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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.

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

(Consolidated)

**PLAINTIFFS NAVAJO NATION AND
AGNES LAUGHTER'S RESPONSE TO
STATE'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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23 The Court should deny the State's Motion for Summary Judgment, as there remain
24 issues of disputed material fact that are critical to resolving the poll tax and Civil Rights
25 Act Claims of Plaintiffs Navajo Nation and Agnes Laughter ("Navajo Plaintiffs"). Further,
26 Defendant State has not met its burden of demonstrating that it should prevail as a matter of
27 law.

1 This Response is supported by the following Memorandum of Points and
2 Authorities, Navajo Plaintiffs' Response to State's Statement of Facts and Navajo
3 Plaintiffs' Statement of Uncontroverted Facts, the Declaration of Patricia Ferguson-
4 Bohnee, and the pleadings and other papers previously filed in this matter.

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

6 SACKS TIERNEY P.A.

7
8 By s/ Judith M. Dworkin
9 Judith M. Dworkin
10 Marvin S. Cohen
11 Patricia Ferguson-Bohnee
12 Attorneys for Plaintiffs Navajo Nation
13 and Agnes Laughter

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 I. STATEMENT OF THE CASE

16 The State moved for summary judgment on four of the Navajo Plaintiffs' claims:
17 mandamus, poll tax, and the Civil Rights Act claims under 42 U.S.C. § 1971(a)(2)(A) and
18 (B). The Navajo Plaintiffs agree that the Court should grant summary judgment in favor of
19 the State on the mandamus claim, and are no longer pursuing this claim. Summary
20 judgment, however, is not appropriate on the Navajo Plaintiffs' poll tax and Civil Rights
21 Act claims. To avoid unnecessary duplication before the Court, the Navajo Plaintiffs join
22 in and adopt the sections of the ITCA Plaintiffs' Response in Opposition to Defendants'
23 Motions for Partial Summary Judgment discussing the poll tax and Civil Rights Act claims.

24 II. LEGAL STANDARD

25 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment is
26 proper only "if the pleadings, depositions, answers to interrogatories, and admissions on
27 file, together with the affidavits, if any, show that there is no genuine issue as to any
28 material fact and that the moving party is entitled to judgment as a matter of law." Fed. R.
Civ. P. 56(c). The State has the burden of demonstrating the absence of a genuine issue of

1 material fact for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). The trial
2 court is to perform a "threshold inquiry of determining whether there is the need for a trial -
3 - whether, in other words, there are any genuine factual issues that properly can be resolved
4 only by a finder of fact because they may reasonably be resolved in favor of either party."
5 477 U.S. at 250. See also Taybron v. City & County of San Francisco, 341 F.3d 957, 959
6 (9th Cir. 2003). Upon reviewing a motion for summary judgment, courts do not weigh
7 conflicting evidence with respect to a disputed material fact. See Liberty Lobby Inc., 477
8 U.S. at 255. In reviewing motions for summary judgment, judges view the evidence in the
9 light most favorable to the nonmoving party, here, the Navajo Plaintiffs. T.W. Electrical
10 Serv., Inc. v. Pacific Electrical Contractors Assoc., 809 F.2d 626, 630-31 (9th Cir. 1987).

11 **III. ARGUMENT**

12 **A. POLL TAX**

13 Navajo Plaintiffs hereby incorporate the arguments and authorities presented by the
14 ITCA Plaintiffs in response to the State's motion for partial summary judgment on the
15 claim that the identification at the polls requirement constitutes a poll tax.

16 In addition to the response provided by the ITCA Plaintiffs, Navajo Plaintiffs have
17 not completed discovery as to number of Navajo citizens who were required to pay a fee in
18 order to procure a form of identification for voting during elections, who could not pay a
19 fee in order to obtain such identification, or why the disproportional number of Navajos
20 who voted conditional provisional ballots did not have identification on Election Day. The
21 State has not provided evidence that the majority of Navajo electors actually receive, free
22 of charge, identification required at the polls. Navajo Plaintiffs provided evidence that
23 many Navajo electors do not receive mail at their homes, and therefore, may not receive
24 these free materials prior to Election Day. Navajo Plaintiffs also provided evidence that the
25 acceptable forms of identification are not readily available to all Navajo electors. In the
26 Court's Order dated October 11, 2006, the Court found that it had not yet been presented
27 with "sufficiently reliable information regarding the number of voters that do not have
28

1 adequate forms of identification and will not be receiving, free of charge, adequate forms of
2 identification prior to the elections." October 11, 2006 Order at 11. Granting summary
3 judgment on this claim prior to the close of discovery would be premature.

4 **B. CIVIL RIGHTS ACT CLAIMS**

5 Navajo Plaintiffs hereby incorporate the arguments and authorities presented by the
6 ITCA Plaintiffs in response to the State's motion for partial summary judgment on the civil
7 rights act claims, including the argument that summary judgment is premature at this stage
8 of the litigation.

9 **IV. CONCLUSION**

10 For these reasons, the Navajo Plaintiffs respectfully request that the Court
11 deny the State's Motion for Partial Summary Judgment on the poll tax and Civil Rights Act
12 claims.

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

14 SACKS TIERNEY P.A.

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17 By: s/ Judith M. Dworkin
18 Judith M. Dworkin
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CERTIFICATE OF SERVICE

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

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

s/ Judith M. Dworkin

I hereby certify that on July 12, 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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