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

12 MARIA M. GONZALEZ, et al.,

13 Plaintiffs,

14 v.

15 STATE OF ARIZONA, et al.

16 Defendants.

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

**STATE DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO
DISMISS PURSUANT TO FED. R.
CIV. P. 12(B)(1) (LACK OF
STANDING) DIRECTED TO AGNES
LAUGHTER**

(Assigned to the Honorable
Roslyn O. Silver)

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1 The Response to the State’s Motion to Dismiss Plaintiff Agnes Laughter
2 (“Response”) fails to establish Ms. Laughter’s standing, and Ms. Laughter should
3 therefore be dismissed from this action. State Defendants have demonstrated, and the
4 Navajo Plaintiffs do not deny, that Ms. Laughter can vote a provisional ballot at the polls
5 right now without having to obtain any further documentation. Moreover, because Ms.
6 Laughter can easily obtain without charge a replacement voter registration card to vote a
7 regular ballot at the polls, Ms. Laughter should be dismissed for lack of standing for the
8 same rationale set forth in *Common Cause/Georgia v. Billups*, 504 F. Supp. 2d 1333
9 (N.D. Ga. 2007)—a case also involving Equal Protection and Section 2 Voting Rights
10 Act claims. *Id.* at 1373-74 (dismissing for lack of standing individual plaintiffs
11 challenging Georgia’s voter identification law because, although plaintiffs did not
12 possess the required government-issued photo identification, that they could obtain such
13 identification if they attempted to do so). Finally, the Navajo Plaintiffs’ argument that
14 Ms. Laughter has standing to assert Equal Protection and Section 2 Voting Rights Act
15 claims despite the fact that her right to vote has not been denied or abridged—and she
16 has therefore not been personally injured—fail on both legal and factual grounds.

17 In short, Ms. Laughter should be dismissed from this action because she has
18 suffered no injury and therefore has no standing to bring either an Equal Protection
19 claim or a Section 2 Voting Rights Act claim. This Reply is supported by Counsel’s
20 Second Declaration and attachments therefore, filed concurrently herewith.

21 **I. Plaintiff Agnes Laughter Has Not Been Denied the Right to Vote, and**
22 **Therefore Has No Equal Protection or Section 2 Voting Rights Act Claim.**

23 In their Complaint, the Navajo Plaintiffs assert that Prop 200’s voting ID
24 requirement “imposes an undue burden on the right of Arizona voters who vote at the
25 polls” and that this requirement “*will deny or abridge the right of Navajo electors living*
26 *on the Navajo Reservation to vote* in violation of the Equal Protection Clause of the
27 United States Constitution.” [Navajo Nation Plaintiffs’ Complaint dated June 20, 2006,
28 ¶¶ 110, 112, 118, 119, dkt. #1, Case No. CV06-2575PHX-EHC (emphasis added)] The
Navajo Plaintiffs also assert in their Complaint that Prop 200’s voting ID requirement
violates Section 2 of the Voting Rights Act, which they quote in pertinent part:

1 “No voting qualification or prerequisite to voting or standard, practice, or
2 procedure shall be imposed or applied by any State or political subdivision
3 in a manner which *results* in a denial or abridgement of the right of any
citizen of the United States to vote on account of race or color.”

4 [*Id.* ¶ 131 (emphasis in original)] The Complaint goes on to assert that the “voter
5 identification requirements are a limitation on voting, a practice or procedure, which *will*
6 *result in the denial of the right to vote to Plaintiff Agnes Laughter.*” [*Id.* ¶ 135
7 (emphasis added)] Thus, the Navajo Plaintiffs’ Complaint clearly states that Ms.
8 Laughter’s alleged “injury” is the denial of her right to vote. However, contrary to the
9 Navajo Plaintiffs’ assertion, Ms. Laughter has not been injured by being denied the right
10 to vote. And, because she has not been injured by being denied the right to vote, she has
no standing to assert a Equal Protection claim or Section 2 claim.

11 As shown in State Defendants’ Motion to Dismiss Pursuant to Fed. R. Civ. P.
12 12(b)(1) (Lack of Standing) Directed to Agnes Laughter and Memorandum in Support
13 Thereof (“State Defendants’ Motion”), Ms. Laughter has now and has always had the
14 ability to vote at the polls on Election Day without having to obtain further identification
15 or documentation. The Secretary of State’s Procedures Manual provides that Native
16 American electors “shall be issued a provisional ballot upon presenting one form of
17 tribal identification that bears the name of the elector.” [Decl. of Counsel in Support of
18 Mots. to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) (Lack of Standing) (“Counsel
19 Decl.”), Dkt. 435, Tab 4 at p. 120] The Navajo Plaintiffs admit that Ms. Laughter
20 possesses a Certificate of Indian Blood that bears her name. [Response at 6 (“During the
21 2007 election Ms. Laughter provided a bank card and a Certificate of Navajo Blood.”)]¹
Upon presentation of the Certificate of Indian Blood at the polling place—without

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23 ¹ The Navajo Plaintiffs assert in their Response that the Certificate of Indian Blood “is
24 not tribal identification” and that “Navajos do not consider the certificate a form of
25 identification.” [Response at 6] They go on to assert that in 2000, the Bureau of Indian
26 Affairs “adopted a proposed rule” that stated that a certificate “does not establish
27 membership in a federally recognized Indian tribe.” [Response at 6 (citing Certificate of
28 Degree of Indian or Alaska Native Blood, 66 Fed. Reg. 20775, 20781 (to be codified at
25 CFR part 70) (proposed April 18, 2000)] This statement, however, is false. The
Bureau of Indian Affairs never adopted this rule. The Bureau kept the proposed rule on
its “unified agenda” until August 1, 2006, when it was withdrawn. Unified Agenda, 71
Fed. Reg. 73473 (December 11, 2006).

1 more—she would be presented with a provisional ballot, which are counted in the same
2 way as early ballots; they are separated from regular ballots, the signatures on the
3 provisional ballots are compared to the voter registration rolls in order to be counted,
4 and no further action or presentation of identification is required on the part of the voter.
5 [Counsel Decl. (Dkt. 435), Tab 4 at p. 121-23] The voter does not have to return to
6 provide additional identification. Thus, if Ms. Laughter wished to do so, she could have
7 voted a provisional ballot at the polls in the 2006 primary election. No one denied or
8 abridged her right to vote.²

9 In addition, Ms. Laughter could easily obtain the identification required to vote a
10 regular ballot, if she so wished. This alone should warrant her dismissal for lack of
11 standing. *See Billups*, 504 F. Supp. 2d at 1373-74 (dismissing for lack of standing
12 individual plaintiffs challenging Georgia’s voter identification law because, although
13 plaintiffs did not possess the required government-issued photo identification, that they
14 could obtain such identification if they attempted to do so). Ms. Laughter’s own
15 testimony establishes that she already has one form of non-photo identification—a bank
16 statement. [Declaration of Agnes Laughter attached as Exhibit E to Response, ¶ 14, Dkt.
17 488.] Navajo County accepts voter registration cards as a form of non-photo
18 identification. [Counsel Decl. (Dkt. 435), Tab 10 (Affidavit of Laurette Justman, ¶ 2);
19 Tab 11 (Dastrup dep., 10:7-14)] Navajo County mailed voter registration cards to active
20 voters prior to Election Day in 2006 in order to provide identification to voters.
21 [Counsel Decl. (Dkt. 435), Tab 10 (Affidavit of Laurette Justman, ¶ 2)] Ms. Laughter
22 states that she has misplaced her voter registration card. [Declaration of Agnes Laughter
23 attached as Exhibit E to Response, ¶ 9, Dkt. 488.] However, she could obtain a
24 replacement at no charge by calling the Navajo County Recorder’s Office and have a

25 ² It is true, as the Response states, that Ms. Laughter’s should not have received a regular
26 ballot upon presentation of her Certificate of Indian Blood and her bank card with no
27 address when she went to the polls during the November 2007 election. [Response at 6]
28 Rather, she should have received a provisional ballot as described above. The
provisional ballot would have been treated as early ballots are treated, and she would not
have been required to return with identification or do any further act for her vote to be
counted.

1 new identification card mailed to her.³ [Counsel Decl. (Dkt. 435), Tab 12 (Navajo
2 County Recorder Voter Frequently Asked Questions)]

3 In *Billups*, the court addressed whether the individual plaintiffs had standing to
4 bring an Equal Protection claim and have declared unconstitutional a Georgia state law
5 requiring photo ID at the polls on the grounds that it imposed an undue burden on the
6 fundamental right to vote. 504 F. Supp. 2d at 1336. The court noted that, although
7 voting is a fundamental right, the equal right to vote is not absolute, and the states can
8 impose voter qualification and can regulate access to voting in other ways. *Id.* at 1375.
9 However, those qualifications and regulations cannot unduly burden or abridge the right
10 to vote without running afoul of the Equal Protection clause. *Id.* The individual
11 plaintiffs in the *Billups* case did not have the photo ID required to vote at the polls under
12 the state law. *Id.* at 1348-1350. Nevertheless, according to their own testimony, each
13 individual plaintiff could obtain the photo ID at no charge if they attempted to do so. *Id.*
14 at 1377 (noting that one plaintiff could get a ride from his children and another plaintiff
15 could take a two-hour bus ride to the registrar’s office). Because the individual plaintiffs
16 could obtain the photo ID if they attempted to do so, the court held that neither one had
standing to pursue an Equal Protection claim. *Id.* at 1373-74, 1377.

17 Ms. Laughter likewise has no standing to assert an Equal Protection claim
18 because she can easily obtain a replacement voter registration card, which, when used in
19 conjunction with her bank statement, would allow her to vote a regular ballot at the polls
20 on Election Day.

21 Moreover, the fact that she can vote should also preclude Ms. Laughter from
22 asserting a Section 2 Voting Rights Act claim. Section 2 specifically prohibits any
23 voting qualification that “results in a denial or abridgement of the right of any citizen of
24 the United States to vote on account of race or color.” 42 U.S.C. § 1973(a). Thus, the
25 qualification at issue must result in a denial or abridgement of the right to vote in order
26 to give rise to a Section 2 claim. In fact, this is exactly what the Navajo Plaintiffs plead
in their Complaint as Ms. Laughter’s injury—that the “voter identification requirements

27 ³ Ms. Laughter testified in her deposition that she retrieves her mail in Kayenta on a
28 regular basis. [Counsel Decl. (Dkt. 435), Tab 13, (Laughter dep., 13:6-21)]

1 are a limitation on voting, a practice or procedure, *which will result in the denial of the*
2 *right to vote to Plaintiff Agnes Laughter.*” [Navajo Nation Plaintiffs’ Complaint dated
3 June 20, 2006, ¶ 135, dkt. #1, Case No. CV06-2575PHX-EHC (emphasis added)]
4 Contrary to the Navajo Plaintiffs’ assertions, however, the evidence shows that the Prop
5 200 voter ID requirement has not resulted in the denial of Ms. Laughter’s right to vote.

6 Because Ms. Laughter has not suffered any injury sufficient to state a claim under
7 either the Equal Protection clause or Section 2 of the Voting Rights Act, she should be
8 dismissed from this lawsuit for lack of standing.

9 **II. Ms. Laughter’s Alleged Inability to Vote Early Does Not Confer Standing to**
10 **Bring an Equal Protection Claim.**

11 In the face of evidence that Ms. Laughter could easily vote at the polls if she so
12 wished, and despite the fact that the Navajo Plaintiffs’ Complaint clearly casts Ms.
13 Laughter’s injury in terms of her inability to vote at the polls, the Navajo Plaintiffs now
14 attempt to transform her so-called “denial of the right to vote” injury into something
15 entirely different by claiming that

16 [e]ven assuming that Ms. Laughter was able to procure satisfactory
17 identification, she would still have standing to challenge the difference in
18 requirements for electors voting at the polls on Election Day to the
19 requirements for early voters as a violation of Equal Protection. Due to
20 her inability to speak or read English, Ms. Laughter votes at the polls on
21 Election Day as there are no early voting locations in her area.

22 [Response at 7] The Navajo Plaintiffs seem to be arguing that, although Ms. Laughter
23 can vote at the polls on Election Day, she cannot vote early, and therefore, her Equal
24 Protection rights have been violated. This argument is nonsensical. Prop 200 did not
25 change early voting requirements—early voting is not subject to or affected by the
26 provisions of Prop 200, and it is Prop 200, not the State’s early voting laws, that the
27 Navajo Plaintiffs are asking this Court to permanently enjoin as violative of the Navajo
28 Plaintiffs’ Equal Protection rights.

And, to the extent that the Navajo Plaintiffs are arguing that the requirement of
obtaining and showing ID at the polls, in and of itself, significantly burdens Ms.
Laughter’s right to vote, that particular contention has been rejected by courts in both
Billups and *Rokita*. As the court stated in *Billups*:

1 “Election laws will invariably impose some burden upon individual voters.
2 Each provision of a code, ‘whether it governs the registration and
3 qualifications of voters, the selection and eligibility of candidates, or the
4 voting process itself, inevitably affects—at least to some degree—the
individual’s right to vote and his right to associate with others for political
ends.’”

5 504 F. Supp. 2d at 1380 (quoting *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d
6 775, 821-22 (S.D. Ind. 2006) (in turn quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788
7 (1983)). What a plaintiff needs to show is a severe burden, an “appreciable hardship.”
8 *Id.* (quoting *Rokita*, 458 F. Supp. 2d at 822-23). Simply because Prop 200 requires Ms.
9 Laughter to bring identification that she already possesses to the polls, or to obtain at no
10 charge identification to allow her to vote a regular ballot at the polls, does not show that
11 her right to vote is severely burdened and she has therefore been injured.

12 **III. The Response Ignores Evidence Presented by State Defendants That Ms.
13 Laughter Can Vote Early if She Wishes to Do So.**

14 Furthermore, the Navajo Plaintiffs’ unsupported contention that Ms. Laughter
15 cannot vote early because “there are no early voting locations in her area” is simply
16 false. [Response at 7] As shown in State Defendants’ Motion, Navajo County provided
17 two early in-person voting sites in Kayenta for the 2006 General Election. [Counsel
18 Decl. (Dkt. 435), Tab 10 (Affidavit of Laurette Justman, ¶ 4)] Navajo County provides
19 language assistance at early voting sites. [2d Counsel Decl. ¶ 3, Tab 18 (Affidavit of
20 Kelly Dastrup)] The location and times of these early voting sites are advertised locally
21 through radio and newspaper announcements and through postings at the Chapter
22 Houses. [2nd Counsel Decl. ¶ 4, Tab 18 (Affidavit of Kelly Dastrup)] Ms. Laughter
23 travels to Kayenta on a regular basis to collect her mail. [Counsel Decl. (Dkt. 435), Tab
24 13, (Laughter dep., 13:6-21)] She also travels to Kayenta for medical treatment.
25 [Counsel Decl. (Dkt. 435), Tab 13, (Laughter dep., 25:23-24)] According to Ms.
26 Laughter, the trip to Kayenta takes about an hour, and her husband drives their truck
27 there. [2d Counsel Decl. Tab 17 (Laughter dep., 22:10-23)] Thus, Ms. Laughter can
28 vote early in Kayenta if she so wishes.

1 **IV. Because a Plaintiff Must Assert His or Her Own Legal Interests to Establish**
2 **Standing, Ms. Laughter May Not Establish Standing by Asserting Injury to**
3 **Other Navajos.**

4 Finally, the Navajo Plaintiffs argue that Ms. Laughter can assert a Section 2
5 Voting Rights Act claim on the basis that, although she can vote, “she is one of the
6 Navajos disproportionately impacted by the voter identification law because it reduces
7 voter turnout and denies Navajos the right to vote.” [Response at 7] Assuming
8 *arguendo* that the Navajo Nation has standing to assert a Section 2 Voting Rights Act
9 claim on this basis, Ms. Laughter certainly does not.

10 A plaintiff “must assert his own legal rights and interests, and cannot rest his
11 claim to relief on the legal rights or interests of third parties.” *Warth v. Seldin*, 422 U.S.
12 490, 499 (1975); *see also Rosario v. Rockefeller*, 410 U.S. 752, 759 n.9 (1973)
13 (plaintiffs lacked standing to raise a challenge to a voting registration restriction that
14 applied to individuals moving from out of state or from one county to another where
15 they failed to allege that any of them had relocated among counties or from out of state);
16 *Fleck & Assocs., Inc. v. City of Phoenix*, 471 D.3d 1100, 1104 (9th Cir. 2006) (stating
17 that a plaintiff must assert his own legal interests as opposed to those of third parties);
18 *Arizonans for Official English v. Arizona*, 520 U.S. 43, 48 (1997) (“Federal courts lack
19 competence to rule definitively on the meaning of state legislation, nor may they
20 adjudicate challenges to state measures absent a showing of actual impact on the
21 challenger.”) (citations omitted). Thus, Ms. Laughter may not assert the legal interests
22 of third parties, *i.e.*, other Navajos who may not have sufficient identification required
23 by Prop 200. She may not use an injury to another Navajo to establish standing.
24 Therefore, the Navajo Plaintiffs’ argument that she has standing to assert a Section 2
25 Voting Rights Act claim fails on this score as well.

26 **Relief Requested**

27 For the reasons set forth above and in State Defendants’ Motion, Ms. Laughter
28 should be dismissed from this action.

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RESPECTFULLY SUBMITTED this 7th day of January, 2008.

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1 **CERTIFICATE OF SERVICE**

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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 served the 8th day of
January, 2008, by U.S. Mail to:

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/s/ Elizabeth Stark

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