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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 THE NAVAJO NATION, a federally
14 recognized Indian tribe, and AGNES
LAUGHTER,

15 Plaintiffs,

16 v.

17 JAN BREWER, individually and in her
18 official capacity as Secretary of State of
the State of Arizona; PATTY HANSEN,
19 individually and in her official capacity as
Coconino County Election Administrator,
20 CANDACE OWENS, individually and in
her official capacity as Coconino County
21 Recorder, PENNY PEW, individually and
in her official capacity as Apache County
22 Elections Director, LENORA JOHNSON,
individually and in her official capacity as
23 Apache County Recorder, KELLY
DASTRUP, individually and in her
24 official capacity as Navajo County
Elections Director, LAURETTE
25 JUSTMAN, individually and in her
official capacity as Navajo County
26 Recorder,

27 Defendants.

No.

VERIFIED COMPLAINT

(Mandamus, Declaratory Judgment,
Injunction)

1 Plaintiffs the Navajo Nation and Agnes Laughter seek mandamus, declaratory
2 judgment, and injunctive relief to prevent the enforcement of proof of identification
3 procedures enacted pursuant to Proposition 200, A.R.S. § 16-579 and the "Procedure for
4 Proof of Identification at the Polls" ("Procedures") adopted by Defendant Secretary of State
5 to implement Proposition 200. For their complaint against the above-named Defendants,
6 Plaintiffs allege the following:

7 **PARTIES**

8 1. Plaintiff Navajo Nation is a federally recognized Indian tribe pursuant to the
9 Treaty of 1868. The Navajo Reservation ("Reservation") was established by Treaty in 1868
10 and was thereafter expanded by successive executive orders. The Reservation consists of
11 approximately 13,989,222 acres of tribally-owned, allotted and government owned land.
12 The Reservation is located in Apache, Navajo, and Coconino counties in Arizona, as well
13 as counties in Utah and New Mexico. According to the 2000 census, the population of the
14 Reservation is 180,462 of whom 108,948 live on the Arizona portion of the Reservation.
15 The Navajo Nation has a voting age population of 61,000 living within the Arizona portion
16 of the Reservation.

17 2. The Navajo Nation's tribal members would have standing to sue in their
18 individual right for the allegations set forth in the Complaint. The Navajo Nation
19 coordinates voter outreach and voter education on the Reservation. The Navajo Nation
20 Election Administration reviews and approves all Navajo language translations used by
21 Apache, Coconino, and Navajo Counties for use on Reservation precincts. The translations
22 include radio and print announcements, ballots, audio tapes, other election material, and
23 poll working training materials. Navajo members lacking identification deemed acceptable
24 by Defendants will not be able to vote in the upcoming elections without expending funds
25 in order to obtain an identification card. The Nation also asserts the right to bring this
26 claim on behalf of its members *parens patriae*.

1 3. Plaintiff Agnes Laughter is a resident of Chilchinbeto, Arizona, an Arizona
2 elector, and a member of the Navajo Nation. Ms. Laughter is a citizen of Arizona and is
3 registered to vote in local, state, and national elections in Arizona. Ms. Laughter does not
4 possess an Arizona driver's license or another form of "acceptable" photo identification
5 listed in the "Procedures." Ms. Laughter does not possess two alternative forms of
6 "acceptable" photo identification listed in the "Procedures" that she can use at the polls to
7 cast a regular ballot. Ms. Laughter would have to pay a fee in order to acquire the
8 identification required by Proposition 200.

9 4. Jan Brewer, the Arizona Secretary of State, is sued individually and in her
10 official capacity as the chief election officer of the State. Her duties include certifying the
11 results of congressional and legislative elections. A.R.S. §§ 16-311, 16-648.

12 5. Patty Hansen is sued individually and in her official capacity as the Election
13 Administrator for Coconino County, Arizona. She is in charge of conducting elections in
14 Coconino County.

15 6. Penny Pew is sued individually and in her official capacity as the Elections
16 Director for Apache County, Arizona. She is in charge of conducting elections in Apache
17 County.

18 7. Kelly Dastrup is sued individually and in her official capacity as the Elections
19 Director for Navajo County, Arizona. She is in charge of conducting elections in Navajo
20 County.

21 8. Candace Owens is sued individually and in her official capacity as the
22 Coconino County Recorder. She is responsible for various aspects of elections in the
23 County.

24 9. LeNora Johnson is sued individually and in her official capacity as the
25 Apache County Recorder. She is responsible for various aspects of elections in the County.

26 10. Laurette Justman is sued individually and in her official capacity as the
27 Navajo County Recorder. She is responsible for various aspects of elections in the County.

JURISDICTION AND VENUE

1
2 11. The claims alleged in this Complaint arise under the Constitution and laws of
3 the United States, seek redress of the deprivation under color of state law of rights,
4 privileges and immunities secured by the Constitution of the United States and by Acts of
5 Congress providing for equal rights of citizens, seek to secure equitable or other relief
6 under Acts of Congress providing for the protection of civil rights, including the right to
7 vote, and seek to enforce the rights of citizens of the United States to vote in Arizona. This
8 action arises under the Due Process Clause and Equal Protection Clause of the Fourteenth
9 Amendment of the United States Constitution; the Twenty-Fourth Amendment of the
10 United States Constitution; the Civil Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(A) and
11 (a)(2)(B); Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973(a);
12 and 42 U.S.C. §§ 1983 and 1988.

13 12. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331,
14 1343(a)(3), 1343(a)(4), 28 U.S.C. § 1367(a), and 42 U.S.C. §§ 1971(d), 1973(j)(f) and
15 1983.

16 13. This Court has jurisdiction to grant both declaratory and injunctive relief
17 under 28 U.S.C. §§ 2201 and 2102.

18 14. All Defendants reside in or are present in the District of Arizona. All claims
19 in this Complaint arose in the District of Arizona and venue is proper in the District of
20 Arizona under 28 U.S.C. § 1391(b).

21 **GENERAL ALLEGATIONS**

22 15. The right to vote is a fundamental right.

23 16. Prior to 2004, Arizona law did not require electors to provide proof of
24 identification at the polls as a condition to cast a ballot.

25 17. In 2004, Arizona voters approved Proposition 200, a voter initiative, entitled
26 the "Arizona Taxpayer and Citizen Protection Act." See The Arizona Taxpayer and Citizen
27 Protection Act, attached hereto as Exhibit 1.

1 18. The impetus behind Proposition 200 was to prevent illegal immigrants from
2 obtaining public benefits.

3 19. The proponents of Proposition 200 claimed that individuals should present
4 identification at the polls to prevent voter fraud by illegal immigrants.

5 20. No evidence of voter fraud was provided to support Proposition 200.

6 21. Upon information and belief, there existed few, if any, incidents of voter
7 fraud or voter impersonation at the polls prior to the adoption of Proposition 200.

8 22. Upon information and belief, voter fraud occurs more often by mail than in
9 person at the polls.

10 23. Upon information and belief, voter fraud is rare and Arizona has safeguards
11 in place to protect against voter fraud.

12 24. Prior to the implementation of Proposition 200, Arizona law required voters
13 to be United States citizens. A.R.S. §16-101.

14 25. Randy Pullman, Chairman of the "Yes on Proposition 200" campaign claimed
15 that the "initiative will require registered voters to provide proof of identity when obtaining
16 a ballot whether in person or by mail." *See Exhibit 1.*

17 26. The Governor of the State of Arizona urged the electorate to vote "no" on
18 Proposition 200. In her written statement, the Governor said, "Proposition 200 would make
19 voting more difficult for lawful Arizona citizens and jeopardize our vote-by-mail system.
20 Valid voters could be denied ballots at the polls if they simply forget to bring i.d. And early
21 voting would be much more confusing. Either Arizonans would have to mail in
22 identification when they request a ballot (which would hinder many early voters, including
23 military personnel and seniors in nursing homes who may not have access to their
24 documents) or our system would unconstitutionally subject early voters to a less rigorous
25 verification process than election day voters face. Proposition 200 does not cure our
26 immigration problems; it compounds them, and does so at the expense of law-abiding
27 Arizonans. Please vote 'No'." *See Exhibit 1.*

1 27. Under A.R.S. § 16-651, Governor Napolitano is charged with implementing
2 new initiatives by issuing a proclamation following a successful vote of the electorate.

3 28. Governor Napolitano officially proclaimed Proposition 200 into law on
4 December 13, 2004.

5 29. Proposition 200 amended A.R.S. § 16-579, the procedures for obtaining a
6 ballot by an elector, by requiring an elector voting in person to "present one form of
7 identification that bears the name, address and photograph of the elector or two different
8 forms of identification that bear the name and address of the elector."

9 30. Proposition 200 does not define "identification" and does not limit the types
10 of identification that can be used to obtain a ballot.

11 31. A.R.S. § 16-579 neither authorizes nor requires Secretary Brewer to adopt a
12 narrow list of acceptable forms of identification.

13 32. Secretary Brewer adopted the "Procedure for Proof of Identification at the
14 Polls" ("Procedures") for the stated purpose of implementing A.R.S. § 16-579(A). *See*
15 *Procedures*, attached hereto as Exhibit 2.

16 33. Governor Napolitano approved the "Procedures" on September 7, 2005.

17 34. Under the "Procedures" developed by Secretary Brewer, to receive a regular
18 ballot at the polls an elector must prove his identity. An elector can prove his identity by
19 either presenting:

20 A. One of the following forms of unexpired identification with the
21 photograph, name, and address of the elector:

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

27 OR

28 601075.13

1 B. Two of the following forms of unexpired identification without a
2 photograph that contains the name and address of the elector:

- 3 • Utility bill of the elector that is dated within ninety days of the date of
4 the election. A utility bill may be for electric, gas, water, solid waste,
5 sewer, telephone, cellular phone, or cable television.
- 6 • Bank or credit union statement that is dated within ninety days of the
7 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 county
16 recorder.

17 35. The "Procedures" identify three classes of ballots: regular, provisional, and
18 conditional provisional. Voters filing a provisional ballot do not need to return to the polls
19 with identification, but voters filing a conditional provisional ballot must return to the
20 county elections office with acceptable identification.

21 36. An elector with no identification can cast a conditional provisional ballot
22 under the "Procedures." The elector must return, with three days for state and local
23 elections and five days for federal elections, with acceptable identification in order for his
24 or her ballot to be counted.

25 37. Pursuant to Section 5 of the Voting Rights Act, on or about October 7, 2005,
26 the United States Department of Justice pre-cleared the "Procedure for Proof of
27 Identification at the Polls."

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1 38. Proposition 200 did not amend the process for electors to obtain an early
2 ballot or to cast an early ballot. To obtain an early ballot, the elector must make a verbal or
3 signed request to the county recorder or other officer in charge for an official early ballot.
4 The elector shall provide his/her name, address, date of birth, county or state of birth, or
5 other information to confirm the elector's identity. The elector must sign an affidavit on the
6 ballot envelope swearing that he/she is the individual casting the ballot. A.R.S. § 16-
7 547(A).

8 39. The new voter identification requirement applies only to electors voting in
9 person on Election Day. No similar voter identification procedures are required by electors
10 voting by mail. No form of identification for early voting is required to obtain a ballot
11 because Arizona has a statewide voter registration database. A.R.S. § 16-579(B)

12 40. On January 17, 2006, Speaker Lawrence T. Morgan of the Navajo Nation
13 Legislative Council addressed the Nation's concerns resulting from the voter identification
14 requirements and the impacts the Nation believes that the requirements will have on Navajo
15 electors during the "Tribal Issues Round Table" session on Tribal Legislative Day. *See*
16 Navajo Nation Presentation dated January 17, 2006, attached hereto as Exhibit 3.

17 41. On January 27, 2006, the Navajo Nation and other tribal representatives met
18 with Representative Laura Knaperek and Representative Albert Tom of the Arizona
19 Legislature to discuss possible solutions to the identification problem. One suggestion was
20 to appropriate funds to tribal governments to finance the issuance of tribal identifications.
21 No additional meetings were held, and no legislation was introduced in the Arizona
22 Legislature to address the problem.

23 42. During the 2006 Legislative Session, legislation introduced to extend
24 Proposition 200's voter identification requirements to early ballots failed.

25 43. On April 11, 2006, the House Committee on Appropriations (P) held a
26 hearing on a strike-everything amendment to SB 1067. The amendment, as proposed,
27 would have applied Proposition 200's voter identification requirements to early voting. *See*

1 Excerpts from Minutes of Committee on Appropriation (P), April 11, 2006, attached hereto
2 as Exhibit 4.

3 44. Maricopa County Elections Director, Karen Osborne testified before the
4 Committee opposing voter identification for early voting. She stated that (1) when one
5 votes by mail, the elector must sign the envelope that contains the ballot; (2) the signature
6 on the outside envelope is compared with the elector's voter registration signature; and (3)
7 Maricopa County considers signature verification for early ballots on the ballot envelope to
8 be an adequate form of positive identification. The voter identification strike-everything
9 amendment to SB1067 was not voted out of Committee. *See* Exhibit 4.

10 45. Electors who vote at the polls must also provide a signature before casting a
11 ballot. Pursuant to 16-579(D), "[e]ach qualified elector shall sign his name in the signature
12 roster prior to receiving his ballot The provisions of this subsection relating to signing
13 the signature roster shall not apply to electors casting a ballot using early voting
14 procedures."

15 46. Stringent voter identification requirements are applied to electors who vote in
16 person on Election Day that are not applied to early voters. The voter identification
17 requirements applied to electors who vote in person prevent persons from casting ballots
18 that would have been accepted from these persons if they had been early voters.

19 47. Pursuant to Section 203 of the Voting Rights Act, Navajo, Apache, and
20 Coconino Counties must provide official language assistance to Navajo Nation members at
21 the polls. Because the Navajo language is historically an unwritten language, only oral
22 assistance is required.

23 48. Official assistance available at the polls for sight-impaired and non-English
24 speakers is not available to Navajo Nation members for early voting. Upon information
25 and belief, the lack of assistance for Navajo Nation language speakers and sight-impaired
26 electors during early voting impedes these electors from effectively participating in the
27 early voting process.

NATIVE AMERICANS AND VOTING

1
2 49. Native Americans comprise approximately five percent of the total
3 population of the State of Arizona.

4 50. A history of official discrimination exists in Arizona and in political
5 subdivisions in and around Indian Reservations and communities and against tribes and
6 individual tribal members. This discrimination has impaired the rights of tribal members to
7 register to vote or to otherwise participate in the democratic process.

8 51. Voting in and around Indian Reservations and communities is, to a significant
9 extent, racially polarized.

10 52. There have been no tribal members elected to the national offices from
11 Arizona or to the offices of Governor, Attorney General, or Secretary of State, two
12 representatives to the 90-seat state legislature are Native American, and the extent to which
13 tribal members have been elected to other State elected offices and offices of the political
14 subdivisions in and around Indian reservations and communities is significantly
15 disproportionate or minimal in relation to the percentage of tribal members in the total
16 population of the state and political subdivisions in and around Indian reservations and
17 communities.

18 53. Native Americans bear the effects of past discrimination in areas such as
19 education; employment and health which hinder their ability participate effectively in the
20 political process.

21 54. As a result of its history of racially discriminatory electoral practices, the
22 State of Arizona is a covered jurisdiction under Section 5 of the Voting Rights Act and must
23 submit its changes that impact voting to either the U.S. Department of Justice or the U.S.
24 District Court for the District of Columbia for preclearance before any voting changes may
25 be implemented.

26 55. Native Americans are a protected class under the Voting Rights Act of 1965.
27

1 56. Because of past discrimination in the State of Arizona, any voting change in
2 Navajo, Apache, and Coconino Counties must be precleared before implementation.

3 57. Coconino, Apache and Navajo Counties are subject to Section 4(f)(4) and
4 Section 203(c) of the Voting Rights Act. These sections require language minority
5 assistance to members of the Navajo Nation. A Consent Decree was entered into to ensure
6 that the state and counties' election practices and procedures provide Navajo with an equal
7 opportunity to participate effectively in the electoral process. *See* First Amended Consent
8 Decree, attached hereto as Exhibit 5.

9 **NAVAJO NATION FACTS**

10 58. The Navajo Nation is a long-standing, cultural and religious community that
11 has existed since time immemorial. There are over one hundred and thirty clans in Navajo
12 society. Because the Nation is comprised of a traditional society made up of clan and
13 family systems, relationships play an important role in daily life.

14 59. The Navajo Nation is divided into one hundred ten Chapters, local
15 governance systems within the Navajo Nation. Upon information and belief, many
16 Reservation precincts are located in Chapter Houses.

17 60. Because of extensive clan and family systems, the rural nature of the
18 Reservation, and the stability of the Nation, tribal members in Chapters do not need formal
19 identification to know the identity of other Chapter members.

20 61. Upon information and belief, all polling places on the Reservation have
21 Navajo poll workers.

22 62. Navajos traditionally greet each other with a handshake.

23 63. If a poll worker personally knows a Navajo elector, requiring a form of
24 identification from that individual before voting is an offense to cultural interaction.

25 64. Navajos living on the Navajo Reservation are less likely than other electors to
26 have the forms of identification required by the "Procedures".

27 65. The Navajo Nation does not issue tribal identification cards to its members.

1 66. Upon information and belief, the Bureau of Indian Affairs issued census coins
2 to Navajo individuals. These coins include a census number, but do not include a name or
3 address.

4 67. Upon information and belief, when the census rolls were updated in 1940, the
5 federal government, the Office of Indian Affairs, later known as the Bureau of Indian
6 Affairs, issued family cards to Navajo Nation households. These family cards include the
7 name, census number, birthday, and relationship of all the family members. These cards
8 were issued only to the heads of households. These cards do not include an address.

9 68. Upon information and belief, from 1940 to 1982, the BIA issued certificates
10 of Indian blood. These certificates include the name, blood quantum, census number, and
11 birthdate of the member. These certificates do not include an address.

12 69. Since 1982, the Navajo Nation has issued certificates of Indian blood to tribal
13 members. These certificates include the name, blood quantum, census number and birthday
14 of the member. These certificates do not include an address of the tribal member.

15 70. A Navajo Nation member can only obtain a copy of his or her certificate of
16 Indian blood from the Navajo Nation Office of Vital Records – Tribal Enrollment Services.
17 In Arizona, these offices are located in Window Rock, Chinle, Fort Defiance, and Tuba
18 City.

19 71. Upon information and belief, the Navajo Nation Department of Highway
20 Safety recently agreed to issue identification cards to tribal members. The identification
21 cards include the individual's name, address, and photograph. The Navajo Nation
22 Department of Highway Safety is located in Window Rock, Arizona. In order to obtain a
23 photo identification card, an elector must travel to Window Rock, AZ, and pay a fee of
24 \$5.00 to obtain the card. This is the only Navajo Nation office that issues identification
25 that contains a name, address, and photograph.

26 72. There are four Arizona Department of Motor Vehicles offices located on the
27 Arizona portion of the Reservation. These offices are located in Tuba City, Chinle,

1 Window Rock, and Tec Nos Pos. The Tec Nos Pos office provides driver licenses only—
2 not title or registration. All of the offices are closed on Saturday and Sunday. The offices
3 are open Monday through Friday, 8:00 a.m. to 5:00 p.m.

4 73. If an elector does not have identification, then an elector must expend funds
5 to travel to a state, federal, or tribal agency to obtain identification for voting.

6 74. Plaintiff Agnes Laughter plans to vote at the polls in the next election.
7 Although Ms. Laughter is a qualified and registered voter in the State of Arizona, she does
8 not possess the identification documents required by Proposition 200 for voting at the polls.
9 *See* Declaration of Agnes Laughter, attached hereto as Exhibit 6.

10 75. Ms. Laughter does not have the required documents to obtain an Arizona
11 identification card. *See* Exhibit 6.

12 76. The only reason Ms. Laughter would attempt to obtain a photo identification
13 card would be to ensure that she has proper identification to vote. As a result of
14 Proposition 200's voter identification requirements, Ms. Laughter will be denied an
15 opportunity to cast a regular ballot at the polls unless she expends funds to travel to a state,
16 federal, or tribal agency and pays a fee to obtain an identification acceptable under the
17 Procedures. *See* Exhibit 6.

18 77. Upon information and belief, the voter identification required for voting at
19 the polls is not necessary for everyday life and would be obtained only for the purpose of
20 voting at the polls.

21 78. Members of the Nation will be subject to the voter identification requirement
22 in the upcoming elections scheduled to be held on September 12, 2006, which includes
23 primaries for federal and state elections.

24 79. Navajo Nation members who do not bring the required forms of identification
25 to the polls will not be allowed to cast a regular ballot. Native Americans will be
26 irreparably harmed if they are forced—between now and the next election—to either (a)
27 obtain a photo identification from a state or federal office, or (b) obtain two identifications

1 from a state, federal, or tribal office. Unless they take one of these actions, they will forfeit
2 their rights as registered voters to vote in the next and subsequent elections or referenda in
3 their respective voting districts or political subdivisions—an injury for which they cannot
4 be adequately compensated in an action at law for money damages.

5 80. Navajo Nation members lacking identification will be required to expend
6 funds to obtain an acceptable form of photo identification.

7 81. Navajo Nation members are less likely than other Arizona voters to have two
8 of the alternative forms of acceptable identification.

9 82. According to the 2000 Census, 33% of the housing units on the Arizona
10 portion of the Navajo Nation Reservation lack complete plumbing. *See* Navajo Nation
11 Data from U.S. Census 2000, attached hereto as Exhibit 7 at 20.

12 83. According to the 2000 Census, 62% the housing units on the Arizona portion
13 of the Navajo Nation Reservation lack telephone service. *See* Exhibit 7 at 20.

14 84. According to the 2000 Census, at least 20% of homes located on the Arizona
15 portion of the Navajo Nation Reservation lack access to a vehicle. *See* Exhibit 7.

16 85. Over 56% of Navajo households located on the Arizona portion of the Navajo
17 Nation Reservation are heated by wood, and traditional Navajos living in hogans do not
18 have electricity and do not receive utility bills. *See* Coconino County letter dated
19 September 28, 2005, attached hereto as Exhibit 8; *see* U.S. Census Bureau General
20 Demographic Characteristics for the Navajo Nation Reservation, attached hereto as Exhibit
21 9.

22 86. On the Navajo Reservation, 37.5% of the homes lack electricity. In the
23 United States, only 1.4% of homes are without electricity. Of those, 75% are on the Navajo
24 Reservation.

25 87. Utility Bills are issued in one individual's name. Sometimes the recipient of
26 the utility services does not even receive the bill.

1 88. According to the 2000 census, 42% of Navajos live below the poverty level.
2 *See* Exhibit 7 at 1.

3 89. Most Navajo voters living on the Navajo Reservation vote at the polls and do
4 not vote by early ballot because of language and social issues. *See* Exhibit 8.

5 90. Navajo County, Apache County, and Coconino County are required to
6 provide language assistance to Navajo language speakers at the polls under Section 203 of
7 the Voting Rights Act. *See* also Exhibit 8.

8 91. In 2004, 90% of the electors in Coconino County voted in person at precincts
9 located on the Navajo Reservation; 98% of the electors voted in person at the precinct
10 located on the Havasupai Reservation, and 96% percent of the electors voted in person at
11 the precinct located at Moenkopi on the Hopi Reservation. *See* Exhibit 8 at Exhibit K.

12 92. For the 2004 elections, Coconino County reported that 64% of the electors
13 living in non-reservation precincts voted at the polls, while 91% of electors living in
14 reservation precincts voted at the polls. *See* Exhibit 8 at Exhibit K.

15 93. According to the 2000 Census, the population of Apache County was 69,423,
16 of which approximately 77%, 53,375, are Native American. The voting age population of
17 Apache County was 42,692 persons, of whom 73.7%, 31,470 persons, are Native
18 American. *See* U.S. Census Bureau Profile of General Demographics: 2000, attached
19 hereto as Exhibit 10.

20 94. According to the 2000 Census, 58.32% of Apache County's population speaks
21 the Navajo language at home. Over one-third, 11,377 persons, of the Native American
22 voting age population was limited-English proficient. *See* Written Testimony of Penny L.
23 Pew dated November 15, 2005, attached hereto as Exhibit 9; *see* Apache County Data,
24 *available at* <http://en.wikipedia.org>, attached hereto as Exhibit 12.

25 95. According to the 2000 Census, in Apache County 37.8% of the population
26 live below the poverty line. *See* Exhibit 10 at 3.

1 96. In Apache County, Native American voter turnout in precincts on the Navajo
2 Reservation increased from 14,277 voters in 2000 to 17,955 voters in 2004. See Exhibit
3 11 at 4.

4 97. Upon information and belief, Apache County has reissued approximately
5 46,000 voter identification cards by mail within the county.

6 98. Upon information and belief, approximately 12,000 voter registration cards
7 have been returned as not deliverable.

8 99. Members of the Navajo Nation living on the Navajo Reservation will be
9 disproportionately impacted by the new voter identification requirement because these
10 Navajo electors vote at the polls at a higher rate than other electors.

11 100. Because of the remoteness and lack of transportation in many areas on the
12 Navajo Reservation, Navajo voters who cast conditional provisional ballots will be less
13 likely than other Arizona voters to return to county election offices to perfect their ballots.
14 See Exhibit 8.

15 101. The Navajo Nation has expended scarce and valuable tribal resources to
16 inform Navajo members of the new voter identification requirements in an attempt to
17 prevent Proposition 200 from diluting the Native American vote and from obstructing
18 Navajo electors at the polls.

19 **FIRST CLAIM FOR RELIEF**

20 **(Mandamus Action)**

21 102. Plaintiffs reallege and reincorporate by reference the allegations contained in
22 Paragraphs 1-101.

23 103. By their actions, Defendants are wrongfully requiring Arizona citizens who
24 are Members of the Navajo Nation living on the Navajo Reservation to produce
25 identification at the polls. Further, Defendants are wrongfully limiting the types of
26 identification that can be accepted at the polls.

1 104. Defendants are legally obligated to treat all voters in a fair, equitable and
2 nondiscriminatory manner.

3 105. Plaintiffs have no plain, adequate and speedy remedy at law.

4 106. Defendants have a ministerial duty under law to accept the same
5 identification at the polling places on the Navajo Reservation as they accept for early
6 voting.

7 WHEREFORE, plaintiffs pray for judgment against all defendants as follows:

8 A. That defendants be ordered to accept as identification at the polling places on
9 the Navajo Reservation the same identification they accept for early voting.

10 B. That plaintiffs be awarded judgment against defendants for attorneys' fees
11 and costs.

12 C. That plaintiffs be awarded such other, further and different relief as the court
13 deems just and proper.

14 **SECOND CLAIM FOR RELIEF**

15 **(Declaratory Judgment that Voter Identification Requirements Violate the Equal**
16 **Protection Clause of the United States Constitution)**

17 107. Plaintiffs incorporate herein by this reference all allegations contained in
18 Paragraphs 1 through 106 above.

19 The Equal Protection Clause of the Fourteenth Amendment of the United States
20 Constitution prohibits states from denying "any person within its jurisdiction the equal
21 protection of the laws."

22 108. The voter identification requirement is not necessary to serve a compelling
23 state interest.

24 109. Persons voting by mail are not subject to the same requirements as electors
25 voting at the polls. Electors voting by mail have no burden to prove his or her
26 identification. This difference violates the Equal Protection Clause of the United States
27 Constitution.

28 601075.13

1 110. The voter identification requirement imposes an undue burden on the right of
2 Arizona voters who vote at the polls, while not imposing the same or similar requirement
3 on Arizona voters who vote by early ballot.

4 111. The percentage of Navajo electors living on the Navajo Reservation who cast
5 ballots at the polls is significantly higher than the percentage other electors casting ballots
6 at the polls.

7 112. The voter identification requirements will deny or abridge the right of Navajo
8 electors living on the Navajo Reservation to vote in violation of the Equal Protection
9 Clause of the United States Constitution.

10 113. The voter identification requirement imposes an undue burden on the right of
11 Navajo electors living on the Navajo Reservation to vote. This burden is neither justified
12 nor necessary to promote a substantial and compelling state interest that was not already
13 adequately protected by existing criminal laws and election procedures, or which could not
14 have been accomplished in other less, restrictive alternatives.

15 WHEREFORE, plaintiffs pray for a declaratory judgment against defendants as
16 follows:

17 A. That the application to Navajo electors voting on the Navajo Reservation of
18 the provisions of A.R.S. § 16-579 establishing voter identification requirements for Arizona
19 voters who vote at the polls violate the Equal Protection Clause of the United States
20 Constitution and is beyond the authority of the defendants to implement or enforce.

21 B. That defendants are legally obligated to allow Navajo voters to cast a regular
22 ballot at the polling places on the Navajo Reservation without showing identification set
23 forth in A.R.S. § 16-579.

24 C. That plaintiffs be awarded judgment against defendants for costs.

25 D. That plaintiffs be awarded such other, further and different relief as the Court
26 deems just and proper.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment that Voter Identification Requirements As Applied To The Polling Places on the Navajo Reservation Violate The Equal Protection Clause Of The United States Constitution)

114. Plaintiffs incorporate herein by this reference all allegations contained in Paragraphs 1 through 113 above.

115. Secretary Brewer created the "Procedures" for electors voting at the polls. These procedures include a list of acceptable forms of identification deemed acceptable by Secretary Brewer

116. Because of Secretary Brewer's action in creating the "Procedures", Navajo electors voting on the Navajo Reservation will have less of an opportunity than other Arizona voters to cast a regular ballot at the polls because these Navajo voters are less likely to have a form of identification deemed acceptable by defendants than other Arizona voters.

117. Upon information and belief, most Navajo voters living on the Navajo Reservation will not return to county elections offices with acceptable identification to perfect a conditional provisional ballot.

118. The voter identification requirements will deny or abridge the right of Navajo electors living on the Navajo Reservation to vote in violation of the Equal Protection Clause of the United States Constitution.

119. Application of the voter identification requirement to Navajo electors living on the Navajo Reservation imposes an undue burden on their right to vote. This burden is neither justified nor necessary to promote a substantial and compelling state interest that is not already adequately protected by existing criminal laws and election procedures, or which could not have been accomplished in other, less restrictive alternatives.

WHEREFORE, plaintiffs pray for a declaratory judgment against defendants as follows:

1 A. That application of the "Procedure for Proof of Identification at the Polls"
2 establishing voter identification requirements for Arizona voters who vote at the polls to
3 Navajo electors living on the Navajo Reservation violates the Equal Protection Clause of
4 the United States Constitution and is beyond the authority of the defendants to implement
5 or enforce.

6 B. That defendants are legally obligated to allow Navajo voters living on the
7 Navajo Reservation to cast a regular ballot at the polls without showing identification set
8 forth in the "Procedures."

9 C. That plaintiffs be awarded judgment against defendants for costs.

10 D. That plaintiffs be awarded such other, further and different relief as the Court
11 deems just and proper.

12 **FOURTH CLAIM FOR RELIEF**

13 **(Declaratory Judgment That The Voter Identification Provisions**
14 **Constitute A Poll Tax)**

15 120. Plaintiffs incorporate herein by this reference all allegations contained in
16 Paragraphs 1 through 119 above.

17 121. Under A.R.S. § 16-579 and the "Procedure for Proof of Identification at the
18 Polls" an elector must have identification in order to cast a regular ballot at the polls.

19 122. To meet the voter identification requirements, many Navajo Nation members
20 living on the Navajo Reservation must travel long distances to obtain identification from
21 either a state, federal, or tribal agency. To obtain the identification, they must incur costs to
22 travel and to obtain the identification.

23 123. The voter identification requirements impose an unconstitutional poll tax on
24 the right to vote in federal and state elections in Arizona.

25 124. Requiring an elector to pay money to obtain identification is an
26 unconstitutional poll tax under the Twenty-Fourth Amendment of the United States
27 Constitution:

1 The right of citizens of the United States to vote in any primary or other
2 election for President or Vice President, for electors for President or Vice
3 President, or for Senator or Representative in 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.

4 Amendment XXIV to the United States Constitution, Section 1.

5 WHEREFORE, plaintiffs pray for a declaratory judgment against defendants as
6 follows:

7 A. That the voter identification requirements in A.R.S. § 16-579 and the
8 "Procedure for Proof of Identification at the Polls" ("Procedures") adopted by Defendant
9 Secretary of State to implement Proposition 200 as applied to Navajo voters living on the
10 Navajo Reservation violate the Twenty-Fourth Amendment to the United States
11 Constitution.

12 B. That the implementation of A.R.S. § 16-579 and the "Procedures" constitutes
13 a poll tax under the Twenty-Fourth Amendment to the United States Constitution.

14 C. That defendants are legally obligated to allow Navajo voters to cast a regular
15 ballot at the polling places on the Navajo Reservation without showing identification set
16 forth in the "Procedures."

17 D. That plaintiffs be awarded judgment against defendants for costs.

18 E. That plaintiffs be awarded such other, further and different relief as the Court
19 deems just and proper.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Declaratory Judgment that the Voter Identification Requirements Violate the Civil
22 Rights Act of 1964, 42 U.S.C. §§ 1971(a)(2)(A) and 1971(a)(2)(B))**

23 125. Plaintiffs incorporate herein by this reference all allegations contained in
24 Paragraphs 1 through 124 above.

25 126. The voter identification requirement violates the Civil Rights Act of 1964, 42
26 U.S.C. § 1971(a)(2)(A), which provides that:

27 No person acting under color of law shall -
28

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

42 U.S.C. § 1971(a)(2)(A) (emphasis added).

127. The voter identification requirement violates 42 U.S.C. § 1971(a)(2)(A)
because only voters who vote in person are required to present identification as a condition
of being allowed to vote. Arizona law imposes no such voter identification requirement on
voters residing in the same "county" or "political subdivision" who vote by casting early
ballots.

128. The voter identification requirement also violates the Civil Rights Act of
1964 (42 U.S.C. § 1971(a)(2)(B)), which provides that:

No person acting under color of law shall -

(B) 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; . . .

129. The voter identification requirement violates 42 U.S.C. § 1971(a)(2)(B)
because it denies individuals who are fully qualified and lawfully registered the right to
vote in person based solely on whether or not they have an acceptable form of
identification. This requirement is imposed even though identity may be established by
other means, such as matching the voter's signature to the signature on the voter's official
voter registration card, or personal identification by election officials who know the voter
to be the same to be the same person whose name appears on the official list of registered
voters.

WHEREFORE, plaintiffs pray for a declaratory judgment against defendants as
follows:

A. That A.R.S. § 16-579 and the "Procedures" violate the Civil Rights Act of
1964.

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1 B. That the voter identification requirement is invalid and defendants are legally
2 obligated to allow Navajo voters to cast a regular ballot at the polling places on the Navajo
3 Nation without showing identification set forth in the "Procedures."

4 C. That plaintiffs be awarded judgment against defendants for costs.

5 D. That plaintiffs be awarded such other, further and different relief as the Court
6 deems just and proper

7 **SIXTH CLAIM FOR RELIEF**

8 **(Declaratory Judgment That The Voter Identification Requirements Violate**
9 **Section 2 of the Voting Rights Act)**

10 130. Plaintiffs incorporate herein by this reference all allegations contained in
11 Paragraphs 1 through 129 above.

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

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

17 (emphasis added).

18 132. Members of the Navajo Nation living on the Navajo Reservation, as a group,
19 have lower personal and family incomes than other citizens of Arizona, and are less likely,
20 as a group, to have Arizona driver's licenses or other "acceptable identification" as provided
21 in the "Procedures," than are other citizens, as a group.

22 133. Members of the Navajo Nation living on the Navajo Reservation, as a group,
23 are more likely to live in rural parts of the State than are other persons, as a group.

24 134. It is unlikely that Navajo electors who cast conditional provisional ballots
25 will return with "acceptable identification" to perfect the ballots.

26 135. The voter identification requirements are a limitation on voting, a practice or
27 procedure, which will result in the denial of the right to vote to Plaintiff Agnes Laughter
28 and other members of the Navajo Nation in violation of Section 2 of the Voting Rights Act,
42 U.S.C. § 1973(a).

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1 WHEREFORE, plaintiffs pray for a declaratory judgment against defendants as
2 follows:

3 A. That A.R.S. § 16-579 and the "Procedures" violate Section 2 of the Voting
4 Rights Act.

5 B. That defendants are legally obligated to allow Navajo voters to cast a regular
6 ballot at the polling places on the Navajo Reservation without showing identification set
7 forth in the "Procedures."

8 C. That plaintiffs be awarded judgment against defendants for costs.

9 D. That plaintiffs be awarded such other, further and different relief as the Court
10 deems just and proper.

11 **SEVENTH CLAIM FOR RELIEF**

12 **(Preliminary And Permanent Injunction)**

13 136. Plaintiffs reallege and incorporate by reference the allegations contained in
14 paragraphs 1 through 135.

15 WHEREFORE, plaintiffs pray:

16 A. That this Court issue an order to defendants to show cause why a preliminary
17 injunction should not be issued enjoining defendants from implementing the voter
18 identification requirements in Section 16-579 of the Arizona Revised Statutes and in the
19 "Procedures" at the polling places located on the Navajo Reservation.

20 B. That this Court issue a preliminary injunction enjoining defendants from
21 implementing the voter identification requirements in Section 16-579 of the Arizona
22 Revised Statutes and in the "Procedures" at the polling places located on the Navajo
23 Reservation.

24 C. That the preliminary injunction be made permanent.

25 D. That plaintiffs be awarded judgment against defendants for costs.

26 E. That plaintiffs be awarded such other, further and different relief as the Court
27 deems just and proper.

28 601075.13

1 DATED this 20th day of June, 2006.

2 SACKS TIERNEY P.A.

3
4
5 By: s/ Marvin S. Cohen
6 Judith M. Dworkin
7 Marvin S. Cohen
8 Patricia Ferguson-Bohnee

9
10 Attorneys for Plaintiffs Navajo Nation
11 and Agnes Laughter
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SACKS TIERNEY P.A., ATTORNEYS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

28 601075.v13

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2006, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ Marvin S. Cohen

SACKS TIERNEY P.A., ATTORNEYS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
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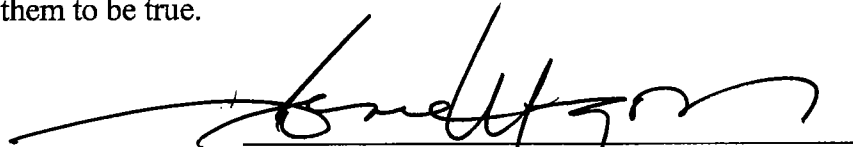
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VERIFICATION

STATE OF ARIZONA
COUNTY OF Apache } ss.

Lawrence Morgan, being first duly sworn upon his oath, deposes and says:

I am the Speaker of the Navajo Nation, a Plaintiff in the above-captioned lawsuit, and as such, I am authorized to make this verification. I have read the foregoing Verified Complaint and know the contents thereof, that the answers are true of my own personal knowledge, except as to those matters therein stated upon information and belief, and, as to those matters, I believe them to be true.



Lawrence Morgan

SUBSCRIBED AND SWORN TO before me this 16th day of June,
2006, by Lawrence Morgan, as Speaker of the Navajo Nation.



Notary Public

My commission expires: July 20, 2009

