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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Maria M. Gonzalez, et al.,)	No. CV 06-1268-PHX-ROS
Plaintiffs,)	ORDER
vs.)	
State of Arizona, et al.,)	
Defendants.)	

Pending before the Court is Defendants’ Motion to Dismiss the Gonzalez Plaintiffs for Lack of Standing.¹ For the reasons stated herein, this motion will be granted in part and denied in part.

I. Factual Background

A. Proposition 200

On November 2, 2004, Arizona voters approved a voter initiative called Proposition 200, which was officially proclaimed law by Governor Janet Napolitano on December 13,

¹ Plaintiffs Maria Gonzalez, Jesus Gonzalez, Bernie Abeytia, Georgia Morrison-Flores, Debbie Lopez, Naeem Abdul-Kareem, and Luciano Valencia are collectively referred to as “Gonzalez Plaintiffs.”

Gonzalez Plaintiffs have not objected to the dismissal of Naeem Abdul-Kareem and Luciano Valencia, so Abdul-Kareem and Valencia will be dismissed. See L. R. Civ. P. 7.2(i).

In addition, Defendants have withdrawn their challenge to the standing of Debbie Lopez. (Doc. 780).

1 2004. (Doc. 352 ¶ 52). Relevant here, Proposition 200 requires voter registrants to provide
2 proof of U.S. citizenship before their application for registration may be accepted, and voters
3 seeking to cast their ballot in person on election day to provide proof of identification. (Id.
4 ¶¶ 54-55, 58).

5 1. *Proof of Citizenship*

6 Proposition 200, which amended A.R.S. §§ 16-152, -166, requires individuals
7 wishing to register to vote to provide proof of citizenship. (Id. ¶¶ 54-55). Six types of
8 documents provide the required proof: (1) an Arizona driver's license issued after October
9 1, 1996, or a license issued by another state that verifies U.S. citizenship prior to issuing
10 licenses; (2) a U.S. birth certificate; (3) a U.S. passport; (4) U.S. naturalization documents;
11 (5) other documents established pursuant to the Immigration Reform and Control Act of
12 1986; or (6) a Bureau of Indian Affairs card number, tribal treaty card number, or tribal
13 enrollment number. A.R.S. § 16-166.

14 2. *Voter Identification*

15 a. *Voting In-Person on Election Day*

16 Proposition 200 also amended A.R.S. § 16-579, requiring an elector voting in-person
17 on election day to present identification to the poll workers. (Doc. 352 ¶ 58). A voter may
18 obtain a regular ballot only by presenting either one form of identification with her
19 photograph, name, and address, or two forms of identification that bear her name and
20 address. (A.R.S. § 16-579(A); Doc. 435, Ex. 4 at 113).

21 The Secretary of State has promulgated regulations setting forth the specific types of
22 identification that are acceptable. (Doc. 435, Ex. 4). Acceptable forms of identification with
23 a photograph, name, and address are: a driver license issued after October 1, 1996;
24 nonoperating identification license; tribal enrollment card or other form of tribal
25 identification; or some other federal, state, or local government issued identification. (Doc.
26 435, Ex. 4 at 113).

1 Acceptable forms of identification without a photograph that bear the name and
2 address of the elector are: utility bill; bank or credit union statement; vehicle registration;
3 Indian census card; property tax statement; tribal enrollment card or other form of tribal
4 identification; vehicle insurance card; recorder's certificate; or federal, state, or local
5 government issued identification, including a voter registration card issued by the county
6 recorder. (Id. at 113-14).

7 b. Voting Early

8 Proposition 200 did not change the requirements for voting early. Every registered
9 voter is eligible to vote by early ballot. A.R.S. § 16-541. Documentation demonstrating
10 proof of identification is not required to obtain or submit an early ballot. A.R.S. §§ 16-542,
11 47. An early ballot may be mailed or dropped off at a polling place by 7:00 p.m. on election
12 day. A.R.S. § 16-548.

13 Counties also allow for in-person early voting at certain polling places. (Doc. 219 at
14 3). No identification is required of early voters that wish to vote in-person. (Id.)

15 B. Gonzalez Plaintiffs

16 In their Amended Complaint, filed October 1, 2007, the Gonzalez Plaintiffs allege that
17 Proposition 200 violates the First Amendment, the Equal Protection Clause of the Fourteenth
18 Amendment, Section 2 of the Voting Rights Act, 42 U.S.C. § 1973(a), and Title VI of the
19 Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*² (Doc. 352). They seek injunctive and
20 declaratory relief, but not damages. (Id.).

21 1. *Maria Gonzalez*

22 Maria Gonzalez was born in Mexico, and is Hispanic/Latina. (Doc. 487, Ex. 1 at 37).
23 On August 18, 2005, she became a naturalized citizen of the United States. (Id. at 36). After
24 the naturalization ceremony, she applied to register to vote using the number from her
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27 ² Gonzalez Plaintiffs' other claims were dismissed on February 5, 2008. (Doc. 611).
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1 certificate of naturalization, rather than her alien registration number, as proof of citizenship.
2 (Id.) Her application was denied for failure to provide proof of citizenship. (Id.)

3 Maria Gonzalez admitted that she possesses the proof of citizenship required by
4 Proposition 200, and currently is registered to vote in Arizona. (Doc. 435, Ex. 2).

5 2. *Jesus Gonzalez*

6 Jesus Gonzalez was born in Mexico, and is Hispanic/Latino. (Doc. 487, Ex. 1 at 27).
7 On August 18, 2005, Jesus Gonzalez became a naturalized citizen of the United States. (Id.
8 at 26). After the naturalization ceremony, he applied to register to vote using the number
9 from her certificate of naturalization, rather than his alien registration number, as proof of
10 citizenship. (Id.) His application was denied for failure to provide proof of citizenship. (Id.)

11 In October 2006, Jesus Gonzalez again attempted to register to vote using his Arizona
12 driver's license. (Id.) He did not attempt to utilize his alien registration number. (See id.)
13 His application was denied because his Arizona driver's license was issued to him before
14 October 1, 1996. (Id.)

15 Jesus Gonzalez admits that he possesses the proof of citizenship required by
16 Proposition 200, but is not currently registered to vote. (Doc. 435, Ex. 2).

17 3. *Bernie Abeytia*

18 Abeytia is a U.S. citizen, a Latino, and is registered to vote. (Doc. 352 ¶ 6). He
19 possesses an Arizona driver's license issued after October 1, 1996, but his license lists his
20 post office box, not his street address. (Doc. 487, Ex. 1 at 41). This is because he wants to
21 protect his personal information from identity theft. (Id.) For the same reason, he uses a post
22 office box for his utility bills and bank statements. (Id.) Abeytia's street address, not his
23 post office box, is the address on the voter rolls. (See id. at 42).

24 4. *Georgia Morrison-Flores*

25 Morrison-Flores is a U.S. citizen, an African-American, and is registered to vote.
26 (Doc. 352 ¶ 10). She still has her voter registration card. (Doc. 487, Ex. 1 at 46; Doc. 696,
27 Ex. 24 at 77:11-23).

1 On November 7, 2006, Morrison-Flores attempted to vote at her polling place using
2 her license as proof of identification, but was not allowed to because the name on the voter
3 rolls did not match the name of her license. (Doc. 487, Ex. 1 at 46). Specifically, her license
4 at the time reflected the name “Georgia A. Morrison-Vasquez,” but the voter rolls reflected
5 the name “Georgia Ann Flores-Morrison.” (Id.)

6 In April 2007, Morrison-Flores updated her drivers’ license to read “Georgia Ann
7 Morrison-Flores,” but the voter rolls still reflect the name “Georgia Ann Flores-Morrison.”
8 (Doc. 617, Exs. 20, 21).

9 In December 2007, Morrison-Flores opened a bank account at SunBank, from which
10 she receives monthly statements. (Doc. 696, Ex. Tab 24 at 22:3-25).

11 On February 8, 2008, she attempted, but was unable, to vote in the Presidential
12 Preference Election. (Doc. 679, Ex. 1, Tab 2). Morrison-Flores asserts the reason was that
13 the name on her drivers’ license did not match the voter database printouts. (Doc. 679). The
14 State asserts that she was not allowed to vote because that election was restricted to voters
15 registered with a party preference, and Morrison-Flores did not designate a political party
16 preference when she registered to vote. (Doc. 696, Exs. 22, 23).

17 Morrison-Flores joined this lawsuit on October 1, 2007. (Doc. 352).

18 **II. Standard of Review**

19 Jurisdictional attacks under Federal Rule of Civil Procedure 12(b)(1) can be either
20 facial or factual. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004);
21 Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003); White v. Lee,
22 227 F.3d 1214, 1242 (9th Cir. 2000). In a facial attack, “the challenger asserts that the
23 allegations contained in a complaint are insufficient on their face to invoke federal
24 jurisdiction,” while, in a factual attack, “[he] disputes the truth of the allegations that, by
25 themselves, would otherwise invoke federal jurisdiction.” Meyer, 373 F.3d at 1039. The
26 State’s jurisdictional attack is factual because it does not assert a lack of standing solely on
27 the basis of the complaint and relies on extrinsic evidence. See id.

1 In resolving a factual attack on jurisdiction, the Court “is not confined by the facts
2 contained in the four corners of the complaint—it may consider facts and need not assume
3 the truthfulness of the complaint.” Americopters, LLC v. F.A.A., 441 F.3d 726, 732 n.4 (9th
4 Cir. 2006); see also Meyer, 373 F.3d at 1039; White v. Lee, 227 F.3d 1214, 1242 (9th Cir.
5 2000). “Once the moving party has converted the motion to dismiss into a factual motion by
6 presenting affidavits or evidence properly before the court, the party opposing the motion
7 must furnish affidavits or other evidence necessary to satisfy its burden of establishing
8 subject matter jurisdiction.” Savage v. Glendale Union High Sch., 343 F.3d 1036, 1039 n.2
9 (9th Cir. 2003); see also Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004) (quoting the
10 same).

11 **III. Justiciability Doctrines: Standing and Mootness**

12 The State challenges the Court’s jurisdiction over the Gonzalez Plaintiffs on the
13 grounds of standing and mootness. Article III of the Constitution limits the judicial power
14 of the federal courts to the resolution of “cases” or “controversies.” U.S. Const. art. III, § 2,
15 cl. 1; DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341 (2006). The Supreme Court has
16 interpreted this limitation on federal jurisdiction to require that “an actual controversy must
17 be extant at all stages of review.” Arizonans for Official English v. Arizona, 520 U.S. 43,
18 67 (1997) (internal quotations omitted); see also Gator.com Corp. v. L.L. Bean, Inc., 398
19 F.3d 1125, 1128 (9th Cir. 2005). The standing doctrine determines whether an actual
20 controversy exists at the time the complaint is filed, and the mootness doctrine addresses
21 whether that controversy continues throughout the course of the litigation. Arizonans for
22 Official English, 520 U.S. at 68 n.22.

23 To establish standing, a plaintiff must demonstrate: (1) an “injury in fact” that is (a)
24 concrete and particularized and (b) actual or imminent; (2) a causal connection between the
25 injury and the conduct complained of; and (3) it is likely that the injury will be redressed by
26 a favorable decision by the Court. Cuno, 547 U.S. at 342, 344; Lujan, 504 U.S. at 560-61;

1 Skaff, 506 F.3d at 837. The burden of proof rests with the plaintiff. Williams v. Boeing Co.,
2 517 F.3d 1120, 1127 (9th Cir. 2008).

3 Once satisfied that a plaintiff had Article III standing to bring an action, the Court
4 must determine whether the plaintiff has a continuing interest in the outcome of the litigation
5 or whether the case is moot. In deciding whether a case is moot, the question is “whether
6 changes in the circumstances that prevailed at the beginning of litigation have forestalled any
7 occasion for meaningful relief.” Center For Biological Diversity v. Lohn, 511 F.3d 960, 963
8 (9th Cir. 2007). “The [defendant] carries the burden of establishing mootness.” Id.

9 **IV. Standing**

10 Only the injury-in-fact requirement of standing is at issue. Defendants do not contest
11 causation and redressibility, and it seems clear that if Proposition 200's identification
12 requirements qualify as a cognizable injury-in-fact then Gonzalez Plaintiffs' injury is fairly
13 traceable to the enactment of Proposition 200 and could be redressed if the Court granted
14 Gonzales Plaintiffs' request to enjoin its enforcement.

15 A. Abeytia and Morrison-Flores Have Established an Injury-in-Fact.

16 Defendants assert that Abeytia and Morrison-Flores have not satisfied the “injury in
17 fact” element of standing because, at the time they joined the suit: (1) they could vote by
18 early ballot without providing any form of identification; (2) they could vote in-person with
19 a provisional ballot; and (3) they could have updated the voter rolls to match their forms of
20 identification required by Proposition 200.

21 Arguably, the Constitution does not guarantee a right to vote in-person on election
22 day, or to vote by regular, as opposed to provisional, ballot. See ACLU v. Santillanes, 506
23 F. Supp. 2d 598, 619 (D.N.M. 2007); Indiana Democratic Party v. Rokita, 458 F. Supp. 2d
24 775, 813 (S.D. Ind. 2006).

25 Arizona law, however, gives voters the option of voting in person by regular ballot.
26 See A.R.S. § 16-411. And the denial of a statutory benefit that a plaintiff would be entitled
27 to but for the government's violation of their constitutional rights to equal protection is a
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1 cognizable injury-in-fact. See Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 211-12
2 (1995); Santillanes, 506 F. Supp. 2d at 620; cf. Warth v. Seldin, 422 U.S. 490, 14 (1975)
3 (“[The legislature] may create a statutory right or entitlement the alleged deprivation of
4 which can confer standing to sue even where the plaintiff would have suffered no judicially
5 cognizable injury in the absence of statute.”).

6 The injury alleged by Abeytia and Morrison-Flores is not that they cannot vote, but
7 that they are being treated less favorably than other similarly situated voters. Persons voting
8 in-person on election day are subject to Proposition 200's identification requirements, while
9 voters voting early do not have to show any identification.³ In addition, persons voting in-
10 person who possess Proposition 200's identification requirements may cast regular ballots,
11 while those without the required identification can only cast provisional ballots.

12 The Supreme Court has made clear that:

13 When the government erects a barrier that makes it more difficult for members
14 of one group to obtain a benefit than it is for members of another group, a
15 member of the former group seeking to challenge the barrier need not allege
16 that he would have obtained the benefit but for the barrier in order to establish
standing. The “injury in fact” in an equal protection case of this variety is the
denial of equal treatment resulting from the imposition of the barrier, not the
ultimate inability to obtain the benefit.

17 Northeastern Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, 508
18 U.S. 656, 666 (1993); see also Adarand, 515 U.S. at 211.

19 Thus, the fact that Abeytia and Morrison-Flores could vote early or by provisional
20 ballot does not defeat their standing to bring an equal-protection claim. See Santillanes, 506
21 F. Supp. 2d at 623; Ind. Democratic Party v. Rokita, 458 F. Supp. 2d 775, 814 (S.D. Ind.
22 2006), aff'd sub nom Crawford v. Marion County Elec. Bd., 472 F.3d 949 (7th Cir. 2007),
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25 ³ Indeed, it is possible that, at the same polling station on election day, while a voter
26 is being required to provide proof of identification in order to cast her ballot, another voter
27 could be dropping off his early ballot without having to provide any identification. See
28 A.R.S. § 16-548 (An early ballot may be dropped off at a polling place on election day until
7:00 p.m.).

1 cert. granted 128 S. Ct. 33 (2007). But see Common Cause/Georgia v. Billups, 504 F. Supp.
2 2d 1333, 1374 (N.D. Ga. 2007).

3 Nor does Abeytia and Morrison-Flores’s ability to update the voter rolls to match their
4 forms of identification required by Proposition 200 defeat their standing. It is beyond
5 peradventure that updating the voter rolls would require some time and expense. See
6 Crawford v. Marion County Elec. Bd., 128 S. Ct. 1610, 1620 (2008) (recognizing that voter
7 identification laws impose some burden on voters, such as when a voter does “not resemble
8 the photo in the identification because he recently grew a beard”). The fact that the cost and
9 inconvenience may be slight does not affect standing, which requires only a minimal
10 showing of injury. See Harper v. Va. Bd. of Elec., 383 U.S. 663 (1966) (\$1.50 poll tax).

11 Therefore, Abeytia and Morrison-Flores have standing. Arizona law gives registered
12 voters the option of voting in-person on election day by regular ballot. And “once the
13 franchise is granted to the electorate, lines may not be drawn that are inconsistent with the
14 Equal Protection Clause of the Fourteenth Amendment.” Harper, 383 U.S. at 665.

15 B. Jesus and Maria Gonzalez Have Established an Injury-in-Fact.

16 Defendants assert that Jesus and Maria Gonzalez have not satisfied the “injury in fact”
17 element of standing because they possess the documents required to register to vote. As
18 discussed above, the fact that they could register does not defeat their standing to bring an
19 equal-protection claim. The injury alleged is not that they cannot register, but that they are
20 being treated less favorably than other similarly situated voters. For example, native-born
21 U.S. citizens can provide copies of their proof of citizenship, but a naturalized citizen must
22 present the original to the county recorder in-person. A.R.S. § 16-166. Therefore, Jesus and
23 Maria Gonzalez have standing.

24 **V. Mootness**

25 Defendants assert that Maria and Jesus Gonzalez’s claims are moot. The Court agrees
26 that Maria Gonzalez’s claims are moot. Because Maria Gonzalez’s claims are based solely
27 on Arizona’s proof of citizenship requirement for registering to vote, (see Doc. 352 ¶¶ 4, 70,
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1 71), and she has registered to vote, she can no longer obtain any relief from her claims.⁴
2 Therefore, Maria Gonzalez’s claims are moot and shall be dismissed. See Foster v. Carson,
3 347 F.3d 742, 745 (9th Cir. 2003) (“If there is no longer a possibility that [a party] can obtain
4 relief for his claim, that claim is moot and must be dismissed for lack of jurisdiction.”).

5 The Court disagrees, however, that Jesus Gonzalez’s claims are moot. A.R.S. § 16-
6 166(F)(4) states that a registrant can provide “the number of the certificate of naturalization”
7 as proof of citizenship. As the State recognizes, Jesus Gonzalez provided that number when
8 he attempted to register to vote. (See Doc. 539 at 4 (“[Jesus Gonzalez] provided the number
9 of his certificate of naturalization on his application.”)). Nonetheless, his application was
10 denied because he did not provide his alien registration number, which is a different number
11 listed on the certificate of naturalization.

12 Defendants assert that Jesus Gonzalez’ challenge to Proposition 200’s proof of
13 citizenship requirement is moot because the new voter registration forms make clear that the
14 alien registration number is required. “A defendant’s voluntary cessation of allegedly
15 unlawful conduct ordinarily does not suffice to moot a case.” Friends of the Earth, Inc. v.
16 Laidlaw Env’tl. Svcs., 528 U.S. 167, 173 (2000). The burden of demonstrating mootness
17 based upon voluntary cessation is “formidable”: Defendants must demonstrate that
18 subsequent events make it “absolutely clear that the allegedly wrongful behavior could not
19 reasonably be expected to occur.” Id. at 189, 190 (internal quotations omitted).

20 Defendants have not met that burden here. Although the new form specifies “alien
21 registration number,” (Doc. 520, Ex. 15), the governing statute still requires “the number of
22 the certificate of naturalization,” A.R.S. § 16-166(F)(4). Thus, it cannot be held that it is
23 absolutely clear that the allegedly wrongful behavior could not reasonably be expected to
24 occur.

26 ⁴ Maria Gonzalez has not asserted that her claims fall into the exception to the
27 mootness doctrine of wrongs capable of repetition yet evading review.


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Accordingly,

IT IS ORDERED Defendants' Motion to Dismiss Gonzalez Plaintiffs (Doc. 434) is **GRANTED IN PART** and **DENIED IN PART**.

IT IS FURTHER ORDERED that Maria Gonzalez, Naeem Abdul-Kareem, and Luciano Valencia are **DISMISSED**.

DATED this 27th day of June, 2008.



Roslyn O. Silver
United States District Judge