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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Armando Coronado, et al.,

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CV 07-1089-PHX-SMM

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Plaintiffs,

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MEMORANDUM OF DECISION AND ORDER

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v.

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Janet K. Napolitano, Governor, et al.,

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Defendants.

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Currently before the Court is Defendants' Motion to Dismiss the First Amended Complaint (Dkt. 62), which challenges Plaintiffs' claims that Arizona's constitutional and statutory schemes governing a convicted felon's right to vote are unconstitutional. Also before the Court is Plaintiffs' Response to Defendants' Motion to Dismiss the First Amended Complaint (Dkt. 67) and Defendants' Reply in Support of State Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint. (Dkt. 71).

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BACKGROUND

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On June 1, 2007, Plaintiffs filed the original complaint in this action. (Dkt. 1). The Complaint alleged that Arizona's disenfranchisement laws violate provisions of the United States of America and State of Arizona constitutions. The first four claims challenged Arizona's disenfranchisement laws precluding restoration of a felon's right to vote until completion of the entire sentence, including payment of fines and restitution, as unconstitutional. (Id. at ¶¶ 56-71). The remaining three claims challenged the

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1 disenfranchisement of all convicted felons by attempting to draw a distinction between
2 common law and non-common law crimes. (Id. at ¶¶ 72-83). Contending that Plaintiff’s
3 Complaint failed to state a claim for which relief could be granted, Defendants filed a Motion
4 to Dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.
5 (Dkt. 22).

6 The Court granted Defendants’ Motion to Dismiss the Complaint without prejudice
7 on January 22, 2008 (Dkt. 48), reasoning that Arizona law treats all felons equally with
8 regard to disenfranchisement and subsequent restoration of civil rights and finding no
9 distinction between common law and non-common law felonies. (Id. at 6, 14). On April 30,
10 2008, Plaintiffs filed the First Amended Complaint (Dkt. 59) and on May 19, 2008,
11 Defendants filed their Motion to Dismiss the First Amended Complaint. (Dkt. 62). Plaintiffs
12 subsequently filed a Response to Defendants’ Motion to Dismiss the First Amended
13 Complaint on June 17, 2008. (Dkt. 67). Defendants then filed a Reply in Support of State
14 Defendants’ Motion to Dismiss Plaintiffs’ First Amended Complaint. (Dkt. 71).

15 The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a), and
16 42 U.S.C. §§ 1971(d), 1983. The Court may exercise supplemental jurisdiction under 28
17 U.S.C. § 1367(a). Venue is proper in this district under 28 U.S.C. § 1391(b)(1).

18 **STANDARD OF REVIEW**

19 To survive a motion to dismiss for failure to state a claim under Rule 12(b)(6),
20 “factual allegations must be enough to raise a right to relief about the speculative level on the
21 assumption that all of the complaint’s allegations are true (even if doubtful in fact).” Bell
22 Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1965 __ U.S. __ (2007). When deciding such
23 a motion to dismiss, all allegations of material fact in the complaint are taken as true and
24 construed in the light most favorable to the plaintiff. W. Mining Council v. Watt, 643 F.2d
25 618, 624 (9th Cir. 1981).

26 A court may dismiss a claim either because it lacks a “cognizable legal theory” or
27 because it fails to allege sufficient facts to support a cognizable legal claim. SmileCare
28 Dental Group v. Delta Dental Plan of Cal., Inc., 88 F.3d 780, 783 (9th Cir. 1996) (quoting

1 Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984). “Dismissal
2 without leave to amend is improper unless it is clear, upon de novo review, that the complaint
3 could not be saved by any amendment.” Polich v. Burlington, N., Inc., 942 F.2d 1467, 1472
4 (9th Cir. 1991). When exercising its discretion to deny leave to amend, “a court must be
5 guided by the underlying purpose of Rule 15 to facilitate decisions on the merits, rather than
6 on the pleadings or technicalities.” United States v. Webb, 655 F.2d 977, 979 (9th Cir.
7 1981).

8 DISCUSSION

9 In their First Amended Complaint, Plaintiffs add four substantive allegations relating
10 to their original claims which impact Counts One and Five of their First Amended
11 Complaint.¹ Under Count One, Plaintiffs first argue that Arizona’s requirement that people
12 with felony convictions pay all of their legal financial obligations (“LFOs”) before they can
13 have their right to vote restored “negatively and disproportionately impacts indigent people
14 in violation of the equal protection clause.” (Dkt. 59 at ¶ 63).² Second, Plaintiffs assert that
15 “[g]iven the racial disparities within the federal and state criminal justice systems, Arizona’s
16 felon disenfranchisement scheme results in minorities being denied the right to vote at much
17 greater rates than whites.” (Id. at ¶ 46). Under Count Five, Plaintiffs assert that the number
18 of individuals who have criminal convictions has increased to a significant degree since the
19 Fourteenth Amendment was passed. (Id. at ¶ 45). Additionally, Plaintiffs claim that
20 Arizona’s admission to the Union required that it disenfranchise only those individuals
21 convicted of common law felonies. (Id. at ¶ 78).

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23 ¹ Plaintiffs’ remaining substantive claims in the First Amended Complaint are virtually
24 identical to claims made in the Original Complaint. Thus, the Court dismisses these claims, Counts
25 2, 3, 4, 6, and 7, for reasons stated in the original dismissal order. (Dkt. 48, Order dated January 22,
2008).

26 ² Plaintiffs asserted this claim in their Response to Defendants’ original motion to dismiss
27 (Dkt. 39 at 18-19) and the Court addressed it in the original dismissal order (Dkt. 48 at 11, Order
28 dated January 22, 2008). However, the Court did not undertake further inquiry of the matter because
the Complaint did not include any allegation of disparate impact. (Id.).

1 unconstitutional because it has a negative and disparate impact on indigent people and to
2 rebut the State's purported interests in enforcing the LFO requirement." (Dkt. 67 at 6).

3 Plaintiffs' claim is insufficient for two reasons. First, Plaintiffs fail to allege that they
4 are indigent and thus, they do not have standing to bring a claim challenging a law based on
5 its alleged disparate impact on indigent persons. Warth v. Seldin, 422 U.S. 490, 498-99
6 (1975) (finding that "the essence of the standing question is whether the plaintiff has 'alleged
7 such a personal stake in the outcome of the controversy' as to warrant his invocation of
8 federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf"
9 (quoting Baker v. Carr, 369 U.S. 186, 204 (1962))). Even if Plaintiffs had alleged they are
10 indigent, indigent persons are not a protected, or suspect, class for purposes of equal
11 protection: "poverty, standing alone[,] is not a suspect classification." Harris v. McRae, 448
12 U.S. 297, 323 (1980). The Supreme Court has "never held that financial need alone
13 identifies a suspect class for purposes of equal protection analysis." Maher v. Roe, 432 U.S.
14 464, 471 (1977). Furthermore, Plaintiffs do not challenge their sentences, which require
15 them to pay the LFOs that are the subject of their claim. The requirement that felons pay all
16 fines and restitution as mandated by their sentence applies to all convicted felons equally.
17 Plaintiffs do not allege that Arizona discriminates against indigent persons in the way it takes
18 away or restores felony voting rights.

19 Additionally, in its original dismissal order, this Court held that fines and restitution
20 are rationally related to the state's interest in "punishing and deterring criminal activity."
21 (Dkt. 48, Order dated January 22, 2008). Consequently, not only can the State permanently
22 disenfranchise convicted felons under Richardson, it has a legitimate interest in enforcing the
23 LFO requirement prior to restoring a convicted felon's right to vote. The State applies the
24 felon disenfranchisement laws equally to all individuals, indigent or not. Thus, the LFO
25 requirement is constitutional, and Plaintiffs have failed to state a claim upon which relief can
26 be granted.

27 Similarly, Plaintiffs are not entitled to engage in discovery to rebut Arizona's interests
28 in enforcing the LFO requirement because the United States and Arizona Constitutions

1 expressly permit felon disenfranchisement. Richardson, 418 U.S. at 56. If a state chooses
2 to restore a felon’s right to vote, it can consider a previous criminal record in determining
3 voter qualifications: “[r]esidence requirements, age, *previous criminal record* . . . are obvious
4 *examples* indicating factors which a State may take into consideration in determining the
5 qualifications of voters.” Richardson, 418 U.S. at 53 (quoting Lassiter v. Northampton
6 County Bd. of Elections, 360 U.S. 45, 51 (1959)) (emphasis added).

7 Additionally, the exclusion of felons from the vote has an affirmative sanction in
8 section 2 of the Fourteenth Amendment:

9 We hold that the understanding of those who adopted the Fourteenth
10 Amendment, as reflected in the express language of section 2 and in the
11 historical and judicial interpretation of the Amendment’s applicability to state
12 laws disenfranchising felons, is of controlling significance in distinguishing
13 such laws from those other state limitations on the franchise which have been
14 held invalid under the Equal Protection Clause.

15 Id. at 54. In other words, felon disenfranchisement on its face will not be held invalid under
16 the Equal Protection Clause. The “purported” State interest that the Plaintiffs seek to rebut
17 is legitimate and was recognized as such by this Court.³ Thus, Plaintiffs’ claims fail, and
18 they are not entitled to engage in discovery to rebut the State’s interest in enforcing the LFO
19 requirement.

17 **B. Racial Disparities**

18 Plaintiffs also allege that racial disparities exist in federal and state criminal justice
19 systems (Dkt. 59 at ¶ 46), but do not allege any discrimination caused by Arizona’s
20 disenfranchisement laws. The argument that racial disparities exist in the justice system is
21 unrelated to Plaintiffs’ claim arguing against paying their sentencing fines and restitution
22 prior to having their right to vote restored. Plaintiffs did not challenge their sentences as the
23 products of racial disparities when they were imposed. Existing racial disparities in the
24 criminal justice system are not directly related to felon reenfranchisement, which occurs after
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26 ³ “In this case, the fine provisions serve the interests in punishing and deterring criminal
27 activity.” (Dkt. 48 at 7, Order dated January 22, 2008) (citing Polykoff v. Collins, 816 F.2d 1326,
28 1337 (9th Cir. 1987)). “Including these financial obligations in a convicted felon’s sentence is
rationally related to these legitimate governmental interests.” (Id.).

1 a felon has completed his sentence. Thus, Count One does not include any claims for which
2 relief can be granted.

3 In addition, Plaintiffs allege that the LFO requirement results in minorities being
4 denied the right to vote at greater rates than whites. (Id.). Similar to the first claim, Plaintiffs
5 have not alleged that they are racial minorities, and thus lack standing to bring the claim. See
6 discussion supra at 5. However, even if Plaintiffs had alleged that they are racial minorities
7 and had shown that Arizona's felon disenfranchisement laws disproportionately deny the
8 right to vote to racial minorities, "[d]isproportionate *impact* is not irrelevant, but it is not the
9 sole touchstone of an invidious racial discrimination forbidden by the Constitution."
10 Washington v. Davis, 426 U.S. 229, 242 (1976) (emphasis added) (finding that "we have not
11 held that a law, neutral on its face and serving ends otherwise within the power of
12 government to pursue, is invalid under the Equal Protection Clause simply because it may
13 affect a greater proportion of one race than of another"). In other words, "official action will
14 not be held unconstitutional solely because it results in a racially disproportionate impact .
15 . . [p]roof of *racially discriminatory intent or purpose* is required to show a violation of the
16 Equal Protection Clause." Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S.
17 252, 264-65 (1977) (emphasis added). Thus, under Davis and Arlington Heights, Plaintiffs
18 must allege that Arizona lawmakers purposefully intended to discriminate against racial
19 minorities when enacting or implementing the felon disenfranchisement laws and the First
20 Amended Complaint fails to contain this required affirmative allegation. Therefore,
21 Plaintiffs' claim fails.

22 A district court must be "particularly cautious about dismissing discrimination claims
23 simply for a failure to allege [certain] facts." Greenier v. Pace, Local No. 1188, 201
24 F.Supp.2d 172, 182 (D. Me. 2002) (reasoning that it "often proves difficult to state facts
25 tending to show a defendant's state of mind before any discovery has taken place").
26 However, unlike Greenier which involved an employment discrimination case that turned on
27 facts available only to the opposing party, the case at hand involves facts of Arizona
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1 lawmakers' intent in enacting the felon disenfranchisement provision. This information can
2 be readily obtained through standard legal research methods and is largely contained in the
3 public records of the State of Arizona.

4 **II. Count Five: Plaintiffs Claim that Disenfranchising Persons Convicted of Non-**
5 **Common Law Felonies Violates the Equal Protection Clause**

6 Plaintiffs also assert that the number of individuals who have criminal convictions has
7 increased to a significant degree since the Fourteenth Amendment was passed. (Dkt. 59 at
8 ¶ 45). However, this statement asserts no claim for which relief can be granted. Given the
9 significant increase in the U.S. population since the enactment of the Fourteenth Amendment,
10 it is not surprising that the number of convicted felons has increased. Plaintiffs fail to allege
11 a correlation between Arizona's felon disenfranchisement laws and a general increase in the
12 number of criminal convictions. Specifically, Plaintiffs fail to show how this statistic
13 indicates that they have been injured.

14 Plaintiffs further argue that “[g]iven the racial disparities within the federal and state
15 criminal justice systems, Arizona's felon disenfranchisement scheme results in minorities
16 being denied the right to vote at much greater rates than whites.” (*Id.* at ¶ 46). Plaintiffs
17 stated that their allegations “regarding racial disparities in the criminal justice system are
18 solely related to Plaintiffs' common law felony claims – not the LFO requirement . . .” (Dkt.
19 67 at 6). However, Plaintiffs' argument regarding racial disparities in the criminal justice
20 system also fails here for the reasons already stated, namely that racial disparities in the
21 criminal justice system are not directly related to felon reenfranchisement.

22 Finally, Plaintiffs alter their original argument that a distinction between common law
23 and non-common law felonies is appropriate⁴ by claiming that Arizona's admission to the
24 Union required that it disenfranchise only those individuals convicted of common law
25 felonies. (Dkt. 59 at ¶ 78). In their response, Plaintiffs provide no authority, either through
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27 ⁴ The Court rejected Plaintiffs' distinction between common law and non-common law
28 felonies in the original dismissal. (Dkt. 48 at 12-14, Order dated January 22, 2008).

1 case law or legislative history, demonstrating that Arizona's admission into the Union was
2 premised upon the notion that it could only disenfranchise those individuals convicted of
3 common law felonies.

4 A search of Arizona legislative history indicates no discussion of an agreement
5 between Congress and Arizona lawmakers that Arizona would only be admitted to the Union
6 if it only disenfranchised individuals convicted of common law felonies. President Taft
7 signed the Enabling Act on June 20, 1910 and authorized the territory of Arizona to "advance
8 toward statehood," meaning that the delegates would need to be elected to draft a state
9 constitution. John S. Goff, Records of the Arizona Constitutional Convention of 1910 iii
10 (1991). Fifty-two delegates were elected and the Arizona Constitutional Convention
11 convened on October 10, 1910. Id. The delegates discussed suffrage, and records reveal
12 that one delegate, Mr. Winsor, initially proposed an amendment which included the
13 following language pertaining to felony disenfranchisement: "[n]o such person under
14 guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor
15 any person convicted of treason or felony, shall be qualified to vote at any election unless
16 restored to civil rights." Mr. Winsor stated:

17 " [t]he qualifications for voters are stated negatively, in order that the doors
18 may be left open for such other qualifications as the legislature or the
19 lawmaking power may hereafter see fit to provide, and until the lawmaking
20 power sees fit to change the qualifications now required of electors they will
21 remain as they are . . . I submit that the only proper and safe course for us to
22 pursue is to leave the matter in such form deemed necessary and [it can] fit the
23 qualifications required of electors to the conditions as they may from time to
24 time exist.⁵

22 Id. at 871. Throughout these discussions pertaining to suffrage, there is no mention of a need
23 to distinguish between common law and non-common law felonies. Thus, Plaintiffs'
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27 ⁵ Although this amendment was rejected by convention attendees, the discussion indicates
28 that there was no discussion of the need to distinguish between common law and non-common law
felonies. See Goff, supra, at 871-75.

1 argument that Congress conditioned Arizona’s admission to the Union on its agreement to
2 disenfranchise felons for common law crimes is unsupported by the legislative history.

3 Even if Plaintiff’s allegation is taken as true, it does nothing to change the Court’s
4 original interpretation of the plain language of the Fourteenth Amendment, namely that the
5 phrase “other crime” does not warrant a distinction between common and non-common law
6 crimes. (Dkt. 48 at 12-14, Order dated January 22, 2008).⁶ “Where the language is plain and
7 admits of no more than one meaning, the duty of interpretation does not arise, and the rules
8 which are to aid doubtful meanings need no discussion.” Caminetti v. United States, 242
9 U.S. 470, 485 (1917). Thus, a distinction between common and non-common law crimes is
10 not warranted as a matter of law.

11 In the case at hand, Plaintiffs were given the opportunity to amend the original
12 complaint. “In the absence of any apparent or declared reason - such as undue delay, bad
13 faith . . . repeated failure to cure deficiencies by amendments previously allowed . . . futility
14 of amendment, etc. - the leave sought should, as the rules require, be ‘freely given.’” Foman
15 v. Davis, 371 U.S. 178, 182 (1962). However, in the First Amended Complaint, Counts 2,
16 3, 4, 6, and 7 were identical to the original counts dismissed in the original complaint. Thus,
17 these counts are dismissed with prejudice because they were a “repeated failure to cure
18 deficiencies by amendments previously allowed.” See id. Similarly, Counts One and Five
19 are dismissed with prejudice because both counts fail as a matter of law to state a claim upon
20 which relief can be granted.

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27 ⁶ “A plain reading of § 2 admits of no distinction between common law and non-common
28 law felonies. Thus the language of § 2 means what it says – persons convicted of crimes may be
excluded from the franchise.” (Id. at 13.).

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CONCLUSION

Accordingly,

IT IS HEREBY ORDERED GRANTING Defendants' Motion to Dismiss the First Amended Complaint (Dkt. 62) with prejudice.

DATED this 5th day of November, 2008.



Stephen M. McNamee
United States District Judge