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

**REPLY 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)

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1 **Preliminary Statement**

2 Although it may be appropriate for the Court to defer ruling on the standing of
3 plaintiffs Debbie Lopez and Georgia Morrison-Flores, each of the remaining individual
4 Gonzalez Plaintiffs should be dismissed at this time because those plaintiffs cannot
5 establish any injury to bring their claims. Accordingly, the Court lacks subject matter
6 jurisdiction to adjudicate those claims.

7 As explained below, each of the remaining individual plaintiffs either has
8 registered to vote, possesses the required proof of citizenship to register to vote,
9 possesses sufficient identification for voting in person at the polls, or has agreed to be
10 dismissed from this case. There is no reason for delay in ruling on the standing of those
11 plaintiffs because they cannot establish any cognizable injury. Moreover, that is true
12 regardless how the Supreme Court decides the similar but unrelated case of *Indiana
Democratic Party v. Rokita*, 128 S. Ct. 34, No. 07-25 (U.S. 2007).

13 Defendants’ motion and this reply are supported by the Declaration of Karen
14 Osborne (“Osborne Decl.”) and by the Second Declaration of Counsel (“2d Counsel
15 Decl.”) and attachments thereto, which are filed herewith.

16 **Legal Argument**

17 **A. Maria Gonzalez.**

18 “To qualify for adjudication in federal court, ‘an actual controversy must be
19 extant at all stages of review, not merely at the time the complaint is filed.’” *DiGiorgio
20 v. Lee*, 134 F.3d 971, 974-75 (9th Cir. 1998) (vacating as moot an action brought by
21 plaintiff tenants challenging a state writ of possession statute where the tenants vacated
22 the property in question; holding that no justiciable controversy existed to challenge the
23 constitutionality of a state statute because such a judicial determination could no longer
24 affect the plaintiffs’ property interests) (quoting *Arizonans for Official English v.
Arizona*, 520 U.S. 43, 67 (1997)).

25 There is no longer any live controversy involving Plaintiff Maria Gonzalez
26 because she no longer has any personal interest at stake in this case. Ms. Gonzalez
27 concedes that she is registered to vote. [Response at 15] Ms. Gonzalez’ claims in this
28 case are based solely on Arizona’s proof of citizenship requirement for registering to

1 vote. [See FAC ¶¶ 4, 70-71] Ms. Gonzalez seeks declaratory and injunctive relief, not
2 damages, regarding Arizona’s proof of citizenship requirement. [FAC at pp. 25-26]
3 Because she has met the proof of citizenship requirement and has registered to vote, she
4 can no longer obtain any relief for her claims. Accordingly, Ms. Gonzalez’ claims are
5 moot and must be dismissed. *E.g., Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003)
6 (a claim is moot if there is no longer a possibility that the plaintiff can obtain relief for
7 her claim; dismissing as moot an appeal challenging the temporary administrative
8 suspension of appointment of indigent defense counsel where the plaintiffs no longer
9 could obtain any relief through their claims for declaratory relief because the suspension
10 had expired).

11 Moreover, Ms. Gonzalez’ claim does not involve an issue that is capable of
12 repetition while evading review. *E.g., Pub. Utils. Comm’n of the State of Cal. v.*
13 *F.E.R.C.*, 100 F.3d 1451, 1459-61 (9th Cir. 1996) (discussing exceptions to the mootness
14 doctrine, including claims involving issues capable of repetition while evading review).
15 For that exception to apply, two requirements must be met: (1) the duration of the
16 challenged action must have been too short to be fully litigated before its cessation; and
17 (2) the complaining party reasonably must expect to be subject to the same action again.
Id. at 1459.

18 Neither of those requirements is met here. Arizona’s proof of citizenship
19 requirement is in full effect and will be in effect unless and until the law is changed.
20 That requirement did not abate in the case of Ms. Gonzalez. Instead, she met that
21 requirement and became registered to vote. For that reason, there is no reasonable
22 expectation that Ms. Gonzalez will be subject to the same voting requirement in the
23 future—she is already registered. There is no evidence that Ms. Gonzalez will ever need
24 or want to register to vote again in Arizona. Moreover, even if she were to attempt to re-
25 register, she has shown that she is able to do so by complying with Arizona’s proof of
26 citizenship requirement.¹

27 ¹ The two remaining exceptions to the mootness doctrine are voluntary cessation and
28 collateral consequences. *See Pub. Utils. Comm’n*, 100 F.3d at 1460-61. Neither of
those exceptions applies to Ms. Gonzalez’ claims. Arizona has not “voluntarily ceased”

1 **B. Jesus Gonzalez.**

2 While it may be true that Mr. Gonzalez (along with Ms. Gonzalez) initially was
3 unable to register in August 2005 using his certificate of naturalization, he *could* register
4 now if he attempted to do so. Mr. Gonzalez asserts that he attempted to register in
5 Yuma County twice. First, he attempted to register in August 2005, shortly after the
6 proof of citizenship requirement had been adopted and precleared for use in Arizona.
7 He provided the number of his certificate of naturalization on his application.²
8 Unfortunately, the alien registration number—and not the separate number listed on a
9 certificate of naturalization—is the number (also found on the certificate) that can be
10 used to verify a person’s citizenship. Accordingly, the county returned his application
11 and informed him that he could successfully register by providing his alien registration
12 number.³

13 Rather than respond by providing his alien registration number, Mr. Gonzalez did
14 nothing until he attempted to register again in October 2006. Again, however, he
15 declined to provide his alien registration number and instead provided the number of a
16 driver’s license that was issued to him before November 1996. Arizona’s proof of
17 citizenship requirement permits voter registration applicants to provide the number of
18 their Arizona driver’s license if the license is issued after October 1, 1996. A.R.S. § 16-
19 166(F)(1). Not surprisingly, his registration form was rejected.

20 Mr. Gonzalez has not explained why he did not provide or, more importantly,
21 why he *could* not provide his alien registration number to register to vote. He does not
22 contend that he does not have the appropriate proof of citizenship. He complains that
23 the county initially did not ask him for the correct number of his naturalization

24 application of its proof of citizenship law in response to this litigation. *See id.* at 1460
25 (“in order for this exception to apply, the defendant’s voluntary cessation must have
26 arisen *because of* the litigation”). In addition, Ms. Gonzalez does not suffer any
27 collateral legal effects from Arizona’s proof of citizenship requirement as applied to
28 her.

² Decl. of Nina Perales in Support of Gonzalez Pls.’ Resp. to State Defs.’ Mot. to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), Dkt. 487, Attachment #1 (“Perales Decl.”), Tab C ¶¶ 5, 7.

³ Perales Decl., Tab C ¶¶ 7-8; Tabs D, E.

1 certificate that would enable him to register. Indeed, Plaintiffs’ response itself suggests
2 that Mr. Gonzalez is not claiming Arizona’s proof of citizenship statute is
3 unconstitutional but rather that he was “deprived of his right to vote . . . *despite having*
4 *the necessary proof of citizenship.*” [Response at 9 (emphasis added)]

5 Defendants have acknowledged that early on, after the adoption of Proposition
6 200, there was confusion, including on the part of election officials, about which number
7 from a certificate of naturalization should be included on the registration form. A
8 uniform procedure has been adopted by the Secretary of State, however, and is set forth
9 in her election procedures manual. That procedure plainly calls for election officials to
10 register individuals who provide their alien registration number, assuming that number is
11 subsequently checked to verify the applicant’s citizenship. [Decl. of Counsel in Support
12 of Mots. to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) (Lack of Standing) (“Counsel
Decl.”), Dkt. 435, Tab 4 at p. 41]

13 Plaintiffs mistakenly assert that “the voter registration has never been changed
14 and counties still request that naturalized citizens provide the number of the certificate of
15 naturalization.” [Response at 10] In fact, Arizona’s voter registration form *was* changed
16 to clarify to registrants which number on an applicant’s certificate of naturalization
17 should be included on the voter registration form as proof of citizenship. A new form
18 was submitted for preclearance to the Department of Justice on October 12, 2007. [2d
19 Counsel Decl. ¶ 2, Tabs 14-15] That form was precleared on December 6, 2007. [2d
20 Counsel Decl. ¶¶ 2-3, Tab 16] That form also may be accessed and printed from the
21 Secretary of State’s website. [See [http://www.azsos.gov/election/Forms/voter
22 registrationform.pdf](http://www.azsos.gov/election/Forms/voter_registrationform.pdf)] The current Arizona voter registration form specifies “alien
23 registration number” in contrast to the former form’s “certificate of naturalization
24 number.” [2d Counsel Decl., Tab 15 (voter registration form, box 19)]

25 Plaintiffs offer no evidence whatever for their assertion that “counties still
26 request” the number of the certificate of naturalization for purposes of proof of
27 citizenship. The record before the Court shows the opposite to be true. Arizona election
28 procedure plainly specifies that the counties accept a person’s alien registration number
in the event the person chooses to use her naturalization certificate as proof of

1 citizenship. [Counsel Decl. (Dkt. 435), Tab 4 at p. 41] That procedure was adopted in
2 August 2006 and Plaintiffs offer no evidence that the Secretary’s procedure is not being
3 followed by any county.

4 Mr. Gonzalez admits that he could provide an alien registration number and
5 therefore can register to vote in Arizona if he so chooses. For whatever reason, he has
6 chosen not to do so. That unilateral decision, however, does not confer standing on him
7 to challenge Arizona’s proof of citizenship requirement.⁴ *E.g., White v. Lee*, 227 F.3d
8 1214, 1225, 1242-43 (9th Cir. 2000) (analyzing a First Amendment claim challenging
9 government investigation of the plaintiffs, and affirming dismissal as moot where the
10 government had implemented and memorialized a new policy prohibiting such
11 investigations; plaintiff “had not alleged any specific objectionable conduct occurring
12 after the implementation of that policy”).

12 **C. Bernie Abeytia.**

13 Plaintiff Bernie Abeytia admittedly possesses sufficient identification to vote in
14 person at the polls on election day. [Counsel Decl. (Dkt. 435), Tab 3 (Abeytia dep.,
15 37:2-7)] Although Plaintiffs’ response is long on details of Mr. Abeytia’s voting
16 preferences, Plaintiffs fail to address (or dispute) one crucial fact: Mr. Abeytia could use
17 his Arizona driver’s license to vote in person at the polls if he simply informed the
18 Maricopa County elections department of the post office box address that he lists as his
19 driver’s license address, so that such address could be included on the signature roster
20 for him at the polls.

21 If Mr. Abeytia would provide that information to the County, Mr. Abeytia would
22 be permitted to use his driver’s license to vote a regular ballot in person on election day.
23 [Osborne Decl. ¶¶ 3-4] That option is no secret and has not been withheld from Mr.
24 Abeytia. Indeed, especially given Mr. Abeytia’s assertion (Response at 13 n.1) that he

25 ⁴ Neither does Mr. Gonzalez have standing to assert an equal protection claim based on
26 Arizona’s definition of proof of citizenship as including driver’s licenses issued after
27 (but not before) October 1, 1996. As explained above, Mr. Gonzalez possesses an alien
28 registration number and could use that number to register to vote if he so chooses. The
fact that he does not possess other forms of proof of citizenship does not amount to any
injury that confers standing upon him.

1 recommends that individuals provide a “post office box on all documents, private and
2 public, rather than to list an actual street address,” his failure to provide such post office
3 box information to the county elections department is curious. In any event, Mr.
4 Abeytia can use his Arizona driver’s license to vote in person at the polls on Election
5 Day if he updates his registration information with the county elections department.

6 Mr. Abeytia also could use his Arizona driver’s license as identification to vote at
7 the polls on Election Day even without providing his post office box information to the
8 county elections department. At the very least, Mr. Abeytia would be permitted to vote
9 a provisional ballot and would therefore not be required to provide any additional
10 identification to have his ballot counted. [Counsel Decl. (Dkt. 435), Tab 4 (Arizona
11 Secretary of State Election Procedures Manual) at 114] Plaintiffs imply that Mr.
12 Abeytia would be injured by having to cast a provisional ballot because he “wants to
13 ensure personally that his vote is counted, as opposed to leaving a provisional ballot
14 segregated in an envelope.” [Response at 13]

15 A provisional ballot, however, is counted just as any other ballot so long as the
16 signature on the provisional ballot envelope is verified by checking it against the
17 signature on the voter’s registration form. [Osborne Decl. ¶ 4] Arizona law requires
18 that it be counted so long as the signature on its envelope matches Mr. Abeytia’s voter
19 registration card signature. A.R.S. § 16-584(E). Plaintiffs offer no authority for the
20 proposition that Mr. Abeytia is injured for purposes of standing because does not feel
21 subjectively assured that his provisional ballot will be counted.

22 In any event, Mr. Abeytia has multiple options with regard to how he votes,
23 including voting in person on Election Day at the polls using his Arizona driver’s
24 license.⁵

25 ⁵ The pending decision of the Supreme Court in *Indiana Democratic Party v. Rokita*,
26 128 S. Ct. 34, No. 07-25 (U.S. 2007), does not support a delay in ruling on Mr.
27 Abeytia’s standing. As explained above, Mr. Abeytia possesses sufficient identification
28 for voting in person at the polls on Election Day. Accordingly, he is not injured by
Arizona’s voter identification requirement. Indeed, Plaintiffs do not explain how or why
the Court’s ultimate decision in *Rokita* could change this Court’s analysis of Mr.
Abeytia’s standing. Even a holding that Indiana’s voter identification law is

1 **D. Georgia Morrison-Flores.**

2 Plaintiff Georgia Morrison-Flores asserts that she possesses a valid Arizona
3 driver's license issued after October 1, 1996, but that the name on her license is her
4 unmarried name, which is different than the married name she provided when she
5 recently registered to vote. Unfortunately, Plaintiffs declined to disclose the
6 circumstances of Ms. Morrison-Flores' alleged voting injuries until they did so in their
7 response to Defendants' motion. [See Counsel Decl., Tab 5 at p. 3 (responses to
8 interrogatory nos. 2, 3)]

9 Accordingly, Defendants request that the Court defer a ruling on Ms. Morrison-
10 Flores' standing in this case until such time as Defendants have been able to take her
11 deposition and evaluate her standing based on additional discovery.

12 **E. Debbie Lopez.**

13 Each of the cases cited in support of Plaintiffs' First Amendment claim for
14 plaintiff Debbie Lopez involved a challenge to a government restriction placed directly
15 on organizations or individuals registering other individuals to vote. None of those
16 cases, by contrast, addresses a restriction placed on the requirements of individuals to
17 register to vote. *E.g.*, *Meyer v. Grant*, 486 U.S. 414, 416 (1988) (challenging state's ban
18 on paid circulators of initiative petitions); *Buckley v. Am. Constitutional Law Found.,*
19 *Inc.*, 525 U.S. 182, 186 (1999) (challenging requirements that petition circulators wear
20 identification badges and be registered voters, and that initiative measure proponents
21 disclose the names and addresses of each paid circulator and the amount paid to each
22 circulator); *Monterey County Democratic Central Committee v. U.S. Postal Serv.*, 812
23 F.2d 1194, 1195-96 (1987) (challenging ban on partisan voter registration groups from
24 using postal service property to register voters); *Project Vote v. Blackwell*, 455 F. Supp.
25 2d 694, 702 (N.D. Ohio 2006) (challenging requirement that persons paid to conduct
26 registration undergo online training, individuals registering others personally return
27 voter registration forms within ten days and identify themselves on the registration form,
28 or face criminal sanctions); *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d

unconstitutional would not change the fact that Mr. Abeytia is not injured by Arizona's law. He lacks standing because he possesses sufficient identification.

1 1314, 1315 (S.D. Fla. 2006) (challenging law holding strictly liable organizations and
2 persons registering individuals to vote for failing to return registration forms within ten
3 days).⁶

4 Plaintiffs do not cite any case holding that a voting requirement applying solely to
5 persons actually registering to vote may be challenged by an individual who desires to
6 register such persons. Unlike the laws at issue in the cases cited by Plaintiffs, Arizona's
7 proof of citizenship requirement does not place any restriction on persons registering
8 other persons to vote. Defendants are not aware of any case, however, that addresses the
9 standing of a person asserting injury caused by a restriction on a third-party that
10 allegedly makes it more difficult for the person to successfully register third persons to
11 vote.

11 **F. Naeem Abdul-Kareem and Luciano Valencia.**

12 Plaintiffs' response does not oppose (or even address) the dismissal of plaintiffs
13 Naeem Abdul-Kareem and Luciano Valencia for lack of standing. Given Plaintiffs'
14 refusal to provide discovery from Messrs. Abdul-Kareem and Valencia, and Plaintiffs'
15 representation that those plaintiffs will be dismissed, the Court should dismiss plaintiffs
16 Abdul-Kareem and Valencia from this action.

17 **Relief Requested**

18 For the foregoing reasons, the Court should dismiss this action with regard to
19 plaintiffs Maria Gonzalez, Jesus Gonzalez, Bernie Abeytia, Luciano Valencia, and
20 Naeem Abdul-Kareem. The Court should defer ruling on the standing of plaintiffs
21 Debbie Lopez and Georgia Morrison Flores.

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26 ⁶ Plaintiffs also cite the unpublished decision in *Ass'n of Community Organizations for*
27 *Reform Now, et al. v. Cox*, No. 1:06-CV-1891-JTC (Sept. 27, 2006). As with Plaintiffs'
28 other cited cases, however, the restriction at issue in *Cox* was on persons who accepted
registration forms (*i.e.*, voter registration organizations). *See id.* at 5.

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RESPECTFULLY SUBMITTED this 7th day of January, 2008.

TERRY GODDARD
Arizona Attorney General

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 7th day of January, 2008, I electronically
3 transmitted the attached document to the Clerk's Office using the ECF System for
4 filing, and transmittal of a Notice of Electronic Filing to the following ECF registrants:
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COPY also served this 8th day of January,
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