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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Maria M. Gonzalez, et al.,

Plaintiffs,

vs.

State of Arizona, et al.,

Defendants.

No. CV 06-1268-PHX-ROS

**ORDER**

Pending is State Defendants’ Motion to Dismiss the First, Third, Sixth, Eighth, Ninth, Tenth, and Eleventh Causes of Action of the Gonzalez Plaintiffs’ First Amended Complaint. (Doc. 401.) For the reasons below, the motion will be granted.

**I. Background**

Maria M. Gonzalez, et al. (“Gonzalez Plaintiffs”) filed this action on May 9, 2006, challenging the voting requirements enacted as part of Proposition 200. ( Doc. 1.) The complaint asserted claims based on the Supremacy Clause, the First Amendment, Twenty-Fourth Amendment, Equal Protection, § 2 of the Voting Rights Act, § 5 of the Voting Rights Act, Title VI of the Civil Rights Act, the National Voter Registration Act, A.R.S. § 16-121.01, and A.R.S. § 16-151(B). On August 17, 2007, Gonzalez Plaintiffs moved for leave to file a first amended complaint. (Doc. 323.) Before ruling on this motion, on August 28, 2007, the Court granted summary judgment against Gonzalez Plaintiffs, leaving only their

1 Equal Protection, First Amendment, Title VI, and § 2 of the Voting Rights Act claim (Doc.  
2 330.)

3 On October 1, 2007, the Court granted Gonzalez Plaintiffs' motion for leave to file  
4 an amended complaint. (Doc. 351.) The amended complaint includes all the claims in the  
5 original complaint except the claim regarding § 5 of the Voting Rights Act. (See Doc. 352.)  
6 It also adds five new plaintiffs and includes two new claims based on the Uniformed and  
7 Overseas Citizens Absentee Voting Act ("UOCAVA") and the Civil Rights Act. The  
8 organizational Gonzalez Plaintiffs<sup>1</sup> and Plaintiff Debbie Lopez have alleged that, "[a]s a  
9 result of the new proof of citizenship requirements imposed by Proposition 200," they "are  
10 impeded in their ability to conduct community-based voter registration." (Am Compl. ¶ 73.)  
11 Specifically, they allege that, "to successfully register voters in the community," they must  
12 now carry a photocopy machine or computer scanner and printer to make copies of  
13 citizenship documents, but their "inability to bring photocopy equipment to malls, school  
14 campuses and community gatherings has injured them by severely limiting their ability to  
15 register voters." (Id. ¶ 74.) The complaint also alleges that "Latinos, among other ethnic  
16 groups, are less likely to possess the forms of identification required under Proposition 200  
17 to register to vote and cast a ballot." (Id. ¶ 75.)

18 On October 16, 2007, Defendants State of Arizona and the Arizona Secretary of State  
19 ("Defendants") moved to dismiss the UOCAVA and Civil Right Act claims for lack of  
20 standing.<sup>2</sup> They also moved to dismiss the claims upon which the Court has previously  
21 entered judgment under the law of the case doctrine. (See Doc. 401.)

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24 <sup>1</sup> The organizational Gonzalez Plaintiffs in the amended complaint include Southwest  
25 Voter Registration Education Project, Valle del Sol, Friendly House, Chicanos Por La Causa,  
26 Arizona Hispanic Community Forum, Project Vote, Association of Community  
Organizations for Reform Now, and Common Cause.

27 <sup>2</sup> In the alternative, Defendants moved to dismiss these claims on the merits.

## 1 II. Motion to Dismiss Standard

2 “A Rule 12(b)(6) motion tests the legal sufficiency of a claim” Navarro v. Block, 250  
 3 F.3d 729, 732 (9th Cir. 2001). When reviewing a motion to dismiss, the Court accepts as true  
 4 all material allegations in the complaint and construes them in a light most favorable to the  
 5 plaintiff. Schmier v. U.S. Court of Appeals for Ninth Circuit, 279 F.3d 817, 820 (9th Cir.  
 6 2002). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need  
 7 detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement  
 8 to relief requires more than labels and conclusions, and a formulaic recitation of the elements  
 9 of a cause of action will not do.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964–65  
 10 (2007) (internal quotations, citations, and alterations omitted). A complaint must plead  
 11 “enough facts to state a claim to relief that is plausible on its face.” Id. at 1974. It is not sufficient  
 12 that a pleading leaves “open the possibility that a plaintiff might later establish some set of  
 13 undisclosed facts to support recovery.” Id. at 1968; see also Car Carriers, Inc. v. Ford Motor  
 14 Co., 745 F.2d 1101, 1106 (7th Cir. 1984) (cited in Twombly, 127 S. Ct. at 1969) (“a  
 15 complaint . . . must contain either direct or inferential allegations respecting all the material  
 16 elements necessary to sustain a recovery under some viable legal theory”).

## 17 III. Standing

18 Defendants claim that Gonzalez Plaintiffs lack standing to bring claims under the  
 19 UOCAVA and the Civil Rights Act. The Court agrees. “Article III of the Constitution  
 20 requires a plaintiff attempting to invoke the jurisdiction of the federal courts to demonstrate  
 21 that he has standing.” Loritz v. U.S. Court of Appeals for Ninth Circuit, 382 F.3d 990, 991  
 22 (9th Cir. 2004). “A plaintiff filing an action in federal court has the burden of alleging  
 23 *specific facts* sufficient to satisfy the standing elements.” Id. at 992 (emphasis added).  
 24 Article III standing has three elements: “First, the plaintiff must have suffered an ‘injury in  
 25 fact’ that is concrete, particularized, and actual or imminent. Second, there must be a causal  
 26 link between the injury and the conduct of which the plaintiff complains. Third, it must be  
 27 likely that a favorable decision will redress the plaintiff’s injury.” Skaff v. Meridien N. Am

1 Beverly Hills, LLC, 506 F.3d 832, 837 (9th Cir. 2007). “Since [these elements] are not mere  
2 pleading requirements but rather an indispensable part of the plaintiff’s case, each element  
3 must be supported in the same way as any other matter on which the plaintiff bears the  
4 burden of proof, i.e., with the manner and degree of evidence required at the successive  
5 stages of the litigation.” Lujan v. Defenders of Wildlife 504 U.S. 555, 561 (1992) (internal  
6 quotations and alterations omitted).

7 “At the pleading stage, general factual allegations of injury resulting from the  
8 defendant’s conduct may suffice, for on a motion to dismiss we presume that general  
9 allegations embrace those specific facts that are necessary to support the claim.” Id. “To  
10 survive a Rule 12(b)(6) motion to dismiss, [a plaintiff] must allege facts in his Amended  
11 Complaint that, if proven, would confer standing upon him.” Sacks v. Office of Foreign  
12 Assets Control, 466 F.3d 764, 771 (9th Cir. 2006). For example, when a lawyer challenged  
13 a Ninth Circuit Rule limiting the circumstances in which a party could rely on unpublished  
14 opinions, the Ninth Circuit upheld dismissal for lack of standing because the lawyer did “not  
15 even assert that, as a result of the Circuit Rules, he has abstained from citing an unpublished  
16 decision that he believed would serve as a helpful precedent.” Id. at 821; see also Loritz, 382  
17 F.3d at 992 (upholding dismissal for lack of standing when plaintiff challenged the Ninth  
18 Circuit Rules concerning non-publication of disposition appeals because the plaintiff did “not  
19 show that the outcome of his particular case could have been affected were he able to cite an  
20 unpublished disposition”).

#### 21 **A. UOCAVA**

22 Gonzalez Plaintiffs allege that “Proposition 200 violates the [ UOCAVA], which  
23 requires states to accept and use the federal post card application for voter registration by  
24 uniformed services voters and overseas voters.” (Am Compl. ¶ 118.) The UOCAVA allows  
25 uniformed services voters and overseas voters to submit an official federal post card form  
26 containing an absentee voter registration application and an absentee ballot application. See  
27 42 U.S.C. § 1973ff-1(a)(1)–(4). An “absent uniformed services voter” is  
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1 (A) a member of a uniformed service on active duty who, by reason of such  
 2 active duty, is absent from the place of residence where the member is  
 3 otherwise qualified to vote; (B) a member of the merchant marine who, by  
 4 reason of service in the merchant marine, is absent from the place of residence  
 5 where the member is otherwise qualified to vote; and (C) a spouse or  
 6 dependent of a member referred to in subparagraph (A) or (B) who, by reason  
 7 of the active duty or service of the member, is absent from the place of  
 8 residence where the spouse or dependent is otherwise qualified to vote.

9 Id. § 1973ff-6(1). An “overseas voter” is

10 (A) an absent uniformed services voter who, by reason of active duty or  
 11 service is absent from the United States on the date of the election involved;  
 12 (B) a person who resides outside the United States and is qualified to vote in  
 13 the last place in which the person was domiciled before leaving the United  
 14 States; or (C) a person who resides outside the United States and (but for such  
 15 residence) would be qualified to vote in the last place in which the person was  
 16 domiciled before leaving the United States.

17 Id. § 1973ff-6(5). Thus, the UOCAVA “provides for registration and voting by United States  
 18 citizens who formerly resided in one of the states and now live abroad or serve in the military  
 19 abroad, in elections for federal office.” Deborah F. Buckman, Validity, Construction, and  
 20 Application of Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C.A. §§  
 21 1973ff, et seq., 1 A.L.R. Fed. 2d 251 (2005).

22 However, Gonzalez Plaintiffs’ complaint only alleges that Proposition 200 impeded  
 23 their “community based voter registration.” Because the UOCAVA provides for registration  
 24 of those who no longer reside in the community, the Court cannot presume that the general  
 25 allegation that the organizational Plaintiffs engaged in “community based voter registration”  
 26 also encompasses registration of those outside the community. Further, the amended  
 27 complaint does not even assert that any of the plaintiffs have unsuccessfully attempted to use,  
 28 much less are eligible to use, the federal post card application to register to vote as absent  
 uniformed services voters or overseas voters. Thus, Gonzalez Plaintiffs lack standing to  
 assert claims under the UOCAVA because they have made no allegation that links their  
 alleged injury to the alleged violation of the UOCAVA.

1           **B.     Civil Rights Act**

2           Gonzalez Plaintiffs also allege that Proposition 200 violates § 1971(a)(2)(A) of the  
3 Civil Rights Act by requiring “registrants who are new to a county to provide proof of  
4 citizenship while exempting intra-county registrants from this requirement” and by  
5 exempting “residents with an Arizona driver or nonoperating license[] issued after October  
6 1, 1996 from providing evidence of citizen[s]hip prior to registering to vote.” (Am. Compl.  
7 ¶¶ 102–03.) The Civil Rights Act provides:

8                   No person acting under color of law shall . . . in determining whether any  
9 individual is qualified under State law or laws to vote in any election, apply  
10 any standard, practice, or procedure different from the standards, practices, or  
11 procedures applied under such law or laws to other individuals within the same  
county, parish, or similar political subdivision who have been found by State  
officials to be qualified to vote.

12 42 U.S.C.A. § 1971(a)(2)(A). Essentially, Gonzalez Plaintiffs contend that Proposition 200  
13 violates the Civil Rights Act by (1) treating individuals with a drivers license issued before  
14 October 1, 1996 in a county differently than individuals with licenses issued after October  
15 1, 1996 within the same county, and (2) treating individuals who recently move to a county  
16 differently than registered voters who already reside in the same county. (Pls.’ Resp. at 4–6.)

17           Again, Gonzalez Plaintiffs fail to allege any specific facts that link the alleged injury  
18 to the alleged violation of § 1971(a)(2)(A). The organizational Gonzalez Plaintiffs and  
19 Plaintiff Debbie Lopez did not allege that they attempted to register voters who possessed  
20 an Arizona licenses issued before October 1, 1996 but lacked other proof of citizenship.  
21 Further, they did not allege that they attempted to register voters who previously registered  
22 in one Arizona county and moved to another Arizona county but lacked proof of citizenship.  
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24           Similarly, none of the other individual Gonzalez Plaintiffs alleged that they were  
25 unable to register because they possessed an Arizona license issued before October 1, 1996  
26 but lacked other proof of citizenship. They also did not allege that they were registered in  
27 one Arizona county but were unable to register after moving to another Arizona county. See

1 Rosario v. Rockefeller, 410 U.S. 752, 759 n.9 (1973) (finding that petitioners lacked standing  
2 to raise claims that durational residency requirements of a voting law were unconstitutional  
3 when they made “no claim that they [were] recently arrived residents of the State or that they  
4 [had] moved from one county to another nor even that they [had] changed their residence at  
5 all within the period relevant”) Thus, Gonzalez Plaintiffs have failed to establish standing  
6 for their Civil Right Act claims.

7 **IV. Law of the Case Doctrine**

8 The amended complaint asserts claims based upon the Supremacy Clause, the Twenty-  
9 Fourth Amendment, National Voter Registration Act, A.R.S. § 16-121.01, and A.R.S. § 16-  
10 151(B). The Court entered judgment on each of these claims in favor of Defendants. (Doc.  
11 330.) “Under the law of the case doctrine, a court is generally precluded from reconsidering  
12 an issue previously decided by the same court, or a higher court in the identical case.” Ingle  
13 v. Circuit City, 408 F.3d 592, 594 (9th Cir. 2005). Plaintiffs concede that they cannot  
14 relitigate these claims. (Pls.’ Resp. at 14–15.) Thus, the Court will dismiss these claims.  
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16 Accordingly,


17 **IT IS ORDERED** State Defendants’ Motion to Dismiss the First, Third, Sixth,  
18 Eighth, Ninth, Tenth, and Eleventh Causes of Action of the Gonzalez Plaintiffs’ First  
19 Amended Complaint (Doc. 401) is **GRANTED**.

20 **IT IS FURTHER ORDERED** Gonzalez Plaintiffs’ Sixth and Eleventh Causes of  
21 Action are **DISMISSED without PREJUDICE**.

22 **IT IS FURTHER ORDERED** Gonzalez Plaintiffs’ First, Third, Eighth, Ninth, Tenth  
23 Causes of Action are **DISMISSED with PREJUDICE**.

24 DATED this 5th day of February, 2008.

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Roslyn O. Silver  
United States District Judge