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9  
10 **IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

11  
12 Maria M. Gonzalez, et al.,  
13 Plaintiffs,  
14 v.  
15 State of Arizona, et al.,  
16 Defendants.  
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No. CV06-1268 PHX ROS  
No. CV06-1362 PCT JAT (Cons)  
No. CV06-1575 PHX EHC (Cons)

**RESPONSIVE BRIEF BY THE  
STATE OF ARIZONA AND  
ARIZONA SECRETARY OF STATE  
REGARDING POLL TAX CLAIM**

(Assigned to the Honorable Roslyn O.  
Silver)

18  
19 Arizona does not assess a tax on voting. To enhance the integrity of elections and  
20 public faith in the results, the policy approved by the voters of Arizona requires  
21 satisfactory evidence of U.S. citizenship from people who register to vote. This policy is  
22 fundamentally different than the real poll tax laws reviewed in the 1960s. Indeed, given  
23 that U.S. citizenship is required under the law to vote in our elections, it cannot be that  
24 states can never verify citizenship when people register to vote.

25 **I. A POLICY REQUIRING EVIDENCE OF CITIZENSHIP IS  
26 FUNDAMENTALLY DIFFERENT THAN A POLL TAX.**

27 Plaintiffs’ claim that Proposition 200 imposes a “modern day” poll tax concedes  
28 that a policy requiring evidence of citizenship is different from the poll tax laws

1 reviewed by the Supreme Court forty years ago. In those cases out of Virginia, that state  
2 assessed an actual tax of \$1.50 on every voter as an absolute requirement to participating  
3 in a state election. Virginia required voters in a federal election to file a certificate of  
4 residence any time those voters refused to pay the poll tax.

5 The Supreme Court in *Harman v. Forssenius*, 380 U.S. 528 (1965), struck down  
6 Virginia’s certificate requirement for the federal voter as it solely applied to people who  
7 refused to waive their Constitutional immunity to a poll tax. *See id.* at 544. The Court  
8 explained that the Twenty-fourth Amendment did not just prohibit a genuine poll tax,  
9 but “was also designed to absolve all requirements impairing the right to vote in federal  
10 elections by reason of failure to pay the poll tax.” *Id.*

11 In *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966), the Court  
12 used the Equal Protection Clause to strike down Virginia’s poll tax on voters  
13 participating in state elections. The Court said that states may not make the affluence of  
14 the voter or payment of a fee an electoral standard. *See id.* at 666. The Court added that  
15 the interest of states is to fix qualifications, which had nothing to do with requiring  
16 voters to pay some arbitrary tax under Virginia’s law. *Id.* (“Voter qualifications have no  
17 relation to wealth nor to paying or not paying this or any other tax”).

18 Proposition 200 represents a policy of a totally different kind. The State does not  
19 impose a poll tax or any other tax on voters.<sup>1</sup> The policy in Arizona simply is to require  
20 evidence of U.S. citizenship when people register to vote. Unlike the poll tax in  
21 Virginia, U.S. citizenship is fundamental to a voter’s qualifications under state and  
22 federal law.

23 Plaintiffs return to language from the *Harman* case that the Constitution bars  
24 regulations that are “somewhat less onerous” or are a “milder substitute” than a poll tax.  
25 *Harman*, 380 U.S. at 542. The law in that case, however, imposed a substitute

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26 <sup>1</sup> In fact, the Twenty-fourth Amendment states that the right to vote in a federal election  
27 shall not be abridged “by reason of failure to pay *any poll or other tax.*” U.S. Const.  
28 amend. XXIV (italics added). That Amendment does not bar a policy that requires  
evidence of citizenship from people voting in our elections.

1 requirement on voters who refused to pay a real poll tax. *See id.* at 538 (“[T]he issue  
2 here is whether the State of Virginia could constitutionally confront the federal voter  
3 with a requirement that he either pay the customary poll tax as required for state  
4 elections or file a certificate of residence”).

5 *Harman* does not support Plaintiffs’ view that any regulation that affects voting is  
6 an invalid substitute for a real poll tax. In fact, the Supreme Court stated that it was not  
7 passing on the authority of states to enact legislation, including Virginia’s residency  
8 certificate law, which is not packaged with a real poll tax. *See id.* The passages  
9 Plaintiffs recite from the *Harman* case do not erase the differences between Virginia’s  
10 law and the policy in Arizona.

11 The Gonzalez Plaintiffs argue that policies like Proposition 200 merit the judicial  
12 scrutiny that the Supreme Court applied in *Harper*. Their argument misses the mark,  
13 however, as the policy in Arizona is not like the poll tax in *Harper*. The law in Arizona  
14 simply requires evidence of U.S. citizenship. Unlike in *Harper*, the line drawn is not  
15 based on wealth.<sup>2</sup>

16 In fact, the registration portion of Proposition 200 applies only to new registrants  
17 in the state, or registered voters who change counties. *See* A.R.S. §16-166(G). All other  
18 registered voters are grandfathered in and need take no steps at all. *See id.* According to  
19 the ITCA Plaintiffs’ own expert, moreover, the vast majority of eligible voters already  
20 have all of the information they need to register in Arizona. This is not a tax to prevent  
21 citizens from voting.

22 The Constitution does not prohibit states from requiring evidence of citizenship.

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24 <sup>2</sup> The Gonzalez Plaintiffs also cite to *Bullock v. Carter*, 405 U.S. 134 (1972), a case that  
25 concerned a direct filing fee for candidates, and thus was like the poll tax in *Harper* and  
26 unlike Proposition 200. *Goosby v. Osser*, 409 U.S. 512 (1973) and *McDonald v. Bd. of*  
27 *Election Commissioners of Chicago*, 394 U.S. 802 (1968), concerned laws for voting by  
28 detainees, and cited *Harper* as an example of a wealth-test case. Arizona’s policy still  
would withstand strict review, however, as the State has a compelling interest in curbing  
fraud and preserving the integrity of elections, *see Burson v. Freeman*, 504 U.S. 191,  
199 (1992), and asks for the kind of information that a policy of this kind requires.

1 Plaintiffs' claim runs far afield of *Harman* and *Harper*, and produces a result that our  
2 nation's prohibition on real poll tax laws never intended.

3 **II. INCIDENTAL COSTS IN THE PROCESS OF ESTABLISHING**  
4 **CITIZENSHIP DO NOT INVALIDATE THIS STATE POLICY.**

5 Arizona is not levying a fee on the right of its citizens to vote. Rather, it is  
6 attempting to ensure that registrants are eligible to vote under longstanding laws that  
7 only citizens of the United States may participate in our nation's elections. Much of the  
8 information that satisfies a policy like Proposition 200 is beyond any one state's control.  
9 Like other incidental burdens, moreover, any costs that occur in the process of  
10 establishing citizenship do not transform a policy like Arizona's into a real poll tax law.

11 In *Harper* and *Harman*, Virginia assessed a poll tax of \$1.50 as a precondition to  
12 voting. The ITCA Plaintiffs argue that the cost of transportation and the time spent in  
13 acquiring evidence of citizenship make Proposition 200 the same kind of law. *See* ITCA  
14 Supplemental Br. at 6-7. These incidental burdens are a far cry from a real poll tax:

15 This argument represents a dramatic overstatement of what fairly  
16 constitutes a "poll tax." It is axiomatic that "(e)lection laws will invariably  
17 impose some burden upon individual voters," *Burdick v. Takuski* [sic], 504  
18 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). Thus, the  
19 imposition of tangential burdens does not transform a regulation into a poll  
20 tax. Moreover, the cost of time and transportation cannot plausibly qualify  
as a prohibited poll tax because these same "costs" also result from voter  
registration and in-person voting requirements, which one would not  
reasonably construe as a poll tax.

21 *Indiana Democratic Party v. Rokita*, No. 1:05-CV-0634-SEB-VSS, 2006 WL 1005037  
22 at \*38 (S.D. Ind. Apr. 14, 2006).

23 The costs that may occur in the process of obtaining documents under Proposition  
24 200 are no different than other costs incidental to voting. Plaintiffs' argument shows  
25 why. They argue that one document to establish citizenship usually requires another  
26 document, and a state imposes a poll tax as long as anywhere in the process of  
27 registering a person encounters some fee. Under Plaintiffs' system, any expense no  
28 matter how far downstream will invalidate a fraud-prevention policy, even if

1 identification the voter actually uses to register is issued for free.

2 In *Billups v. Common Cause/Georgia*, 406 F. Supp. 1326 (N.D. Ga. 2005), the  
3 court invalidated a Georgia law that required voters to present photo identification at the  
4 polls, after that state had stripped voters of the ability to present identification like a  
5 utility bill or bank statement which would have previously sufficed. At the same time,  
6 Georgia doubled the price of the identification that voters could use.<sup>3</sup>

7 Unlike Georgia, Arizona asks for the type of information that a policy requiring  
8 evidence of citizenship requires. Moreover, *Harper* and *Harman* simply do not hold  
9 that any incidental cost incurred in the process of registering transforms a policy that  
10 verifies citizenship into a poll tax. Indeed, the practical result of Plaintiffs' system  
11 would be that states cannot verify a voter's citizenship, and that is not what the  
12 prohibition on real poll tax laws intended.

13 The expenses incurred in the process of establishing citizenship are nothing of the  
14 kind experienced by voters in Virginia decades ago. Plaintiffs' claim is a long way from  
15 the primary poll tax cases of *Harper* and *Harman*.

16 **III. THE ADDITIONAL BRIEFING IS NOT A VEHICLE FOR THE**  
17 **GONZALEZ PLAINTIFFS TO REVISIT THEIR OTHER CLAIMS.**

18 The Court requested additional briefing on whether the policy in Arizona that  
19 requires evidence of citizenship when registering to vote is a poll tax. The Gonzalez  
20 Plaintiffs devote a substantial portion of their brief rehashing their other theories pressed  
21 in an attempt to invalidate Arizona's law.

22 They revisit arguments, unsuccessful at the preliminary injunction stage, that  
23 Proposition 200 places an impermissible burden on the fundamental right to vote, and  
24 that the policy requiring identification at the polls amounts to a prohibited poll tax. The  
25 Court properly denied their motion, and the additional briefing that the Court requested  
26 is not the vehicle to revisit these claims.

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27 <sup>3</sup> The lower court case out of Missouri that the ITCA Plaintiffs attach to their brief  
28 presents a similar scenario. The state eliminated many forms of identification that had  
earlier been acceptable and imposed a strict photo ID requirement for voters at the polls.

1           The Gonzalez Plaintiffs also do not assist the Court by suggesting that the process  
2 by which naturalized citizens register to vote in Arizona does not function on the  
3 ground. They indicate that naturalized citizens cannot register to vote, which is not  
4 correct, and that naturalized citizens must register in person, which also is not correct.  
5 *See* Gonzalez Supp. Br. at 6-8.

6           Proposition 200 asks for a naturalization number to register to vote. *See* A.R.S. §  
7 16-166(F)(4). As briefed previously, the counties have learned that the alien registration  
8 number that appears on a certificate of naturalization may be used to verify citizenship.  
9 *See* Deposition of Karen Osborne, July 31, 2006 at 35:1-36:2. Election officials provide  
10 this information at naturalization ceremonies, and request the correct number from  
11 applicants who register by mail. *See id.*

12           The result is that naturalized citizens are registering under Proposition 200. The  
13 Response filed by the County Defendants to the Gonzalez Plaintiffs' supplemental brief  
14 confirms this. The County Defendants also note that the Procedures Manual  
15 promulgated by the Arizona Secretary of State pursuant to A.R.S. § 16-452, and  
16 precleared by the Department of Justice, advises counties of which number to use.<sup>4</sup>

#### 17 **IV. CONCLUSION.**

18           Arizona's policy of requiring satisfactory evidence of citizenship under  
19 Proposition 200 is not a poll tax.  
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24 <sup>4</sup> The ITCA Plaintiffs' suggestion that the State of Arizona as a whole is covered under  
25 Section 5 of the Voting Rights Act because of a literacy test is not accurate. The entire  
26 State of Arizona became a covered jurisdiction after Congress redefined the formula for  
27 Section 5 coverage to include jurisdictions that printed ballot and other election  
28 materials in only the English language where a single language minority constituted  
more than five percent of citizens of voting age. *See* 40 Fed. Reg. 43746 (September 23,  
1975). This history also is recounted on the Department of Justice website,  
[http://www.usdoj.gov/crt/voting/sec\\_5/about.htm](http://www.usdoj.gov/crt/voting/sec_5/about.htm).

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RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of September, 2006.

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ORIGINAL of the foregoing filed  
electronically this 25<sup>th</sup> day of September, 2006.

COPY of the foregoing mailed with a Notice of  
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The Honorable Roslyn O. Silver  
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