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

13 MARIA M. GONZALEZ, et al.,  
14 Plaintiffs,  
15 v.  
16 STATE OF ARIZONA, et al.  
17 Defendants.

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

**REPLY IN SUPPORT OF  
STATE DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT DIRECTED TO  
THE GONZALEZ PLAINTIFFS**

(Assigned to the Honorable  
Roslyn O. Silver)

1 **Preliminary Statement**

2 Despite the submission of 1,650 “additional facts” and hundreds of non-indexed  
3 exhibits, the admissible evidence before the Court establishes that there is no genuine  
4 dispute about the *material* facts and plaintiffs cannot establish their remaining claims.

5 Plaintiffs have not disputed with any admissible evidence that:

- 6 • There is no plaintiff in this lawsuit that cannot vote or register to vote  
7 because he or she lacks voting identification or proof of citizenship.
- 8 • There is no evidence that Latinos among other racial groups in Arizona  
9 are less likely to obtain or possess proof of citizenship or voting  
10 identification.
- 11 • There is no evidence that any historical or racial discrimination against  
12 Latinos in Arizona has ever resulted in their being less likely to obtain  
13 or possess proof of citizenship or voting identification.
- 14 • The data produced by plaintiffs in the case demonstrates that both  
15 Latino and non-Latino registrations have increased in the post-Prop 200  
16 period over the comparable pre-Prop 200 period.
- 17 • The data produced by plaintiffs in the case do not demonstrate any  
18 disparate impact on Latino voter registrations since Prop 200 was  
19 implemented.
- 20 • There is no admissible evidence of any disparate impact on Latino voter  
21 turnout since the implementation of Prop 200.

22 Plaintiffs’ entire argument that there is a dispute about whether Latino  
23 registrations and turnout have been disparately impacted is based on inadmissible  
24 hearsay and an unauthenticated factual submission. Plaintiffs have not submitted any  
25 affidavits or declarations that support their factual assertions of a disparate impact.  
26 Accordingly, plaintiffs have not established any dispute about Defendants’ facts relating  
27 to the absence of a discriminatory impact.

28 Moreover, even had plaintiffs submitted admissible evidence in their response,  
plaintiffs cannot escape their own data regarding voter registration levels before and  
after Prop 200 was implemented. A reasonable fact finder could not conclude that  
plaintiffs’ data show either that there has been any disparate impact on Latino  
registrations or that there has been any negative impact on overall registrations since the  
implementation of Prop 200.



1 equal protection argument fails because they offer no evidence that there is any undue  
2 burden on plaintiffs or any class of individuals with regard to Prop 200’s voting  
3 requirements or that there is discrimination (intentional or otherwise) against naturalized  
4 citizens.

5 **A. The Evidence Does Not Establish an Undue Burden on Plaintiffs’**  
6 **Voting Rights.**

7 There is no evidence of any burden imposed on naturalized citizens or any other  
8 class of individuals caused by Arizona’s proof of citizenship or voting identification  
9 requirements. Plaintiffs assert (at 22-23) that proof of citizenship and voting  
10 identification documents have a monetary cost and that therefore those requirements  
11 violate equal protection as recently discussed in *Crawford v. Marion County Election*  
12 *Bd.*, 128 S. Ct. 1610 (2008). Plaintiffs’ characterization of *Crawford*, however, is  
13 misleading.

14 The Indiana law upheld in *Crawford* was more stringent than Arizona’s  
15 requirements. Under Indiana’s law, individuals need a government-issued photo  
16 identification to vote. Although Indiana issues such identification at no charge,  
17 individuals must present both a “primary” document and two other types of documents  
18 to obtain the government-issued identification. *Id.* at 1621 n.17; Ind. Admin. Code § 7-  
19 4-2(c)-(e). A primary document includes a birth certificate, certificate of naturalization,  
20 U.S. passport, and military identification—documents nearly identical to Arizona’s  
21 forms of proof of citizenship. The Court acknowledged that individuals must pay a fee  
22 to obtain a copy of their birth certificate. 128 S. Ct. at 1621 n.17.

23 The relevant inquiry under *Crawford* is whether the challengers have offered  
24 evidence to establish that the proof of citizenship and voting identification requirements  
25 actually impose an excessive burden on plaintiffs or some class of individuals. *Id.* at  
26 1623 n.20 (“While it is true that obtaining a birth certificate carries with it a financial  
27 cost, the record does not provide even a rough estimate of how many indigent voters  
28 lack copies of their birth certificates.”).

Plaintiffs have offered no evidence about the number of citizens, naturalized or  
otherwise, who lack proof of citizenship or voting identification and cannot obtain such

1 proof or identification. Indeed, with regard to proof of citizenship, plaintiffs do not  
2 (because they cannot) dispute that every naturalized citizen receives a certificate of  
3 naturalization. Neither do they dispute that every naturalized citizen has an alien  
4 registration number.<sup>2</sup> In addition, plaintiffs do not dispute that 87.4% of Arizona’s  
5 voting eligible citizens have both proof of citizenship and voting identification by virtue  
6 of their Arizona driver’s or non-operating license. [See Defs.’ SOF 24] Thus, plaintiffs’  
7 argument that naturalized citizens or any other individuals are unduly burdened is not  
8 supported by the evidence.

9 Plaintiffs have filed the declarations of seven individuals who state that their  
10 voter registration forms were rejected for lack of proof of citizenship. [Pls.’ exs. 528,  
11 529, 531, 532, 535, 540, 550] Six of those individuals were untimely disclosed to  
12 Defendants, even though Defendants had asked plaintiffs by interrogatory to identify any  
13 individuals lacking proof of citizenship or voting identification. [See Defs.’ SOF 20, 22]  
14 In any event, those declarations do not provide any basis for denying summary  
15 judgment. Five of those individuals, by their own statements, are registered to vote. Of  
16 those seven declarants, only one (Maria Gonzalez) is a plaintiff in this lawsuit—and she  
17 is registered to vote.

18 Plaintiffs also filed declarations of six individuals who complain about the voting  
19 identification requirement. [Pls.’ exs. 522, 525, 527, 530, 538, 552] Four of those  
20 individuals were untimely disclosed (or *not* disclosed) to Defendants, and the defense  
21 therefore had no opportunity to cross-examine them or take discovery about them. In  
22 any event, two of those declarants (Abeytia and Terrazas) have voted since the  
23 implementation of Prop 200. One of the declarations (Cotto) is incomplete and does not  
24 fully disclose the declarant’s purported experience. Two of the individuals (Fletchall

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25 <sup>2</sup> Plaintiffs’ argument that not every certificate of naturalization includes an alien  
26 registration number (“A-number”) is a red herring. Naturalized citizens may prove  
27 citizenship by providing their A-number or by presenting their naturalization certificate.  
28 There is no requirement that the A-number be listed on the certificate of naturalization.  
Indeed, to the contrary, if elections officials have seen the certificate there is no need for  
the A-number at all and if the county officials verify the A-number there is no need for  
the certificate of naturalization.

1 and Belle-Oudry) possess voting identification. One declaration is from Agnes Laughter  
2 in 2006, who was a plaintiff in the Navajo Nation case, which has been dismissed. [Dkt.  
3 775] In any event, Ms. Laughter undisputedly can vote using tribal identification, which  
4 she admittedly possesses. [See dkt. 436-1, ex. 9 (Interrog. resp. no. 7)]

5 Although Defendants did not have any opportunity to explore the circumstances  
6 regarding the voting or registration experiences of most of plaintiffs' declarants, the  
7 negative experiences of those individuals with registration or voting do not provide any  
8 basis for holding Arizona's law unconstitutional. If their stories are true, it is  
9 unfortunate that they had negative experiences, but the relatively few experiences of  
10 individuals who are not before the Court as plaintiffs is insufficient under the reasoning  
11 and holding of *Crawford* to render Arizona's voting requirements unconstitutional.

12 Only two of the individuals for whom plaintiffs submitted declarations regarding  
13 their experiences with registration or voting are plaintiffs in this case. Both of those  
14 individuals are registered to vote and one of them (Abeytia) has voted without any  
15 apparent difficulty since the implementation of Prop 200. [SOF 19, 21] Moreover, even  
16 if the proof of citizenship or voting identification requirement imposes a burden on those  
17 individuals, such a showing is insufficient to establish plaintiffs' claim for relief here.  
18 Under *Crawford*, the fact that some plaintiffs lacked a birth certificate and testified that  
19 they were unable to obtain it was not sufficient to establish that the identification  
20 requirement was unconstitutionally burdensome: "When we consider only the statute's  
21 broad application to all Indiana voters we conclude that it 'imposes only a limited  
22 burden on voters' rights.'" *Crawford*, 128 S. Ct. at 1623. The vast majority of  
23 Arizona's voting eligible citizens possess proof of citizenship and voting identification.  
24 [SOF 24]

25 There is no evidence that either plaintiffs or some class of voting eligible citizens  
26 are excessively burdened by either the proof of citizenship or voting identification  
27 requirement. *E.g., id.* at 1621 ("even assuming that the burden may not be justified as to  
28 a few voters, that conclusion is by no means sufficient to establish petitioners' right to  
the relief they seek in this litigation"). Accordingly, summary judgment should be  
granted on plaintiffs' equal protection claim based on an undue burden.

1           **B.       There Is No Evidence of Discrimination Against Naturalized Citizens.**

2           To establish an equal protection claim based on national origin discrimination,  
3 plaintiffs must prove that the challenged law intentionally discriminates on such  
4 improper basis. *Washington v. Davis*, 426 U.S. 229, 239 (1976) (“But our cases have  
5 not embraced the proposition that a law or other official act, without regard to whether it  
6 reflects a racially discriminatory purpose, in unconstitutional solely because it has a  
7 racially disproportionate impact.”). Plaintiffs have made no such showing.

8           As an initial matter, plaintiffs do not argue that there is any disparate impact on  
9 naturalized citizens’ voting registrations since Prop 200 was implemented. Neither does  
10 plaintiffs’ evidence (even if it were admissible) establish that naturalized citizens are  
11 burdened more than other citizens by the proof of citizenship requirement. Plaintiffs do  
12 not dispute that 87.4% of Arizona’s voting eligible citizens possess a valid Arizona  
13 driver’s license or non-operating license, which may be used as proof of citizenship.  
14 [See SOF 24] Plaintiffs offer no evidence to show that naturalized citizens are less  
15 likely than other groups to possess such Arizona licenses. Thus, the vast majority of  
16 naturalized citizens—like native born citizens—would not even need to use  
17 naturalization papers to register to vote.

18           If those individuals choose to use their naturalization papers, however, they are  
19 not burdened any more than individuals who submit other forms of proof. Indeed, one  
20 of the forms of identification that could be used to obtain the required government-  
21 issued photo identification in *Crawford* was a certificate of naturalization. *Crawford*,  
22 128 S. Ct. at 1621 n.17 (“To obtain a photo identification card a person must present at  
23 least one “primary” document, which can be a birth certificate, certificate of  
24 naturalization, U.S. military photo identification, or a U.S. passport.”).

25           Moreover, plaintiffs do not dispute that individuals may simply write their alien  
26 registration number on their voter registration form.<sup>3</sup> Although Arizona’s form initially

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26           <sup>3</sup> The issue Plaintiffs raise regarding the need to verify an applicant’s A-number proves  
27 to be non-discriminatory as well. Non-naturalized citizens may provide their birth  
28 certificate, which need not be verified, or their Arizona driver license number, which  
must be verified. Naturalized citizens may provide their certificate of naturalization,

1 specified “certificate of naturalization number” rather than “alien registration number,”  
2 plaintiffs do not dispute that Arizona’s voter registration form has since been modified  
3 to reflect “alien registration number” so as to eliminate any confusion about what  
4 number should be included on the form. [See [http://www.azsos.gov/election/forms/  
5 VoterRegistrationForm.pdf](http://www.azsos.gov/election/forms/VoterRegistrationForm.pdf), box 19]

6 Plaintiffs’ assertion that Defendants have no authority to request an applicant’s  
7 A-number rather than requiring registrants to show their actual certificate of  
8 naturalization implies that plaintiffs would rather election officials interpret Prop 200  
9 *more* stringently. Satisfactory evidence of U.S. citizenship includes: “presentation to  
10 the county recorder of the applicant's United States naturalization documents or the  
11 number of the certificate of naturalization.” A.R.S. § 16-166(F)(4). There are two  
12 different series of numbers in the upper right hand corner of a certificate of  
13 naturalization. The first set of numbers is preceded only by the abbreviation for the  
14 word number, “No.” The second set of numbers is identified as the “INS Registration  
15 No.” and begins with the letter A. This arguably creates an ambiguity that must be  
16 resolved by elections officials. A.R.S. § 1-221(B) (“Statutes shall be liberally construed  
17 to effect their objects and to promote justice.”) As such, rather than taking the rigid  
18 approach that arbitrarily designates only one of the two sets of numbers as the “number  
19 of the certificate of naturalization,” the county election officials interpret the statute to  
20 mean that only the set of numbers that actually verifies the registrant’s citizenship is  
21 required. This reasonable interpretation of the law has been memorialized in the  
22 Secretary of State’s Procedures Manual, which has the operation and effect of law. *See*  
23 A.R.S. § 16-452(C).

24 Neither do plaintiffs’ cited cases support their argument. Each of those cases  
25 involved laws that pertained only to naturalized citizens. *E.g., Schneider v. Rusk*, 377  
26 U.S. 163, 164 (1964) (the challenged law applied only to naturalized citizens and would

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27 which need not be verified, or their driver license number or A-number, which must be  
28 verified. The law does not treat citizens differently – it merely provides for the use of  
many possible documents that might be available to citizens. Moreover, plaintiffs do not  
argue or identify any admissible evidence that verification of A numbers has led to any  
eligible citizens being denied the ability to register.

1 result in their loss of citizenship if they resided abroad for three years); *Boustani v.*  
2 *Blackwell*, 460 F. Supp. 2d 822, 824-25 (N.D. Ohio 2006) (the challenged law applied  
3 only to naturalized citizens; only they, and no other citizens, could be challenged at the  
4 polls).<sup>4</sup> Prop 200 does not single out naturalized citizens. Instead, it applies to each  
5 Arizona citizen equally and provides more than one way for those citizens to comply  
6 with the requirement. Plaintiffs have demonstrated no “invidious discrimination”  
7 against naturalized citizens.<sup>5</sup>

8 **II. SUMMARY JUDGMENT IS WARRANTED ON PLAINTIFFS’ VOTING RIGHTS**  
9 **ACT CLAIMS.**

10 **A. Plaintiffs Have Not Offered Any Admissible Evidence to Dispute**  
11 **Defendants’ Facts or Otherwise to Create Any Issue of Material**  
12 **Fact.**

13 Pursuant to Local Rule 56.1, a party opposing summary judgment must file a  
14 separate response to the moving party’s statement of facts stating whether the opponent  
15 disputes the statement of fact and providing “a reference to the specific admissible  
16 portion of the record supporting the party’s position if the fact is disputed.” Ariz. L. R.  
17 56.1(b). Plaintiffs do not dispute eleven of Defendants’ 24 facts on summary judgment.  
18 Plaintiffs do dispute those defense facts regarding the lack of evidence of any disparate  
19 impact on Latino voter registrations or voting turnout. [Pls.’ Resps. to Defs.’ SOF 7-12,  
20 14-18] Plaintiffs fail to support their responses, however, by citation to any admissible  
21 evidence. Instead, plaintiffs cite to unsworn statements that are inadmissible hearsay  
22 and therefore not sufficient to defeat summary judgment. *E.g., Orr v. Bank of Am.*, 285  
23 F.3d 764, 773, 778-79 (9<sup>th</sup> Cir. 2002) (“A trial court can only consider admissible

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24 <sup>4</sup> See also *Faruki v. Rogers*, 349 F. Supp. 723, 725 (D.D.C. 1972) (the challenged  
25 statute applied only to naturalized citizens, who had to be citizens for ten years to be  
26 eligible for Foreign Service appointment); *Fernandez v. Georgia*, 716 F. Supp. 1475,  
27 1477 (M.D. Ga. 1989) (the challenged statute specified that state officers be native-born  
28 citizens).

29 <sup>5</sup> Plaintiffs’ argument (at 22) that Prop 200 discriminates against naturalized citizens  
30 “by requiring them to present in person their original naturalization certificates” is not  
31 supported in the record (or in the SOF’s cited in plaintiffs’ brief at 22:5-7). Plaintiffs do  
32 not dispute Defendants’ SOF 23 that naturalized citizens may simply provide their A  
33 number to comply with the proof of citizenship requirement. [Defs.’ SOF 23]

1 evidence when ruling on a motion for summary judgment”]; affirming the district court’s  
2 exclusion of hearsay evidence in granting summary judgment).

3 Thus, as a legal matter plaintiffs have not disputed Defendants’ facts that there  
4 has been no disparate impact on Latino voter registrations and have not offered any  
5 admissible evidence to show a disparate impact on Latino voter turnout. On that basis  
6 alone, summary judgment should be granted to Defendants on plaintiffs’ § 2 claim.<sup>6</sup>  
7 *E.g., Smith v. Salt River Project Agric. Improvement & Power Dist.*, 109 F.3d 586, 594  
8 (9<sup>th</sup> Cir. 1979) (“§ 2 prohibits voting qualifications which result in discrimination on  
9 account of race or color”) (emphasis omitted).

10 **B. Plaintiffs Have Offered No Evidence on an Essential Element of**  
11 **Their § 2 Claim—the Disparate Lack of Voting Identification or**  
12 **Proof of Citizenship.**

13 Plaintiffs allege in their First Amended Complaint that “Latinos, among other  
14 ethnic groups, are less likely to possess the forms of identification required under  
15 Proposition 200 to register to vote and cast a ballot. *As a result*, significant numbers of  
16 Latinos attempting to register and turn out to vote are denied the right to vote.” [Dkt.  
17 352, FAC ¶ 75 (emphasis added)] After two years of litigating, plaintiffs concede that  
18 they have no evidence that Latinos are in fact less likely to possess proof of citizenship  
19 or voting identification. [See Pls.’ Resp. to Defs.’ SOF 1]

20 That lack of evidence is fatal to their § 2 claim. The Court previously held in this  
21 litigation that: “To succeed on a Section 2 claim, Plaintiffs must establish three related  
22 propositions: 1) the challenged voting practice results in a disparate impact; 2) there is a  
23 history of racial discrimination; and 3) *there is a causal connection between the*  
24 *discrimination and the resulting disparate impact.*” [Order dated 5/03/07, dkt. 279, at 2  
25 (citing *Smith*, 109 F.3d at 595)(emphasis added)] That statement of the legal standard  
26 accords with controlling Ninth Circuit authorities.

27 The *Smith* court affirmed the requirement that ““plaintiffs must show a causal  
28 connection between the challenged voting practice and a prohibited discriminatory

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<sup>6</sup> Defendants file simultaneously with this reply a motion to strike Gonzalez plaintiffs’ exhibits, which motion more fully explains Defendants’ objections to those exhibits.

1 result.”” *Smith*, 109 F.3d at 595. Similarly, the *Farrakhan* court stated that the  
2 challenged voting requirement must “interact[] with social and historical conditions to  
3 cause an inequality” in voting opportunities. *Farrakhan v. Washington*, 338 F.3d 1009,  
4 1017 (9<sup>th</sup> Cir. 2003). The *Farrakhan* court further explained the application of that  
5 principle in the *Smith* case: “Because *the land ownership rates did not reflect racial*  
6 *discrimination*, we concluded [in *Smith*] that the land ownership requirement did not  
7 violate Section 2.” *Id.* at 1017-18 (emphasis added).

8 Thus, although plaintiffs are correct that there was no showing of historical  
9 discrimination in *Smith*, the relevant legal standard was whether the voting requirement  
10 (*i.e.*, land ownership) was causally connected to racial discrimination. Because there  
11 was no showing of racial discrimination, there necessarily could be no causal  
12 connection. Such a result, however, does not support the notion that if there *is* a  
13 showing of historical discrimination, that showing by itself is sufficient without  
14 establishing that the discrimination is causally related to the voting requirement (*i.e.*,  
15 providing identification or proof of citizenship). *E.g.*, *Badillo v. City of Stockton*, 956  
16 F.2d 884, 890 (9<sup>th</sup> Cir. 1992) (“the challenged device must be shown actually to impair  
the ability of minority voters to elect representatives of their choice”).

17 Summary judgment might not be appropriate if plaintiffs had offered some  
18 evidence that racially polarized voting or historical discrimination (or other § 2 factors)  
19 has somehow resulted in Arizona’s Latinos being less able to obtain or possess  
20 identification or proof of citizenship. A showing of a disparate impact and the existence  
21 of historical discrimination (even if it had been made), however, does not establish a § 2  
22 claim, as previously recognized by this Court in its May 3, 2007, order.<sup>7</sup>

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23 <sup>7</sup> Plaintiffs’ submission of facts about racially polarized voting (though not conceded)  
24 demonstrates the incorrectness of their argument about the applicable legal standard for  
25 a § 2 claim. Under plaintiffs’ proposed legal standard (*i.e.*, no causal connection  
26 between the § 2 factor and the voting requirement), they could establish their § 2 claim  
27 by showing a disparate impact on Latinos and the existence of racially polarized voting  
28 (*i.e.*, a § 2 factor). Yet there is no logical (or factual) basis to conclude that the existence  
of racially polarized voting somehow results in fewer Latinos being able to register or  
vote due to a lack of identification. Indeed, plaintiffs have never argued otherwise.  
Racially polarized voting is a factor in vote dilution cases, which typically involve

1                   **C. Plaintiffs Have Not Shown Any Disparate Impact on Latino**  
2                   **Voter Registrations or Voting Turnout.**

3                   In moving for summary judgment, Defendants submitted the declaration of  
4                   defense expert Dr. Jeffrey Zax. [Dkt. 802] Dr. Zax explains in his detailed declaration  
5                   that based on his analysis of the data disclosed by plaintiffs’ experts Drs. Lanier and  
6                   Espino, voter registrations in Arizona have increased for both Latinos and non-Latinos  
7                   in the post-Prop 200 period over the comparable pre-Prop 200 period. [See Defs.’ SOF  
8                   8, 14] In addition, Dr. Zax states in his declaration that, based on the data disclosed by  
9                   Dr. Lanier as analyzed by Dr. Zax, the number of both Latino and non-Latino  
10                  registrations increased by a very similar magnitude in the post-Prop 200 period over the  
11                  comparable pre-Prop 200 period. [See SOF 9] Although plaintiffs dispute those facts in  
12                  their response to Defendants’ statement of facts, plaintiffs did not submit any admissible  
13                  evidence to rebut Dr. Zax declaration.

14                  With regard to Dr. Zax’ analysis of Dr. Espino’s data (SOF 13-18), plaintiffs  
15                  merely refer to the inadmissible report of Dr. Espino and simply argue that Defendants’  
16                  facts are disputed. They do not even address the problems identified in Dr. Espino’s  
17                  conclusions, which are not supported by his own data. In addition, in response to SOF  
18                  17 that Dr. Espino failed to test for statistical significance, which eliminates any  
19                  scientific meaning in his calculated numbers, plaintiffs respond merely that Dr. Espino  
20                  concluded there was a decline in Hispanic voter registrations amounting to “differences  
21                  in thousands of voters each years [sic].” Plaintiffs do not dispute, however, the fact that  
22                  Dr. Espino’s numbers, whatever they are, lack scientific meaning in terms of disparate  
23                  impact because he did not test for statistical significance. [Defs.’ SOF 17]

24                  Similarly, Dr. Zax states in his declaration that Dr. Espino’s analysis does not  
25                  account for population data disclosed by plaintiffs that show that Latino citizen voting  
26                  age population (“CVAP”) experienced a higher growth rate than non-Latino CVAP  
27                  before Prop 200, but experienced a smaller growth rate than non-Latino CVAP after

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28                  redistricting challenges. Plaintiffs’ proposed standard necessarily would mean that the  
                    “causal connection” requirement could be met by the fact of a disparate impact—a  
                    notion expressly rejected by the Ninth Circuit.

1 Prop 200. [SOF 18] Plaintiffs’ response in disputing that fact is merely that “Dr. Espino  
2 analyzed all relevant data.” [Pls.’ Resp. to Defs.’ SOF 18] Such a conclusory assertion  
3 is insufficient to create a genuine issue about that fact.

4 Plaintiffs have not offered any admissible evidence to dispute the fact that in  
5 comparing the average monthly Latino registrations in the post-Prop 200 period to the  
6 average monthly Latino registrations in the comparable pre-Prop 200 period, Dr.  
7 Espino’s own Figure 1 demonstrates that the average proportion of Latino registrations  
8 was markedly higher in the post-Prop 200 period. [SOF 14]

9 Dr. Zax states in his declaration that the data disclosed by Dr. Lanier, as reflected  
10 in Dr. Lanier’s charts 1 and 2, demonstrates that the number of Latino and non-Latino  
11 voter registrations has increased in the post Prop 200 period. [SOF 8] That is easily  
12 observed from Dr. Lanier’s own charts. Plaintiffs have not disputed that fact with any  
13 citation to admissible evidence in the record. Moreover, plaintiffs do not dispute that  
14 Dr. Lanier’s own data on the number of registrations in September 2002 compared to  
15 September 2006 demonstrate an approximately 60% increase in the number of both  
16 Latino and non-Latino registrations. [SOF 9]

17 Although plaintiffs may argue that a different conclusion should be drawn from  
18 the data, they cannot dispute that data, because it is disclosed by their own experts.  
19 Moreover, they have offered no admissible evidence from their own experts in the form  
20 of affidavits or declarations to dispute Dr. Zax’ analysis. Accordingly, plaintiffs have  
21 not disputed the evidence that there is no showing of any disparate impact in Latino  
22 voter registration levels since the implementation of Prop 200.

23 **III. SUMMARY JUDGMENT IS WARRANTED ON PLAINTIFFS’ CIVIL RIGHTS**  
24 **ACT CLAIMS.**

25 Plaintiffs cite (at 24) *Alexander v. Sandoval*, 532 U.S. 275 (2001), without page  
26 citation, for their assertion that “disparate treatment of foreign born U.S. citizens is  
27 sufficient to establish a violation of Title VI.” *Sandoval* says no such thing, however,  
28 and expressly states that Title VI “prohibits only intentional discrimination.” 523 U.S. at  
280. Plaintiffs have made no evidentiary showing that Prop 200 intentionally  
discriminates on the basis of race or national origin. Moreover, as stated above,

1 plaintiffs have offered no admissible evidence that there has been any discriminatory  
2 racial impact in voter registration or voting turnout. Accordingly, Defendants are  
3 entitled to summary judgment on plaintiffs' Title VI claim.

4 **IV. SUMMARY JUDGMENT IS WARRANTED ON PLAINTIFFS' FIRST**  
5 **AMENDMENT CLAIM.**

6 Plaintiffs cannot establish a First Amendment violation of their free speech or  
7 associational rights. "Courts will uphold as 'not severe' restrictions that are generally  
8 applicable, even-handed, politically neutral, and which protect the reliability and  
9 integrity of the election process." *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1014  
10 (9<sup>th</sup> Cir. 2002) (upholding an election restriction in a First Amendment challenge where  
11 the plaintiff did not show that the restriction imposed a severe burden and where the  
12 state had important regulatory interests furthered by the restriction).

13 Plaintiffs offer no evidence that the proof of citizenship requirement is not  
14 generally applicable and even-handed or that it content or viewpoint based. Moreover,  
15 *Crawford* establishes that identification requirements such as the proof of citizenship  
16 indeed further important state regulatory interests in detecting and deterring fraud and in  
17 ensuring public confidence in the electoral process. *Crawford*, 128 S. Ct. at 1617.

18 Unlike the restrictions at issue in each of the cases cited by plaintiffs, Arizona's  
19 proof of citizenship imposes no First Amendment restriction on plaintiffs whatever. In  
20 each of plaintiffs' cited cases, the challenged restriction was on the plaintiff  
21 organizations—not individuals registering to vote.<sup>8</sup> Defendants are entitled to summary

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22 <sup>8</sup> *E.g.*, *Meyer v. Grant*, 486 U.S. 414, 416 (1988) (restriction at issue was a ban on paid  
23 circulators of initiative petitions); *Buckley v. Am. Constitutional Law Found., Inc.*, 525  
24 U.S. 182, 186 (1999) (challenged requirements were that petition circulators wear  
25 identification badges and be registered voters, and that initiative measure proponents  
26 disclose the names and addresses of each paid circulator and the amount paid to each  
27 circulator); *Monterey County Democratic Central Committee v. U.S. Postal Serv.*, 812  
28 F.2d 1194, 1195-96 (1987) (restriction at issue was a ban on partisan voter registration  
groups from using postal service property to register voters); *Project Vote v. Blackwell*,  
455 F. Supp. 2d 694, 702 (N.D. Ohio 2006) (challenged requirements were that persons  
paid to conduct registration undergo online training, individuals registering others  
personally return voter registration forms within ten days and identify themselves on the  
registration form, or face criminal sanctions); *League of Women Voters of Fla. v. Cobb*,

1 judgment on plaintiffs' First Amendment claim.

2 **Relief Requested**

3 For the reasons stated in Defendants' motion and this reply, the Court should  
4 enter judgment in favor of Defendants State of Arizona and Arizona Secretary of State  
5 Janice Brewer on all claims asserted by plaintiffs in Case No. CV 06-1268.

6 RESPECTFULLY SUBMITTED this 20th day of June, 2008.

7 TERRY GODDARD  
8 Arizona Attorney General

9 s/ Barbara A. Bailey \_\_\_\_\_  
10 Mary O'Grady  
11 Solicitor General  
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13 Senior Litigation Counsel  
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16 Assistant Attorneys General  
17 Attorneys for the State of Arizona and  
18 the Arizona Secretary of State  
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25 447 F. Supp. 2d 1314, 1315 (S.D. Fla. 2006) (challenged law that imposed strict liability  
26 on organizations and persons registering individuals to vote for failing to return  
27 registration forms within ten days); *Ass'n of Community Organizations for Reform Now,*  
28 *et al. v. Cox*, No. 1:06-CV-1891-JTC (Sept. 27, 2006), 2006 U.S. Dist. Lexis 87080, at  
\*7 (unpublished) (restriction at issue was on persons who accepted registration forms  
(i.e., voter registration organizations)).

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 20th day of June, 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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6 **COPY** also served this 20<sup>th</sup> day of June, 2008, by hand-delivery with Notice of  
7 Electronic Filing, on the following, who may not be a registered participant of the ECF  
8 System:

9 The Honorable Roslyn O. Silver  
10 United States District Court  
11 Sandra Day O'Connor U.S. Courthouse, Suite 624  
12 401 West Washington Street, SPC 59  
13 Phoenix, AZ 85003-2158

14 /s Elizabeth Stark

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