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10 **IN THE UNITED STATES DISTRICT COURT**
DISTRICT OF ARIZONA

11
12 Maria M. Gonzalez, et al.,
13 Plaintiffs,
14
15 v.
16 State of Arizona, et al.,
17 Defendants.

No. CV06-1268 PHX ROS
No. CV06-1362 PCT JAT (Cons)
No. CV06-1575 PHX EHC (Cons)

**ADDITIONAL BRIEFING BY THE
STATE OF ARIZONA AND
ARIZONA SECRETARY OF STATE**

(Assigned to the Honorable Roslyn O.
Silver)

18
19 Pursuant to the Court's Order dated September 11, 2006, the State of Arizona and
20 the Arizona Secretary of State (together, the "State"), through counsel, provide this
21 additional brief to illustrate that the registration policy approved by the voters under
22 Proposition 200 is not a poll tax. This brief is supported by the Memorandum of Points
23 and Authorities that follows and by the record in this matter.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Although U.S. citizenship is a basic requirement to vote in our nation, Plaintiffs
4 argue that our Constitution does not allow states to require evidence that people who
5 register to vote are actually U.S. citizens. Among their theories, Plaintiffs stretch the
6 Fourteenth and Twenty-fourth Amendments to read that a state policy that simply
7 requires evidence of citizenship to vote in U.S. elections is akin to a real poll tax.¹

8 There is a fundamental difference between assessing a discriminatory tax on
9 voting itself and requiring evidence of citizenship from individuals who must be U.S.
10 citizens to vote in the first place. Whether Plaintiffs agree with the policy choice of
11 Arizona voters, Plaintiffs’ claim that the Constitution prohibits states from requiring
12 voters to actually demonstrate they are citizens runs far afield of the Supreme Court
13 cases to review genuine poll tax laws, and produces an unrealistic result.

14 The days of honor-system voting preferred by Plaintiffs are waning. Amid
15 growing concerns of voter fraud, nearly half of all states already require identification
16 from voters at the polls. With the Help America Vote Act, Congress too required
17 identification from certain in-person voters, and sought to ensure that only U.S. citizens
18 are voting. *See* 42 U.S.C. § 15483(b). Policies like Proposition 200 address these
19 concerns and are lawful.

20 As discussed below, the Court correctly ruled that Plaintiffs did not have a
21 likelihood of success on their claims that requiring evidence of citizenship is a poll tax.
22 If and when the Court proceeds to the merits, Plaintiffs’ claims also fail as a matter of
23 law and should be dismissed.

24 **II. BACKGROUND FOR PLAINTIFFS’ POLL TAX CLAIM.**

25 The parties are past the point of arguing that Arizona has no justification for

26 ¹ The ITCA and Gonzalez Plaintiffs (the “Plaintiffs”) argue that the registration
27 provisions of Proposition 200 amount to a poll tax, impermissibly burden the right to
28 vote, and are prohibited by federal law. The Navajo Nation Plaintiffs do not pose any
challenge in their lawsuit to the registration provisions of Proposition 200.

1 requiring evidence of U.S. citizenship when individuals register to vote. States no doubt
2 have a compelling interest in curbing voter fraud and preserving the integrity of
3 elections. *See Burson v. Freeman*, 504 U.S. 191, 199 (1992) (a state “indisputably has a
4 compelling interest in preserving the integrity of its election process”).

5 To date, the evidence reveals multiple instances of non-citizens allegedly
6 registering to vote. And had fraudulent registrations never occurred in Arizona, which is
7 not the case, the Constitution still allows states to act with foresight in promoting fair
8 and honest elections. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 196-97
9 (1986); *see also Griffin v. Roufas*, 385 F.3d 1128, 1131 (7th Cir. 2004) (“the striking of
10 the balance between discouraging voter fraud and other abuses and encouraging turnout
11 is quintessentially a legislative judgment with which we judges should not interfere
12 unless strongly convinced that the legislative judgment is grossly awry”).

13 United States citizenship is a fundamental qualification for voting in Arizona
14 elections. *See* A.R.S. § 16-101(A) (“Every resident of the state is qualified to register to
15 vote if he . . . [i]s a citizen of the United States”). Citizenship also is a precondition to
16 voting under federal law. *See, e.g.*, 42 U.S.C. § 15483(b); 18 U.S.C. § 1015(f).

17 Proposition 200 amended Arizona law simply to require satisfactory evidence of
18 citizenship from people who want to register to vote. *See* A.R.S. § 16-166(F). The
19 voters provided several alternatives to satisfy this policy, including: a driver’s license or
20 non-operating ID card issued after October 1, 1996; a birth certificate; a U.S. passport;
21 naturalization documents; and a Bureau of Indian Affairs Card number, Tribal Treaty
22 Card number or Tribal Enrollment number. *See id.*

23 The vast majority of Arizona citizens already have the information needed to
24 satisfy the registration requirements of Proposition 200. The expert for the ITCA
25 Plaintiffs estimated that approximately 98 percent of Arizonans have all that they need.
26 Moreover, because Proposition 200 grandfathers in Arizonans who were already
27 registered to vote in our state, most Arizonans need not take any steps at all to comply
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1 with these requirements.²

2 For those individuals who remain, the items necessary to establish citizenship
3 may carry an incidental cost. According to the Motor Vehicles Department website, an
4 Arizona driver's license costs from \$10 to \$25. A duplicate license or ID card costs \$4.³
5 The Department of Health Services website places the cost of a certified copy of a birth
6 certificate issued in Arizona at \$10 for births in or after 1990, and \$15 for births at an
7 earlier date. The federal government apparently imposes a fee for citizens wishing to
8 naturalize, but naturalization is required to vote in U.S. elections in the first place. The
9 fee that may accompany other evidence of citizenship like a passport, Tribal documents
10 and birth certificates issued in other states also are beyond the State's control.

11 **III. A STATEWIDE POLICY THAT REQUIRES EVIDENCE OF**
12 **CITIZENSHIP IS NOT A POLL TAX.**

13 The State of Arizona does not impose a poll tax or any other tax as a precondition
14 to voting. U.S. citizenship is a fundamental requirement for being eligible to vote, and
15 the State policy under Proposition 200 is simply to require evidence that each individual
16 who registers to vote is in fact a citizen of the United States. Such a basic policy does
17 not even remotely resemble a real poll tax, and enforces a legitimate interest in
18 promoting the integrity of elections and confidence in the results.

19 **A. Proposition 200 Is Not A Poll Tax Law.**

20 The statewide policy for registration under Proposition 200 is a long way from
21 the real poll tax laws reviewed in the 1960s. In *Harman v. Forssenius*, 380 U.S. 528
22 (1965), Virginia imposed a genuine poll tax on voters participating in state elections.
23 Virginia also required any federal voter who refused to pay the poll tax to file a
24 residency certificate six months before each election in order for that person to vote.

25 ² The registration requirements of Proposition 200 apply only to individuals who register
26 for the first time in Arizona, or those who move from one county to another in the state.
27 *See* A.R.S. § 16-166(G). All other registered voters are grandfathered in. *See id.*

28 ³ A person who is 65 years of age or older and a person who is a recipient of public
monies as a disabled individual under Title 16 of the Social Security Act are exempt
from the fees for a nonoperating ID card. *See* A.R.S. § 28-3165(J).

1 The Supreme Court noted that the Twenty-fourth Amendment abolished
2 completely the customary poll tax as a prerequisite to voting in federal elections. *See id.*
3 at 542. The Court struck down Virginia’s law as that state imposed the certificate
4 requirement specifically on voters who sought immunity from the poll tax law. *See id.*
5 at 544 (“That Amendment was also designed to absolve all requirements impairing the
6 right to vote in federal elections by reason of failure to pay the poll tax”).⁴

7 Indeed, the Twenty-fourth Amendment states that “[t]he right of citizens of the
8 United States to vote in any primary or other election for President or Vice President, for
9 electors for President or Vice President, or for Senator or Representative in Congress,
10 shall not be denied or abridged . . . by reason of failure to pay *any poll tax or other tax.*”
11 U.S. Const. amend. XXIV (italics added). Unlike Virginia in the 1960s, Arizona does
12 not impose any poll tax or other tax on the right to vote.

13 In earlier briefing, Plaintiffs seized upon language in the *Harman* case that the
14 Twenty-fourth Amendment bars restrictions on voting that are “somewhat less onerous
15 than a poll tax” or are a “milder substitute.” *See* ITCA Plaintiffs’ Preliminary Injunction
16 Motion at 24 (quoting *Harman*, 380 U.S. at 542). The law in *Harman*, however,
17 imposed a substitute requirement on those citizens who refused to pay a real poll tax.
18 The Court’s language does not support Plaintiffs’ view that any rule connected with the
19 process of voting can be deemed an unlawful substitute for a genuine poll tax.

20 One year after *Harman*, the Supreme Court applied the Equal Protection Clause
21 of the Fourteenth Amendment to strike down the part of Virginia’s law that imposed a
22 poll tax of \$1.50 on every resident as a precondition for voting. *See Harper v. Virginia*
23 *State Bd. of Elections*, 383 U.S. 663, 666 (1966). The Court reasoned that a state

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25 ⁴ Under Virginia’s law, a person voting in a state election had to pay to the state at least
26 six months before the election any and all poll taxes assessed against him for the
27 preceding three years as an absolute prerequisite to voting. *See Harman*, 380 U.S. at
28 529. The annual poll tax in Virginia at the time was \$1.50. *See id.* at 531. Voters in
federal elections who did not pay the poll tax had to file a certificate of residence at least
six months before the election. *See id.* at 532.

1 violates equal protection by making wealth or the payment of a fee an electoral standard.
2 *See id.* at 666. The Court added that the interest of states is to fix qualifications, and
3 voter qualifications had no relation to Virginia’s law. *See id.* at 668.

4 U.S. citizenship is a qualification for voting in our nation, and the policy to verify
5 a voter’s citizenship stands in contrast to the intent driving the real poll tax laws in
6 *Harper* and *Harman*. The Virginia laws were born from a state policy to disenfranchise
7 minority voters. *See Harman*, 380 U.S. at 542; *Harper*, 383 U.S. at 666 n.3. Arizona’s
8 policy is simply to require evidence of U.S. citizenship from people wishing to vote in a
9 U.S. election. The Twenty-fourth and Fourteenth Amendments do not bar such a law.

10 **B. Incidental Costs of Establishing Citizenship Do Not Make A Policy**
11 **Like Proposition 200 A Real Poll Tax Law.**

12 States do not impose a poll tax every time that some cost arises in connection
13 with the process of voting. A state or federal law that requires citizens to register in
14 person, to vote on a Tuesday and to travel to their assigned precinct all carry some
15 indirect cost. For some, these indirect costs may well be higher than what is necessary
16 to comply with Proposition 200. To equate these expenses with a real poll tax would
17 eliminate any number of policies that affect voters.

18 In *Indiana Democratic Party v. Rokita*, No. 1:05-CV-0634-SEB-VSS, 2006 WL
19 1005037 (S.D. Ind. Apr. 14, 2006), Indiana required a government-issued photo ID from
20 voters casting a ballot at the polls. The district court rejected arguments that the
21 ancillary cost in time and transportation of procuring the ID converted that state’s policy
22 into a real poll tax:

23 It is axiomatic that “(e)lection laws will invariably impose some burden
24 upon individual voters.” *Burdick v. Takushi*, 504 U.S. 428, 433, 112 S.Ct.
25 2059, 119 L.Ed.2d 245 (1992). Thus, the imposition of tangential burdens
does not transform a regulation into a poll tax.

26 *Id.* at *38; *see also Common Cause/Georgia League of Women Voters v. Billups*, 439 F.
27 Supp. 2d 1294, 1354 (N.D. Ga. 2006) (same).

28 For many Arizonans, the registration provisions of Proposition 200 require

1 nothing at all. People who are registered in Arizona and do not change counties are
2 grandfathered in. See A.R.S. § 16-166(G). New registrants may expend some resources
3 in obtaining information to verify their citizenship, but unlike the laws in *Harman* and
4 *Harper*, their number is relatively small. Indeed, Arizona is not levying a fee on its
5 citizens' right to vote, it is attempting to ensure that registrants are eligible to vote as
6 required by state and federal law.

7 The law mandates U.S. citizenship from voters, and Proposition 200 simply asks
8 for the type of information that a policy of this kind requires. Much of the information
9 permitted by Proposition 200 is beyond any one state's control. Like other incidental
10 burdens, moreover, any expense that some people incur in the process of registering is
11 too attenuated to invalidate this State law.

12 *Harper* and *Harman* do not hold that a state imposes a poll tax every time some
13 person incurs this kind of expense. Indeed, any fee paid in connection with one in a
14 chain of documents could under Plaintiffs' theory invalidate a state law that itself
15 imposes no poll tax, even if identification is issued for free. This is a far cry from the
16 true poll tax cases in Virginia. The result would be that states could not enact a law like
17 Proposition 200 to verify citizenship. That is not what the prohibition on real poll tax
18 laws intended to do.

19 **IV. CONCLUSION.**

20 For the reasons discussed above, the State policy of requiring satisfactory
21 evidence of citizenship under Proposition 200 is not a poll tax.

22 RESPECTFULLY SUBMITTED this 18th day of September, 2006.

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The Honorable Roslyn O. Silver
United States District Court
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