

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 21 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FLOYD L. MORROW; MARLENE
MORROW, individually, as taxpayers of the
City of San Diego, State of California, and
on behalf of those similarly situated,

Plaintiffs-Appellants,

v.

CITY OF SAN DIEGO, a charter city,

Defendant-Appellee,

and

MANDEL E. HIMELSTEIN, an individual;
DOES 1-100,

Defendants.

No. 17-56642

D.C. No. 3:11-cv-01497-BAS-KSC

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cynthia A. Bashant, District Judge, Presiding

Submitted June 12, 2018**

Before: RAWLINSON, CLIFTON, and NGUYEN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

Floyd L. Morrow and Marlene Morrow appeal from the district court's summary judgment in their 42 U.S.C. § 1983 action alleging an equal protection claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Davis v. City of Las Vegas*, 478 F.3d 1048, 1053 (9th Cir. 2007). We affirm.

The district court properly granted summary judgment because the Morrows failed to raise a genuine dispute of material fact as to whether defendant's actions did not have a rational relationship to a legitimate state interest, or whether it had a discriminatory effect or purpose. *See Lacey v. Maricopa County*, 693 F.3d 896, 920 (9th Cir. 2012) (to succeed on a selective enforcement claim under the Equal Protection Clause of the Fourteenth Amendment, "a plaintiff must demonstrate that enforcement had a discriminatory effect and [that those enforcing the statute] were motivated by a discriminatory purpose." (internal quotation marks omitted)); *Lockary v. Kayfetz*, 917 F.2d 1150, 1155 (9th Cir. 1990) (a law that does not implicate a fundamental right or suspect classification need only some rational relationship to a legitimate state interest).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on

appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.