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10 **IN THE UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 MARIA M. GONZALEZ, et al.,

13 Plaintiffs,

14 v.

15 STATE OF ARIZONA, et al.

16 Defendants.

No. CV06-01268 PHX ROS
No. CV06-1362 PCT ROS (Cons)
No. CV06-1575 PCT ROS (Cons)

**REPLY IN SUPPORT OF MOTION
TO SUPPLEMENT THE RECORD
IN SUPPORT OF STATE
DEFENDANTS' MOTION TO
DISMISS PURSUANT TO FED. R.
CIV. P. 12(B)(1) (LACK OF
STANDING) DIRECTED TO
GONZALEZ PLAINTIFFS**

(Assigned to the Honorable
Roslyn O. Silver)

1 The Court should dismiss this action as to plaintiff Georgia Morrison-Flores
2 because she undisputedly possesses identification that would permit her to vote in person
3 at any Arizona election if she is otherwise qualified to vote in such election. Plaintiffs'
4 response to Defendants' motion does not support Ms. Morrison-Flores' standing in this
5 case for the following reasons.

6 **1. Ms. Morrison-Flores was not eligible to vote in the Presidential
7 Preference Election.**

8 Plaintiffs argue that Ms. Morrison-Flores attempted to vote in the February 2008
9 Presidential Preference Election ("PPE") and was told by a poll worker that she could
10 not vote. [Response at 4] Ms. Morrison-Flores was not eligible to vote in that election,
11 however, because she is not registered in either the Democratic or Republican Party.
12 When Ms. Morrison-Flores registered to vote, she did not designate any political party
13 preference. [Fourth Declaration of Counsel in Support of Motions to Dismiss Pursuant
14 to Fed. R. Civ. P. 12(b)(1) ("Fourth Counsel Decl.") (filed herewith), Tab 22 (Aff. of
15 Krysty Marin) ¶ 5] Neither has she designated any party preference on her registration
16 since that time. [*Id.*, Tab 22 ¶ 6] Only voters registered with a recognized political party
17 that is represented on the ballot in the PPE are eligible to vote in that election. [Fourth
18 Counsel Decl., Tab 23 (State Elections Instructions and Procedures Manual (October
19 2007), at p. 101)] Unlike Arizona's primary elections, the PPE is open only to those
20 voters who are registered with the particular parties that are participating in that election.
21 [Ariz. Atty. Gen. Op. No. I99-025; Fourth Counsel Decl., Tab 23, at p. 101)] Ms.
22 Morrison-Flores was not deprived of her right to vote based on a lack of identification at
23 the polls.¹

24 Plaintiffs assert that Ms. Morrison-Flores was not offered a provisional ballot at
25 the PPE. Ms. Morrison-Flores curiously omits from her declaration any discussion of
26

27 ¹ Plaintiffs' assertion that Ms. Morrison-Flores was informed "that she could not vote
28 with that [Arizona driver's license] identification" is misleading. [Response at 4] Ms.
Morrison-Flores' declaration does not support that assertion. Instead, she states in her
declaration that she was told she could not vote. [Decl. of Georgia Morrison-Flores ¶ 8
(dkt. 679-2)] Ms. Morrison-Flores' declaration does not state that she was ever told she
could not vote in the PPE because her identification was insufficient.

1 whether she asked for a provisional ballot at the PPE and was refused such request. In
2 any event, although for purposes of this motion Defendants do not dispute her assertion,
3 the county's failure to offer her a provisional ballot does not confer standing upon Ms.
4 Morrison-Flores to challenge Proposition 200's identification requirement.

5 **2. Ms. Morrison-Flores' Arizona driver's license is sufficient**
6 **identification for voting at the polls.**

7 Plaintiffs argue that Ms. Morrison-Flores' Arizona driver's license is not
8 sufficient because the license lists her name as "Georgia Ann Morrison-Flores" and her
9 voter record reflects the name "Georgia Flores-Morrison." [Response at 3] Ms.
10 Morrison-Flores testified in her deposition that the name she goes by is "Georgia A.
11 Morrison-Flores," which is the name on the Arizona driver's license that was issued to
12 her in April 2007. [Fourth Counsel Decl., Tab 24 (at 13:23-25); Third Counsel Decl.
13 (dkt. 617), Tab 20) (driver's license indicates the name "Georgia Ann Morrison-
14 Flores")] She testified that she expects to use that driver's license to vote in person in
15 this fall's elections. [Fourth Counsel Decl., Tab 24 (at 62:17-63:10)]

16 She also testified that she does not believe it is necessary to check with Yuma
17 County elections officials to confirm whether her driver's license is sufficient for
18 purposes of voting in person at the polls this fall. [*Id.*, Tab 24 (at 81:23-82:19)]
19 Moreover, if Ms. Morrison-Flores is concerned that she will not be able to vote because
20 she wrote her name as "Flores-Morrison" on her voter registration form, she could easily
21 (and without cost) update her voting record with the elections department to reflect her
22 name as "Morrison-Flores," which is the name she goes by. [*Id.*, Tab 22 ¶¶ 7-8]

23 **3. Ms. Morrison-Flores has at least two additional forms of identification**
24 **that she could use to vote.**

25 Ms. Morrison-Flores testified that she has a voter registration card that she
26 received from the Yuma County elections department after registering to vote in 2004.
27 [*Id.*, Tab 24 (at 77:11-23)] Although she did not bring that card with her to her
28 deposition, she testified that she still has the card. [*Id.*] Moreover, there is no dispute
that Ms. Morrison-Flores could obtain (at no cost) a new voter registration card if she
wanted to. [*Id.*, Tab 22 ¶ 9]

1 Ms. Morrison-Flores also testified that she opened a bank account recently and
2 has begun receiving monthly statements for that account. [*Id.*, Tab 24 (at 22:3-25)]
3 Bank statements that contain the name and address of an elector, if dated within 90 days
4 of the date of election, may be used as a form of non-photo identification to vote at the
5 polls. [*Id.*, Tab 23, at p. 128)] Ms. Morrison-Flores testified that she expects to receive
6 monthly statements in the future. [*Id.*, Tab 24 (at 23:1-4)] Plaintiffs offer no
7 explanation why Ms. Morrison-Flores would not be able to use such a statement as
8 identification to vote in the future. *E.g.*, *Nelson v. King County*, 895 F.2d 1248, 1252-54
9 (9th Cir. 1990) (holding that the plaintiffs lacked standing to assert claim for injunctive
10 relief and monetary damages where the plaintiffs had not established a credible threat
11 that their rights would be violated in the future).

12 Plaintiffs cannot credibly dispute that Ms. Morrison-Flores has a valid Arizona
13 driver's license that would enable her to vote in all Arizona elections in which she is
14 otherwise eligible to vote. She is not injured by the voting identification requirement of
15 Proposition 200 and therefore lacks standing to bring this lawsuit.

16 For the reasons explained in Defendants' motion and this reply, the Court should
17 dismiss Ms. Morrison-Flores as a plaintiff in this lawsuit.

18 RESPECTFULLY SUBMITTED this 6th day of March, 2008.

19 TERRY GODDARD
20 Arizona Attorney General

21 s/ Barbara A. Bailey
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 6th day of March, 2008, I electronically transmitted
3 the attached document to the Clerk's Office using the ECF System for filing, and
4 transmittal of a Notice of Electronic Filing to the following ECF registrants:
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COPY also served this 6th day of March,
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/s/ Elizabeth Stark

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