IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Maria M. Gonzalez, et al., Plaintiffs, vs. State of Arizona, et al., Defendants.	No. CV 06-1268-PHX-ROS **ORDER**

The State of Arizona, the Arizona Secretary of State, and the majority of the county defendants, seek partial summary judgment.[1] For the following reasons, the motion will be granted.

On September 11, 2006, Plaintiffs appealed the Court's denial of their request for a preliminary injunction. On April 20, 2007, the Ninth Circuit issued an opinion affirming the denial of the preliminary injunction. The Ninth Circuit decision includes discussion of some of the legal issues still pending before this Court. Based on this Court's prior rulings, as well as the Ninth Circuit's opinion, Defendants are entitled to summary judgment on nine of Plaintiffs' claims.

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[1] The only defendants that did not join the motion for summary judgment are the Coconino and Navajo county defendants.

I. Summary Judgment Standard

A court must grant summary judgment if the pleadings and supporting documents, viewed in the light most favorable to the non-moving party, "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322-323 (1986). Substantive law determines which facts are material, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When a party seeks summary judgment early in the litigation, the opposing party may request additional time for discovery. According to Federal Rule of Civil Procedure 56(f), "[s]hould it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court . . . may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had." A continuance is proper only if the opposing party "shows, among other things, that the discovery would uncover specific facts which would preclude summary judgment." United States Cellular Inv. Co. v. GTE Mobilnet, Inc., 281 F.3d 929, 939 (9th Cir. 2002). A Rule 56(f) continuance need not be granted if the claims fail as a matter of law. Id. at 939-40.

II. Plaintiffs' Claims

Defendants seek summary judgment on nine of Plaintiffs' claims. Each claim will be addressed separately.

A. National Voter Registration Act

Defendants seek summary judgment on Plaintiffs' claim that the National Voter Registration Act ("NVRA") prohibits the State of Arizona from requiring individuals from submitting proof of citizenship when registering to vote. The Ninth Circuit found that the language of the NVRA "does not prohibit documentation requirements." Gonzalez v. Arizona, 485 F.3d 1041,1050 (9th Cir. 2007). In fact, the Ninth Circuit found that the NVRA

"plainly allow[s] states, at least to some extent, to require their citizens to present evidence of citizenship when registering to vote." Id. at 1050-51. The NVRA does not prohibit the State of Arizona's actions and Defendants are entitled to judgment as a matter of law on this issue.

B. Supremacy Clause

Plaintiffs' claim pursuant to the Supremacy Clause is premised on their belief that Prop. 200 and the NVRA are in conflict. (Doc. 300 p.21) Because Prop. 200 and the NVRA do not conflict, Plaintiffs have no cause of action pursuant to the Supremacy Clause and summary judgment will be granted on this claim.

C. Poll Tax

Defendants seek summary judgment on Plaintiffs' claim that Prop. 200's registration identification requirement amounts to an unconstitutional poll tax in violation of the Twenty-fourth Amendment. In resolving this issue, the Ninth Circuit found that Arizona's system "is not like the system found unconstitutional" by the Supreme Court in Harman v. Forssenius, 380 U.S. 528 (1965). Id. at 1049. In Arizona, "voters do not have to choose between paying a poll tax and providing proof of citizenship when they register to vote. They have only to provide the proof of citizenship." Id. Arizona's system does not, as a matter of law, qualify as a poll tax. Thus, Defendants are entitled to summary judgment on this issue.

D. 42 U.S.C. § 1971(a)(2)(A)

Section 1971(a)(2)(A) prohibits a person acting under color of law from "apply[ing] any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote." Plaintiffs believe Prop. 200 conflicts with this section because Prop. 200 "creates two classes of voters: those who vote early and those who vote at the polls on election day." (Doc. 295 p.13) According to Plaintiffs, voters that choose to vote early are not subject to Prop. 200's

identification requirements but voters that vote at the polls on election day are subject to the requirements. Early voting "is an *inherently* different procedure from voting in person." Indiana Democratic Party v. Rokita, 458 F. Supp. 2d 775, 840 (S.D. Ind. 2006). Because early voting and voting at the polls are different types of voting, it is not a violation of § 1971(a)(2)(A) for Arizona to employ different "standards, practices, or procedures" to these two types of voting. 42 U.S.C. § 1971(a)(2)(A). Defendants are entitled to summary judgment on this claim.

E. 42 U.S.C. § 1971(a)(2)(B)

Section 1971(a)(2)(B) prohibits any person acting under color of law from "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." Plaintiffs believe that Prop. 200 violates this statute in two ways. First, the failure to provide valid identification at the polls is "an error or omission on any record or paper relating to any application, registrations, or other act requisite to voting." And second, proof of citizenship is not material for determining an individual's eligibility to vote. Neither argument is convincing.

The Court agrees with the analysis in Rokita that "the act of presenting photo identification in order to prove one's identity is by definition not an 'error or omission on any record or paper.'" Rokita, 458 F. Supp. 2d at 841. Thus, Prop. 200 does not violate the first portion of § 1971(a)(2)(B). Also, only citizens may vote. Requiring an individual to present proof of citizenship allows the State to determine if that individual is qualified to vote. Citizenship is material in determining whether an individual may vote and Arizona's decision to require more proof than simply affirmation by the voter is not prohibited. Thus, Prop. 200 does not violate the second portion of § 1971(a)(2)(B). Defendants are entitled to summary judgment on this claim.

F. Voting Rights Act

Before implementing any legislative or other changes affecting voting, Arizona is required to obtain federal approval of those changes. Plaintiffs believe that Arizona "did not comply with the federal requirement to describe its proposed election changes with 'sufficient particularity' to allow the Department of Justice to evaluate their impact on minority voters." (Doc. 297 p.14) Specifically, Plaintiffs believe that Arizona's submission to the Department of Justice was insufficient because it did not include a copy of A.R.S. § 16-121.01. It is undisputed, however, that Prop. 200 did not change A.R.S. § 16-121.01. Prop. 200 did change A.R.S. § 16-152 (requirements for voter registration) but that statute *was* submitted to the Department of Justice in the preclearance submission. There is no issue of material fact regarding Arizona's preclearance of Prop. 200 and Defendants are entitled to summary judgment on this claim.

G. A.R.S. § 16-151(B)

Pursuant to A.R.S. § 16-151(B), "[t]he secretary of state shall make available for distribution through governmental and private entities the voter registration forms that are prescribed by the federal election commission." Plaintiffs claim that the Secretary of State is violating this statute by failing to make available the federal registration forms.

According to evidence submitted by Defendants, "[t]he Secretary of State's Office makes the Federal Form available to anyone who requests it." (Doc. 282-4 p.9) Also, the form is "available on the Election Assistance Commission's website . . . and can be easily printed or downloaded." (Id.) See also Maricopa County Election Director's deposition testimony (the form is available "on-line and . . . [they] have them on-line if somebody came in." (Doc. 308-2 p.3)). Plaintiffs have not presented any evidence that the form is not available or that any individual has been unable to obtain the form from the Secretary of State. Defendants are entitled to summary judgment on this claim.

H. A.R.S. § 16-121.01

Plaintiffs believe A.R.S. § 16-121.01 "provides that a person is presumed to be properly registered to vote on completion of a registration form . . . without the submission of further documentary proof of citizenship." (Doc. 1-2 p.7) Requiring any submission of proof of citizenship, according to Plaintiffs, is in direct conflict with § 16-121.01. Plaintiffs arrive at their conclusion by construing the statute in an overly strict manner.

Section 16-121.01 states "[a] person is presumed to be properly registered to vote on completion of a registration form as prescribed by § 16-152." Pursuant to § 16-152, voter registration forms must include "[a] statement that the applicant shall submit evidence of United States citizenship with the application and that the registrar shall reject the application if no evidence of citizenship is attached." Reading these statutes together, § 16-121.01 requires a prospective voter to complete a registration form and § 16-152 requires registration forms to alert prospective voters to the requirement that they submit proof of citizenship. These statutes do not conflict. An individual that *properly* completes a registration form as set forth in A.R.S. § 16-152 will be presumed to be properly registered pursuant to A.R.S. § 16-121.01. Plaintiffs have not shown that requiring a properly completed registration form violates the presumption set forth in A.R.S. § 16-121.01. Defendants are entitled to summary judgment on this claim.

I. Mandamus

In their response to the Motion for Summary Judgment, the Navajo Plaintiffs agreed "that the Court should grant summary judgment in favor of the State on the mandamus claim." (Doc. 292 p.2) Based on this statement, summary judgment on this claim will be granted.

Accordingly,

IT IS ORDERED Defendants' Motion for Summary Judgment (Doc. 282) is **GRANTED**.

IT IS FURTHER ORDERED the Motion for Summary Judgment Joinder (Doc. 283) is **GRANTED**.

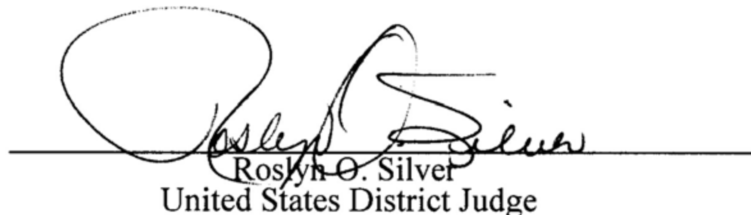
IT IS FURTHER ORDERED a hearing on the parties' discovery dispute is set for August 30, 2007 at 1:30 p.m.

IT IS FURTHER ORDERED the parties shall submit a revised case management plan and proposed scheduling order. These revised documents should reflect the changes due to the granting of the summary judgment motion. The revised case management plan and proposed scheduling order shall be submitted by September 14, 2007.

IT IS FURTHER ORDERED a Rule 16 Scheduling Conference is set for September 28, 2007 at 10:30 a.m.

IT IS FURTHER ORDERED the Motion to Withdraw (Doc. 326) is **GRANTED**.

DATED this 28th day of August, 2007.



Roslyn O. Silver
United States District Judge