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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF ARIZONA**

8	MARIA M. GONZALEZ, et. al.,)	CV 06-1268-PHX-ROS (LEAD)
9)	CV 06-1362-PHX-ROS
	Plaintiffs,)	CV 06-1575-PHX-ROS
10)	
	vs.)	COCONINO COUNTY DEFENDANTS'
11)	RESPONSE IN NON-OPPOSITION
)	
12	STATE OF ARIZONA, et al.,)	(Consolidated)
13)	
)	
14	Defendants.)	

15 **I. INTRODUCTION**

16 Coconino County will confine its brief to the issue of immediate concern: voter
 17 identification at the polls. On September 12, 2006, the county will hold its first county-
 18 wide election after pre-clearance of the Secretary of State's Procedure for Proof of
 19 Identification and Provisional Ballot Processing at the Polls, developed to implement
 20 Proposition 200 passed by the voters of Arizona in November 2004. Coconino County
 21 Defendants believe, based on their years of experience in administering voter
 22 registration and elections in Coconino County, that the requiring voter identification at
 23 the polls will place a disproportionate burden on Native Americans, the poor, and the
 24 elderly, effectively disenfranchising these classes of persons. Therefore, even though
 25 Coconino County officials are named Defendants in this action, they support ITCA
 26

1 Plaintiffs' request for a preliminary injunction.

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3 **II. FACTUAL BACKGROUND FOR COCONINO COUNTY'S POSITION**

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5 The Coconino County Recorder and Elections Administrator, as well as the
6 elected Board of Supervisors, are opposed to the voter identification requirements of
7 Proposition 200 for the same reasons articulated by ITCA Plaintiffs in their Memorandum
8 filed on August 9, 2006. The Coconino County Recorder and Elections Administrator
9 are committed to serving all residents of Coconino County, the second largest county by
10 area in the United States. Approximately one-third of these residents are Native
11 American and most are members of one of the six federally recognized Indian tribes
12 located within the county boundary. These residents include members of the Navajo
13 Nation, Hopi, Havasupai, Hualapai, Kaibab Paiute, and Southern San Juan Paiute
14 Tribes—all of whom are among the Plaintiffs or members of Plaintiff organizations.
15

16 The Coconino County Recorder's opposition to Prop 200 is a matter of record. On
17 September 28, 2005, the Recorder filed an objection with the U.S. Department of Justice
18 to Secretary of State Jan Brewer's Procedures for Identification at the Polls. A copy of
19 the objection document is attached to Plaintiff Navajo Nation's Complaint in CV06-1575-
20 PCT-EHC, as Exhibit 8, now consolidated with the Gonzales case before the court.

21 Coconino County officials are acutely aware of the obstacles faced by reservation
22 residents, particularly those who reside in remote areas accessible by unimproved and
23 unmaintained dirt roads, to travel to the polls to vote. There are 21 voting precincts
24 located within the reservation boundaries. A total of 110 pollworkers and 40 to 50
25 translators of three native languages are trained and hired by Coconino County to work
26 at the reservation polling places. The pollworkers know firsthand that the obstacles for

1 reservation residents are not only physical (requiring travel times of 1 ½ hours to reach a
2 polling place), they are logistical (arranging for transportation through a family member)
3 and they are linguistic (verbally translating a ballot and voting instructions written in
4 English to a language that traditionally had no written form).

5 Requiring voters to present identification at the polls is Coconino County's
6 greatest concern. As ITCA Plaintiffs have clearly articulated, the forms of identification
7 required by the Secretary of State's Procedures are not commonly held by reservation
8 residents. The statistics cited by expert witness Anthony Sissons are consistent with
9 Coconino County Defendants' experience with Native American, elderly, and low-income
10 voters.

11 In the November 2004 General Election, 91% of votes cast from reservation
12 precincts in Coconino County were cast at the polls. Only 68% of votes cast from non-
13 reservation precincts were cast at the polls. Clearly, voters residing within reservation
14 precincts prefer to cast their vote in person. Indeed, in her 14 years as an election
15 official, the Coconino County Recorder has observed that voting in person is a social
16 and cultural custom among reservation residents. Voting by mail, in other words by
17 early ballot, is unrealistic for the majority of reservation residents. Several factors affect
18 the manner in which a vote is cast.
19 ~~TERENCE CHANCE~~ 4627

20 First, reservation residents include many traditional Native Americans who speak
21 only their original language or lack English proficiency. These non-English speakers
22 require assistance from translators hired by the County to remain at the polls. In fact, as
23 a covered jurisdiction under the Voting Rights Act, Coconino County is required by the
24 Department of Justice to have translators at reservation polls because of the significant
25 number of non-English speaking voters.

26 Second, voting is a privilege granted recently enough for the living elders to

1 remember the days when they were not even considered to be citizens of the United
2 States. To Native Americans, exercising the right to vote is far more than a fundamental
3 right described in court decisions. Voting is a tangible manifestation of the recognition of
4 Native Americans' ability to participate in making the rules by which they are governed.

5 Third, many residences on the reservation do not have mail delivery because of
6 their remote location.¹ Dr. Sissons states that for all Arizona reservations, only 16.9% of
7 residents have their mailed delivered. He assumes that the other 83% have post office
8 boxes. Even if the latter assumption is true, the reality is that when low-income
9 reservation residents run out of money, they cancel the post office box rental and
10 resume it again when funds are available, obtaining a different box number. Early
11 ballots and official election mailings are sent to the address on file with the County
12 Recorder and returned if the voter has changed box numbers. Moreover, for reservation
13 residents who don't own cars, a trip to the post office means waiting until a ride is
14 available. Often, that ride is provided by adult children who reside off the reservation
15 and return home on weekends to assist their elderly parents with their errands.
16 Checking the post office box is not a daily event.
17

18 For these reasons, voting by mail is neither realistic or acceptable. Voting in
19 person is real. Voting in person is understandable. Trained translators are available to
20 assist non-English speakers. Poll workers direct voters to the proper precinct roster and
21 assist the voters with feeding their ballot into the counting machine. The voters can
22 observe their ballots going into a counting machine and get a paper receipt. Voting in
23 person is a tangible, observable process.

24 Other Defendants in this case may argue that if voting is so important to Native
25

26 ¹ Ex. 21, page 13, Report of R. Anthony Sissons, page 13, Exhibit 21 of Plaintiff ITCA's Memorandum in Support of Preliminary Injunction.

1 Americans, why can't they remember to bring one of the many forms of identification to
2 the polls with them? There is even a special rule for Native Americans that allows them
3 to show only one form of identification—a tribal identification card. As ITCA Plaintiffs
4 have learned in their discovery, extensively cited in their brief, Native Americans are less
5 likely to have any or even one or two of the forms of identification on the Secretary's list.
6 And, not all tribes issue identification cards. Not all reservation residents are members
7 of the tribe where they reside or even enrolled in any tribe so as to be able to obtain an
8 identification card. Again, the facts cited in Plaintiffs' ITCA are consistent with the
9 customs and practices observed by Coconino County election officials.

10 Other Defendants in this case may also argue that if voting at the polling place
11 occurs in higher proportions at reservation precincts, in spite of the obstacles of
12 distance, lack of transportation, and poor road conditions, why can't reservation
13 residents return to a post-election identification verification site to show one of the many
14 forms of allowable identification? Assuming the voter had the proper identification at all,
15 it is important to keep in mind the social stigma created when a voter is either turned
16 away from the polls or told their vote won't count unless they jump through one more
17 hoop. The humiliation and embarrassment resulting from being singled out as one who
18 failed to meet the qualifications is inevitable. The elderly may still recall the days before
19 citizenship was granted in 1924 when they or their parents were kept from entering a
20 polling place. The next younger generation may still recall the days when Coconino
21 County administered a literacy test to non-English speakers before allowing them to
22 register to vote.² The same generation and their children may recall the days when their
23 hands were whacked with a ruler for speaking their original language in a school
24

25
26 ² A literacy test was required in Arizona between 1913 and 1970, until
banned by the U.S. Supreme Court in *Oregon v. Mitchell*, 400 U.S. 112 (1970).

1 classroom.

2 The Secretary of State's list imposes no less of a forced acculturation than these
3 Draconian practices of only a few decades past. Coconino County election officials
4 believe, based on their experiences, that this humiliation will deter voters from returning
5 to a designated election office to show identification and make their vote count, in effect
6 disenfranchising those least likely to carry identification—Native Americans residing on
7 the reservation.

8 Finally, there is minimal evidence of voting or attempted voting by non-citizens, as
9 revealed in ITCA Plaintiffs' discovery and referenced in their Memorandum. There is
10 simply insufficient support for a compelling state interest that justifies depriving even one
11 bona fide citizen of the right to vote. While Coconino County has trained its pollworkers
12 to check identification, it is a simple matter to delete that requirement should the court
13 grant the injunction. No harm will result to the county elections process.
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16 **III. STATEMENT OF COCONINO COUNTY'S POSITION**

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18 Coconino County Defendants concur with the arguments presented by ITCA
19 Plaintiffs et al. in their Memorandum in Support of the Motion for Preliminary Injunction
20 filed on August 9, 2006. Requiring voters to present identification at the polls in order to
21 vote or to make their conditional provisional ballot count imposes a severe restriction on
22 the fundamental right to vote for Native Americans, in particular non-English speaking
23 reservation residents, the elderly, and the poor. The injury to these classes of citizens far
24 outweighs the minimal risk that non-citizens will cast a vote based on Arizona's
25 experience with voter fraud in the last decade, or the alleged confusion resulting from a
26 simple change in instructions to pollworkers.

1 Coconino County Defendants respectfully request that the Court enter a
2 preliminary injunction order as requested by the ITCA Plaintiffs.

3 Dated this 16th day of August.

4 COCONINO COUNTY ATTORNEY
5 Terence C. Hance

6 /s/ Jean E. Wilcox
7 By: Jean E. Wilcox
8 Deputy County Attorney

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that I caused a copy of the foregoing to be electronically transmitted
11 via the U.S. District Courts Electronic Filing System this 16th day of August, 2006 to:

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I further certify that I caused a copy of the above document to be mailed on the 16th day of August, 2006, to:

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