-to-door.
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24

25 3. Plaintiff **Inter Tribal Council of Arizona, Inc.** (“ITCA”) is a private,
26 non-profit Arizona corporation established to provide its 20 member Tribes in
27 Arizona with a means for action on matters that affect them collectively and
28

1 individually. ITCA's mission is to provide its member tribes with a united voice and
2 the means for united action on matters that affect them collectively or individually; to
3 be the voice of the Member Tribes in bringing about Indian involvement and self-
4 determination in order to improve the general welfare; to eliminate prejudice and
5 discrimination against Indians and to improve the image of Indians held by non-
6 Indians; to promote community development and enhance the quality of life for our
7 Tribal members living in our communities; to empower our youth to be healthy in
8 body, mind, and spirit and to make positive contributions for the well being of our
9 communities; to defend human and civil rights as protected by law; to educate Indians
10 and non-Indians about matters of concern to the Indians in Arizona through such
11 means as public discussion groups, forums, panels, lectures, or any means possible
12 and appropriate. ITCA's members include 20 Arizona Indian Tribes, Nations, and
13 Communities, and each Tribe is represented in ITCA by its highest elected official.
14 The Tribes are recognized by the United States under the Constitution by Treaties,
15 Statutes, Executive Orders, the Secretary of the Interior and other actions by the
16 United States. ITCA member Tribes occupy Reservations with land areas (including
17 the Navajo Nation) of approximately a third of Arizona, or about 25 million acres.
18 Indians were recognized as citizens of the United States by the Act of June 2, 1924,
19 43 Stat. 253, 8 U.S.C. § 3. The ITCA operates projects and facilitates the formulation
20 of public policy designed to strengthen the self-determination of Indian Tribal
21 governments. For decades, ITCA has been involved in promoting Native American
22 voting rights in Arizona and providing voter education programs for its Members.
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1 Many individuals in the ITCA’s member Tribes cannot register to vote because they
2 lack the identification required by the Act. Moreover, many individuals in the
3 member Tribes cannot cast a ballot on election day because they lack the polling place
4 identification required by the Act. Moreover, obtaining the necessary identification
5 will cause financial hardship because individuals in ITCA’s member Tribes will have
6 to expend time and money procuring the identification from various agencies, some of
7 which are at a great distance from the reservations of the member Tribes.
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10 4. Plaintiff **League of United Latin American Citizens (“LULAC”)**
11 **Arizona** is an Arizona-based branch of the organization founded in 1929 to advance
12 the economic condition, educational attainment, political influence, health and civil
13 rights, including voting rights, of the Hispanic population of the United States.
14 LULAC’s activities in the state of Arizona include voter education and registration.
15 LULAC registers voters in Arizona at registration drives outside of retail stores,
16 sporting venues, nightclubs, and at community parades and events. LULAC members
17 will be affected by the Act’s identification requirements.
18
19

20 5. Plaintiff **Arizona Advocacy Network (“AzAN”)** is a coalition of
21 nonprofit public interest organizations dedicated to increasing citizen participation in
22 the political process. AzAN promotes social, economic, racial and environmental
23 justice by connecting and building power among activists and leaders in those fields,
24 and by leading efforts for electoral justice and increased civic participation. Towards
25 that end, AzAN’s scope of work includes, among other goals, protecting and
26 improving citizen access to voting by working to diminish limitations and restrictions
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28

1 on registration and voting, extending registration to vote up to and including election
2 days, promoting voting by mail, and ending the requirement of documentary proof of
3 citizenship at polling places and for voter registration. AzAN has conducted and will
4 conduct voter registration in Arizona, and is particularly focused on registering
5 underrepresented communities and thereby engaging those communities in civic
6 participation.
7

8
9 6. Plaintiff **People For the American Way (“PFAWF”) Foundation** is a
10 nonpartisan non-profit corporation committed to promoting values and institutions
11 that sustain a diverse democratic society and an informed electorate, and whose
12 efforts include voter education and registration in Arizona through a project focused
13 on Hispanic citizens. PFAWF has conducted and will conduct voter registration in
14 Arizona.
15

16 7. Plaintiff **Steve M. Gallardo** is an Arizona State House Representative
17 for District 13. Mr. Gallardo was elected in 2002. Mr. Gallardo engages in election
18 campaigns, seeks the votes of eligible, registered voters, and seeks to ensure that the
19 voting rights of all eligible citizens are protected, and that no eligible voters are
20 discouraged or prevented from registering to vote or casting a ballot. Mr. Gallardo
21 seeks to correctly inform eligible citizens about the identification required to register
22 to vote, and to correctly inform registered voters about the identification necessary to
23 cast a ballot. Voters who would vote for Mr. Gallardo in upcoming elections, but lack
24 the registration and/or polling place identification required by the Act, will not be able
25 to cast their vote for Mr. Gallardo. As a result, Mr. Gallardo will receive fewer votes.
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1 Some of Mr. Gallardo's constituents cannot register because they lack the
2 identification required by the Act. Some of Mr. Gallardo's constituents cannot cast a
3 ballot because they lack the polling place identification required by the Act.
4 Obtaining the necessary identification will cause financial hardship because such
5 constituents will have to expend time and money procuring the identification required
6 by the Act from various designated agencies. Finally, some of Mr. Gallardo's
7 constituents, who have secured or could secure the identification required by the Act,
8 through inadvertence, may prove unable to present the identification required by the
9 Act at the time of voting.

12 8. ITCA, the Hopi Tribe, and LULAC have members who would have
13 standing to sue in their individual right for the allegations set forth in the Complaint,
14 the interests that ITCA, the Hopi Tribe, LULAC and their members seek to protect in
15 the Complaint are germane to the purpose of each of each organization, and neither
16 the claim nor the relief sought requires participation by the individual members of
17 ITCA, the Hopi Tribe, and LULAC.

19 **C. Defendant**

20 9. **Secretary of State Jan Brewer** is in her official capacity as the
21 Secretary of State of Arizona, in which capacity she is the chief state election officer
22 under A.R.S. § 16-142.

23 **III. JURISDICTION AND VENUE**

24 10. This case arises under the Constitution, laws, or treaties of the United
25 States. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§
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1 1331, 1343(a)(3) and (4) § 1361, and 28 U.S.C. § 1367(a), and 42 U.S.C. §§ 1971(d),
2 1973j(f) and 1983. This Court has jurisdiction to grant both declaratory and
3 injunctive relief under 28 U.S.C. §§ 2201 and 2202.
4

5 11. Venue in this district and division is proper under 28 U.S.C. § 1391(b)
6 because defendant Brewer resides and may be found in this district, and a substantial
7 part of the events giving rise to the claim occurred in this district.
8

9 **IV. FACTUAL ALLEGATIONS**

10 **A. Pre-Existing Arizona Law**

11 12. Arizona has a history of widespread and persistent discrimination in
12 voting through practices and procedures that unconstitutionally interfere with the
13 fundamental right to vote guaranteed by the Constitution. In 1975, Congress
14 recognized Arizona's discriminatory by requiring Arizona to prove that proposed
15 voting changes do not deny or abridge the right to vote on account of race, color, or
16 membership in a language minority group pursuant to Section 5 of the Voting Rights
17 Act. 42 U.S.C. § 1973c.
18

19 13. Prior to the enactment of the Act, a person registering to vote in Arizona
20 was required to sign a statement declaring that he or she is a United States citizen and
21 acknowledging that executing a false registration is a class 6 felony. Registrants were
22 not required to submit other documentary proof of United States citizenship with their
23 registration applications. A.R.S. § 16-152 (amended 2004).
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1 14. Prior to 2003, registered voters in Arizona were not required to present
2 any form of identification at the polls as a condition of casting a ballot. A.R.S. § 16-
3 579 (amended 2004).
4

5 15. Effective November 2003, A.R.S. §16-579 was amended in order to
6 comply with the requirements of the Help American Vote Act. The amendments
7 provided that if a statewide voter registration database was not yet operational at the
8 time of an election, certain identification requirements would apply to voters who
9 registered by mail after January 1, 2003 or reregistered by mail after that date after
10 moving from one Arizona county to another.
11

12 **B. The Arizona Taxpayer and Citizen Protection Act (“Proposition 200”)**

13 16. In November 2004, Arizona voters approved the Arizona Taxpayer and
14 Citizen Protection Act (“Proposition 200”), a ballot initiative which, according to the
15 “findings and declaration” section of the initiative, was designed to “discourage
16 illegal immigration.” The Act in large measure addresses issues unrelated to voting,
17 namely: requiring that state and local governments verify the identity of applicants
18 for certain public benefits, and requiring that government employees report alleged
19 violations of immigration law by applicants for public benefits. The Act also amended
20 three sections of the Arizona Revised Statutes pertaining to voting: A.R.S. §§ 16-152,
21 16-166, and 16-579. The Act imposed a new proof of citizenship requirement for
22 voter registration, as well as new requirements for presenting identification at the
23 polling place in order to receive and cast a ballot.
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1 verified with the United States Immigration and Naturalization Service by the County
2 Recorder.

3 e) Other documents or methods of proof that are established
4 pursuant to the Immigration Reform and Control Act of 1986.

5 f) The applicant's Bureau of Indian Affairs card number, Tribal
6 treaty number or Tribal enforcement number. A.R.S. § 16-166(F).

7
8 18. The Act includes a "grandfather" clause that provides that a person who
9 was registered to vote in Arizona on the effective date of the amendment to A.R.S. §
10 16-166 is deemed to have provided satisfactory evidence of citizenship, and is not
11 required to resubmit evidence of citizenship unless he or she changes voter
12 registration from one county to another. A.R.S. § 16-166(G).

13
14 19. A.R.S. § 16-166(F), as amended by the Act, further provides that proof
15 of voter registration from another state or Arizona county is not satisfactory evidence
16 of citizenship. Therefore, an individual who moves from one Arizona county to
17 another Arizona county must resubmit "satisfactory evidence" of United States
18 citizenship in order to register to vote in his or her new county of residence. A.R.S.
19 §§ 16-166(H).

20
21 20. Because Arizona is covered under § 5 of the Voting Rights Act, it
22 cannot implement a change in voting absent federal preclearance. Arizona's proof of
23 citizenship requirement for voter registration was precleared by the U.S. Department
24 of Justice on January 24, 2005, and the Arizona Voter Registration Form was
25 precleared on May 6, 2005. Preclearance does not bar a subsequent action to enjoin
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1 enforcement of a voting qualification, standard, practice or procedure. 42 U.S.C. §
2 1973(c).

3
4 ***The New Polling Place Identification Requirements***

5 21. The Act also amended A.R.S. § 16-579 to require that all registered
6 Arizona voters appearing at the polls to vote must satisfy new identification
7 requirements before they will be allowed to cast a ballot. A voter who appears at a
8 polling place to cast a ballot must present either one form of identification that bears
9 the name, current address, and photograph of the voter, or two other forms of
10 identification that bear the name and current address of the voter. A.R.S. § 16-
11 579(A).
12

13 22. Defendant Brewer has promulgated rules to implement the polling place
14 identification requirements of the Act. These regulations were precleared by the
15 Department of Justice on October 7, 2005.
16

17 23. In a document entitled, “Procedure for Proof of Identification at the
18 Polls,” dated September 6, 2005, posted on the Secretary of State’s website, the forms
19 of polling place identification deemed “acceptable” by the Secretary of State are
20 identified as follows:
21

22 **Acceptable forms of identification with photograph, name, and address of**
23 **the elector**

- 24
- 25 • Valid Arizona driver license
 - 26 • Valid Arizona nonoperating identification license
 - 27 • Tribal enrollment card or other form of Tribal identification
 - 28 • Valid United States federal, state, or local government issued identification

1 **Acceptable forms of identification without a photograph that bear the**
2 **name and address of the elector (two required)**

- 3 • Utility bill of the elector that is dated within ninety days of the
4 date of the election. A utility bill may be for electric, gas, water,
5 solid waste, sewer, telephone, cellular phone, or cable television
6 • Bank or credit union statement that is dated within ninety days of
7 the date of the election
8 • Valid Arizona Vehicle Registration
9 • Indian Census Card
10 • Property tax statement of the elector’s residence
11 • Tribal enrollment card or other form of Tribal identification
12 • Vehicle insurance card
13 • Recorder’s Certificate
14 • Valid United States federal, state, or local government issued
15 identification, including a voter registration card issued by the
16 county recorder.

17 The identification set forth above is “valid” unless it can be determined on its face
18 that it has expired.

19 According to the above-referenced document, “Procedure for Proof of
20 Identification at the Polls,” the foregoing list of “acceptable” proof of identification is
21 not exhaustive. However, other forms of identification not on the foregoing list must
22 be deemed acceptable by the county official in charge of elections and must establish
23 the identity of the elector in accordance with the requirements of A.R.S. § 16-579(A).

24 24. According to the Secretary of State’s regulations, electors who do not
25 provide the identification required by A.R.S. § 16-579(A) must be issued a
26 provisional ballot, and must be instructed by a poll worker that, in order for the
27 provisional ballot to be processed and counted, the elector must provide the
28 identification required by A.R.S. § 16-579(A) to the county recorder’s office by 5:00

1 p.m. on the fifth business day after a general election that includes an election for
2 federal office or 5:00 p.m. on the third business day after any other election.

3
4 25. The new identification requirements imposed by the Act apply only to
5 registered voters who vote *in person* on Election Day. The Arizona Taxpayer and
6 Citizen Protection Act did not affect Arizona's early voting provisions.

7
8 26. All Arizona elections must provide for early voting and any qualified
9 elector may vote by early ballot. A.R.S. § 16-541. Except for first-time voters as set
10 forth in A.R.S. § 16-542(A), electors who vote by early ballot are not required to
11 satisfy the identification requirements imposed by the Act. Rather, to obtain an early
12 ballot, a voter is required only to submit along with his or her request for an early
13 ballot "the date of birth and state or country of birth or other information that if
14 compared to the voter registration information on file would confirm the identity of
15 the elector." A.R.S. § 16-542(A). After the voter completes the early ballot and
16 executes an affidavit on an accompanying envelope that attests to the voter's identity,
17 the early voter may deliver or mail the ballot to the county recorder or other officer in
18 charge of elections. A.R.S. § 16-547, 16-548. The county recorder is required to
19 review the signature on the completed affidavit to ensure that it corresponds to the
20 signature of the elector on his or her registration form, and if the voter's affidavit is
21 sufficient, the vote shall be allowed. A.R.S. § 16-550, 16-552(A). Except as noted
22 above, an early voter is not required to satisfy the polling place identification
23 requirements imposed by the Act. Moreover, according to the Secretary of State's
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1 regulations, “[a]n elector who is dropping off his or her early ballot at a precinct
2 voting location is not required to show identification.”

3
4 **C. Proposition 200’s Proof of Citizenship and Polling Place Identification**
5 **Requirements Impose an Unnecessary and Undue Restriction on the**
6 **Fundamental Right to Vote**

7 27. The proof of citizenship requirement of the Act, A.R.S. §§ 16-152 and
8 16-166, as amended, imposes an unnecessary and undue burden on the exercise of the
9 fundamental right to vote of thousands of citizens of Arizona who are fully eligible
10 and qualified to register to vote, but who either do not possess or are unable to access
11 the documents specified as “satisfactory evidence” of citizenship by A.R.S. § 16-
12 166(F), as amended, and, accordingly, will be disenfranchised. Individual members
13 of LULAC, the Hopi Tribe, and individuals in ITCA’s member Tribes will be injured
14 by the Act’s proof of citizenship requirements, for the reasons discussed below.

15 28. Indian reservations in Arizona, including the reservation of ITCA
16 Member Tribes, encompass approximately 25 million acres. Thousands of individual
17 Members of the ITCA’s Member Tribes who are residents of the reservations live in
18 remote areas, and many have no running water, electricity, telephone, gas services,
19 bank accounts, home addresses, drivers’ licenses, automobiles, or access to public
20 transportation. The ITCA Tribes have the highest unemployment rates in the nation.
21 Unemployment ranges up to 82% on some reservations. Many Members of the
22 ITCA’s Member Tribes live in such poor housing conditions that paper documents
23 proving citizenship are difficult to impossible to preserve.
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1 29. Thousands of citizens of Arizona are eligible and qualified to register to
2 vote, but do not have one of the items required by § 16-166(F): a driver’s license or
3 non-operating identification license issued after October 1, 1996 by Arizona or
4 another state indicating citizenship; a photocopy of a birth certificate or a passport;
5 naturalization or other documents established pursuant to the Immigration Reform and
6 Control Act of 1996; or Tribal documentation. Many U.S. citizens, by necessity or
7 choice, do not have driver’s licenses. Moreover, many citizens do not have passports,
8 either because their health or financial situation makes it difficult for them to travel
9 abroad, or simply because they choose not to. Many citizens, furthermore, either do
10 not possess or do not have access to a copy of their birth certificate. In addition, the
11 naturalization or Tribal documentation referenced in § 16-166(F) may not be
12 applicable to many Arizona citizens.

16 30. While the new voter registration provisions of the Act will burden all
17 registrants, compliance with these provisions will impose an especially difficult
18 obstacle for citizens who are eligible and qualified to register, but who are: (a) poor
19 and therefore do not own a vehicle, do not have a passport because they cannot afford
20 to travel abroad, and do not have possess or have access to a birth certificate; (b)
21 elderly and no longer drive, no longer have a passport because they do not travel
22 abroad, and do not possess or have access to a birth certificate; (c) physically disabled
23 and therefore do not drive, and either by necessity or choice do not travel abroad on a
24 passport, and do not possess or have access to a birth certificate; (d) residents of
25 retirement and nursing homes who, by choice or necessity, do not have driver’s
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1 licenses or passports, and do not possess or have access to a birth certificate; (e)
2 married women who have changed their names; and (f) individuals who live in rural
3 areas for whom providing a photocopy of the required documentation would impose a
4 hardship.
5

6 31. Moreover, the Act's requirement that citizens provide documentary
7 proof of citizenship in order to register will significantly hamper the voter registration
8 efforts of organizations that conduct voter registration in Arizona, including plaintiffs
9 the Hopi Tribe, LWVAZ, LULAC, AzAN, PFAWF, and ITCA. The Act's citizenship
10 documentation requirement will make it extremely difficult for voter registration
11 organizations to register individuals in public places (such as shopping malls, fairs,
12 etc.) because individuals typically do not carry birth certificates or passports on their
13 persons, and because of the general unavailability of photocopying machines at such
14 public places. Moreover, the Act's citizenship documentation requirement will make
15 it extremely difficult for voter registration organizations to conduct door-to-door voter
16 registration drives because households typically do not have photocopying machines,
17 and such machines cannot be moved from house to house. In sum, the Act limits the
18 number of persons who can be registered, and hinders the organizations' ability to
19 conduct voter registration.
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23 32. The Act will deplete the resources of voter registration organizations
24 who will be forced to copy, assist in copying, and transport for copying
25 documentation establishing citizenship, such as birth certificates and passports. The
26 Plaintiff organizations, including the ITCA, Hopi Tribe, LWVAZ, LULAC, AzAN,
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1 PFAWF, and ITCA will be required to shift limited resources away from their
2 respective existing programs and voting outreach efforts and apply such resources to
3 helping their members comply with the Act's identification requirements. Plaintiff
4 organizations, including the Hopi Tribe, LWVAZ, LULAC, AzAN, PFAWF, and
5 ITCA's have an interest in accurately informing their members and constituencies of
6 the identification required to register to vote and to cast a ballot. This ability is
7 hindered by the Act's requirements, and by Secretary Brewer's refusal to use the
8 Federal Mail Voter Registration Form prescribed by the U.S. Election Assistance
9 Commission for registration of voters in federal elections, as described more fully
10 below.

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14 33. The new polling place identification requirements of A.R.S. § 16-579,
15 as amended, as well as the Secretary of State's implementing regulations, also impose
16 an unnecessary and undue burden on the exercise of the fundamental right to vote of
17 thousands of qualified voters in Arizona who do not possess or are unable to access
18 the documents deemed "acceptable" proof of identification, including members of
19 LULAC, the Hopi Tribe, and the individual members of the ITCA's member Tribes.

20
21 34. Thousands of Arizona citizens are eligible and qualified voter
22 registrants but have neither a form of photo identification with a current address, nor
23 two forms of non-photo identification with a current address, that have been deemed
24 "acceptable" by defendant Brewer or their county election official. Many registered
25 and qualified electors do not have a driver's license, or do not have a driver's license
26 with a current address. Moreover, many qualified electors do not possess photo
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1 identification issued by the federal, state or local government with a current address.
2 With respect to non-photo identification, many electors – including those who are
3 poor and/or elderly, who live in assisted living facilities, who live on reservations
4 and/or in rural areas without conventional addresses, who do not possess a vehicle or
5 real property, and who do not have a bank account or utility account in their own
6 name – will be unable to present the identification required at the polling place and,
7 accordingly, will be disenfranchised.
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10 35. The burdens imposed by the polling place identification requirement
11 affect a wide spectrum of Arizona’s registered voters, such as:

12 1) Voters who are poor, do not own a vehicle, and lack a driver’s license
13 or other government-issued photo identification, and therefore are very unlikely to
14 have a vehicle insurance card or Arizona vehicle registration, and are less likely to
15 have two recent utility bills or bank statements in their names;
16

17 2) Residents of assisted living facilities who may not have driver’s
18 licenses, either because they are unable to drive or simply choose not to, and are
19 less likely to have vehicle insurance cards, vehicle registration documents, or recent
20 utility bills in their names.
21

22 3) Registered voters who do not drive and whose household utility bills
23 and other documents are in the name of the voter’s spouse;
24

25 4) Native American voters, particularly those who live on reservations
26 and/or in rural areas, and who may not have conventional addresses or documents
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1 bearing their address, and who may not have bank statements or utility bills in their
2 name;

3
4 5) Students who do not drive and whose student identification cards lack
5 addresses and/or are issued by private colleges or universities, and who do not have
6 utility bills in their names because they share such costs with parents and/or
7 roommates; and

8
9 6) Women who recently married and changed their name but whose
10 identification documents do not yet reflect that change.

11 **D. The Fees Necessary to Obtain the Documents Deemed To Be “Satisfactory**
12 **Evidence” of Citizenship by A.R.S. § 16-166(F), and “Acceptable” Proof of**
13 **Identification Pursuant to A.R.S. § 16-579 Are a Poll Tax On the Right to Vote**

14 36. The fees necessary to obtain the documents deemed to be “satisfactory
15 evidence” of citizenship by A.R.S. § 16-166, as amended, and “acceptable” proof of
16 identification under A.R.S. § 16-579, as amended, constitute a poll tax on the right to
17 vote because, for individuals lacking these documents, including members of the Hopi
18 Tribe, LULAC and individuals in the ITCA’s member Tribes, such fees are a
19 financial condition for the right to vote.
20

21 37. Arizona citizens who are qualified and eligible and desire to register to
22 vote, but who lack one of the documents evidencing citizenship required by A.R.S. §
23 16-166, and for whom the naturalization, immigration and Tribal documents
24 referenced in that provision are inapplicable, will be required to either: (a) apply for
25 an Arizona driver’s license or state identification card by traveling to a Motor Vehicle
26 Division office, presenting required identification (such as an original birth certificate
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1 or Social Security card), and paying a fee that ranges from ten dollars (\$10.00) to
2 twenty-five dollars (\$25.00), depending on the applicants age; (b) apply for a birth
3 certificate copy from the Arizona Division of Public Health Services (or the
4 equivalent agency of the person's state of birth), which application must include a
5 copy of government-issued photo identification (such as a driver's license) and
6 payment of fifteen dollars (\$15.00) for births occurring prior to 1990; or (c) apply for
7 a U.S. passport by traveling to a designated office, presenting appropriate
8 documentation (such as a birth certificate), and two photographs, and paying ninety-
9 seven dollars (\$97.00) in fees and surcharges.

12 38. Arizona citizens who are registered to vote and desire to cast a ballot at
13 the polling place on election day, but who lack one of the polling place identification
14 documents deemed "acceptable" under A.R.S. 16-579, will be required to either: (a)
15 apply for an Arizona driver's license or state identification card by undergoing the
16 process and paying the fees described above; or (b) open a utility account or bank
17 account in their name and paying the associated fees. Even registered voters who
18 have driver's licenses or non-operating licenses may not have updated the cards to
19 reflect their current address, as this is not required by Arizona law; doing so will
20 require payment of a four dollar (\$4.00) fee.

23 39. The new voting registration and voting provisions of the Act impose an
24 undue burden on the right of voters, including individual members of LULAC, the
25 Hopi Tribe, and ITCA's member Tribes, who will be required to expend time and
26

1 money in order to obtain the specified documents needed to register to vote and cast a
2 ballot.

3
4 **E. Arizona’s Asserted Interest in “Discouraging Illegal Immigration” Does Not**
5 **Justify the Severe Burden on the Fundamental Right to Vote Imposed by the**
6 **Arizona Taxpayer and Citizen Protection Act**

7 40. The Supreme Court has held that:

8 A court considering a challenge to a state election law must
9 weigh “the character and magnitude of the asserted injury to the rights
10 protected by the [Constitution] that the plaintiff seeks to vindicate”
11 against “the precise interests put forward by the State as justifications
12 for the burden imposed by the rule,” taking into consideration “the
13 extent to which those interests make it necessary to burden the
14 plaintiff’s rights.”

15 *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)(quoting *Anderson v. Celebrezze*,
16 460 U.S. 780, 789 (1983); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208,
17 213-14 (1986)).

18 41. The state interest put forward by the proponents of the Arizona
19 Taxpayer and Citizen Protection Act in the ballot measure’s “findings and
20 declaration” section relate to the purported economic hardship to the State caused by
21 the provision of public benefits to undocumented immigrants. The “findings and
22 declaration” section of the Act asserts: “Therefore, the people of this state declare
23 that the public interest of this state requires all public agencies within this state to
24 cooperate with federal immigration authorities to discourage illegal immigration.”
25 Nowhere in its “findings and declaration” section does Proposition 200 mention
26 voting.

27 42. The burden upon Arizona citizens’ right to vote imposed by the Act’s
28 new proof of citizenship requirement for voter registration is unnecessary, and

1 unjustified by evidence of significant voting by “illegal immigrants” or non-citizens
2 in Arizona.

3
4 43. There is no evidence that the procedures in place prior to the enactment
5 of the Act for preventing undocumented immigrants or non-citizens from voting were
6 inadequate. In this regard, the Federal Mail Voter Registration Form (“Federal
7 Registration Form” or “Federal Form”) prescribed by the U.S. Election Assistance
8 Commission (“EAC”), which states are required to use and accept for the registration
9 of voters in elections for federal office pursuant to the National Voter Registration
10 Act (“NVRA”), 42 U.S.C. § 1973gg-4(a), does not require a registrant to provide
11 documentary evidence of citizenship.
12

13
14 44. Arizona law already protects against the unauthorized voter registration
15 of undocumented immigrants or non-citizens. Arizona law, both prior to the
16 enactment of Proposition 200 as well as currently, criminalizes the false voter
17 registration of persons not entitled to register. Under A.R.S. § 16-182, “[a] person
18 who knowingly causes, procures or allows himself to be registered as an elector of
19 any county, city, town, district or precinct, knowing that he is not entitled to such
20 registration, or any person who knowingly causes or procures another person to be
21 registeredknowing that such other person is not entitled to such registration,is
22 guilty of a class 6 felony.” A.R.S. § 16-183. The term of imprisonment for a class 6
23 felony is one year. A.R.S. § 13-701(C)(5).
24

25
26 45. There is no evidence that the procedures in place prior to the Act for
27 preventing undocumented immigrants or non-citizens from registering to vote resulted
28

1 in substantial numbers of undocumented immigrants or non-citizens on the voting
2 rolls. Moreover, to the extent that undocumented immigrants or non-citizens were
3 registered to vote as a result of procedures in effect prior to the enactment of the Act
4 (which plaintiffs dispute), the Act is a wholly ineffective and inappropriate solution
5 due, in part, because of the Act’s “grandfather” clause. Pursuant to the Act, a person
6 who was registered to vote in Arizona on the effective date of the amendment to
7 A.R.S. § 16-166 is deemed to have provided satisfactory evidence of citizenship, and
8 is not required to resubmit evidence of citizenship. A.R.S. § 16-166(G). If the
9 procedures in place prior to the enactment of the Act resulted in undocumented
10 immigrants and non-citizens being included on the voter registration rolls, it makes no
11 sense for the State to grandfather in these alleged undocumented immigrants and non-
12 citizens by specifically exempting them from the requirement of producing
13 documentation of citizenship.

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17 46. Even if the citizenship documentation provision of the Act had been
18 truly intended to prevent undocumented immigrants or non-citizens from registering
19 to vote, the citizenship documentation provision is overbroad and not narrowly
20 tailored. It is overbroad because it applies to and burdens the right to vote of the
21 overwhelming majority of qualified and eligible citizens who attempt to register to
22 vote in order to prevent a hypothetical miniscule fraction of people from illegally
23 registering. Moreover, it is not narrowly tailored to prevent or deter continued voting
24 by any alleged undocumented immigrants or non-citizens who were registered prior to
25 the effective date of Proposition 200.
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1 47. The burden upon Arizona citizens' right to vote imposed by the Act's
2 new polling place voter identification provisions is unnecessary, and unjustified by
3 evidence of significant voting by undocumented immigrants or non-citizens in
4 Arizona, or other fraudulent voting.
5

6 48. There is no evidence of substantial numbers of undocumented
7 immigrants or non-citizens voting in Arizona elections. Even if such evidence existed
8 (which Plaintiffs dispute), the Act's polling place voter identification requirements are
9 not an effective or appropriate solution to prevent such illegal voting because many of
10 the documents deemed acceptable proof of identification under A.R.S. § 16-579 (e.g.,
11 utility bills, bank statements), do not establish U.S. citizenship.
12

13 49. To the extent that the State attempts to justify the polling place voter
14 identification requirements of the Act on the grounds that they are necessary to
15 prevent voter fraud in general, there is no evidence of such fraud in Arizona that
16 would justify the disenfranchisement of Arizona citizens caused by the polling place
17 identification requirements. Specifically, there is no evidence of substantial numbers
18 of voters in Arizona appearing at polling places and impersonating registered voters,
19 such that the restrictive and disenfranchising identification requirements of the Act
20 are justified.
21

22 50. There is no evidence that existing provisions of Arizona law have been
23 ineffective in deterring and preventing imposters from fraudulently obtaining and
24 casting ballots at the polls by misrepresenting their true identities to election officials
25 and passing themselves off as registered voters whose names appear on the official
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1 voter registration list. Pursuant to Arizona law, a person who, not being entitled to
2 vote, knowingly votes, is guilty of a class 5 felony, punishable by imprisonment for
3 one and one-half years. A.R.S. § 16-1016, § 13-701. Thus, fraudulent voting was
4 already prohibited by existing Arizona law without unduly burdening the right of a
5 citizen to vote.
6

7 51. Even if there were evidence in Arizona of significant voter fraud by
8 impersonation of registered voters (which plaintiffs dispute), the Arizona Taxpayer
9 and Citizen Protection Act is not an effective or appropriate solution to prevent such
10 fraud because it creates a loophole for early voters. With the exception of first-time
11 voters as set forth in A.R.S. § 16-542(A), electors who vote by early ballot in Arizona
12 are not required to satisfy the identification requirements imposed by the Act, and
13 thus the Act is ineffective at preventing fraudulent voting by imposters.
14
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16 52. Even if the polling place voter identification provision of the Act had
17 been truly intended to prevent fraudulent voting by imposters (which plaintiffs
18 dispute), the polling place identification provision is overbroad and not narrowly
19 tailored. It is overbroad because it applies to and burdens the right to vote of the
20 overwhelming majority of citizens who cast their ballots in person at the polling place
21 in order to prevent a hypothetical miniscule fraction of people from fraudulently
22 casting ballots by misrepresenting their identities to poll workers. Moreover, it is not
23 narrowly tailored to prevent or deter fraudulent voting by early voting.
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26 53. In summary, the amendments to Arizona's election laws brought about
27 by the Act do nothing to further the State's purported interest in "discouraging illegal
28

1 immigration.” Nor is there evidence of unauthorized voting by undocumented
2 immigrants or non-citizens, or voter fraud generally, that would justify these
3 substantial burdens on the fundamental right to vote. Even if the proof of citizenship
4 and polling place voter identification provisions of the Act had been truly intended to
5 effect legitimate state interests relating to voter registration and voting, those
6 provisions are overbroad and are not narrowly tailored.
7

8
9 **F. The Arizona Taxpayer and Citizen Protection Act Will Have A Disparate
Impact on Native American and Latino Voters**

10 54. The voter registration and voting provisions of the Act will have a
11 disparate impact on the ability of voter registrants and voters who are Latino or Native
12 American, because Latinos and Native Americans in Arizona, on average, are (a) less
13 affluent than whites, when evaluated through a number of statistical measures,
14 including median household income, per capita income, and percent of persons below
15 the poverty line and (b) are less likely to own or have access to a motor vehicle than
16 whites according to recent data published by the U.S. Census Bureau. Moreover,
17 Native Americans are more likely to live in rural locations at a greater distance to the
18 polls, and have unconventional addresses or no formal street address at all.
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22 **G. The National Voter Registration Act Requires States to Accept the
Federal Mail Voter Registration Form, and Does Not Permit A State to
23 Condition Acceptance of the Form on Submission of Supplemental Evidence of
24 Citizenship**

25 55. States are required by the National Voter Registration Act (“NVRA”),
26 42 U.S.C. § 1973gg-4(a), to accept and use the Federal Mail Voter Registration Form
27 (“Federal Registration Form” or “Federal Form”) prescribed by the U.S. Election
28

1 Assistance Commission (“EAC”) for the registration of voters in elections for Federal
2 office. 42 U.S.C. §1973gg-4(a). The Federal Registration Form prescribed by the
3 EAC requires that a registrant attest that he or she is a United States citizen, but does
4 not require the registrant to supplement the Federal Form with documentary evidence
5 of citizenship.
6

7 56. By letter to defendant Brewer, dated March 6, 2006, from the EAC’s
8 Executive Director, Thomas R. Wilkey, the U.S. Election Assistance Commission
9 rejected a request by defendant Brewer’s office to apply the proof of citizenship
10 requirements derived from the Arizona Taxpayer and Citizen Protection Act to the
11 Federal Form registration process. The EAC advised defendant Brewer that “[n]o
12 state may condition acceptance of the Federal Form upon receipt of additional proof”
13 of voter qualification. Accordingly, the EAC advised defendant Brewer that “Arizona
14 may not refuse to register individuals to vote in a Federal election for failing to
15 provide supplemental proof of citizenship, if they have properly completed and timely
16 submitted the Federal Registration Form,” and that Arizona’s refusal to register such
17 individuals would violate the NVRA.
18
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21 57. Notwithstanding the EAC’s rejection of defendant Brewer’s request that
22 Arizona be permitted to condition acceptance of the Federal Form upon submission of
23 supplemental evidence of citizenship, defendant Brewer subsequently advised the
24 EAC Chairman, Paul S. DeGregorio, by letter dated March 13, 2006, that she “will
25 instruct Arizona’s county recorders to continue to administer and enforce the
26 requirement that all voters provide evidence of citizenship when registering to vote as
27
28

1 specified in A.R.S. § 16-166(F).” On March 13, 2006, State Election Director Joseph
2 Kanefield stated via email to all County Recorders that “Secretary Brewer’s position
3 [is] that the proof of citizenship requirement set forth in A.R.S. § 16-166(F) must
4 continue to be enforced for all newly registered voters and voters moving from one
5 county to another. Secretary Brewer made this decision after consulting with the
6 Arizona Attorney General.”
7

8
9 58. By letter dated March 22, 2006, counsel for plaintiffs LULAC, PFAWF
10 and Rep. Gallardo notified defendant Brewer pursuant to 42 U.S.C. §1973gg- 9(b) of
11 plaintiffs’ intent to bring a civil action on behalf of aggrieved persons under the
12 National Voter Registration Act, based upon defendant Brewer’s refusal to accept,
13 and her instructions to Arizona’s county recorders not to accept, the Federal
14 Registration Form.
15

16 59. A civil action may be brought in an appropriate district court for
17 declaratory or injunctive relief with respect to a violation of the NVRA if a state’s
18 chief election officer fails to correct the violation within 90 days after receiving notice
19 of such violation. If the violation occurs within 120 days after the date of an election
20 for federal office, an action may be brought within 20 days after the chief election
21 officer’s receipt of notice of the violation. 42 U.S.C. §1973gg- 9(b).
22

23
24 60. On August 10, 2006 – less than 120 days before the filing of this
25 complaint – early voting will begin for federal primary election in Arizona.
26
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1 The right of citizens of the United States to vote in any primary or
2 general election for President or Vice President, for electors for
3 President or Vice President, or for Senator or Representative in
4 Congress, shall not be denied or abridged by the United States or any
State by reason of failure to pay a poll tax or other tax.

5 By virtue of its prohibition of *abridgment* as well as denial of the
6 right to vote, “the Twenty-fourth nullifies sophisticated as well as simple-
7 minded modes of impairing the right to vote.” *Harman v. Fossenius*, 380 U.S.
8 528, 540-41 (1965).

9
10 66. The repugnant results of the poll tax that prompted passage of the
11 Twenty-fourth amendment are imminent in Arizona as a result of the Arizona
12 Taxpayer and Citizen Protection Act: “disenfranchisement of the poor occasioned by
13 failure to pay the tax,” as well as disenfranchisement of “a substantial number of
14 voters who did not plan []far [enough] ahead.” *Id.* at 539-40.

15
16 67. Conditioning the right to vote on the production of certain forms of
17 identification impairs the ability of Arizona’s poor -- who are disproportionately
18 minority and who historically have been disenfranchised -- to exercise that right. The
19 requirements amount to a poll tax on Arizona citizens that do not have these forms of
20 identification. Qualified Arizona citizens who are poor are the most likely to need to
21 obtain these documents for the first time as a result of amended A.R.S. §16-166, and
22 are also the least likely to have internet access (the fastest way to find out about how
23 to obtain these documents and often to request them is online), least likely to be able
24 to take time away from work and family to visit offices of public agencies in person
25 during business hours, and least likely to be able to afford these documents.
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Count Three

Violation of the Civil Rights Act of 1964, 42 U.S.C. §§ 1971(a)(2)(A)

68. The allegations of paragraphs 1 through 67 above are hereby incorporated as though fully set forth herein.

69. The polling place identification requirements of the Arizona Taxpayer and Citizen Protection Act, as set forth in A.R.S. §16-579 and the implementing regulations, violate the Civil Rights Act of 1964, 42 U.S.C. §1971(a)(2)(A), which provides that:

No person acting under color of law shall-

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

70. The polling place identification requirements violate 42 U.S.C. § 1971(a)(2)(A) because different standards with respect to identification requirements are applied to individuals within the same county who vote in person at the polling place as compared to those who vote by early ballot. Electors who vote by early voting are not required to satisfy the identification requirements imposed by the Act.

Count Four

Violation of the Civil Rights Act of 1964, 42 U.S.C. §§ 1971(a)(2)(B)

71. The allegations of paragraphs 1 through 70 above are hereby incorporated as though fully set forth herein.

1 72. The polling place identification requirements of the Act violate the Civil
2 Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(B), which provides that:

3
4 No person acting under color of law shall-

5 (B) deny the right of an individual to vote in any election because of an
6 error or omission on any record or paper relating to any application,
7 registration, or other act requisite to voting, if such error or omission is
8 not material in determining whether such individual is qualified under
9 State law to vote in such election;...

10 73. The polling place identification requirements violate 42 U.S.C. §
11 1971(a)(2)(B) because the requirements deny citizens who are lawfully registered and
12 fully qualified the right to vote in person at a polling place based solely on whether
13 they have identifying documents deemed acceptable, regardless of whether their
14 identity may be established by other means, such as matching signatures, or if they are
15 personally known to election officials to be the same person as the person whose
16 name appears on the official list of registered voters.

17
18 74. Proposition 200's proof of citizenship requirement for voter registration
19 violates 42 U.S.C. § 1971(a)(2)(B) because the requirement denies citizens who are
20 fully eligible and qualified to register to vote the opportunity to register based solely
21 on whether or not they have identifying documents deemed satisfactory evidence of
22 citizenship, regardless of whether their citizenship status may be established by other
23 means.
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Count Five

Section 2 of the Voting Rights Act

75. The allegations of paragraphs 1 through 74 above are hereby incorporated as though fully set forth herein.

76. Section 2 of the Voting Rights Act of 1965 (42 U.S.C. § 1973(a)) provides:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color.

77. Latino and Native American citizens of Arizona, as a group, have lower family and personal incomes than citizens of Arizona who are white and are less likely, as a group, to have Arizona driver’s licenses or passports deemed to be “satisfactory evidence” of U.S. citizenship than are white citizens.

78. Latino and Native American citizens of Arizona, as a group, have lower family and personal incomes than citizens of Arizona who are white and are less likely, as a group, to have Arizona driver’s licenses, bank or credit union statements, utility bills in their name, vehicle registration and insurance cards, or other government-issued identification deemed “acceptable” to establish identity at the polling place.

79. Native Americans on reservations are more likely to live in remote, rural locations at a greater distance to the polls, have unconventional addresses or no formal street address at all.

1 **Irreparable Harm/ Inadequate Remedy at Law**

2 84. Congressional and statewide elections that will be subject to the new
3 proof of citizenship and polling place identification requirements are scheduled for
4 September 12, 2006 (primary) and November 7, 2006 (general).
5

6 85. The plaintiffs and the members of the organizational plaintiffs who do
7 not have one of the forms of identification required by A.R.S. § 16-166 to establish
8 proof of citizenship or required at the polls by the procedure for implementing A.R.S.
9 § 16-579 will be irreparably harmed if they are forced, between now and the next
10 election to either (a) obtain new identification, or (b) forfeit their rights as Arizona
11 citizens qualified to register and vote in the next and subsequent elections or referenda
12 in their respective voting districts or political subdivisions for which they cannot be
13 adequately compensated in an action at law for money damages.
14
15

16 WHEREFORE, Plaintiffs respectfully pray that:

- 17 (a) the Court enter a declaratory judgment pursuant to 28 U.S.C. § 2201 declaring
18 A.R.S. §§ 16-152, 16-166, 16-579 as amended by the Arizona Taxpayer and
19 Citizen Protection Act, unconstitutional, unlawful, null and void;
20
21 (b) the Court order that defendant and her agents, servants and employees are
22 immediately restrained from refusing to register voters who timely submit a
23 properly completed Federal Mail Voter Registration Form (the “Federal
24 Form”), but do not submit “satisfactory evidence of citizenship” as defined by
25 A.R.S. § 16-166(F).
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(c) the Court enter a preliminary and permanent injunction pursuant to 42 U.S.C. § 1973gg-9(a)(2) and Fed. R. Civ. P. 65 restraining and enjoining defendant from refusing to accept the Federal Mail Voter Registration Form without "satisfactory evidence of citizenship" as defined in A.R.S. § 16-166;

(d) the Court enter a preliminary and permanent injunction pursuant to Fed. R. Civ. P. 65 restraining and enjoining defendant from enforcing or applying A.R.S. §§ 16-152, 16-166, 16-579 to deny plaintiffs or any other qualified Arizona resident the right to register voters, register to vote, obtain a ballot, cast a ballot, and have their ballots counted in any primary, general, special, run off or referenda election in Arizona because of their inability to provide documentary proof of citizenship as required by A.R.S. §§ 16-152 and 16-166, or to comply with the polling place identification requirements as set forth in the guidelines for implementing A.R.S. § 16-579;

(e) Plaintiffs recover their reasonable attorney's fees and costs; and

(f) Plaintiffs have such other and further relief as may be just and equitable.

Respectfully submitted this 24th day of May, 2006

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