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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF ARIZONA

8	Rebecca Holka, Kristofer Seneca,)	Case No.
	Michael Huntoon, Sean Belnap, Justin)	
9	Dixon, Dennis Rumsey, David Van)	
	Orden, Donald Wooters III, Anthony)	FEDERAL CIVIL RIGHTS
10	Rodriguez, and all others similarly)	COMPLAINT
	situated,)	
11)	STATE CIVIL RIGHTS
	Plaintiffs,)	COMPLAINT
12)	
	vs.)	STATE COMPLAINT FOR
13)	DECLARATORY JUDGMENT
	Janet Napolitano, Governor of the)	
14	State of Arizona, and Terry Goddard,)	Class Action Certification
	Attorney General of the State of)	Requested
15	Arizona, in their official capacities,)	
)	Jury Trial Requested
16	Defendants.)	
)	

17 I. INTRODUCTION

18 1. Plaintiffs bring this civil rights action to remedy the Defendant's
19 unconstitutional taking of 5% of their already-earned wages for the express purpose
20 of funding a treatment and anti-recidivism program for others. Plaintiffs seek
21 declaratory and injunctive relief.

22 2. This action is brought by persons in the legal custody of the Arizona
23 Department of Corrections who are not serving a sentence for a drug offense (i.e., a
24 conviction under Title 13, chapter 34) and who, as of September 19, 2007, will be
25 subject to HB 2298, a newly-enacted Arizona bill which mandates a 5% deduction from
26 their earned wages.

1 12. Plaintiff Kristofer Seneca is a citizen of the United States and a male
2 prisoner committed to the legal custody of the Arizona Department of Corrections
3 (ADC# 113423) who falls within the category of persons who are simultaneously
4 subject to (1) the mandatory statutory 5% deduction for the drug transition program
5 and to (2) the mandatory statutory ineligibility criterion of not serving a sentence for a
6 drug offense, that were enacted as part of HB 2298.

7 13. Plaintiff Michael Huntoon is a citizen of the United States and a male
8 prisoner committed to the legal custody of the Arizona Department of Corrections
9 (ADC# 176411) who falls within the category of persons who are simultaneously
10 subject to (1) the mandatory statutory 5% deduction for the drug transition program
11 and to (2) the mandatory statutory ineligibility criterion of not serving a sentence for a
12 drug offense, that were enacted as part of HB 2298.

13 14. Plaintiff Sean Belnap is a citizen of the United States and a male prisoner
14 committed to the legal custody of the Arizona Department of Corrections
15 (ADC# 163876) who falls within the category of persons who are simultaneously
16 subject to (1) the mandatory statutory 5% deduction for the drug transition program
17 and to (2) the mandatory statutory ineligibility criterion of not serving a sentence for a
18 drug offense, that were enacted as part of HB 2298.

19 15. Plaintiff Justin Dixon is a citizen of the United States and a male prisoner
20 committed to the legal custody of the Arizona Department of Corrections
21 (ADC# 1178818) who falls within the category of persons who are simultaneously
22 subject to (1) the mandatory statutory 5% deduction for the drug transition program
23 and to (2) the mandatory statutory ineligibility criterion of not serving a sentence for a
24 drug offense, that were enacted as part of HB 2298.

25 16. Plaintiff Dennis Rumsey is a citizen of the United States and a male
26 prisoner committed to the legal custody of the Arizona Department of Corrections

1 (ADC# 041414) who falls within the category of persons who are simultaneously
2 subject to (1) the mandatory statutory 5% deduction for the drug transition program
3 and to (2) the mandatory statutory ineligibility criterion of not serving a sentence for a
4 drug offense, that were enacted as part of HB 2298.

5 17. Plaintiff David Van Orden is a citizen of the United States and a male
6 prisoner committed to the legal custody of the Arizona Department of Corrections
7 (ADC# 033321) who falls within the category of persons who are simultaneously
8 subject to (1) the mandatory statutory 5% deduction for the drug transition program
9 and to (2) the mandatory statutory ineligibility criterion of not serving a sentence for a
10 drug offense, that were enacted as part of HB 2298.

11 18. Plaintiff Donald Wooters III is a citizen of the United States and a male
12 prisoner committed to the legal custody of the Arizona Department of Corrections
13 (ADC# 104212) who falls within the category of persons who are simultaneously
14 subject to (1) the mandatory statutory 5% deduction for the drug transition program
15 and to (2) the mandatory statutory ineligibility criterion of not serving a sentence for a
16 drug offense, that were enacted as part of HB 2298.

17 19. Plaintiff Anthony Rodriguez is a citizen of the United States and a male
18 prisoner committed to the legal custody of the Arizona Department of Corrections
19 (ADC# 184337) who falls within the category of persons who are simultaneously
20 subject to (1) the mandatory statutory 5% deduction for the drug transition program
21 and to (2) the mandatory statutory ineligibility criterion of not serving a sentence for a
22 drug offense, that were enacted as part of HB 2298.

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24 IV. DEFENDANTS

25 20. Defendant Janet Napolitano, in her official capacity as Governor of the
26 State of Arizona, is a "person" for purposes of prospective injunctive relief under

1 42 U.S.C. § 1983. In her official capacity as Governor of the State of Arizona, she
2 signed into law the legislative enactment which is challenged herein (HB 2298).
3 Governor Napolitano also is the chief executive officer of the State of Arizona; and, as
4 Governor, she is the head of the Executive Branch of government for the State of
5 Arizona. The state agency which has legal custody of Plaintiffs is an agency within the
6 Executive Branch of Government and under the control of the Governor, who selects
7 and appoints the agency director. She is ultimately responsible for implementing
8 Arizona law. She is sued in her official capacity only for actions that she took under
9 color of state law.

10 21. Defendant Terry Goddard, in his official capacity as Attorney General of the
11 State of Arizona, is a "person" for purposes of prospective injunctive relief under
12 42 U.S.C. § 1983. In his official capacity as Attorney General, he is responsible for
13 enforcement of the duly enacted laws of the State of Arizona. He is sued in his official
14 capacity only for actions that he took under color of state law

15
16 V. FACTUAL ALLEGATIONS RELEVANT TO ALL PLAINTIFFS

17 22. Under HB 2298 and A.R.S. § 31-254 (2007) (effective September 19,
18 2007), the State of Arizona mandates a 5% deduction from the earned wages of all
19 prisoners except those convicted of a DUI offense:

20 D. If the compensation due a prisoner is less than two dollars per
21 hour, mandatory deductions shall be taken for the following
purposes in the order specified:

22 3. If the prisoner was not convicted of a violation of title 28,
23 chapter 4, five per cent of the prisoner's wages shall be
24 used exclusively to fund the transition offices established by
section 31-283. All monies collected under this paragraph
25 shall be deposited, pursuant to sections 35-146 and 35-147,
in the transition office fund established by section 31-284.

26 See A.R.S. § 31-254 (Compensation for labor performed and distribution of earnings.

1 23. The transition office fund is to be used for the exclusive purpose of
2 providing transition services for only those persons convicted of drug offenses:

3 A. The department shall establish a transition program. The
4 department shall contract with any private or nonprofit entity to
provide eligible inmates with transition services....

5 B. The director shall adopt rules to implement this article. The rules
6 shall include:

7 1. Eligibility criteria for receiving the contracted entity's transition
services. To be eligible, at a minimum, an inmate shall:

8 (a) Be convicted of a violation of title 13, chapter 34, except
9 that an inmate who was convicted of a violation of title 13,
10 chapter 14 or 17 or an offense involving death or physical
injury or the use of a deadly weapon or dangerous
11 instrument is not eligible to participate in the transition
program.

12 (b) Be classified by the state department of corrections as
a low risk to the community.

13 (c) Not have been convicted of a violent crime as defined in
14 section 13-604.04.

15 (d) Have a nonviolent risk score as determined by the
department.

16 (e) Not have any felony detainers.

17 (f) Agree in writing to provide specific information after
18 the inmate is released. The department shall use the
information to prepare the report prescribed by
19 subsection D, paragraph 3 of this section.

20 (g) Have made satisfactory progress on the inmate's
individualized corrections plan as determined by the
21 department.

22 (h) Have maintained civil behavior while incarcerated as
determined by the department.

23 (i) Be current on restitution payments pursuant to section
24 31-254.

25 (j) Have a need and ability to benefit from the program as
determined by the department.

26 See A.R.S. § 31-281 (Transition program; drug offenders) (bold print added).

1 legal custody of the Arizona Department of Corrections exceeds 36, 000 persons.²
2 Additionally, ordinary joinder is impracticable also because the number and identity of
3 prisoners committed to the legal custody of the Arizona Department of Corrections
4 constantly changes as a result of releases, returns, and new commitments.

5 27. There are questions of law and fact common to the class, including being
6 subject to the statutorily enacted mandatory deduction and subject to the ineligibility
7 provisions applicable to the drug offender transition program funded by the deduction.

8 28. The claims of the representative Plaintiffs are typical of the claims of the
9 class; the representative Plaintiffs are persons who fall within the statutorily defined
10 classes of persons subject to the deduction and subject to the ineligibility provisions.

11 29. The named Plaintiffs will fairly and adequately protect the interests of the
12 class. There is no conflict between the representative Plaintiffs and other class
13 members, and Plaintiffs adequately are represented by counsel rather than
14 proceeding on their own.

15 30. Class certification is appropriate because the prosecution of separate
16 actions by individual class members would unnecessarily consume vast amounts of
17 judicial resources. In addition class certification is appropriate because many
18 members of the class have no resources with which to obtain legal representation in
19 individual actions.

20 31. The challenged statutory provisions act on grounds specifically applicable
21 to the class, thereby making it appropriate for the Court to provide preliminary and final
22 injunctive relief and corresponding declaratory relief with respect to the class as a
23 whole.

24
25 ² 36,248 prisoners, according to article Who's in prison and where are they?,
26 Arizona Capital Times, August 17, 2007, at Page 12, citing as sources the Arizona
Department of Coprr3ections at a Glance Report for March 2007 and department staff.

1 VII. COUNT ONE

2 VIOLATION OF FEDERAL DUE PROCESS CLAUSE

3 32 Plaintiffs incorporate by reference all preceding paragraphs as if fully set
4 forth herein.

5 33. Plaintiffs are persons simultaneously subject to the mandatory statutory
6 5% deduction for the drug transition program and subject to the mandatory statutory
7 ineligibility criterion of not serving a sentence for a drug offense, that were enacted as
8 part of HB 2298.

9 34. There is no pre-deprivation or post-deprivation remedy under state law
10 applicable to the mandatory deductions from earned wages pursuant to the provisions
11 of HB 2298. No hearings are provided, no appeal process is available, no dispute
12 process is applicable, and no other form of meaningful process is available to
13 Plaintiffs. The conversion by the State of a portion of earned wages is accomplished
14 by means of an automatic deduction devoid of any pre- or post-deprivation process
15 whatsoever. Moreover, the agency which handles the deduction has no discretion as
16 to whether to implement the law and no power or authority to modify its application or
17 mitigate its effect.

18 35. The monetary deduction of a portion of earned wages without meaningful
19 process constitutes a violation of Plaintiffs' rights under the Due Process Clause of the
20 Fifth Amendment to the United States Constitution, as incorporated into the Fourteenth
21 Amendment and applied against the states.

22 VIII. COUNT TWO

23 VIOLATION OF FEDERAL TAKINGS CLAUSE

24 36 Plaintiffs incorporate by reference all preceding paragraphs as if fully set
25 forth herein.
26

1 37. There is no compensation for the taking of a portion of Plaintiffs' earned
2 wages. There is no benefit provided, no return of monies allowed, no alternative form
3 of payment. There is a taking, but there is no return in any amount or at any time or
4 in any alternative or delayed manner.

5 38. The monetary deduction of a portion of earned wages without meaningful
6 compensation constitutes a violation of Plaintiffs' rights under the Takings Clause of
7 the Fifth Amendment to the United States Constitution, as incorporated into the
8 Fourteenth Amendment and applied against the states.

9
10 IX. COUNT THREE

11 VIOLATION OF STATE DUE PROCESS CLAUSE

12 39 Plaintiffs incorporate by reference all preceding paragraphs as if fully set
13 forth herein.

14 40. Plaintiffs are persons simultaneously subject to the mandatory statutory
15 5% deduction for the drug transition program and subject to the mandatory statutory
16 ineligibility criterion of not serving a sentence for a drug offense, that were enacted as
17 part of HB 2298.

18 41. There is no pre-deprivation or post-deprivation remedy under state law
19 applicable to the mandatory deductions from earned wages pursuant to the provisions
20 of HB 2298. No hearings are provided, no appeal process is available, no dispute
21 process is applicable, and no other form of meaningful process is available to
22 Plaintiffs. The conversion by the State of a portion of earned wages is accomplished
23 by means of an automatic deduction devoid of any pre- or post-deprivation process
24 whatsoever. Moreover, the agency which handles the deduction has no discretion as
25 to whether to implement the law and no power or authority to modify its application or
26 mitigate its effect.

1 (4) Issue a permanent injunction enjoining Defendants and their agents,
2 employees, and representatives from enforcing the 5% deduction created by HB 2298
3 with respect to the Plaintiff class.

4 (5) Award Plaintiffs their expenses, costs, fees, and other disbursements
5 associated with the filing and maintenance of this action, including reasonable
6 attorneys' fees, pursuant to 42 USC § 1988;

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

9 (7) Award any other and further relief to which the Plaintiffs are legally entitled
10 and this Court deems proper and just.

11 RESPECTFULLY SUBMITTED this 7TH day of September, 2007.

12 AMBROSE LAW FIRM, P.C.

13
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