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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

16	Maria M. Gonzalez, et al.,)	No. CV-06-1268-PHX-ROS(Lead)
)	No. CV-06-1362-PCT-JAT(Cons.)
17	Plaintiffs,)	No. CV-06-1575-PHX-EHC(Cons.)
)	
18	vs.)	GONZALEZ PLAINTIFFS'
)	SUBMISSION REGARDING
19	State of Arizona, et al,)	REMAINING CLAIMS IN CASE
)	
20	Defendants.)	(Assigned to the
21)	Honorable Roslyn O. Silver)

22
23 NOW COME Gonzalez Plaintiffs and make this Submission Regarding
24 Remaining Claims in Case pursuant to the Court's Order of June 30, 2008 (Dkt. 884).
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1 **I. INTRODUCTION**

2 On June 30, 2008, this Court ordered that Plaintiffs:

- 3 (1) identify whether each cause of action [] is a facial or as-applied challenge;
4 (2) if as-applied, identify to which Plaintiff(s) it is applied; and
5 (3) provide specific citation to the complaint for each of the above.
6

7 *See* Dkt. Entry No. 884 at 1.

8 Pursuant to the Court’s Order, Gonzalez Plaintiffs set out below a description of
9 the claims remaining in the case, the plaintiffs affected by the application of the
10 challenged provisions of Prop 200, and the citations to the complaint supporting
11 Plaintiffs’ remaining claims. Gonzalez Plaintiffs further describe, for their claims
12 arising under the U.S. Constitution, whether the claims are facial or as-applied.
13

14 **II. CLAIMS REMAINING IN CASE**

15 A. 14th Amendment Equal Protection Clause (Disparate
16 Treatment of Naturalized Citizens)

17 Gonzalez Plaintiffs allege that Proposition 200’s proof of citizenship requirement
18 discriminates against naturalized citizens and thus violates the Equal Protection Clause
19 of the 14th Amendment. *See* Dkt. Entry No. 352, Gonzalez Plaintiffs’ First Amended
20 Complaint, at ¶¶ 5, 8, 11-18, 52-57, 69-71, 73-75, 82.

21 2. Description of the Claim

22 The Equal Protection Clause “is essentially a direction that all persons similarly
23 situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473
24 U.S. 432, 439 (1985). When a “challenged government action classifies or
25 distinguishes between two or more relevant groups” courts must conduct an equal
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1 protection inquiry to determine the validity of the classifications. *Quib v. Strauss*, 11
2 F.3d 488, 491 (5th Cir. 1993). *See* Dkt. Entry No. 352 at ¶¶ 94-96.

3 In situations where the distinction involves a suspect class, such as national
4 origin, the challenged law is subject to the “strict scrutiny” standard of review.
5 Similarly, laws that treat differently U.S. citizens because of the manner in which they
6 acquired their citizenship (e.g. naturalized citizens), are subject to the “strict scrutiny”
7 standard of review. Finally, because Proposition 200 implicates a fundamental right
8 strict scrutiny applies. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 554 (1964) (“Voting is
9 of the most fundamental significance under our constitutional structure.”); *Graham v.*
10 *Richardson*, 403 U.S. 365, 372 (1971) (classifications based on national origin are
11 inherently suspect). *See* Dkt. Entry No. 352 at ¶¶ 94-96.

12 3. The Claim of Disparate Treatment of Naturalized Citizens in 13 Voter Registration is Facial and As-applied

14
15
16 Gonzalez Plaintiffs challenge the proof of citizenship requirement for voter
17 registration on its face and as applied to naturalized citizens. On its face, Prop 200
18 singles out naturalized citizens for different treatment when compared to native born
19 citizens. For example, the statute provides that only naturalized citizens are required to
20 present the original version of their citizenship documents to the County Recorder.
21 Native born citizens may photocopy and mail their birth certificates to the Recorder, or
22 write a tribal identification number on the registration form, to satisfy the proof of
23 citizenship requirement. *See* Dkt. Entry No. 352 at ¶¶ 5, 52-57, 69-71.

1 before he made a second attempt at registration. In his second attempt to register to
2 vote, this time using his valid Arizona driver's license, Mr. Gonzalez was again
3 rejected, this time because his license was issued before 1996. Mr. Gonzalez remains
4 unregistered today. *See* Dkt. Entry No. 352 at ¶¶ 5, 57.

5
6 The proof of citizenship requirement's disparate treatment of naturalized citizens
7 thwarts the mission of the Plaintiff organizations because it limits or precludes the
8 organizations' ability to register naturalized voters, many of whom are Latino or live in
9 Latino neighborhoods and thus are core constituents of Plaintiff organizations. To
10 counteract the Prop 200's effects, Plaintiff organizations are forced to divert scarce
11 resources to conduct voter education and outreach geared specifically to the registration
12 requirements for naturalized citizens. Furthermore, the in-person registration mandate
13 for those relying on their naturalization documents makes community-based voter
14 registration impossible. *See* Dkt. Entry No. 352 at ¶¶ 8, 11-18, 52-57, 69, 73-75, 82

15
16 B. 14th Amendment Equal Protection Clause (Undue Burden)

17 Gonzalez Plaintiffs have alleged that the proof of citizenship and voter
18 identification requirements in Prop 200 impose an undue burden on the right to vote in
19 violation of the 14th Amendment's Equal Protection Clause. *See* Dkt. Entry No. 352 at
20 ¶¶ 10-16, 18, 52-61, 75, 81-82.

21
22 1. Description of the Claim

23 Gonzalez Plaintiffs' claim of undue burden rests on the fact that Prop 200
24 requires voters and voter registration applicants to pay a fee to acquire documents to
25 prove either their identity or citizenship. These additional requirements result in the
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1 burdening and exclusion of voters from the political process and are neither even-
2 handed nor justified. *See* Dkt. Entry No. 352 at ¶¶ 10-16, 18, 52-61, 75.

3
4 2. The Undue Burden Claim is an As-applied Claim

5 Each of the documents required to prove citizenship for Proposition 200 costs a
6 fee, including an Arizona Driver’s License or State Identification Card. Although
7 driver’s licenses are widely held in Arizona, not all are issued after October 1, 1996 and
8 can satisfy the proof of citizenship requirements. Thus, unlike the law challenged in
9 *Crawford v. Marion County Election Board*, Prop 200 forces voter registration
10 applicants who lack citizenship documents to pay to purchase or replace them before
11 they can register to vote. *See Crawford* at *9 (“[t]he fact that most voters already
12 possess a valid driver's license, or some other form of acceptable identification, would
13 not save the statute under our reasoning in *Harper* if the State required voters to pay a
14 tax or a fee to obtain a new photo identification.”). In addition, the acceptable voter
15 identification documents under Prop 200 either require a fee to purchase or require
16 some financial expenditure or resources to obtain (e.g. bank statement, car insurance
17 receipt, utility bill, etc). *See* Dkt. Entry No. 352 at ¶¶ 10, 52-61.

19 As applied, Prop 200’s proof of citizenship requirement has resulted in the
20 rejection of over 37,000 voter registration applications. The implementation of Prop
21 200’s proof of citizenship provisions has not only required individuals to produce
22 documentation that costs a fee but also has been characterized by additional burdens
23 such as 1) the distribution of out-of-date registration forms that caused many applicants
24 not to even realize that their applications were defective, 2) applicants receiving
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1 inaccurate information from election officials, and 3) applicants completing federal
2 voter registration forms pursuant to the National Voter Registration Act or the
3 UOCAVA that were rejected automatically. *See* Dkt. Entry No. 352 at ¶¶ 52-61.

4 In addition, as applied Prop 200's voter identification requirement has forced
5 voters with valid identification to cast conditional provisional ballots or purchase new
6 identification because Arizona's implementation of Prop 200 does not permit use of
7 valid identification cards in situations where the voter has changed a name through
8 marriage or changed addresses. *See* Dkt. Entry No. 352 at ¶¶ 10, 81.

10 3. Plaintiffs Gonzalez, Morrison Flores and Organizations are
11 Injured by the Undue Burden Imposed by Prop 200

12 With respect to voter registration, as explained above, Prop 200 has been applied
13 to Mr. Gonzalez in such a way as to reject his voter registration application twice and
14 force him either to take time off from work and travel to register to vote in person at the
15 Yuma County Recorder's office or to pay at least \$65.00 for a U.S. passport. *See* Dkt.
16 Entry No. 352 at ¶¶ 5.

17 In addition, the proof of citizenship requirement thwarts the mission of the
18 Plaintiff organizations because it makes grassroots and community-based voter
19 registration cost-prohibitive to the applicants and the organizations. The requirement
20 that registration applications be accompanied by photocopies of documents that prove
21 the registrant's citizenship forces Plaintiff organizations to forego registration of
22 individuals who cannot afford to purchase the documents and has crippled the efforts of
23 the organizations to go into the Latino community and register voters as they have for
24 so many years before. The organizations simply cannot afford, nor is it practical, to
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1 outfit each employee or volunteer with a portable photocopier or provide multiple copy
2 machines to deploy in the field or at community events. *See* Dkt. Entry No. 352 at ¶¶
3 11-16, 17-18, 73-74.

4 The voter identification provision of Prop 200, as applied to Georgia Morrison
5 Flores, has resulted in her inability to vote in the 2006 November General Election and
6 the 2008 Presidential Preference Election. Her valid driver's license was rejected on
7 two different occasions by poll workers on Election Day. Additional witnesses have
8 testified and will testify that their valid identification was rejected for a host of reasons,
9 including name and address changes. Overall, more than 4,000 voters cast uncounted
10 conditional provisional ballots as a result of the application of Prop 200's voter
11 identification requirement in the 2006 federal elections and the 2008 Presidential
12 Preference Election. Ms. Morrison Flores, and others, are forced to purchase new
13 identification cards, with different information, in order for that identification to be
14 accepted on Election Day under the implementation of Prop 200. *See* Dkt. Entry No.
15 352 at ¶¶ 10, 52-53, 58-61, 81.

16 Proposition 200's voter identification requirements similarly prevent the
17 organizational Plaintiffs from realizing their long-standing missions of civic
18 engagement and political participation. Plaintiff organizations are aware that members
19 of their community have been turned away at the polls or had their votes left uncounted
20 because they lacked the identification deemed acceptable by Prop 200 for voting. The
21 organizations engage in targeted voter turnout and education efforts to counteract these
22 effects. As Prop 200's identification requirements continue to result in uncounted and
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1 uncast ballots, the organizational Plaintiffs’ resources are drained and their mission of
2 increasing political participation is hindered. *See* Dkt. Entry No. 352 at ¶¶ 11-18, 52-53,
3 58-61, 75, 82.

4 C. Section 2 of the Voting Rights Act

5 Gonzalez Plaintiffs have alleged that Proposition 200 dilutes Latino voting
6 strength in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973 *et*
7 *seq.* *See* Dkt. Entry No. 352 at ¶¶ 5, 8, 11-18, 52-61, 69-71, 73-75, 82.

9 1. Description of the Claim

10 Section 2 of the Voting Rights Act prohibits official practices that “result in a
11 denial or abridgement of the right of any citizen of the United States to vote on account
12 of race or color . . .” 42 U.S.C. 1973 (a). A violation of Section 2 exists when, “based
13 on the totality of circumstances, it is shown that the political processes leading to
14 nomination or election in the State or political subdivision are not equally open to
15 participation by [Latinos] in that its members have less opportunity than other members
16 of the electorate to participate in the political process and to elect representatives of
17 their choice.” 42 U.S.C. 1973 (b).

19 Prop 200’s proof of citizenship requirement for voter registration and voter
20 identification requirement have a disparate impact on Latinos. As a result, Latinos are
21 less likely to register to vote and are more likely to cast uncounted conditional
22 provisional ballots than non-Latinos. This disparate impact, in combination with
23 additional factors including racially polarized voting and differences in socioeconomic
24 status, results, under the totality of circumstances, in less opportunity for Latinos to
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1 participate in the political process when compared to non-Latinos. *See* Dkt. Entry No.
2 352 at ¶¶ 5, 8, 11-18, 52-61, 69-71, 73-75, 82.

3
4 2. Plaintiffs Gonzalez and Organizational Plaintiffs are Affected by
5 Proposition 200's Violation of Section 2

6 Mr. Gonzalez, who is Latino, has been denied the ability to register to vote by
7 Prop 200, in the manner set out above. This injury constitutes both vote denial and vote
8 dilution for Mr. Gonzalez. In addition, other Latino voters, including the members of
9 Plaintiff organizations, Ms. Lopez and Mrs. Gonzalez, suffer a dilution of their voting
10 strength as a result of Prop 200's disparate exclusion of Latinos from the electorate. *See*
11 Dkt. Entry No. 352 at ¶¶ 5, 8, 11-18, 52-61, 69-71, 73-75, 82.

12 D. First Amendment

13 Gonzalez Plaintiffs allege that Prop 200's proof of citizenship requirement for
14 voter registration violates the free speech and associational rights of Plaintiff Lopez and
15 Plaintiff organizations that are guaranteed by the First Amendment of the U.S.
16 Constitution. *See* Dkt. Entry No. 352 at 20 (Gonzalez Plaintiffs' First Amended
17 Complaint). *See* Dkt. Entry No. 352 at ¶¶ 8, 11-18, 52-61, 69-71, 73-75, 82.

18
19 1. Description of Claim

20 Through their voter registration efforts Plaintiffs exercise expressive and
21 associational rights protected under the First Amendment to the U.S. Constitution. *See*
22 *Monterey County Democratic Cent. Committee v. United States Postal Service*, 812
23 F.2d 1194, 1196 (9th Cir. 1987). "These rights belong to – and may be invoked by –
24 not just the voters seeking to register, but by third parties who encourage participation
25 in the political process through increasing voter registration rolls." *Project Vote v.*
26

1 *Blackwell*, 455 F. Supp. 2d 694, 701 (D. Ohio 2006) (citing *Williams v. Rhodes*, 393
2 U.S. 23, 30 (1968)); *see also League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314
3 (D. Fla. 2006); *Ass'n of Cmty. Orgs. for Reform Now v. Cox*, 2006 U.S. Dist. LEXIS
4 87080 (N.D. Ga. Sept. 28, 2006). *See* Dkt. Entry No. 352 at ¶¶ 8, 11-18, 52-61, 69-71,
5 73-75, 82.

6
7 By preventing Plaintiffs from conducting voter registration in community-based
8 activities, and preventing Plaintiffs from using the federal voter registration postcards,
9 Prop 200's registration requirements impair Plaintiffs in the exercise of both free speech
10 and associational rights.

11 2. The First Amendment Claim is As-Applied

12 Gonzalez Plaintiffs allege that the implementation of Prop 200's voter
13 registration requirements has violated their First Amendment rights. The in-person
14 registration requirement for applicants who rely on their naturalization certificate,
15 Defendant Brewer's decision not to accept federal voter registration postcards, and the
16 need to photocopy citizenship documents for voters lacking a recent Arizona driver's
17 license all combine to thwart Gonzalez Plaintiffs' efforts to register voters. *See* Dkt.
18 Entry No. 352 at ¶¶ 8, 11-18, 52-61, 69-71, 73-75, 82.

21 3. Prop 200's Registration Requirements Violate the First Amendment Rights of Plaintiff Debbie Lopez and Plaintiff Organizations

22 Plaintiff Lopez and Plaintiff organizations have been impaired in their ability to
23 register voters using the federal registration forms and using community-based efforts
24 for the reasons described above. Plaintiff Lopez has spent substantial additional time
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1 and personal resources registering voters as a result of Prop 200's registration
2 requirements. *See* Dkt. Entry No. 352 at ¶¶ 8, 11-18, 52-61, 69-71, 73-75, 82.

3 E. Title VI of the Civil Rights Act of 1964

4 Gonzalez Plaintiffs allege that for the same reasons that Prop 200 violates the
5 Equal Protection Clause by discriminating against naturalized citizens, Prop 200
6 violates the disparate treatment provision of Title VI of the Civil Rights Act of 1964, 42
7 U.S.C. 2000d. *See* Dkt. Entry No. 352 at ¶¶ 5, 8, 11-18, 52-56, 69-71, 73-75, 82.

9 1. Description of the Claim

10 Title VI provides:

11 No person in the United States shall, on the ground of race,
12 color, or national origin, be excluded from participation in, be denied
13 the benefits of, or be subjected to discrimination under any program
14 or activity receiving Federal financial assistance.

15 42 U.S.C. 2000d

16 Defendants are recipients of federal funds under Title VI and Prop 200
17 discriminates on its face against naturalized citizens by imposing more and greater
18 burdens for voter registration. This disparate treatment of foreign born U.S. citizens is
19 sufficient to establish a violation of Title VI. *See Alexander v. Sandoval*, 532 U.S. 275
20 (2001).

21 2. Plaintiffs Gonzalez and Organizations are Injured by Prop 200's
22 violation of Title VI

23 For the reasons set out in Section A 3, above, Mr. Gonzalez and Plaintiff
24 organizations are injured by Prop 200's violation of Title VI. *See* Dkt. Entry No. 352 at
25 ¶¶ 5, 8, 11-18, 52-56, 69-71, 73-75, 82.
26

1 DATED this 3rd day of July, 2008. Respectfully submitted,

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3

By: s/Nina Perales

4

Nina Perales

5

Counsel for Plaintiffs

6

Gonzalez, et al.

7

CERTIFICATE OF SERVICE

8

I hereby certify that on the 3rd day of July, 2008, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

9

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11

COPY of the foregoing filed electronically this 3rd day of July, 2008.

12

13

COPY of the foregoing mailed with Notice of Electronic Filing this 3rd day of July, 2008 to:

14

The Honorable Roslyn O. Silver
United States District Court
Sandra Day O’Connor U.S. Courthouse, Suite 624
401 West Washington Street, SPC 59
Phoenix, AZ 85003-2158

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16

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s/Nina Perales

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Nina Perales

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