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14
15 **IN THE UNITED STATES DISTRICT COURT**
16
17 **FOR THE DISTRICT OF ARIZONA**

18 ARMANDO CORONADO; JOSEPH
19 RUBIO; MICHAEL GARZA; MICHELE
20 CONVIE; and RAYMOND LEWIS, JR.,

21
22 Plaintiff,

23 vs.

24 JANET NAPOLITANO, Governor;
25 JANICE K. BREWER, Secretary of State of
Arizona; F. ANN RODRIGUEZ, Pima
County Recorder; and HELEN PURCELL,
Maricopa County Recorder, in their official
capacities

Defendant.

No. 07-CV-01089-PHX-SMM

**ANSWER OF DEFENDANT
PIMA COUNTY RECORDER F.
ANN RODRIGUEZ**

Defendant F. Ann Rodriguez, Pima County Recorder, in her official capacity, by
and through counsel undersigned hereby asserts that she is a nominal party in this action
and, as such, answers as follows:

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1.0

INTRODUCTION

1.1. With respect to the allegations in Paragraph 1 of Plaintiffs' Complaint, Defendant Rodriguez admits that Plaintiffs are bringing an action regarding the alleged voting rights of Plaintiffs, but denies the remaining allegations contained therein.

1.2. With respect to the allegations in Paragraphs 2 through 4 of Plaintiffs' Complaint, Defendant Rodriguez denies the allegations.

2.0

JURISDICTION AND VENUE

2.1 With respect to the allegations in Paragraphs 5 and 6 of Plaintiffs' Complaint, Defendant Rodriguez admits the allegations.

3.0

PLAINTIFFS

3.1. With respect to the allegations in Paragraph 7 of Plaintiffs' Complaint, Defendant Rodriguez lacks sufficient information from which to form a belief as to the truth or falsity of the allegations and, therefore, denies the same.

3.2. With respect to the allegations in Paragraphs 8 and 9 of Plaintiffs' Complaint, Defendant Rodriguez lacks sufficient information from which to form a belief as to the truth or falsity of the allegations and, therefore, denies the same.

3.3. With respect to the allegations in Paragraph 10 of Plaintiffs' Complaint, Defendant Rodriguez admits only that Plaintiff Michele Convie is a United States citizen and that she was, between April 1997 and September 1, 2005, a resident of Pima County. With respect to the remaining allegations in Paragraph 10, Defendant Rodriguez lacks sufficient information from which to form a belief as to the truth or falsity of the allegations and, therefore, denies the same. Defendant Rodriguez affirmatively alleges

1 that Plaintiff Convie has not made an attempt to vote or to re-register to vote since her
2 registration was cancelled on September 1, 2005.

3 3.4. With respect to the allegations in Paragraph 11 of Plaintiffs' Complaint,
4 Defendant Rodriguez lacks sufficient information from which to form a belief as to the
5 truth or falsity of the allegations and, therefore, denies the same.

6 **4.0**

7 **DEFENDANTS**

8 4.1. With respect to the allegations in Paragraphs 12 through 15 of Plaintiffs'
9 Complaint, Defendant Rodriguez admits the allegations.

10 4.2. Defendant Rodriguez affirmatively alleges that she is a nominal party in
11 this action.

12 **5.0**

13 **FACTUAL ALLEGATIONS RELEVANT TO PLAINTIFFS**

14 **CORONADO, RUBIO AND GARZA**

15 5.1. With respect to the allegations contained in Paragraph 16 of Plaintiffs'
16 Complaint, Defendant Rodriguez admits only that Plaintiffs have quoted A.R.S. § 13-
17 912(A).

18 5.2. With respect to the allegations contained in Paragraph 17 of Plaintiffs'
19 Complaint, Defendant Rodriguez admits the allegations, but affirmatively alleges that the
20 correct statutory cite is A.R.S. §13-801(A).

21 5.3. With respect to the allegations contained in Paragraphs 18 and 19 of
22 Plaintiffs' Complaint, Defendant Rodriguez admits the allegations.

23 5.4. With respect to the allegations contained in Paragraphs 20 through 34 of
24 Plaintiffs' Complaint, Defendant Rodriguez lacks sufficient information from which to
25 form a belief as to the truth or falsity of the allegations and, therefore, denies the same.

1 disqualify persons convicted of a felonies from registering to vote. Defendant Rodriguez
2 denies the remaining allegations.

3 6.8. With respect to the allegations contained in Paragraph 50 of Plaintiffs'
4 Complaint, Defendant Rodriguez lacks sufficient information from which to form a belief
5 as to the truth or falsity of the allegations and, therefore, denies the same.

6 6.9. With respect to the allegations contained in Paragraph 51 of Plaintiffs'
7 Complaint, Defendant Rodriguez admits only that A.R.S. §§ 13-905 and 13-908 require a
8 person convicted of two or more felonies to seek discretionary approval from the judge
9 who either sentenced or discharged the person before the State restores the person's
10 voting rights. Defendant Rodriguez denies the remaining allegations and affirmatively
11 alleges that A.R.S. § 13-912 grants an exception for first time felons, permitting the
12 automatic restoration of civil rights if the person completes a term of probation or
13 receives an absolute discharge from imprisonment and pays any imposed fine or
14 restitution.

15 6.10. With respect to the allegations contained in Paragraph 52 of Plaintiffs'
16 Complaint, Defendant Rodriguez admits only that Plaintiff Michele Convie is a citizen of
17 the United States and that she was, between April 1997 and September 1, 2005, a resident
18 of Pima County in Arizona. Regarding the remaining allegations of Paragraph 52,
19 Defendant Rodriguez lacks sufficient information from which to form a belief as to the
20 truth or falsity of the allegations and, therefore, denies the same.

21 6.11. With respect to the allegations contained in Paragraphs 53 and 54 of
22 Plaintiffs' Complaint, Defendant Rodriguez lacks sufficient information from which to
23 form a belief as to the truth or falsity of the allegations and, therefore, denies the same.

24 6.12. With respect to the allegations contained in Paragraph 55 of Plaintiffs'
25 Complaint, Defendant Rodriguez denies the allegations.

7.0

COUNT ONE

(Disfranchisement for Failure to Pay LFOs)

VIOLATION OF EQUAL PROTECTION CLAUSE

7.1. With respect to the allegations contained in Paragraph 56 of Plaintiffs' Complaint, Defendant Rodriguez admits that Plaintiffs have correctly provided a partial quote of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

7.2. With respect to the allegations contained in Paragraph 57 of Plaintiffs' Complaint, Defendant Rodriguez denies the allegations and affirmatively alleges that the provisions regarding the automatic restoration of civil rights to first time felons is set forth in A.R.S. § 13-912.

7.3. With respect to the allegations contained in Paragraph 58 of Plaintiffs' Complaint, Defendant Rodriguez lacks sufficient information from which to form a belief as to the truth or falsity of the allegations and, therefore, denies the same.

7.4. With respect to the allegations contained in Paragraph 59 of Plaintiffs' Complaint, Defendant denies the allegations.

8.0

COUNT TWO

(Disfranchisement for Failure to Pay LFOs)

**VIOLATION OF THE TWENTY-FOURTH AMENDMENT TO THE U.S.
CONSTITUTION AND 42 U.S.C. §1973H of the VOTING RIGHTS ACT**

8.1. In response to Paragraph 60 of Plaintiffs' Complaint, Defendant Rodriguez incorporates by reference all preceding paragraphs as if fully set forth herein.

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1 8.2. With respect to the allegations contained in Paragraph 61 of Plaintiffs'
2 Complaint, Defendant Rodriguez admits that Plaintiffs have correctly quoted the Twenty-
3 Fourth Amendment to the U.S. Constitution.

4 8.3. With respect to the allegations contained in Paragraph 62 of Plaintiff's
5 Complaint, Defendant Rodriguez admits the allegations.

6 8.4. With respect to the allegations contained in Paragraphs 63 and 64 of
7 Plaintiffs' Complaint, Defendant denies the allegations.

8 **9.0**

9 **COUNT THREE**

10 **(Disfranchisement for Failure to Pay LFOs)**

11 **VIOLATION OF ARIZONA CONSTITUTION ARTICLE 2, SECTION 21**

12 9.1. In response to Paragraph 65 of Plaintiffs' Complaint, Defendant Rodriguez
13 incorporates by reference all preceding paragraphs as if fully set forth herein.

14 9.2. With respect to the allegations contained in Paragraph 66 of Plaintiffs'
15 Complaint, Defendant Rodriguez admits that Plaintiffs have correctly quoted of Article 2,
16 Section 21 of the Arizona Constitution.

17 9.3. With respect to the allegations contained in Paragraph 67 of Plaintiffs'
18 Complaint, Defendant Rodriguez denies the allegations.

19 **10.0**

20 **COUNT FOUR**

21 **(Disfranchisement for Failure to Pay LFOs)**

22 **VIOLATION OF PRIVILEGES AND IMMUNITIES CLAUSES**

23 **IN UNITED STATES AND ARIZONA CONSTITUTIONS**

24 10.1. In response to Paragraph 68 of Plaintiffs' Complaint, Defendant Rodriguez
25 incorporates by reference all preceding paragraphs as if fully set forth herein.

1 10.2. With respect to the allegations contained in Paragraph 69 of Plaintiffs'
2 Complaint, Defendant Rodriguez admits that Plaintiffs have correctly provided a partial
3 quote of Section 1 of the Fourteenth Amendment to the U.S. Constitution.

4 10.3. With respect to the allegations contained in Paragraph 70 of Plaintiffs'
5 Complaint, Defendant Rodriguez admits that Plaintiffs have correctly quoted of Article 2,
6 Section 13 of the Arizona Constitution.

7 10.4. With respect to the allegations contained in Paragraph 71 of Plaintiffs'
8 Complaint, Defendant Rodriguez denies the allegations.

9 **11.0**

10 **COUNT FIVE**

11 **(Disfranchisement for Conviction of Non-Common Law Felony)**

12 **VIOLATION OF EQUAL PROTECTION CLAUSE**

13 11.1. In response to Paragraph 72 of Plaintiffs' Complaint, Defendant Rodriguez
14 incorporates by reference all preceding paragraphs as if fully set forth herein.

15 11.2. With respect to the allegations contained in Paragraph 73 of Plaintiffs'
16 Complaint, Defendant Rodriguez admits that Plaintiffs have correctly provided a partial
17 quote of the Equal Protection Clause of the Fourteenth Amendment to the U.S.
18 Constitution.

19 11.3. With respect to the allegations contained in Paragraph 74 of Plaintiffs'
20 Complaint, Defendant Rodriguez admits the allegations, but affirmatively alleges that
21 these allegations are irrelevant to the case at hand as felonies in Arizona are prescribed by
22 state statute and not common law.

23 11.4. With respect to the allegations contained in Paragraphs 75 and 76 of
24 Plaintiffs' Complaint, Defendant Rodriguez denies the allegations.

25 /////

12.0

COUNT SIX

(Disfranchisement for Conviction of Non-Common Law Felony)

VIOLATION OF ARIZONA CONSTITUTION ARTICLE 2, SECTION 21

12.1. In response to Paragraph 77 of Plaintiffs' Complaint, Defendant Rodriguez incorporates by reference all preceding paragraphs as if fully set forth herein.

12.2. With respect to the allegations contained in Paragraph 78 of Plaintiffs' Complaint, Defendant Rodriguez admits that Plaintiffs have correctly quoted of Article 2, Section 21 of the Arizona Constitution.

12.3. With respect to the allegations contained in Paragraph 79 of Plaintiffs' Complaint, Defendant Rodriguez denies the allegations.

13.0

COUNT SEVEN

(Disfranchisement for Conviction of Non-Common Law Felony)

VIOLATION OF PRIVILEGES AND IMMUNITIES CLAUSES IN UNITED STATES AND ARIZONA CONSTITUTIONS

13.1. In response to Paragraph 80 of Plaintiffs' Complaint, Defendant Rodriguez incorporates by reference all preceding paragraphs as if fully set forth herein.

13.2. With respect to the allegations contained in Paragraph 81 of Plaintiffs' Complaint, Defendant Rodriguez admits that Plaintiffs have correctly provided a partial quote of Section 1 of the Fourteenth Amendment to the U.S. Constitution.

13.3. With respect to the allegations contained in Paragraph 82 of Plaintiffs' Complaint, Defendant Rodriguez admits that Plaintiffs have correctly quoted of Article 2, Section 13 of the Arizona Constitution.

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1 13.4. With respect to the allegations contained in Paragraph 83 of Plaintiffs'
2 Complaint, Defendant Rodriguez denies the allegations.

3 **14.0**

4 **PLAINTIFFS' PRAYER FOR RELIEF**

5 14.1. With respect to the allegations in Paragraphs (1) through (4) of Plaintiff's
6 prayer for relief, Defendant Rodriguez denies that Plaintiffs are entitled to this relief.

7 14.2. With respect to the allegations in Paragraphs (5) and (6) of Plaintiff's prayer
8 for relief, Defendant Rodriguez denies that Plaintiffs are entitled to this relief, and further
9 specifically denies that any such relief is available from Defendant Rodriguez.

10 14.3. With respect to the allegations in Paragraphs (7) of Plaintiff's prayer for
11 relief, Defendant Rodriguez denies that Plaintiffs are entitled to this relief.

12 14.4. With respect to the allegations in Paragraphs (8) of Plaintiff's prayer for
13 relief, Defendant Rodriguez denies that Plaintiffs are entitled to this relief, and further
14 specifically denies that any such relief is available from Defendant Rodriguez.

15 **15.0**

16 15.1 Defendant Rodriguez denies any allegations not specifically admitted
17 herein.

18 **16.0**

19 **AFFIRMATIVE DEFENSES**

20 16.1. Defendant Rodriguez affirmatively alleges that, as Pima County Recorder,
21 she is bound by the laws and the Constitution of the State of Arizona to carry out the
22 duties and responsibilities ascribed to her office therein.

23 16.2. Defendant Rodriguez affirmatively alleges that, as Pima County Recorder,
24 she cannot exercise independent discretion in determining the rights of any particular
25 individual under the laws of the State of Arizona.

1 16.3. Defendant Rodriguez affirmatively alleges that, given the mandated duties
2 of a Recorder in the State of Arizona, she is a nominal party in this action.

3 16.4. Defendant Rodriguez affirmatively alleges that she has no record of
4 Plaintiffs Armando Coronado and Raymond Lewis, Jr. either registering to vote or
5 attempting to register to vote in Pima County, Arizona.

6 16.5. Defendant Rodriguez affirmatively alleges that Plaintiffs Armando
7 Coronado and Raymond Lewis, Jr., having failed to assert any alleged voting rights, lack
8 standing to bring this suit and, therefore, this case should be dismissed as to them.

9 16.6. Additional facts may be revealed by future discovery, which support
10 affirmative defenses available to, but currently unknown to Defendant Rodriguez.
11 Accordingly, Defendant Rodriguez hereby incorporates by this reference all applicable
12 affirmative defenses as though set forth fully in this answer including, but not limited to:
13 failure to state a claim upon which relief may be granted pursuant to Rule 12 of the
14 Federal Rules of Civil Procedure; assumption of risk; statute of limitations; contributory
15 negligence, lack of jurisdiction over the subject matter; lack of jurisdiction over the
16 persons; lack of standing; failure to join necessary and indispensable parties pursuant to
17 Rule 19; arbitration and award; fraud; payment; release; *res judicata*; statute of frauds;
18 insufficient service of process; estoppel; waiver; set-off; recoupment; failure to comply
19 with conditions precedent; failure to mitigate damages; avoidable consequences; lack of
20 any agency relationship; privilege; and, immunity.

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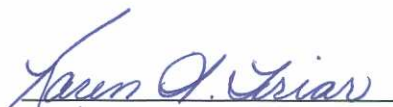
1 WHEREFORE, having fully responded to Plaintiffs' Complaint, Defendant
2 Rodriguez requests the following:

- 3 1. That the Court dismiss Plaintiffs' Complaint and that Plaintiffs take nothing
4 thereby;
- 5 2. That, in the event that the Court does not dismiss Plaintiffs' Complaint, that
6 the Court dismiss the claims of Plaintiffs Armando Coronado and Raymond
7 J. Lewis, Jr. for lack of standing;
- 8 3. That, in the event that the Court does not dismiss Plaintiffs' Complaint, that
9 Plaintiffs take nothing from Defendant Rodriguez, a nominal party to the
10 action; and
- 11 4. That the Court grants such other and further relief as the Court deems just.

12
13 RESPECTFULLY SUMMITTED this 30th day of August, 2007.

14
15 BARBARA LAWALL
16 PIMA COUNTY ATTORNEY

17
18 By:



19 Karen S. Friar
20 Deputy County Attorney
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23
24
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of August, 2007, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF Systems for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

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Original of the foregoing mailed
this ___ day of August, 2007 to:

By: _____