

CRISS E. CANDELARIA
Apache County Attorney

Bradley Carlyon
Deputy County Attorney
SBN #013179
P.O. Box 637
St. Johns, AZ 85936
(928) 337-7560
bcarlyon@apachelaw.net

Attorneys for Defendant Apache County

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

THE NAVAJO NATION, a federally ,)
recognized Indian tribe, and AGNES)
LAUGHTER,)
)
Plaintiffs,)

No. CV06-1575-PCT-EHC

v.)

**ANSWER OF DEFENDANT
APACHE COUNTY**

JAN BREWER, individually and in her,)
official capacity as Secretary of State of the)
State of Arizona; PATTY HANSEN,)
individually and in her official capacity as)
Coconino County Election Administrator,)
PENNY PEW, individually and in her official)
capacity as Apache County Elections)
Director, LENORA JOHNSON, individually)
and in her official capacity as Apache County)
Recorder, KELLY DASTRUP, individually and)
in her official capacity as Navajo County)
Elections Director, LAURETTE JUSTMAN,)
individually and in her official capacity as)
Navajo County Recorder,)
)
Defendants.)

Defendant Apache County answers the Complaint in the above-entitled matter as follows:

1. Defendants Penny Pew, Apache County Elections Director, and LaNora Johnson, Apache County Recorder (hereafter "Apache County") specifically admit the allegations

contained in paragraphs 4-17, 24, 27-30, 32-39, 42-43, 54-57, 65, 78, 115, 121, 131.

2. As to the allegations contained in paragraphs ninety-seven and ninety-eight, Apache County denies those allegations and affirmatively alleges that the Apache County Recorder's Office sent out 45,176 Voter Identification Cards, which included both active (41,327) and inactive (3,489) registered voters. This first mailing was sent with "Do No Forward" instructions. On the initial mailing, 6,284 were returned as non-deliverable. A second mailing has been sent with forwarding instructions, and Apache County is currently awaiting the results of this second mailing.

3. As to the balance of the allegations contained in the Complaint, Apache County either denies the allegations in the Complaint, or has insufficient information on which to either admit or deny the allegations in the Complaint, and therefore enters a general denial to the balance of the allegations.

4. Apache County denies each and every allegation contained in the Complaint that it does not specifically admit.

AFFIRMATIVE ALLEGATIONS

1.) Apache County affirmatively alleges that in 2004, the citizens of Arizona approved Proposition 200, a voter initiative, entitled the "Arizona Taxpayer and Citizen Protection Act." One provision of Proposition 200 requires voters to present photo identification with a name and address or two forms of non-photo identification with a name and address before the voter can obtain a ballot at the polls. The "identification at the polls" requirement has been codified in A.R.S. § 16-579(A)

2.) That the Arizona Secretary of State is vested with the authority, after consultation with the county board of supervisors of each county or other officer in charge of elections, to

" . . . prescribe rules to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting . . ." See A.R.S. § 16-452(A). These procedures are organized and published in the Secretary of State's Procedures Manual, which are approved by the Arizona Attorney General and the Governor of the State of Arizona.

3.) That on or about October 7, 2005, the United States Department of Justice pre-cleared the "Procedure for Proof of Identification at the Polls."

4.) That under Arizona law, the Apache County Elections Director, Penny Pew, and the Apache County Recorder, LaNora Johnson, have no choice but to implement and follow the identification at the polls procedures prescribed by Proposition 200 and the Secretary of State's Procedures Manual. In fact, it would constitute a criminal offense for Ms. Pew or Ms. Johnson to take any course of action other than to follow the identification at polls procedures that have been adopted by the Secretary of State. A.R.S. § 16-452 provides that, "[a] person who violates any rule adopted pursuant to this section is guilty of a class 2 misdemeanor."

5.) That while Apache County takes no legal position on the specific claims of the Plaintiffs in this matter or on the constitutionality of the identification at the polls requirements of Proposition 200 and the Secretary of State's Procedures Manual, the county has no choice but to follow the laws until such time as they may be invalidated by a Court of competent jurisdiction.

6.) That as Plaintiffs in this matter are questioning the validity of state law--specifically the identification at the polls requirements of Proposition 200 and the implementation thereof as directed by the Arizona Secretary of State--Apache County considers itself only a nominal party in this matter.

7.) Apache County's only interest is to follow the law in conducting its' upcoming elections, and the County will comply with any orders this Court may issue regarding the implementation of the identification at the polls requirements and procedures contained in Proposition 200 and the Arizona Secretary of State's Procedures Manual.

8.) That it is the understanding of Apache County that the Plaintiffs in this matter will not seek an award of costs and attorney's fees from Apache County and that Apache County takes no legal position in this litigation, is only a nominal party that will not be taking an active role in the litigation, and will comply with whatever orders the Court may enter regarding validity of state law and the implementation thereof.

WHEREFORE, it is respectfully requested that the Court:

a.) Make findings and orders in this matter regarding the validity of the identification at the polls provisions Proposition 200 and the Secretary of State's Procedures Manual in a timely manner so that the County can comply with whatever orders the Court may issue in implementing the County's upcoming elections;

b.) That the Court deny the Plaintiff any award of costs or attorney's fees from Defendant Apache County;

c.) Grant such other relief that the Court deems just and equitable.

DATED this 10th day of July, 2006.

CRISS E. CANDELARIA
APACHE COUNTY ATTORNEY

By: s/Bradley W. Carlyon
Deputy County Attorney
Attorneys for Defendant Apache County

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July, 2006 to:

Marvin S. Cohen
Sacks Tierney, P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251
(480) 425-2600

Dana L. Bobroff
The Navajo Nation, Dept. of Justice
P.O. Drawer 2010
Window Rock, AZ 86515
(928) 871-6275

Peter A. Silverman
Assistant Attorney General
1275 W. Washington St.
Phoenix, AZ 85007-1298
(602) 542-8305

Lance B. Payette
Navajo County Attorney's Office
P.O. Box 668
Holbrook, AZ 86025

Ms. Jean Wilcox
Coconino County Attorney's Office
110 E. Cherry Ave.
Flagstaff, AZ 86001-4627
(928) 779-6518

By: Bradley W. Carlyon