

LAUGHLIN McDONALD*
NEIL BRADLEY*
NANCY G. ABUDU*
American Civil Liberties Union
Voting Rights Project
2600 Marquis One Tower
245 Peachtree Center Ave. NE
Atlanta, Georgia 30303-1227
Tel: (404) 523-2721
Fax: (404) 653-0331
lmcdonald@aclu.org
nbradley@aclu.org
nabudu@aclu.org
*Admitted Pro Hac Vice

DANIEL POCHODA
(AZ Bar No. 021979)
American Civil Liberties Union
of Arizona
P.O. Box 17148
Phoenix, Arizona 85011-0148
Tel: (602) 650-1967
Fax: (602) 650-1376
dpochoda@acluaz.org

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

ARMANDO CORONADO; JOSEPH RUBIO;)
MICHAEL GARZA; MICHELE CONVIE;)
and RAYMOND LEWIS, JR.,)

No. CV-07-1089-PHX-SMM

Plaintiffs,)

**COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
NOMINAL MONETARY DAMAGES**

vs.)

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

Defendants.)

INTRODUCTION

1. Plaintiffs bring this civil rights action to remedy the Defendants' arbitrary and unconstitutional deprivations of their basic right to vote. Specifically, Plaintiffs challenge: (a) Defendants' denial of voting rights to people convicted of non-common law felonies; and (b) Defendants' requirement that people with felony convictions pay all of their legal financial obligations ("LFOs") before they are eligible for restoration of their voting rights. Defendants' disfranchisement of Plaintiffs violates Plaintiffs' fundamental right to vote and undermines our representative system of government. Plaintiffs seek declaratory and injunctive relief, as well as nominal monetary damages.

2. Denying the right to vote based on acts which were not felonies at common law constitutes a deprivation of a fundamental right that is not permitted by any constitutional provision or exception and does not serve a compelling or legitimate governmental interest.

3. Defendants deny the right to vote to all persons convicted of a felony in Arizona solely because they have not paid their court-imposed LFOs including fines, restitution, and probation costs. Denying the right to vote based on one's failure or inability to pay LFOs is the modern equivalent of a poll tax and serves no compelling or legitimate governmental interest.

4. The above deprivations violate Plaintiffs' rights under the Fourteenth and Twenty-Fourth Amendments to the United States Constitution, Article 2, Section 21 of the Arizona Constitution, and the Privileges and Immunities Clauses of the United States and Arizona Constitutions. The relief that Plaintiffs seek in this case is necessary to address these constitutional violations and to enable Plaintiffs to participate in the democratic process.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 42 U.S.C. § 1971(d), 42 U.S.C. § 1973j(f), and this suit also is authorized by 42 U.S.C. § 1983. This Court may exercise supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear

claims under the Constitution and laws of Arizona. This Court has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because Defendants Napolitano, Brewer, and Purcell are situated within this judicial district.

PLAINTIFFS

7. Plaintiff Armando Coronado is a citizen of the United States and a resident of Pima County, Arizona. He was convicted of a felony drug offense on August 6, 1990 and his sentence included an order to pay \$2,740.00 in court fines and \$100.00 to a victim compensation fund. Mr. Coronado received an absolute discharge from the Department of Corrections on May 3, 1994, but still owes the court system \$2,840.00 in addition to all interest that has accrued on his debt. Mr. Coronado applied for restoration of his civil rights on October 25, 1999 pursuant to Sections 13-906 and 13-907 of the Arizona Revised Statutes. The State of Arizona (“the State”) denied his application. He wishes to vote in upcoming elections, but remains ineligible because of his outstanding LFOs.

8. Plaintiff Joseph Rubio is a citizen of the United States and a resident of Maricopa County, Arizona. He was convicted of attempted aggravated domestic violence in or about January 2006. The State issued Mr. Rubio a Certificate of Absolute Discharge on February 23, 2007. Mr. Rubio applied for restoration of his civil rights in or about March of 2007. The State denied Mr. Rubio’s application on April 10, 2007 on the ground that he failed to pay the costs associated with his term of probation which amounts to \$55 plus any accrued interest. He wishes to vote in upcoming elections, but remains ineligible because of his outstanding LFOs.

9. Plaintiff Michael Garza is a citizen of the United States and a resident of Maricopa County, Arizona. He was convicted of a felony drug offense in Arizona on December 4, 1992. Mr. Garza has completed his term of imprisonment, parole, and probation. However, he still owes over \$3,700 in court fines and restitution plus any accrued interest. He wishes to vote in upcoming elections, but remains ineligible because of his outstanding LFOs.

10. Plaintiff Michele Convie is a citizen of the United States and a resident of Pima County, Arizona. She was convicted of a felony drug offense in California on September 12, 1975, and of four felony drug offenses in Arizona on July 1, 1981, October 5, 1985, November 8, 1985, and January 26, 1986. Ms. Convie is no longer in prison, on parole, or on probation. She wishes to vote in upcoming elections, but is ineligible because of her felony drug convictions.

11. Plaintiff Raymond Lewis, Jr. is a citizen of the United States and a resident of Pima County, Arizona. He was convicted of two felony drug offenses, one on July 10, 1990 and the other one on August 10, 1998. Mr. Lewis is no longer in prison, on parole, or on probation. He wishes to vote in upcoming elections, but is ineligible because of his felony drug convictions.

DEFENDANTS

12. Defendant Janet Napolitano is the Governor of the State of Arizona. As the State's chief executive officer, she is ultimately responsible for implementing Arizona law, including violations of election and other criminal laws, rules, and regulations. She is sued in her official capacity only for actions that she took under color of state law.

13. Defendant Janice K. Brewer is the Secretary of State of Arizona and, as such, the chief election officer for the State. Ariz. Rev. Stat. § 16-142. She is sued in her official capacity only for actions that she took under color of state law.

14. Defendant F. Ann Rodriguez is the county recorder for Pima County, the official custodian of the voter registration books, and is responsible for the registration of voters in her county pursuant to Ariz. Rev. Stat. §§ 16-163, 16-165, 16-166, and 16-168. She is required to cancel the registration of persons convicted of any felony. Ariz. Rev. Stat. § 16-165. She is sued in her official capacity only for actions that she took under color of state law.

15. Defendant Helen Purcell is the county recorder for Maricopa County, the official custodian of the voter registration books, and is responsible for the registration of voters in her county pursuant to Ariz. Rev. Stat. §§ 16-163, 16-165, 16-166, and 16-168. She is required to cancel the

registration of persons convicted of any felony. Ariz. Rev. Stat. § 16-165. She is sued in her official capacity only for actions that she took under color of state law.

**FACTUAL ALLEGATIONS RELEVANT
TO PLAINTIFFS CORONADO, RUBIO AND GARZA**

16. Section 13-912 of the Arizona Revised Statutes provides that:

Any person who has not previously been convicted of another felony shall automatically be restored to any civil rights that were lost or suspended by the conviction if the person both: (1) Completes a term of probation or receives an absolute discharge from imprisonment [and] (2) Pays any fine or restitution imposed.

17. A court may order a convicted defendant to pay a fine as a part of his or her sentence. Ariz. Rev. Code §§ 801(A) and (B).

18. If a court requires a defendant to pay a fine, restitution, a penalty assessment, or incarceration costs or surcharges, such LFOs become a condition of the defendant's probation. Ariz. Rev. Stat. § 13-808 (B).

19. Section 2(C) of Article VII of the Arizona Constitution states that no person convicted of a felony shall be qualified to vote "unless restored to civil rights."

20. Plaintiff Armando Coronado is a citizen of the United States and a resident of Pima County, Arizona.

21. Mr. Coronado was convicted of a felony drug offense on August 6, 1990 and the sentencing court ordered him to pay a total of \$2,840.00 in court fines and restitution.

22. Pursuant to Arizona law, Mr. Coronado applied for and received an absolute discharge from his conviction on May 3, 1994.

23. The State denied Mr. Coronado's request for restoration of his civil rights because he owes \$2,840.00 in court fines and restitution payments plus accrued interest.

24. Thus, Mr. Coronado was and remains ineligible for automatic restoration of his voting rights under Section 13-912 of the Arizona Code.

25. Plaintiff Joseph Rubio is a citizen of the United States and a resident of Maricopa County, Arizona.

26. Mr. Rubio was convicted of attempted aggravated domestic violence in or about January 2006.

27. The State issued Mr. Rubio a Certificate of Absolute Discharge on February 23, 2007.

28. Mr. Rubio applied for restoration of all of his civil rights in or about March of 2007.

29. The State denied Mr. Rubio's rights restoration request on April 10, 2007 on the ground that he failed to pay the costs associated with his probation.

30. Mr. Rubio was and remains ineligible for automatic restoration of his voting rights under Section 13-912 of the Arizona Code.

31. Plaintiff Michael Garza is a citizen of the United States and a resident of Maricopa County, Arizona.

32. Mr. Garza was convicted of a felony drug offense in Arizona on December 4, 1992.

33. Although Mr. Garza has completed his term of imprisonment, parole, and probation, he still owes over \$3,700 in court fines and restitution plus any accrued interest.

34. Mr. Garza was and remains ineligible for restoration of his voting under Section 13-912 of the Arizona Code.

35. Plaintiffs Coronado, Rubio, and Garza are suffering irreparable injury as a result of the denial of their right to vote and they have no adequate remedy at law.

FACTUAL ALLEGATIONS RELEVANT TO ALL PLAINTIFFS

36. In March of 1867, prior to passage of the Fourteenth Amendment, Congress adopted a Reconstruction Act which required confederate states seeking readmission to the Union to grant universal suffrage to all males regardless of race, color, or previous condition of servitude.

37. Section 5 of the Reconstruction Act provided that:

[W]hen the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male

citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, **except such as may be disfranchised for participation in the rebellion or for felony at common law** . . . said State shall be declared entitled to representation in Congress

Reconstruction Act of Mar. 2, 1867, ch. CLII (1867) (emphasis added).

38. The Thirty-Ninth Congress proposed the Fourteenth Amendment to the United States Constitution in June of 1866 and the states ratified the amendment in July of 1868.

39. Section 2 of the Fourteenth Amendment states that:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, **except for participation in rebellion, or other crime**, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number the male citizens twenty-one years of age in such State.

U.S. Const. amend. XIV, § 2 (emphasis added).

40. Congress also enacted a series of statutes known as “Enabling or Readmission Acts” in 1868 and 1870 which accorded confederate states representation in Congress.

41. The Readmission Act for Arkansas, the first state readmitted, declared that:

[T]he State of Arkansas is entitled and admitted to representation in Congress as one of the States of the Union upon the following fundamental condition: That the constitution of Arkansas shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, **except as a punishment for such crimes as are now felonies at common law**, whereof they shall have been duly convicted, under laws equally applicable to all the inhabitants of said State

Act of June 22, 1868, c. 69, 15 Stat. 71 (emphasis added).

42. Congress imposed the same condition, with only slight variations in language, in the statutes that readmitted the remaining confederate states. See Act of June 25, 1868, c. 70, 15 Stat. 73;

Act of Jan. 26, 1870, c. 10, 16 Stat. 62; Act of Feb. 1, 1870, c. 12, 16 Stat. 63; Act of Feb. 23, 1870, c. 19, 16 Stat. 67; Act of Mar. 30, 1870, c. 39, 16 Stat. 80; Act of July 15, 1870, c. 299, 16 Stat. 363.

43. The possession, use, sale, or manufacturing of narcotic drugs were never common felonies.

44. Attempted aggravated domestic violence was never a common law felony.

45. The number of people who have criminal convictions has increased significantly since passage of the Fourteenth Amendment.

46. Given the racial disparities within the federal and state criminal justice systems, Arizona's felon disfranchisement scheme results in minorities being denied the right to vote at much greater rates than whites.

47. Arizona's first constitution, which was drafted in 1910 and adopted in 1912, stated that "[n]o person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights." Ariz. Const. art. VII, § 2 (effective November 1912).

48. Although Article VII of the Arizona Constitution was amended in 1962 and 2000, the following language, which is currently in Article VII, Section 2(C) has remained unchanged since 1912: "nor shall any person convicted of treason or felony, be qualified to vote at any election, unless restored to civil rights."

49. Section 13-105(16) of the Arizona Revised Statutes defines a "felony" as "an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state." Ariz. Rev. Stat. § 13-105(16).

50. Section 2(C) in Article VII of the Arizona Constitution provides that: "No person who is adjudicated an incapacitated person shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election, unless restored to civil rights."

51. The State's disfranchisement of people with felony convictions is also embodied in sections 13-904(A) and 16-101(A)(5) of the Arizona Revised Statutes.

52. There are over 176,000 people in the State convicted of a felony who currently do not have the right to vote in state or federal elections.

53. Whereas the State automatically restores the voting rights of a person convicted of only one felony who has paid his or her LFOs, a person convicted of two or more felonies must seek discretionary approval from the judge who either sentenced or discharged the person before the State restores his or her voting rights. Ariz. Rev. Stat. §§ 13-905 and 13-908.

54. Plaintiff Michele Convie is a citizen of the United States and a resident of Pima County, Arizona.

55. Plaintiff Raymond Lewis, Jr. is a citizen of the United States and a resident of Pima County, Arizona.

56. Plaintiffs were all convicted of non-common law felonies.

57. Plaintiffs are suffering irreparable injury as a result of the denial of their right to vote and have no adequate remedy at law.

COUNT ONE
(Disfranchisement for Failure to Pay LFOs)

VIOLATION OF EQUAL PROTECTION CLAUSE

58. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

59. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that: “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

60. Arizona law allows a person with only one felony conviction who has paid all of his or her LFOs to receive automatic restoration of his or her civil rights, including the right to vote. Ariz. Rev. Stat. § 13-913.

61. Although Plaintiffs Coronado, Rubio, and Garza only have one felony conviction, they remain ineligible for automatic restoration of their voting rights because they owe outstanding LFOs.

62. Defendants' requirement that people with a felony conviction pay all of their LFOs as a precondition to being eligible for restoration of their voting rights unlawfully denies Plaintiffs Coronado, Rubio, and Garza equal protection under the law.

63. Defendants' requirement that people with a felony conviction pay all of their LFOs as a precondition to being eligible for restoration of their voting rights also negatively and disproportionately impacts indigent people in violation of the equal protection clause.

COUNT TWO
(Disfranchisement for Failure to Pay LFOs)

VIOLATION OF THE TWENTY-FOURTH AMENDMENT
TO THE U.S. CONSTITUTION

64. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

65. The Twenty-Fourth Amendment to the U.S. Constitution states that:

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State for reason of failure to pay any poll tax or other tax.

66. Section 13-912 of the Arizona Code conditions the right to vote upon a convicted person's payment of LFOs.

67. The requirement set forth in Section 13-912 is, therefore, invalid because it contradicts the Twenty-Fourth Amendment.

COUNT THREE
(Disfranchisement for Failure to Pay LFOs)

VIOLATION OF ARIZONA CONSTITUTION ARTICLE 2, SECTION 21

68. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

69. Article 2, Section 21 of the Arizona Constitution states that: "All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

70. Defendants' denial of Plaintiffs Coronado, Rubio, and Garza's fundamental right to vote based upon their failure or inability to pay LFOs unlawfully denies them the free exercise of the right of suffrage that Article 2, Section 21 of the Arizona Constitution provides.

COUNT FOUR
(Disfranchisement for Failure to Pay LFOs)

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

71. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

72. Section 1 of the Fourteenth Amendment to the United States Constitution provides that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"

73. Section 13 in Article 2 of the Arizona Constitution declares that: "No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations."

74. State restrictions that deny the fundamental right to vote based upon the failure to pay LFOs unlawfully deny rights, privileges, immunities and the protections of equality afforded by the United States and Arizona Constitutions.

COUNT FIVE
(Disfranchisement for Conviction of Non-Common Law Felony)

VIOLATION OF EQUAL PROTECTION CLAUSE

75. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

76. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

77. The possession, use, sale, or manufacturing of narcotic drugs and the crime of attempted aggravated domestic violence were never common law felonies.

78. Arizona's admission to the Union required that it disenfranchise only those individuals convicted of common law felonies.

79. Defendants' denial of Plaintiffs' right to vote based on their felony drug convictions serves no compelling governmental state interest.

80. The State's disenfranchisement of Plaintiffs based on their convictions for non-common law felonies denies their right to equal protection under the law.

COUNT SIX

(Disfranchisement for Conviction of Non-Common Law Felony)

VIOLATION OF ARIZONA CONSTITUTION ARTICLE 2, SECTION 21

81. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

82. Section 21 in Article 2 of the Arizona Constitution states that: "All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

83. Because neither the possession, use, sale, or manufacturing of narcotic drugs nor the crime of attempted aggravated domestic violence were never common law felonies, the State's denial of Plaintiffs' right to vote based on their conviction for non-common law felonies unlawfully denies Plaintiffs the free exercise of the right of suffrage that Article 2, Section 21 of the Arizona Constitution provides.

COUNT SEVEN

(Disfranchisement for Conviction of Non-Common Law Felony)

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

84. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

85. Section 1 of the Fourteenth Amendment to the United States Constitution provides that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"

86. Section 13 in Article 2 of the Arizona Constitution declares that: “No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.”

87. The State’s denial of Plaintiffs’ right to vote based on their convictions for non-common law felonies unlawfully denies the rights, privileges, immunities, and the protections of equality that the United States and Arizona Constitutions afford.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to:

(1) Exercise supplemental jurisdiction over Plaintiffs’ claims brought under the Constitution and laws of Arizona;

(2) Declare that the denial of Plaintiffs Coronado, Rubio, and Garza’s right to vote based on their failure or inability to pay LFOs violates the Fourteenth and Twenty-Fourth Amendments to the United States Constitution, Article 2, Section 21 of the Arizona Constitution, and the Privileges and Immunities Clauses of the United States and Arizona Constitutions;

(3) Declare that the denial of Plaintiffs voting rights based on their convictions for non-common law felonies violates the Fourteenth Amendment to the United States Constitution, Article 2, Section 21 of the Arizona Constitution, and the Privileges and Immunities Clauses of the United States and Arizona Constitutions;

(4) Enjoin Defendants and their agents, employees, and representatives from denying Plaintiffs of their right to register and vote, and direct Defendants to prepare and circulate a state registration form in accordance with this Court’s declarations;

(5) Award Plaintiffs nominal damages for the denials of their right to vote;

(6) Award Plaintiffs’ their expenses, costs, fees, and other disbursements associated with the filing and maintenance of this action, including reasonable attorneys’ fees, pursuant to 42 U.S.C. §§ 1988 and 1973l(e);

(7) Exercise continuing jurisdiction over this action during the enforcement of its judgment;

and

(8) Award any other and further relief that this Court deems proper and just.

DATED this 19th day of February, 2008.

Respectfully submitted,

By: /s/ LaughlinMcDonald

Laughlin McDonald*

Neil Bradley*

Nancy G. Abudu*

AMERICAN CIVIL LIBERTIES UNION

VOTING RIGHTS PROJECT

2600 Marquis One Tower

245 Peachtree Center Ave. NE

Atlanta, GA 30303-1227

Tel: (404) 523-2721

Fax: (404) 653-0331

lmcdonald@aclu.org

nbradely@aclu.org

nabudu@aclu.org

*Admitted pro hac vice

Daniel Pochoda (AZ Bar # 021979)

Legal Director

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION OF ARIZONA

PO Box 17148

Phoenix, AZ 85011-0148

Tel: (602) 650-1967

Fax: (602) 650-1376

dpochoda@acluaz.org

Attorneys for Plaintiffs

Certificate of Service

I hereby certify that I have served the foregoing upon counsel of record for Defendants,
addressed as follows, via electronic filing:

Barbara A. Bailey
Assistant Attorney General
Office of the Attorney General
1275 West Washington
Phoenix, Arizona 85007

Mary O'Grady
Soliticor General
Office of the Attorney General
1275 West Washington
Phoenix, Arizona 85007

Karen Friar
Deputy Pima County Attorney
32 North Stone, Suite 2100
Tucson, AZ 85701-1403

Andrew P. Thomas
Maricopa County Attorney
Colleen Connor
Deputy County Attorney
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004-2206

Dennis I. Wilenchik
Kathleen E. Rapp
Wilenchik & Bartness, P.C.
The Wilenchik & Bartness Building
2810 North Third Street
Phoenix, Arizona 85004

This 19th day of February, 2008, at Atlanta, Georgia.

/s/Laughlin McDonald