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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**

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16 MARIA M. GONZALEZ, et al.,
17 Plaintiffs,
18 v.

19 STATE OF ARIZONA; et al.
20 Defendants.

No. CV 06-1268-PHX-ROS (LEAD)
CV 06-1362-PHX-ROS
CV 06-1575-PHX-ROS

**RESPONSE TO THE STATE'S
MOTION TO DISMISS PLAINTIFF
AGNES LAUGHTER**

(ORAL ARGUMENT REQUESTED)

(Assigned to the Honorable Roslyn O.
Silver)

(Consolidated)

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26 The Court should deny the State's Motion to Dismiss Plaintiff Agnes Laughter for
27 lack of standing. Ms. Laughter has alleged personal injury traceable to the voter
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1 identification requirement and her injury is likely to be redressed by the requested relief.
2 This Response is supported by the pleadings filed in this action and the following
3 Memorandum of Points and Authorities, which is incorporated herein by reference.

4
5 RESPECTFULLY SUBMITTED this 19th day of December, 2007.

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15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. BACKGROUND

17 Ms. Laughter was born in a hogan and was raised in a traditional Navajo household.
18 Because she was born at home, she does not have a birth certificate, though she has
19 unsuccessfully attempted to obtain one several times. She did not have the opportunity to
20 attend school, and therefore, has never learned the English language. Ms. Laughter lives
21 with her husband on the Navajo Reservation (“Reservation”) and lacks many of the
22 common amenities found in households outside of the Reservation; her household does not
23 have electricity, phone, internet, or television, and her home is heated by wood. Ms.
24 Laughter requires Navajo translation assistance in order to complete a ballot during
25 elections.

26 In the 1970’s, after the Arizona’s literacy requirement was invalidated, Ms. Laughter
27 began voting in state and federal elections. *Oregon v. Mitchell*, 400 U.S. 112 (U.S. 1970);
28 Laughter Dep. 14-15, Oct. 19, 2006, attached hereto as Exhibit A. At federal and state
elections prior to 2006, Ms. Laughter signed the voting register with a thumbprint. Exh. A,
Laughter Dep. 14:21-24. In 2004, however, Ms. Laughter’s fundamental right to vote was

1 thwarted when the State of Arizona adopted the voter identification requirements for in-
2 person voting. Knowledgeable of the voter identification requirements, Ms. Laughter
3 traveled to several locations, approximately 90-115 miles from her home, in unsuccessful
4 attempts to obtain identification for the purpose of voting. Prior to 2006, Ms. Laughter had
5 not needed any of the forms of identification required under the Secretary of State's
6 Procedure for Proof of Identification at the Polls ("Procedures"). *See* Exh. A. The Navajo
7 Nation does not issue tribal identification cards; rather, the Navajos have a system of
8 identification, which is used to identify Navajo tribal members and their relationships to
9 each other. Testimony of Leonard Gorman, Prel. Inj. Hr'g Tr. 63, Aug. 30, 2006, attached
10 hereto as Exhibit B.

11 Ms. Laughter has lived her entire life in Chilchinbeto. Chilchinbeto is located north
12 of the Navajo-Hopi partitioned lands, in the middle of the Reservation. According to the
13 2000 Census, Chilchinbeto has a population of 1,325. On September 12, 2006, Ms.
14 Laughter went to vote at her usual polling location, the Chilchinbeto Chapter House. She
15 was greeted immediately by two poll officials who asked her if she had identification. She
16 did not. They told her to wait outside while they went inside the Chapter House to speak
17 with someone. Five minutes later, they emerged and invited her into the polling station.
18 Inside, Mary Yazzie, a poll worker, recognized Ms. Laughter greeted her in the Navajo
19 language. Ms. Yazzie acknowledged Ms. Laughter as her older sister through their
20 maternal clan Running-into-the-Water. Ms. Laughter and her family are well known in the
21 community; her son is the Chilchinbeto Chapter Vice President. Nevertheless, the
22 confirmation of her identity through personal knowledge and the traditional tribal kinship
23 system was not sufficient to permit Ms. Laughter to vote. During the 2006 election cycle,
24 Ms. Laughter was the denied the right to vote in the Primary Election as a direct result of
25 the voter identification law because she did not have one of the statutory forms of
26 identification. As a direct result of the embarrassment she felt after her 2006 Primary
27 Election experience and because she does not have identification to permit her to receive a
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1 ballot, Ms. Laughter did not even attempt to vote in the 2006 General Election. *See*
2 Affidavit of Agnes Laughter, attached hereto as Exhibit C.

3 During the November 2007 school bond election, Ms. Laughter again attempted to
4 vote. At this election, she presented a Certificate of Navajo Indian Blood and a bank card.
5 Exhibit 8 ¶ 7 to Motion to Dismiss. Upon presentation of these documents, Ms. Laughter
6 received and voted a regular ballot. *See* Note between Kimmeth Yazzie and Doris Clark
7 dated Dec. 12, 2007, attached hereto as Exhibit D.

8 **II. LEGAL ANALYSIS**

9 In *Marbury v. Madison*, the Supreme Court stated that "[t]he very essence of civil
10 liberty certainly consists in the right of every individual to claim the protection of the laws,
11 whenever [s]he receives an injury." *Marbury v. Madison*, 1 Cranch 137, 163 (1803).
12 Voters have standing when they allege facts showing a disadvantage to themselves
13 individually. *Baker v. Carr*, 369 U.S. 186, 206-207 (1962).

14 The requisite elements of Article III standing are well established: "A plaintiff must
15 allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and
16 likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S. 737, 751 (1984).
17 To determine whether an individual has standing, the Court must look initially to what the
18 complaint alleges. *Warth v. Seldin*, 422 U.S. 490, 498, 501 (1975). Ms. Laughter alleges
19 that she is a member of the Navajo Nation, a United States citizen, and a registered voter.
20 Complaint ¶ 3. She also alleges that she does not have acceptable identification that can be
21 used to cast a regular ballot at the polls on Election Day. Complaint ¶¶ 3, 74-75. The
22 complaint further alleges that the new voter identification requirement applies only to
23 electors voting in person on Election Day, and it does not apply to electors voting by mail
24 or the early voting process. Complaint ¶¶ 38-39. The requirements for electors at the polls
25 prevent persons from casting ballots that would have been accepted from these persons had
26 they been early voters. Complaint ¶ 46. Because Ms. Laughter speaks only Navajo and
27 Navajo is an oral language, the County must provide Ms. Laughter language assistance at
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1 the polls on Election Day. Complaint ¶¶ 47, 5; Declaration of Agnes Laughter, Exh. 6. to
2 Verified Complaint, attached hereto as Exhibit E. Ms. Laughter is not able to participate in
3 early voting, and therefore, she is required to meet the stricter requirements for electors
4 voting at the polls. Complaint ¶ 48. Further, Ms. Laughter and other Navajos similarly
5 situated are disproportionately impacted because they vote at the polls at higher rates than
6 those individuals living off of the Reservation. Complaint ¶ 99.

7 In the Verified Complaint complaint, Ms. Laughter requests that the Court (1) enter
8 a declaratory judgment finding that the voter identification requirement violated the Equal
9 Protection Clause of the Fourteenth Amendment, both on its face and as applied; (2) enter a
10 declaratory judgment finding that that the voter identification requirement violates Section
11 2 of the Voting Rights Act; and (3) enter an injunction barring the voter identification
12 requirement. Ms. Laughter is a Native American, and therefore, she is a member of a
13 protected class under the Voting Rights Act. Because Ms. Laughter is Navajo language
14 speaker, and not proficient in English, Sections 4(f)(4) and 203 (c) of the Voting Rights
15 require the State and Navajo County to provide Ms. Laughter with an equal opportunity to
16 participate in state and federal elections. However, because Ms. Laughter votes at the polls
17 and not by mail, she is subject to a heightened and undue burden of producing identification in
18 order to vote at the polls, while not placing a similar requirement on early voters, in violation
19 of the Equal Protection Clause. Complaint ¶¶ 109-113. Under the Voting Rights Act, Ms.
20 Laughter alleges the voter identification requirement denies or abridges the rights of Navajos
21 to vote. Complaint ¶¶ 130-135. Ms. Laughter alleged that the voter identification would deny
22 or limit her voting rights in violation of Section 2 of the Voting Rights Act.

23 Ms. Laughter has standing to challenge the voter identification requirement as a
24 violation of the Equal Protection Clause and as a violation of the Voting Rights Act. The
25 Motion to Dismiss fails to address the Equal Protection or Voting Rights allegations
26 presented by Ms. Laughter in her complaint, nor does the State allege that under these
27 theories that Ms. Laughter does not have standing to address these claims.

1 Ms. Laughter was denied the right to vote in the 2006 Primary and General Elections
2 because of the voter identification requirement. The State assumes that because Ms.
3 Laughter was allowed to vote in the November 2007 Election, she no longer has a claim.
4 This argument must fail for four reasons.

5 First, Ms. Laughter failed to provide the documents required for receiving a regular
6 ballot under either Proposition 200 or the Procedures, but she received and completed a
7 regular ballot. Proposition 200 requires that an elector provide a photo identification with
8 the elector's name and address or two forms of identification with the elector's name and
9 address. During the 2007 election, Ms. Laughter provided a bank card and a Certificate of
10 Navajo Blood. Neither of these documents includes Ms. Laughter's address. Therefore,
11 Ms. Laughter should not have received a regular ballot under either the Procedures or the
12 statute. Because a poll worker accepts documentation that does not meet the requirements
13 during one election, does not mean that Ms. Laughter will be permitted to successfully
14 complete and cast a regular ballot in all future elections with the same or similar
15 identification used during the 2007 election.

16 Second, the Navajo Nation does not issue tribal identification cards. The Certificate
17 of Navajo Indian Blood provided by Ms. Laughter is not tribal identification. The
18 Certificate of Navajo Indian Blood is on an 8 1/2 by 11 piece of paper, and Navajos do not
19 consider the certificate a form of identification. The purpose of the certificate is not to
20 serve as a form of identification but to confirm a person's degree of Navajo blood. Exh. B,
21 Testimony of Leonard Gorman, Prel. Inj. Hr'g Tr. 59-60, 93. In 2000, the Bureau of Indian
22 Affairs adopted a proposed rule governing Certificates of Degree of Indian Blood
23 ("CDIB"). As described in the proposed rule, "[a] CDIB does not establish membership in
24 a federally recognized Indian tribe." Certificate of Degree of Indian or Alaska Native
25 Blood, 66 Fed. Reg. 20775, 20781 (to be codified at 25 CFR part 70) (proposed April 18,
26 2000).

27 Third, Ms. Laughter has standing to challenge the voter identification requirement as
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1 a violation of the Equal Protection Clause of the Fourteenth Amendment as presented in the
2 Second and Third Claims for Relief in the Verified Complaint. The State failed to address
3 Ms. Laughter's equal protection claim, nor has the State alleged that under these theories
4 that Ms. Laughter does not have standing to address these claims. Even assuming that Ms.
5 Laughter was able to procure satisfactory identification, she would still have standing to
6 challenge the difference in requirements for electors voting at the polls on Election Day to
7 the requirements for early voters as a violation of Equal Protection. Due to her inability to
8 speak or read English, Ms. Laughter votes at the polls on Election Day as there are no early
9 voting locations in her area. Exh. 10 to Motion to Dismiss.

10 Finally, Ms. Laughter has standing to challenge the prohibited voting practice as a
11 violation of the Voting Rights Act. The State failed to address Ms. Laughter's Voting
12 Rights Act claim, nor has the State alleged that under these theories that Ms. Laughter does
13 not have standing to address these claims. She alleges that she is one of the Navajos
14 disproportionately impacted by the voter identification law because it reduces voter turnout
15 and denies Navajos the right to vote. Under the Voting Rights Act, the analysis is whether
16 Ms. Laughter and the Navajo Nation have demonstrated that the totality of the
17 circumstances support the conclusion that the voter identification requirement denies
18 members of the Navajo Nation—a protected minority—the same opportunity as other
19 members of the electorate to participate in the political process and to elect representatives
20 of their choice on account of their race and/or membership in a language minority.
21 *Farrakhan v. Washington*, 338 F. 3d 1009, 1016-1017 (9th Cir. 2003) (citing 42 U.S.C.
22 1973(b); *Thornburg v. Gingles*, 478 U.S. 30, 43, 47 (1968)).

23 **III. CONCLUSION**

24 Because the State failed to address how Ms. Laughter does not have standing to
25 address her Equal Protection and Voting Rights Act claims, the Court should deny the
26 State's motion. In addition, Ms. Laughter alleges a continuing violation and threatened
27 future violation that can be redressed for her benefit. Since the implementation of the voter
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1 identification requirement, Ms. Laughter has been denied the right to vote twice, been
2 improperly allowed to vote a regular ballot under the current Arizona law, and been subject to
3 requirements more burdensome than the early voter. If the Court finds that the voter
4 identification requirement violates either the Equal Protection Clause or the Voting Rights
5 Act, Ms. Laughter will be able to participate in elections on an equal footing with other
6 Arizona electors. For all of these reasons, the Court should deny the State's Motion to
7 Dismiss.

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DATED this 19th day of December, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants, if any:

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