

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-092999

03/14/2005

HON. BARBARA M. JARRETT

CLERK OF THE COURT
M. Brady
Deputy

FILED: 03/16/2005

YES ON PROPOSITION 200, et al.

DAVID L ABNEY

v.

JANET NAPOLITANO, et al.

SUSAN PLIMPTON SEGAL

TIMOTHY A NELSON

MINUTE ENTRY

The Court previously heard oral argument on the Attorney General's Motion to Dismiss Plaintiffs' First Amended Complaint for Failure to State a Claim, and took this matter under advisement. Having considered the pleadings filed by the parties (including the pleadings filed after oral argument), the arguments of counsel, and the applicable law, the Court now makes the following findings and enters the following orders.

In the November 2, 2004, general election, Arizona voters approved Proposition 200, a ballot initiative. Proposition 200, among other things, requires state and local government employees to (1) verify the identity, eligibility and immigration status of all applicants for certain state and local public benefits, and (2) report any immigration law violations by applicants for those public benefits. Proposition 200 makes the failure of government employees to report discovered violations of federal immigration law a Class 2 misdemeanor.

Following voter approval of Proposition 200, Anthony D. Rogers, Director of the Arizona Health Care Cost Containment System (AHCCCS), requested an opinion from the Arizona Attorney General addressing the meaning of the term "state and local public benefits" as used in Proposition 200. On November 12, 2004, the Hon. Terry Goddard, Arizona Attorney General, issued Attorney General Opinion 104-010 to Director Rogers. Attorney General Goddard concluded in his Opinion that the "state and local public benefits" subject to Proposition 200 are "those benefits received through programs in Title 46 of the Arizona Revised Statutes that are subject to federal eligibility restrictions in 8 U.S.C. § 1621."

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On November 18, 2004, Plaintiffs filed their Verified Special Action Complaint with this Court, naming as Defendants Hon. Janet Napolitano, Hon. Janice K. Brewer, and Hon Terry Goddard, in their capacities as Arizona public officials. Plaintiffs are four individuals (Randall Pullen, Willa Key, George R. Childress, and Robert K. Park), and two organizations (Yes on Proposition 200 Committee, and Federation for American Immigration Reform). In their original Complaint, Plaintiffs sought, among other relief, declaratory and injunctive relief in regard to Attorney General Opinion 104-010. Specifically, Plaintiffs requested from this Court “A declaration that the term of ‘state and local public benefits non mandated by federal law’ in A.R.S. § 46-140.1 must be declared to apply to all benefits described in 8 U.S.C. § 1621, regardless of which particular state or local government agency administers or regulates the provision of such benefits; A declaration that the Attorney General’s Opinion is mistaken...; and An injunction directing the Attorney General to formally and immediately advise the Governor and all appropriate officials of the State of Arizona and its political subdivisions that they are mandated to conduct eligibility verification for appropriate benefits...”

On December 8, 2004, Defendants filed a Motion to Dismiss the Complaint for Failure to State a Claim. Defendants contend in their Motion to Dismiss that the Complaint fails to state a claim for declaratory relief under A.R.S. § 12-1831 et seq., and fails to state a claim for injunctive relief.

Plaintiffs filed a response to the Motion to Dismiss in which they urged the Court to use its mandamus power to grant the relief they requested. Plaintiffs also filed a First Amended Verified Special Action Complaint. In their Amended Complaint, Plaintiffs seek the same relief set forth in the original Complaint, and additionally request the Court to issue “A preliminary and then permanent injunction in the nature of a special action writ of mandamus requiring the Arizona Attorney General formally and immediately advise the Governor – and all of the various officials of the State of Arizona and its political subdivisions that the Arizona Attorney General is authorized to advise – that they are mandated to conduct eligibility verification for appropriate benefits and to promptly issue regulations and administrative directives in accordance with such advice, in consultation with the Attorney General, and further directing that such injunction in the nature of a writ of mandamus is enforceable to the full extent of this Court’s jurisdiction and authority.”

Defendants filed a Motion to Dismiss the First Amended Complaint for Failure to State a Claim for the same reasons set forth in their prior Motion to Dismiss, and their reply in support of that motion.

As correctly noted by Defendants in their reply to the Motion to Dismiss the Original Complaint, mandamus may lie to compel a public officer to act in a matter involving discretion, but “it may not designate how that discretion is to be exercised.” *Kahn v. Thompson*, 185 Ariz. 408, 411 (1995). As the Arizona Supreme Court held in *Rhodes v. Clark*, 92 Ariz. 31, 34 (1962), mandamus will lie only where two conditions are present: first the act, performance of which is sought to be compelled, must be a ministerial act which the law specially imposes as a duty

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resulting from office or, if discretionary, it must clearly appear that the officer has acted arbitrarily or unjustly and in abuse of discretion; and second, there must be no other plain, speedy and adequate remedy at law.

Plaintiffs contend in their Complaint that the Attorney General's action in issuing the Opinion was arbitrary. The term "arbitrary" is defined in Black's Law Dictionary (revised Fourth Edition) as follows: "Means in an 'arbitrary manner, as fixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic; ... Without fair, solid, and substantial cause; ...not governed by any fixed rules or standard." (Citations omitted.)

Based upon its review of Attorney General Opinion 104-010, the Court finds and determines that the Attorney General did not act arbitrarily, nor did he abuse his discretion, when he issued the opinion in question. The Attorney General applied general principles of statutory construction in determining the meaning of the phrase "state and local public benefits" contained in Proposition 200. The fact that Plaintiffs are of the opinion that the Attorney General erred in concluding that "state and local public benefits" are limited to those benefits referred to in Title 46 does not mean that this Court should find that the Attorney General acted in an arbitrary manner. Even if this Court agreed with Plaintiffs that the phrase "state and local public benefits" could logically be construed to apply to all benefits described in 8 U.S.C. § 1621, this Court would still not have the authority to order the Attorney General to withdraw his Opinion or to declare that the Opinion is erroneous.

The Court would note that, if it were being asked to determine the meaning of the phrase "state and local public benefits" contained in Proposition 200 in the context of an actual case or controversy, it would not be bound by the Attorney General's Opinion. While the Court would certainly review and consider the Opinion, it is possible that the Court might come to a conclusion that the Attorney General has too narrowly limited the scope of Proposition 200. However, the Court agrees with Defendants that Plaintiffs' Complaint does not present the Court with an actual case or controversy at this time. Thus, the Court has no authority to substitute its opinion for that of the Attorney General in this matter.

Plaintiffs have requested this Court to conduct an evidentiary hearing in this case to afford them an opportunity to present evidence on the issue whether the Attorney General abused his discretion and/or acted arbitrarily in issuing Opinion 104-010. They also contend that the Court cannot grant the Defendants' Motion to Dismiss because it must assume to be true all of the material allegations set forth in their Complaint. *Newman v. Maricopa County*, 167 Ariz. 501 (App.Div.1, 1991). The Court does not believe that an evidentiary hearing is necessary in this case, as there is no material factual dispute. Further, the Court accepts as true all of the factual allegations set forth by Plaintiffs in their Complaint. However, the Court is not required to accept as true Plaintiffs' allegations that the Attorney General abused his discretion and/or acted arbitrarily in issuing his Opinion. The issue whether the Attorney General abused his

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discretion and/or acted arbitrarily is a conclusion of law that must be made by the Court, and the Court has resolved that issue against Plaintiffs after considering all of their factual allegations.

In determining whether to grant a Motion to Dismiss for failure to state a claim upon which relief can be granted, the Court is required to give the non-moving party an opportunity to amend the complaint if such amendment cures its defects. *Wigglesworth v. Mauldin* 195 Ariz. 432 (App.Div.1, 1999). In the present case, Plaintiffs have filed a Motion for Leave to File Second Amended Verified Special Action Complaint. In their proposed Amended Complaint, Plaintiffs seek to add as defendants four State agency directors who are apparently relying on and following Attorney General Opinion 104-010. Having reviewed Plaintiffs' Motion for Leave to File Second Amended Verified Special Action Complaint, their proposed Second Amended Complaint, Defendants' response, and the reply, the Court finds and determines that the proposed Second Amended Complaint has the same defects contained in Plaintiffs' original Complaint and First Amended Complaint. Plaintiffs are still urging this Court to invoke its mandamus power to conclude that the Attorney General acted arbitrarily and abused his discretion when he issued his Opinion construing the scope of Proposition 200. Additionally, Plaintiffs urge the Court to invoke its mandamus power to conclude that the Governor acted arbitrarily and abused her discretion when she issued Executive Order No. 2004-30, and included the following language in that order: "All executive Branch agencies are directed to immediately implement A.R.S. § 46-140.01, as enacted by Proposition 200, to the full extent required by the law as set forth in the Proposition, relevant judicial opinions, and the opinions of the Arizona Attorney General." For the same reasons the Court has found that the Attorney General did not act arbitrarily and capriciously in regard to his interpretation of Proposition 200, the Court further finds and determines that the Governor did not act arbitrarily and capriciously in issuing Executive Order No. 2004-30.

For all the preceding reasons,

IT IS ORDERED granting Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint, and dismissing their complaint with prejudice for failure to state a claim.

IT IS FURTHER ORDERED denying Plaintiffs' Motion for Leave to File Second Amended Verified Special Action Complaint, as the Court finds that it would be futile to grant the motion to amend.