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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)
17 Plaintiffs,) No. CV-06-1362-PCT-JAT(Cons.)
) No. CV-06-1575-PHX-EHC(Cons.)
18 vs.) **GONZALEZ PLAINTIFFS'**
) **RESPONSE TO STATE**
19 State of Arizona, et al,) **DEFENDANTS' MOTION TO**
) **DISMISS**
20 Defendants.)
) (Assigned to the
21 Honorable Roslyn O. Silver)

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1 **I. INTRODUCTION**

2 In their latest dispositive motion, Defendants State of Arizona and the Arizona
3 Secretary of State (collectively the "State Defendants") request that this Court dismiss
4 significant portions of the Gonzalez Plaintiffs' First Amended Complaint, which was entered by
5 this Court on October 1, 2007. *See* Dkt. Entry No. 352. According to State Defendants, the
6 two new causes of action Plaintiffs bring in their amended complaint should be dismissed prior
7 to any discovery on the issues raised in the pleading because the claims fail as a matter of law
8 and because Plaintiffs have failed to allege standing to bring those claims. State Defendants
9 also request that this Court rule again on claims already dismissed by the Court on State
10 Defendants' previous motion for summary judgment and strike portions of Plaintiffs' complaint
11 that relate to those dismissed claims.

12 State Defendants' Motion should be denied in its entirety because Plaintiffs have stated
13 a claim under both of the new causes of action they assert in their amended complaint.
14 Furthermore, despite Defendants' contentions, Plaintiffs are not attempting to re-introduce any
15 claims already decided by the Court and there is no requirement that the Court or the Plaintiffs
16 modify the amended complaint in the manner suggest by Defendants.

17 **II. APPLICABLE LEGAL STANDARDS**

18 In ruling on a Rule 12(b)(6) motion to dismiss, the court must accept as true all
19 allegations of material fact and must construe said allegations in the light most favorable to the
20 non-moving party. *See, e.g., Western Reserve Oil & Gas Co. v. New*, 765 F.2d 1428, 1430 (9th
21 Cir. 1985). Any existing ambiguities must be resolved in favor of the pleading. *See Walling v.*
22 *Beverly Enterprises*, 476 F.2d 393, 396 (9th Cir. 1973); *Gillibeau v. City of Richmond*, 417 F.2d
23 426, 430 (9th Cir. 1969). A Rule 12(b)(6) motion to dismiss must not be granted "unless it
24 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
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1 would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45 (1957). As the Ninth Circuit
2 has observed, "The [Rule 12(b)(6)] motion to dismiss for failure to state a claim is viewed with
3 disfavor and is rarely granted." *Gilligan v. Jamco Develop. Corp.*, 108 F.3d 246, 249 (9th Cir.
4 1997).

5 III. ARGUMENT

6 The State Defendants' primary contention in their motion to dismiss is that Plaintiffs
7 should be required to provide a more detailed account of their claims challenging Proposition
8 200. It is well-established federal law, however, that to survive a Rule 12(b)(6) motion a
9 complaint generally must satisfy only the minimal notice pleading requirements of Rule 8(a)(2)
10 of the Federal Rules of Civil Procedure. *See, e.g., Porter v. Jones*, 319 F.3d 483, 494 (9th Cir.
11 2003). Rule 8(a)(2) requires only that the complaint include "a short and plain statement of the
12 claim showing that the pleader is entitled to relief." *Id.*; FED. R. CIV. P. 8(a)(2). Neither the
13 Federal Rules of Civil Procedure nor federal case law requires a plaintiff to plead a claim with
14 the particularity demanded by the State Defendants in this case.
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16 **A. Defendants Have Provided no Basis to Dismiss Plaintiffs' Claims Under the Civil**
17 **Rights Act at This Stage of the Pleadings.**

18 **1. Plaintiffs Have Stated Sufficient Facts to State a Claim That Proposition 200**
19 **Violates the Civil Rights Act.¹**

20 ¹ The sixth cause of action in Plaintiffs' First Amended Complaint states:

21 102. Proposition 200 violates Subsection (a)(2)(A) of Section
22 1971 of the Civil Rights Act which requires states use the
23 same procedures in determining voter eligibility for all
24 individuals within the same county. Proposition 200
requires registrants who are new to a county to provide
proof of citizenship while exempting intra-county
registrants from this requirement.

25 103. Proposition 200 also violates Subsection (a)(2)(A) of
26 Section 1971 of the Civil Rights Act because it exempts
residents with an Arizona driver or nonoperating license

1 Section 1971(a)(2)(A) of the Civil Rights Act strictly prohibits state governments from
2 applying standards, practices or procedures to determine whether an individual is qualified to
3 vote that are different from those standards, practices, or procedures applied to others within
4 the same county who have been found qualified to vote. See 42 U.S.C. § 1971(a)(2)(A).

5
6 Proposition 200 amended Arizona law to state that,

7 any person who is registered in this state on the effective
8 date of this amendment to this section is deemed to have
9 provided satisfactory evidence of citizenship and shall not
10 be required to resubmit evidence of citizenship *unless* the
11 person is changing voter registration from one county to
12 another.

13 A.R.S. § 16-166(G) (emphasis added). By its plain language, the amendment creates a practice
14 and procedure for determining the qualification to vote of some individuals residing in a county
15 (registered voters that recently moved to the county from another within the state), that is
16 different from other individuals residing in the same county (registered voters who recently
17 moved or changed addresses within the same county). In this way, Proposition 200 creates
18 what is essentially a Grandfather Clause, requiring one group of voter registrants to submit
19 additional information with their applicants while exempting another group of voter registrants.
20 Only the individuals from the former group are required to meet Arizona's documentary proof
21 of citizenship requirements, while individuals in the latter group are wholly exempt from that
22 burden under the Grandfather Clause. This provision of Proposition 200 creates the peculiar
23 situation in which a voter who has just submitted documentary proof of citizenship to register
24 to vote in Pima County would have to submit that information again if she moves to Maricopa

25 issued after October 1, 1996 from providing evidence of
26 citizenship prior to registering to vote.

Dkt. Entry No. 352 at ¶¶ 102, 103.

1 County. At the same time, a voter registering to vote after moving within Maricopa County
2 would be exempted from the citizenship requirements, even if she initially registered to vote
3 before the effective date of Proposition 200 and never provided proof of citizenship to the
4 County Recorder.

5 Despite the plain and unambiguous language of Plaintiffs' First Amended Complaint,
6 Section 1971, and Proposition 200, the State Defendants attempt to persuade the Court that
7 Plaintiffs' claim fails because "Arizona does not apply standards or procedures differently . . .
8 with regard to requiring proof of citizenship for registering to vote [because] [s]ince the
9 effective date of Prop 200, every person *who is not already registered* and who wishes to
10 register to vote must provide proof of citizenship." Dkt. Entry No. 401 ("Def's Mot.") at 12
11 (emphasis added). Defendants' argument completely misses the mark. Plaintiffs' claim is not
12 limited to persons who are not already registered to vote, but also concerns the different
13 requirements imposed on *registered* voters, based on no rationale other than whether they
14 relocated across a county line before registering to vote. Defendants' argument that Plaintiffs'
15 cause of action fails as a matter of law is thus groundless, because Proposition 200 undoubtedly
16 creates different procedures for determining voter eligibility for residents of the same county.
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18 Proposition 200 also changed Arizona law to require persons who have valid Arizona
19 drivers' licenses issued before October 1, 1996 to present documentary proof of citizenship in
20 order to register to vote, while exempting those who have valid drivers' licenses issued after
21 October 1, 1996 from that same requirement. *See* A.R.S. § 16-166(F). Because voters within
22 the same county who hold valid Arizona driver's licenses are subject to different standards,
23 practices and procedures for determining their eligibility to vote depending on the date their
24 licenses were issued, this provision of Proposition 200 also violates 42 U.S.C. § 1971(a)(2)(A).
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1 Nothing argued by Defendants in their Motion changes the fact that Proposition 200
2 imposes different standards and procedures for persons living within the same county in
3 Arizona in order to determine their eligibility to vote. Defendants skirt the issue, proclaiming
4 that, "Under Plaintiffs' legal theory, a new class of §1971(a)(2)(A) plaintiffs would be created
5 whenever such persons were either unable or unwilling to comply with a particular voting
6 requirement." Def's. Mot. at 13.

7 Defendants' again misread Plaintiffs' complaint and the Civil Rights Act. The issue
8 related to Section 1971 has nothing to do with persons who are unwilling to comply with a
9 state-imposed voting requirement; instead, the issue is whether Proposition 200 violates Section
10 1971(a)(2)(A) by utilizing different standards, procedures and practices for determining the
11 voter eligibility of persons residing in the same county. Proposition 200, on its face, does just
12 that and Plaintiffs' have therefore stated a claim under the Civil Rights Act.

13 Defendants' reliance on *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775 (S.D.
14 Ind. 2006), is misplaced. In that case, plaintiffs alleged a violation of Section 1971(a)(2)(A)
15 based on the state's requirement that in-person voters present photo identification in order to
16 vote, while not requiring absentee voters to do the same. The district court rejected that claim,
17 finding that Section 1971 did not apply to the different identification procedures pertaining to
18 in-person and absentee voters in part because those procedures did not relate to determining
19 voter eligibility and because in-person and absentee voting were in themselves inherently
20 different procedures. *See id.* at 839-40. Unlike the case in *Rokita*, Gonzalez Plaintiffs do not
21 challenge the photo identification requirements of Proposition 200 under Section 1971.
22 Instead, Plaintiffs' claim relates to voter registration and the imposition of different standards,
23 practices and procedures to determine voter eligibility for similarly-situated groups of persons
24 residing within the same county.
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1 State Defendants also claim that Plaintiffs' Section 1971 claims must fail because
2 Plaintiffs have failed to allege discrimination on the basis of race. Allegations of racial
3 discrimination, however, are not a necessary element of a claim brought under 42 U.S.C.
4 1971(a)(2)(A). Although State Defendants rely on *Rokita* for that proposition, the district
5 court's decision in that case stands alone and contradicts not only the plain language of the
6 statute, but years of Section 1971 jurisprudence. See, e.g., *Ball v. Brown*, 450 F.Supp. 4, 7
7 (N.D. Ohio 1977); *Frazier v. Callicutt*, 383 F. Supp. 15, 20 (N.D. Miss. 1974); *Sloane v. Smith*,
8 351 F. Supp. 1299, 1305 (D.C. Pa. 1972); *Brier v. Luger*, 351 F. Supp. 313, 316 (M.D. Pa.
9 1972); *Shivelhood v. Davis*, 336 F. Supp. 111 (D. Vt. 1971). Nevertheless, even assuming that
10 a Section 1971 claim requires proof of racial discrimination, Plaintiffs have sufficiently alleged
11 that the documentary proof of citizenship requirements of Proposition 200 discriminates against
12 Latinos and provides them with less opportunity than other members of the electorate to
13 participate in the political process. The complaint specifically alleges:

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15 Latinos, among other ethnic groups, are less likely to
16 possess the forms of identification required under
17 Proposition 200 to vote and cast a ballot. As a result,
18 significant numbers of Latinos attempting to register and
19 turn out to vote are denied the right to vote.

20 ...

21 Proposition 200's requirement that the county recorder
22 reject applications for registration that do not include
23 satisfactory evidence of citizenship disparately affects
24 Latino voters, unlawfully dilutes Latino voters' right to
25 vote, and provides them with less opportunity than other
26 members of the electorate to participate in the political
process.

27 Dkt. Entry No. 352 at ¶¶ 75, 98. In their cause of action regarding Section 1971, Plaintiffs
28 specifically incorporate these allegations regarding discrimination against Latinos. See *id.* at ¶

1 101. Therefore, there is no support for State Defendants' argument that Plaintiffs have failed to
2 allege racial discrimination.

3 **2. Plaintiffs Have Stated Sufficient Facts to Establish Standing to Bring Their**
4 **Claim Under the Civil Rights Act at This Stage of the Litigation.**

5 State Defendants also assert that Plaintiffs' claims brought under Section 1971(a)(2)(A)
6 should be dismissed because Plaintiffs have not established, in their amended complaint, that
7 they have standing to bring those claims. State Defendants again put the cart before the horse
8 by demanding more of Plaintiffs' amended complaint than that required by the Federal Rules of
9 Civil Procedure. A showing of standing must be measured against the "manner and degree of
10 evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504
11 U.S. 555, 561 (1992); *see also Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 114-
12 115 and n. 31 (1979); *Warth v. Seldin*, 422 U.S. 490, 528 (1975). "At the pleading stage,
13 general factual allegations of injury resulting from the defendant's conduct may suffice, for on a
14 motion to dismiss [courts] 'presume that general allegations embrace those specific facts that
15 are necessary to support the claim.'" *Lujan*, 504 U.S. at 561 (quoting *Lujan v. National Wildlife*
16 *Federation*, 497 U.S. 871, 889 (1990)).

17 Here, a number of Plaintiffs have alleged sufficient facts in their amended complaint to
18 establish standing to challenge Proposition 200 under Section 1971 of the Civil Rights Act.
19 Plaintiffs Debbie Lopez, Southwest Voter Registration Education Project, Valle del Sol,
20 Friendly House, Chicanos Por La Causa, Arizona Hispanic Community Forum, Project Vote,
21 Association of Community Organizations for Reform Now, and Common Cause all describe
22 how they have long engaged, and will continue to engage, in activities aimed at increasing
23 Latino and other citizen participation in the voting process through, among other things, voter
24 registrations efforts that target low and moderate-income families in Arizona. *See* Dkt. Entry
25 No. 352 at ¶¶ 8, 11-18. Plaintiffs further describe how the documentary proof of citizenship
26

1 requirements of Proposition 200 impede their ability to conduct community-based voter
2 registration and voter education and describe how Latinos are less likely to possess the forms of
3 identification required under Proposition 200 to register to vote and cast a ballot. *See id.* at ¶¶
4 73-75. Plaintiffs have also alleged that their voter registration and education efforts have been
5 impeded by all of the defects in Proposition 200 that are identified in the amended complaint;
6 these allegations include the requirement that registered voters moving into a county and
7 persons with valid driver's licenses preceding October 1, 1996 provide documentary proof of
8 citizenship when others are exempted. Nothing more is required of Plaintiffs at this stage of
9 the litigation and State Defendants' contentions to the contrary run against long-established
10 Supreme Court precedent.

11
12 **B. State Defendants Have Provided no Basis to Dismiss Plaintiffs' Claims Under the**
13 **Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") at This**
14 **Stage of the Litigation.**²

15
16 **1. Plaintiffs Have Stated Sufficient Facts to Show That Proposition 200 Violates**
17 **the UOCAVA.**

18 In 1986, Congress enacted the UOCAVA to improve absentee registration and voting in
19 federal elections for members of the U.S. military and U.S. citizens living abroad. The main
20 provisions of the UOCAVA require states to: 1) permit absent uniformed services voters, their
21 spouses and dependents, and overseas voters who no longer maintain a residence in the U.S. to
22 register absentee and to vote by absentee ballot in all elections for federal office (including

23 ² The eleventh cause of action in Plaintiffs' First Amended Complaint states:

24 118. Proposition 200 violates the Uniformed and Overseas
25 Citizens Absentee Voting Act, 42 U.S.C. § 1973 FF, which
26 requires states to accept and use the federal post card
application for voter registration by uniformed services
voters and overseas voters.

Dkt. Entry No. 352 at ¶ 118.

1 general, primary, special, and runoff elections); 2) accept and process any valid voter
2 registration application from an absent uniformed services voter or overseas voter if the
3 application is received not less than 30 days before the election. *See* 42 U.S.C. § 1973ff-1.
4 As admitted by State Defendants in their motion to dismiss, the UOCAVA directs states to
5 “accept and process, with respect to any election for federal office, any otherwise valid voter
6 registration application and absentee ballot application from an absent uniformed services voter
7 or overseas voter,” and to “use the official post card form . . . for simultaneous voter
8 registration application and absentee ballot application.” 42 U.S.C. § 1973ff-1(a)(2) and (a)(4).

9
10 Thus, under the UOCAVA, Congress has directed the states to provide a simplified
11 procedure for overseas citizens, military and civilian, to register and vote absentee in federal
12 elections. State Defendants do not dispute, and in fact appear to concede that Proposition
13 200’s documentary proof of citizenship requirement requires more of overseas voter
14 registration applicants than does the UOCAVA. State Defendants continue to insist, however,
15 that Proposition 200 does not violate the UOCAVA and is not preempted by that federal statute
16 for three reasons. First, State Defendants seem to argue that because this Court has already
17 held that Proposition 200 was not preempted by the NVRA, then it cannot be preempted by or
18 conflict with any federal statute and therefore Plaintiffs’ claim fails as a matter of law. Second,
19 State Defendants unconvincingly try to interpret the language of the UOCAVA to allow states
20 to require further documentation from military personnel and other overseas voters than that
21 stated on the UOCAVA’s federal post card application. Finally, State Defendants argue that
22 the issue is controlled not by the mandates of Congress embodied in the plain language of the
23 statute, but rather by the manner in which one federal agency provides information to overseas
24 voters. Neither of these arguments is persuasive and certainly do not provide a basis of
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1 dismissal of Plaintiffs' claims under the UOCAVA at this stage of the litigation and before
2 Plaintiffs have had the opportunity to further develop their claim.

3 *a. The Ninth Circuit's decision regarding the NVRA does not preclude a*
4 *finding that Proposition 200 violates or is preempted by the UOCAVA.*

5 In their amended complaint, Gonzalez Plaintiffs assert that Proposition 200's
6 documentary proof of citizenship requirement, when applied to military and overseas voters
7 who submit the federal postcard application, violates the UOCAVA. *See* Dkt. Entry No. 352 at
8 ¶ 118. Plaintiffs' claim also asserts that Proposition 200 is both field and conflict preempted by
9 the UOCAVA.

10 The United States Supreme Court has confirmed "Congress' broad powers to regulate
11 federal elections and maintain a national government." *Prigmore v. Renfro*, 356 F. Supp. 427,
12 433 (N.D. Ala. 1972), *aff'd*, 410 U.S. 919, 93 S. Ct. 1369 (1973) (citing *Oregon v. Mitchell*,
13 400 U.S. 112 (1970)); *see* U.S. CONST. art. I, § 4, cl.1. Federal courts have held that "any state
14 requirement that conflicts with the mandatory provisions of the Uniformed and Overseas
15 Citizens Absentee Voting Act is preempted and invalid." *Bush v. Hillsborough County*
16 *Canvassing Board*, 123 F. Supp. 2d 1305, 1314 (N.D. Fla. 2000).

17 State Defendants request that the Court dismiss the UOCAVA claim for the same
18 reason summary judgment was granted against the NVRA claim. The State Defendants'
19 argument appears to be that, because the Ninth Circuit declined to grant a preliminary
20 injunction under the NVRA, Proposition 200 can never be preempted or be in conflict with any
21 federal statute or law.
22

23 State Defendants' assertion circumvents legal analysis and oversimplifies the doctrine of
24 federal preemption. Because the NVRA and the UOCAVA are distinct statutes under which
25 Congress addressed different concerns, a finding that Proposition 200 is not preempted by one
26 statute does not translate into a ruling that Plaintiffs are forbidden from pleading a preemption

1 claim with regard to a different statute. More importantly, the Ninth Circuit's analysis
2 regarding the NVRA is not applicable to Plaintiffs' claim under the UOCAVA. Specifically,
3 the Ninth Circuit looked at language in the NVRA that provides that "states either accept and
4 use the mail voter registration form prescribed by the Federal Election Commission . . . *or in*
5 *the alternative*, develop and use their own form, as long as the latter conforms to the federal
6 guidelines." *Gonzalez v. Arizona*, 485 F.3d 1041, 1050 (9th Cir. 2007) (internal quotations and
7 ellipses omitted) (emphasis added). According to the Ninth Circuit, that language precluded a
8 finding that Proposition 200 was in conflict, and therefore preempted by, the NVRA.³

9
10 In their motion to dismiss, State Defendants cannot direct the Court to any language in
11 the UOCAVA that allows states to ignore the statute's mandate that states accept and use the
12 federal post card application form when military or overseas voters seek to simultaneously
13 register to vote and submit an absentee ballot application. *See* 42 U.S.C. § 1973ff-1(a)(4). In
14 fact, the UOCAVA was amended in 2001 to remove language that only *recommended* that
15 states use the federal post card application, but retained the language that *required* states to do
16 so. *See* Pub. L. 101-07, § 1606(b). State Defendants present no evidence or even allege that
17 the federal post card application itself demands that overseas voters provide the documentary
18 proof of citizenship required by Proposition 200. Therefore, Defendants' argument that
19 Plaintiffs' claim fail as a matter of law is incorrect.

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25 ³ Gonzalez Plaintiffs disagree with this analysis by the Ninth Circuit at the preliminary
26 injunction stage of the litigation and intend to raise the issue on appeal.

1 *b. The UOCAVA's mandate that states accept any "otherwise valid" voter*
2 *registration application does not mean that Arizona can reject a properly*
3 *completed federal post card application.*

4 State Defendants also argue that UOCAVA only requires states to accept "otherwise
5 valid" voter registration applications, and they interpret that to mean that military and overseas
6 voters must also abide by any requirement that Arizona chooses to impose upon them. Plaintiffs
7 disagree, and maintain that an "otherwise valid voter registration application" does not refer to
8 any procedural hurdle that a state may choose to impose on overseas voters, but instead refers
9 only to whether voter registration applications are completed correctly and provide all the other
10 necessary information requested by the UOCAVA itself. In enacting the UOCAVA, Congress
11 intended that the completion and submission of a federal postcard application form would
12 suffice to allow military and overseas voters to register to vote in federal elections. To read the
13 language to allow states to add requirements to that process would render the statute
14 meaningless and obviate the federal goal of providing one uniform application for the
15 registration of overseas citizens and military personnel.

16 *c. The fact that one federal agency provides information to overseas voters that*
17 *does not conform to the UOCAVA is not controlling.*

18 Finally, Defendants argue that Plaintiffs' claim under the UOCAVA must fail as a
19 matter of law because the federal agency charged with prescribing the federal post card
20 application form provides overseas voters with information on individual state registration
21 requirements. The fact that a federal agency provides these instructions does not change the
22 fact that the UOCAVA does not require the submission of documentary proof of citizenship in
23 order for military and overseas citizens to register to vote. The instructions cited by State
24 Defendants were not debated or enacted by Congress, and are clearly not part of the UOCAVA
25 or the federal post card application itself. Whatever weight those instructions may be given,
26 they certainly do not resolve the issue whether the requirements of Proposition 200 violate the

1 UOCAVA, especially in light of the unambiguous language of that statute. *See Consumer*
2 *Prod. Safety Comm'n v. GTE Sylvania, Inc.* 447 U.S. 102, 108 (1980) (stating that absent a
3 "clearly expressed legislative intention to the contrary," as statute's plain meaning "must
4 ordinarily be regarded as conclusive.").

5 **2. Plaintiffs Have Stated Sufficient Facts to Establish Standing to Bring Their**
6 **Claim Under the UOCAVA at This Stage of the Pleadings.**

7 Similar to their premature argument concerning Plaintiffs' standing to bring their
8 Section 1971(a)(2)(A) claim, State Defendants also demand that Plaintiffs' claims brought
9 under the UOCAVA be dismissed because they have not provided more specific details of how
10 Plaintiffs are injured by Proposition 200. As was the case in their previous argument, State
11 Defendants miss the mark; Plaintiffs have provided more than sufficient information in their
12 amended complaint to establish standing to bring this claim. *See, e.g., Lujan*, 504 U.S. at 561;
13 *Warth*, 422 U.S. at 528; *Porter*, 319 F.3d at 494.

14 In their amended complaint, no less than eight organizational plaintiffs describe how
15 Proposition 200 has impeded their efforts to engage in activities meant to increase voter
16 participation and registration in Arizona. *See* Dkt. Entry No. 352 at ¶¶ 11-18, 52-57, 73-75.
17 Although Plaintiffs do not specifically mention each of their causes of action in the paragraphs
18 of their complaint relating to injury, the allegations above are enough to allow Plaintiffs to
19 plead and move forward with their challenge against Proposition 200.

20
21 **C. Contrary to State Defendants' Allegation, Plaintiffs are not Trying to Relitigate**
22 **Issues Already Decided by the Court.**

23 State Defendants also request that this Court dismiss the First, Third, Eighth, Ninth and
24 Tenth Cause of Actions in Plaintiffs' First Amended Complaint. State Defendants assert that
25 the law of the case doctrine precludes this Court from reconsidering the issues raised in those
26 causes of action. Plaintiffs, however, are not attempting to re-litigate any of the claims that

1 were dismissed on State Defendants' previous motion for summary judgment. At the time
2 Plaintiffs moved to amend their complaint, the Court had not yet ruled on the motion for
3 summary judgment and therefore Plaintiffs had no reason to remove those claims from their
4 proposed amended complaint. *Compare* Dkt. Entry No. 323 (Plaintiffs' Motion for Leave to
5 Amend Complaint, filed on August 17, 2007) *with* Dkt. Entry No. 330 (Order Granting Motion
6 for Summary Judgment, entered on August 28, 2007). There is no rule or law that requires that
7 Plaintiffs modify their amended complaint in the manner demanded by State Defendants.
8 Defendants' request should therefore be denied. Plaintiffs are well aware that the Court has
9 entered summary judgment on certain of their claims in the case and that the amended complaint
10 does not resurrect the claims.

11 12 V. CONCLUSION

13 For the reasons stated above, Gonzalez Plaintiffs' respectfully request that the Court
14 deny in its entirety State Defendants' Motion to Dismiss.

15
16 DATED this 30th day of October, 2007.

Respectfully submitted,

17 By: s/Nina Perales
18 Nina Perales

19 Counsel for Plaintiffs
20 Gonzalez, et al.

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2007, 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.

COPY of the foregoing filed electronically this 30th day of October, 2007.

COPY of the foregoing mailed with Notice of Electronic Filing this 30th day of October, 2007 to:

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

s/Nina Perales
Nina Perales