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Mr. Lyle W. Cayce, Clerk
U.S. Court of Appeals for the Fifth Circuit
600 South Maestri Place
New Orleans, LA 70130-3408

Re: *Project Vote et al. v. Steen*, No. 12-40914
Response to Project Vote's Rule 28(j) Letter

Dear Mr. Cayce:

Earlier this week, the plaintiffs filed a Rule 28(j) letter informing the Court of the Supreme Court's ruling in *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013). But nothing in that decision helps the plaintiffs' claims in this case, nor does it undercut any of the arguments on which the Secretary of State relies.

Inter Tribal Council has nothing to say on the First Amendment issues in this case, and the plaintiffs do not contend otherwise. Instead, the plaintiffs suggest that *Inter Tribal Council* supports their claims that the National Voter Registration Act "preempts" state regulation of volunteer deputy registrars (VDRs). But *Inter Tribal Council* construed only one provision of the National Voter Registration Act: the requirement that States "accept and use" the federal voter-registration form. 42 U.S.C. § 1973gg-4(a)(1). Texas complies with this requirement because it accepts every completed voter-registration form—even when VDRs violate state law by mailing third parties' completed forms. See TEX. ELEC. CODE §§ 13.071-.072; USCA5 1622. Texas does not impose additional requirements as a condition for acceptance of the federal form, as Arizona did by requiring applicants to submit proof of citizenship.

The plaintiffs correctly note that the Supreme Court held that the "presumption against preemption" is inapplicable when Congress enacts legislation to regulate the "times, places and manner of holding elections for Senators and Representatives." See U.S. CONST. art. I, § 4 cl. 1. But the Secretary of State did not rely on that presumption in his brief or at oral argument. And there is no need to rely

on that presumption when the State of Texas accepts every completed federal form (including those that were illegally mailed by volunteer deputy registrars). Finally, the dissenting opinion's observation that the "purpose" of the federal form is to "facilitate interstate voter registration drives" does not establish that federal law preempts every state regulation that burdens interstate voter-registration drives. *See Inter Tribal Council*, 133 S. Ct. at 2275 (Alito, J., dissenting).¹

Respectfully submitted.

/s/ Jonathan F. Mitchell
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cc: Chad W. Dunn, counsel for Plaintiffs-Appellees

p.s. This letter is being transmitted via the Court's CM/ECF Document Filing System, <https://ecf.ca5.uscourts.gov>; it has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses. An electronic copy is being served on today's date, via the Court's CM/ECF Document Filing System, upon counsel for Appellees.

¹ The majority did not "agree" with the dissent's characterization of the federal form's "purpose," as the plaintiffs assert. The majority simply acknowledged that this was the view of the dissent. *See Inter Tribal Council*, 133 S. Ct. at 2255 n.4 ("The 'purpose' of the Federal Form, *it claims*, is 'to facilitate interstate voter registration drives.'") (emphasis added).