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

15 MARIA M. GONZALEZ, et al.,

16 Plaintiffs,

17 v.

18 STATE OF ARIZONA, et al.,

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

(Consolidated)

**NAVAJO PLAINTIFFS' RESPONSE TO
STATE'S SEPARATE STATEMENT OF
FACTS IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT**

AND

**NAVAJO PLAINTIFFS' STATEMENT
OF UNCONTROVERTED FACTS**

1 Plaintiffs Navajo Nation and Agnes Laughter ("Navajo Plaintiffs") hereby submit
2 their response to Defendant's Separate Statement of Uncontroverted Facts and their
3 Statement of Uncontroverted Facts in support of their Response to Defendants' Motion for
4 Summary Judgment.

5 **NAVAJO PLAINTIFFS' RESPONSE TO THE**
6 **STATE'S STATEMENT OF FACTS**

7 1. On November 2, 2004, Arizona voters adopted by ballot initiative
8 Proposition 200 ("Prop 200").

9 **Navajo Plaintiffs' Response:** For purposes of the Motion for Partial
10 Summary Judgment by Defendant Arizona Secretary of State, and without waiving their
11 evidentiary objections, the Navajo Plaintiffs do not dispute paragraph 1.

12 2. Sections 3, 4 and 5 of Prop 200 amended Arizona's voting laws in two
13 substantive ways: (1) applicants to register to vote were required to submit proof of U.S.
14 citizenship; and (2) voters who choose to vote in-person at the polls on election day (as
15 opposed to early voters) would be required to present identification.

16 **Navajo Plaintiffs' Response:** For purposes of the Motion, and without
17 waiving their evidentiary objections, the Navajo Plaintiffs do not dispute paragraph 2.

18 3. On December 9, 2004, the Arizona Attorney General submitted to the
19 U.S. Department of Justice ("DOJ") a request for preclearance of Sections 3, 4 and 5 of
20 Prop 200.

21 **Navajo Plaintiffs' Response:** For purposes of the Motion, and without
22 waiving their evidentiary objections, the Navajo Plaintiffs do not dispute paragraph 3.

23 4. The request for preclearance expressly stated, among other things, that
24 Prop 200's amendments would "require applicants registering to vote to provide evidence
25 of United States citizenship with the application."

26 **Navajo Plaintiffs' Response:** For purposes of the Motion, and without
27 waiving their evidentiary objections, the Navajo Plaintiffs do not dispute paragraph 4.

1 **Navajo Plaintiffs' Response:** The Navajo Plaintiffs take no position as to
2 paragraph 8 as it is irrelevant to the Navajo Plaintiffs' claims.

3 9. Following the implementation of Prop 200, Arizona has continued to
4 accept both the Federal Form and Arizona's form for voter registration purposes, although
5 the State requires submissions of proof of U.S. citizenship along with whichever
6 application form the registrant submits.

7 **Navajo Plaintiffs' Response:** The Navajo Plaintiffs take no position as to
8 paragraph 9 as it is irrelevant to the Navajo Plaintiffs' claims.

9 10. The Arizona Secretary of State makes the Federal Form available to
10 anyone who requests it, and the form is available for downloading and printing on the
11 EAC's website.

12 **Navajo Plaintiffs' Response:** The Navajo Plaintiffs take no position as to
13 paragraph 10 as it is irrelevant to the Navajo Plaintiff's claims.

14 11. Most individuals who are eligible to register to vote already possess a
15 driver's license or nonoperating identification card, and thus do not require any other
16 identification to vote.

17 **Navajo Plaintiffs' Response:** The Navajo Plaintiffs dispute paragraph 11
18 and incorporate the ITCA Plaintiffs' Response to paragraph 11. Further, Navajos such as
19 Plaintiff Agnes Laughter lack the required identification. [Tab 1, Prel. Inj. Hr'g Exh. 115 at
20 3; Tab 2, Prel. Inj. Hr'g Exh. 112]. To the extent that defendants rely on paragraph 11 in
21 support of the Motion, this disputed fact precludes the entry of partial summary judgment
22 for defendants.

23 12. Many counties send official election mail and voter registration cards
24 and inform voters that they may use those items as identification at the polls. Those items
25 are free.

26 **Navajo Plaintiffs' Response:** The Navajo Plaintiffs dispute paragraph 12
27 and incorporate the ITCA Plaintiffs' response to paragraph 12. The only counties relevant
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1 to the Navajo Plaintiffs' claims are Coconino, Apache, and Navajo. Further, there is no
2 evidence that the anticipated recipient receives the election mail prior to Election Day. To
3 the extent that defendants rely on paragraph 12 in support of the Motion, this disputed fact
4 precludes the entry of partial summary judgment for defendants.

5 **NAVAJO PLAINTIFFS' UNCONTROVERTED STATEMENT OF FACTS**

6 1. Whether an elector is a citizen is determined at the time of registration.
7 A.R.S. § 16-101.

8 2. Whether an individual is eligible to vote under A.R.S. § 16-101 is determined
9 at the time of registration.

10 3. Navajo electors living on the Navajo Reservation do not have street
11 addresses, rural route numbers or any other standard form. Addresses typically describe
12 the location of a residence by distance from a landmark, such as a Chapter House. The
13 same address can appear in several different formats making comparison difficult. [Tab 1,
14 Prel. Inj. Hr'g Exh. 115 at 3]

15 4. Navajos living on the Reservation do not receive mail at their homes. [Tab 3,
16 Prel. Inj. Hr'g Tr. 8/30/06 at 52]

17 5. Navajo electors living on the Navajo Reservation do not receive property tax
18 statements. [Tab 1, Prel. Inj. Hr'g Exh. 115 at 3]

19 6. Forty-two percent of Navajos live below the poverty level. [Tab 4, Prel. Inj.
20 Hr'g Exh. 109 at 3]

21 7. Thirty-four percent of the housing units on the Navajo Reservation lack
22 complete plumbing. [Tab 4, Prel. Inj. Hr'g Exh. 109 at 4]

23 8. Sixty-three percent of the housing units on the Navajo Reservation lack
24 telephone service. [Tab 4, Prel. Inj. Hr'g Exh. 109 at 4]

25 9. Over fifty-six percent of the Navajo households are heated by wood. [Tab 4,
26 Prel. Inj. Hr'g Exh. 109 at 4]

1 10. At least twenty percent of the homes on the Arizona portion of the Navajo
2 Reservation lack access to a vehicle. [Tab 4, Prel. Inj. Hr'g Exh. 109 at 4]

3 11. Navajos do not have tribal treaty cards or census cards. [Tab 3, Prel. Inj. Hr'g
4 Tr. 8/30/06 at 58]

5 12. The Navajo Nation does not issue tribal identification cards. [Tab 1, Prel. Inj.
6 Hr'g Exh. 115 at 3; Tab 3, Prel. Inj. Hr'g Tr. 8/30/06 at 58]

7 13. Navajos electors vote at the polls at much higher rates than off-reservation
8 voters in Navajo, Coconino, and Apache Counties. [Tabs 5, 6, 7, 8, Pre. Inj. Hr'g Exh. 124,
9 125, 126, 127]

10 14. Within Navajo, Apache, and Coconino Counties, Navajos utilize early voting
11 at significantly lower rates than off-reservation voters. [Tab 8, Prel. Inj. Hr'g Exh. 127;
12 Tab 9, Prel. Inj. Hr'g Exh. 181]

13 15. A higher percentage of Navajo voters filed conditional provisional ballots
14 than non-Reservation voters in Navajo, Coconino, and Apache Counties. [Id.]

15 16. A higher percentage of conditional provisional ballots cast on the Navajo
16 Reservation were not counted than those cast in non-Reservation precincts in Navajo,
17 Coconino, and Apache Counties. [Id.]

18 17. In-person early voting is one method by which Arizona registered voters can
19 vote. *See* A.R.S. § 16-541(A). Procedures for in-person early voting are exactly the same
20 as in-person voting on election day, except that voters need not present Polling ID to vote
21 early. [Oct. 11 Order, at 3-4]

22 18. The Navajo language is an oral language. [Tab 3, Prel. Inj. Hr'g 8/30/06 at
23 44-45; Tab 10, Prel. Inj. Hr'g Exh. 165]

24 19. Approximately 50,765 of the 61,505 adults living on the Arizona portion of
25 the Navajo Reservation speak Navajo at home. Of the adult Navajo speakers,
26 approximately 17%, or 8,605, are Limited English Proficient. [Tab 11, Prel. Inj. Hr'g Exh.
27 117 at 1]

1 20. Pursuant to sections 4(f)(4) and 203 of the Voting Rights Act, Apache,
2 Navajo, and Coconino counties must provide language assistance to Navajo voters who are
3 Limited English Proficient. *See* 42 U.S.C. §§ 1973b(f), 1973aa-1a; 28 C.F.R. Part 55.

4 21. Language assistance must be made available for traditional Navajos who are
5 Limited English Proficient in order to complete an early ballot or ballot at the polls on
6 Election Day. [Tab 10, Prel. Inj. Hr'g Exh. 165]

7 22. Navajos have less opportunity than non-Reservation voters to request and
8 complete an early ballot. For the November 7, 2006 General Election, the Navajo ballot
9 translation was not available until October 20, 2006. Training for translators was not
10 complete until November 3, 2006. [Tab 10, Prel. Inj. Hr'g Exh. 165 at 2; Tabs 12 and 13,
11 Prel. Inj. Hr'g Exh. 140-141]

12 RESPECTFULLY SUBMITTED this 12th day of July, 2007.

13 SACKS TIERNEY P.A.

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17 Marvin S. Cohen
18 Patricia Ferguson-Bohnee
19 Attorneys for Plaintiffs Navajo Nation
20 and Agnes Laughter
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 12, 2007, a complete, duplicate copy of this document
3 was forwarded directly to Judge Roslyn O. Silver by First Class Mail, at the following
4 addresses:

5 Hon. Roslyn O. Silver
6 United States District Court, Suite 624
401 W. Washington Street, SPC 59
Phoenix, Arizona 85003

7 s/ Judith M. Dworkin

8 I hereby certify that on July 12, 2007, I electronically transmitted the attached
9 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
10 Notice of Electronic Filing to the following CM/ECF registrants, if any:

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