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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 JAT (Cons)
 No. CV06-1575 PHX EHC (Cons)

**MOTION AND MEMORANDUM IN
 SUPPORT OF MOTION FOR
 PARTIAL SUMMARY JUDGMENT
 BY DEFENDANTS STATE OF
 ARIZONA AND THE ARIZONA
 SECRETARY OF STATE**

(Assigned to the Honorable
 Roslyn O. Silver)

(Oral Argument Requested)

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1 **MOTION**

2 Pursuant to Fed. R. Civ. P. 56(b), Defendants State of Arizona and the
3 Arizona Secretary of State (“Defendants”) move for summary judgment as to certain
4 claims asserted in the three respective complaints of these consolidated actions. This
5 motion is supported by the Memorandum in Support of Motion for Partial Summary
6 Judgment by Defendants State of Arizona and the Arizona Secretary of State, the
7 Separate Statement of Facts in support of that motion, and the Declaration of Counsel in
8 support thereof, all of which are filed herewith.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **Preliminary Statement**

11 The majority of the claims asserted in these consolidated cases either (1) have
12 been decided on legal grounds by this Court and/or the Ninth Circuit; or (2) have not yet
13 been presented to the Court for disposition but are appropriate for resolution because
14 there is no dispute about the material facts pertaining to those claims. As to such claims,
15 summary judgment is both warranted and appropriate.¹

16 More than one year ago, Plaintiffs filed the first of these cases against Defendants
17 State of Arizona and the Arizona Secretary of State (“Defendants”) and numerous
18 County defendants.² Plaintiffs’ actions challenge two voting changes that were adopted
19 by Arizona ballot initiative (“Prop 200”) in November 2004: (1) the requirement that
20 applicants to register to vote show proof of U.S. citizenship; and (2) the requirement that
21 persons voting at the polls on Election Day present identification. Plaintiffs’ respective
22 complaints assert a total of thirteen separate legal theories ranging from state statutory
23 and common law claims to federal constitutional and statutory claims. Nearly all of

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25 ¹ For the Court’s convenience, the chart on page 15, *infra*, summarizes the claims that
26 are the subject of Defendants’ motion and indicates the respective Plaintiffs that assert
such claims.

27 ² Each of the three actions was brought by a distinct set of plaintiffs. Where
28 appropriate, this memorandum specifies the particular plaintiff(s) as “Gonzalez
Plaintiffs” (No. CV 06-1268), “ITCA Plaintiffs” (No. CV 06-1362) and “Navajo Nation
Plaintiffs” (No. CV 06-1575).

1 those claims depend upon legal theories that either have been decided by this Court or
2 the Ninth Circuit or *should* be decided because there is no factual dispute to warrant
3 further litigation of those claims.

4 The main argument advanced by the Gonzalez and ITCA Plaintiffs thus far in this
5 Court is that the National Voter Registration Act (“NVRA”) preempts Arizona’s proof
6 of citizenship requirement. Not only did this Court reject that legal theory, but the Ninth
7 Circuit decided the matter by holding that the NVRA does not preempt Arizona’s voter
8 registration requirement of proof of citizenship. Thus, Plaintiffs’ claims that depend on
9 that legal theory (*i.e.*, NVRA and Supremacy Clause claims) fail as a matter of law.
10 Similarly, the Ninth Circuit affirmed this Court’s reasoning in its preliminary injunction
11 ruling, and rejected Plaintiffs’ argument that the proof of citizenship requirement
12 constitutes an unconstitutional poll tax. Defendants thus are entitled to judgment on that
13 claim.

14 In addition to those claims that have been decided by the Ninth Circuit, this Court
15 previously decided on grounds of law and undisputed fact certain claims based upon the
16 Civil Rights Act and Voting Rights Act § 5. Accordingly, summary judgment is
17 appropriate on those claims at this time.

18 Each of Plaintiffs’ remaining claims at issue in this motion presents solely legal
19 matters for the Court to decide. Those claims are based on Arizona Revised Statutes
20 §§ 16-121.01 and 16-151(B) and common law mandamus. None of those claims
21 involves any dispute about the facts. Moreover, as explained in this memorandum,
22 under the applicable authorities each of those claims fails as a matter of law.
23 Accordingly, summary judgment should be entered in favor of Defendants on those
24 claims.³

26 ³ Although Defendants’ motion does not seek summary judgment on every claim
27 asserted in this litigation, Defendants expect to move for summary judgment on all or
28 some of Defendants’ remaining claims after completion of discovery in this matter. A
scheduling conference in this matter is set for August 3, 2007; no scheduling order
governing motion practice and other aspects of the case has been entered.

1 **Statement of Undisputed Facts**

2 On November 2, 2004, Arizona voters adopted by ballot initiative Proposition
3 200 (“Prop 200”). [SOF 1]⁴ Sections 3, 4 and 5 of that initiative amended Arizona’s
4 voting laws in two substantive ways: (1) applicants to register to vote would be required
5 to submit proof of U.S. citizenship; and (2) voters who choose to vote in-person at the
6 polls on Election Day (as opposed to early voters) would be required to present
7 identification. [SOF 2]

8 On December 9, 2004, the Arizona Attorney General submitted to the U.S.
9 Department of Justice (“DOJ”) a request for preclearance of Sections 3, 4 and 5 of Prop
10 200. [SOF 3] That request expressly stated, among other things, that Prop 200’s
11 amendments would “require applicants registering to vote to provide evidence of United
12 States citizenship with the application.” [SOF 4]

13 The request also included an analysis by the Legislative Council of Prop 200’s
14 amendments to Arizona’s voting laws. That analysis expressly stated, among other
15 things, that the amendments “would require that evidence of United States citizenship be
16 presented by every person to register to vote.” [SOF 5] The submission package to the
17 DOJ comprised many pages and attached exhibits of information about Prop 200,
18 including copies of the initiative, the laws to be amended by Prop 200, and articles and
19 other public information relating to its passage. [SOF 6] The DOJ precleared Prop
20 200’s voting-related amendments on January 24, 2005. [SOF 7]

21 Since the inception of the National Voter Registration Act in 1995, Arizona has
22 used and accepted for voter registration the Federal Mail Voter Registration Form
23 (“Federal Form”), which was developed by the U.S. Election Assistance Commission
24 (“EAC”). [SOF 8; *see* 42 U.S.C. § 1973gg-7(a)(2)] Following the implementation of
25 Prop 200, Arizona has continued to accept both the Federal Form and Arizona’s form
26 for voter registration purposes, although the State requires submission of proof of U.S.
27 citizenship along with whichever application form the registrant submits. [SOF 9] The

28 ⁴ “SOF” refers to the Separate Statement of Facts in Support of Motion for Partial
Summary Judgment by Defendants State of Arizona and the Arizona Secretary of State,

1 Arizona Secretary of State makes the Federal Form available to anyone who requests it.
2 [SOF 10] In addition, that form is available for downloading and printing on the EAC's
3 website. [SOF 10]

4 Most individuals who are eligible to register to vote already possess a driver's
5 license or nonoperating identification card, and thus do not require any other
6 identification to vote. [SOF 11] In addition, many counties send official election mail
7 and voter registration cards and inform voters that they may use those items as
8 identification at the polls. [SOF 12] Those items are free. [SOF 12]

9 **Legal Argument**

10 **I. THE APPLICABLE LEGAL STANDARD.**

11 Summary judgment is appropriate upon a showing that "there is no genuine issue
12 as to any material fact and that the moving party is entitled to judgment as a matter of
13 law." Fed. R. Civ. P. 56(c); see *Jesinger v. Nev. Fed. Credit Union*, 24 F.3d 1127, 1130
14 (9th Cir. 1994). Once a defendant has identified those parts of the record that indicate an
15 absence of an issue of material fact, "the nonmoving party must 'designate specific facts
16 showing that there is a genuine issue for trial.'" *Brinson v. Linda Rose Joint Venture*, 53
17 F.3d 1044, 1048 (9th Cir. 1995) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 324
18 (1986)) (internal quotations omitted). Moreover, "[w]hen the moving party has carried
19 its burden under Rule 56(c), its opponent must do more than simply show that there is
20 some metaphysical doubt as to the material facts." *Id.* (quoting *Matsushita Elec. Indus.*
21 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). Summary judgment should be
22 granted if the evidence is merely colorable or if it is not significantly probative. *Id.*

23 **II. SUMMARY JUDGMENT IS WARRANTED ON PLAINTIFFS' NVRA CLAIM FOR** 24 **THE REASONS STATED IN THE DECISIONS OF THIS COURT AND THE NINTH** **CIRCUIT.**

25 The Gonzalez and ITCA Plaintiffs assert that Arizona's proof of citizenship
26 requirement violates the National Voter Registration Act ("NVRA"). Section 6 of the
27 NVRA provides that states either must accept and use the federal mail-in registration

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which is filed herewith.

1 form prescribed by the Election Assistance Commission or must develop and use the
2 state’s own form, which must conform to the federal guidelines. [See 42 U.S.C.
3 § 1973gg-7(a)(2)] According to Plaintiffs, the Act prohibits states from requiring proof
4 of citizenship to register to vote because the federal form includes a “check box” for
5 applicants to verify citizenship but does not contain a separate requirement of proof of
6 citizenship.

7 Plaintiffs’ NVRA argument, however, was thoroughly considered and rejected by
8 the Court in its fifteen-page Opinion and Order denying Plaintiffs’ request for a
9 temporary restraining order. [See Op. & Order dated 6/19/06] Although the Court’s
10 decision was made in the context of injunction proceedings, the basis for that ruling was
11 that the Plaintiffs’ NVRA preemption theory fails as a matter of law. [See *id.* at 13
12 (“Plaintiffs have not shown that the requirements of Proposition 200 conflict with a
13 plain language reading of the NVRA.”)]

14 The Ninth Circuit affirmed this Court’s decision and analysis on Plaintiffs’
15 NVRA claim. The Ninth Circuit expressly held that “[t]he language of the statute does
16 not prohibit documentation requirements. Indeed, the statute permits states to ‘require []
17 such identifying information . . . as is necessary to enable . . . election official[s] to
18 assess the eligibility of the applicant.’” *Gonzalez v. Arizona*, Nos. 06-16521, 06-16702,
19 06-16706, __ F.3d __, 2007 WL 1163440, at *6 (9th Cir. Apr. 20, 2007) (quoting 42
20 U.S.C. § 1973gg-7(b)(1)) (alterations and ellipses in original). Because “[t]he NVRA
21 clearly conditions eligibility to vote on United States citizenship,” the Act’s provisions
22 permit states to require citizens to present evidence of citizenship when registering to
23 vote. *Id.*

24 Both this Court and the Ninth Circuit have soundly rejected Plaintiffs’ NVRA
25 claim. The respective courts did so on legal—not factual—bases. Accordingly, there is
26 no reason to delay judgment in favor of Defendants on Plaintiffs’ NVRA claim. In
27 addition, because Plaintiffs’ Supremacy Clause claim is based upon their preemption
28 argument, the Court should grant judgment on that claim as well.⁵

⁵ Moreover, the Supremacy Clause does not provide a basis for an independent

1 **III. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON THE POLL TAX**
2 **CLAIM.**

3 Plaintiffs assert that the proof of citizenship requirement constitutes a poll tax and
4 therefore violates the Twenty-Fourth Amendment, which prohibits the denial or
5 abridgement of citizens' right to vote based on a failure to pay any poll tax or other tax.
6 Plaintiffs allege that some Arizona citizens do not have proof of citizenship and will be
7 required to spend money to obtain such documentary proof. [ITCA Compl. ¶¶ 64-67;
8 Gonzalez Compl. ¶¶ 84-86; Navajo Nation Compl. ¶¶ 64-67]

9 In the preliminary injunction proceedings, this Court ruled that Plaintiffs did not
10 show a strong likelihood of success on this claim. [10/11/06 Order at 10] The Court
11 noted in its order that, unlike in *Harman v. Forssenius*, 380 U.S. 528 (1965), Arizona's
12 voting requirements that are the subject of this litigation do not require the payment of
13 any express poll tax. [*Id.* at 8-9]

14 The Court stated that "[t]he only issue is whether requiring forms of identification
15 should be classified as a poll tax under the reasoning of *Harman*." [*Id.* at 9] The Court
16 considered plaintiffs' evidence which showed that "the vast majority of eligible voters"
17 already possessed sufficient identification for registration. The Court denied the
18 preliminary injunction motion because the identification requirement was not the type of
19 indirect poll tax that would be objectionable under the reasoning in *Harman*. [*See id.* at

20 cause of action separate from Plaintiffs' preemption claim. The Supremacy Clause is
21 not by itself a source of any federal rights. *E.g.*, *Golden State Transit Corp. v. City of*
22 *Los Angeles*, 493 U.S. 103, 107-08 (1989) (stating that the Supremacy Clause is not a
23 source of any federal rights but instead secures federal rights by according them priority
24 whenever they conflict with state law); *White Mountain Apache Tribe v. Williams*, 810
25 F.2d 844, 848 (9th Cir. 1985) ("the Supremacy Clause, standing alone, 'secures' federal
rights only in the sense that it establishes federal-state priorities; it does not create
individual rights, nor does it 'secure' such rights within the meaning of § 1983").

26 To the extent that Plaintiffs have claims based on federal rights, they have
27 asserted such claims directly under the respective federal authorities. Plaintiffs have
28 identified no basis for any independent cause of action under the Supremacy Clause.
E.g., *Mashpee Tribe v. Watt*, 542 F. Supp. 797, 806 (D. Mass. 1982) (dismissing
independent claim based on Supremacy Clause: "The Supremacy Clause does not
support direct causes of action.").

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2 The Ninth Circuit affirmed this Court's ruling and reasoning, and held that
3 Arizona's proof of citizenship requirement is not a poll tax. The Court explained why
4 the voting requirement at issue in this case is unlike the express poll tax before the
5 Supreme Court in *Harman*. The Court stated:

6 Here, voters do not have to choose between paying a poll tax and
7 providing proof of citizenship when they register to vote. They have only
8 to provide the proof of citizenship. Nor does Arizona's new law "make[]
the affluence of the voter or payment of any fee an electoral standard."

9 *Gonzalez*, 2007 WL 1163440, at *4.

10 The reasoning of the Ninth Circuit's opinion, which affirms the reasoning and
11 ruling of this Court, disposes of the merits of Plaintiffs' poll tax claim. Accordingly, the
12 Court should grant summary judgment on that claim.

13 The Court likewise should grant summary judgment on Plaintiffs' claim that the
14 identification at the polls requirement constitutes a poll tax. As noted by the Court in its
15 October 11, 2006, Order, the only issue is whether requiring the identification should be
16 classified as a poll tax under the rationale of *Harman*. In *Harman*, Virginia required the
17 payment of a \$1.50 annual poll tax, and any potential voter not wishing to pay it could
18 file a certificate of residency instead. 380 U.S. at 530-31. The Court stated that this
19 system would be held invalid if it "impos[ed] a material requirement solely upon those
20 who refuse[d] to surrender their constitutional right to vote in federal elections without
21 paying a poll tax." *Id.* at 541. The Court concluded that Virginia's system was invalid.
22 *Id.* However, the Court noted that it was not deciding "whether it would be within a
23 State's power to abolish entirely the poll tax and require all voters—state and federal—
24 to file annually a certificate of residence." *Id.* at 538.

25 Here, Prop 200 does not require the payment of a poll tax. Prop 200 allows for
26 many different types of identification at the polls. Most individuals who are eligible to
27 register to vote already possess a driver's license or nonoperating identification card, and
28 thus do not require any other identification to vote. [SOF 11] Telephone, electricity or
other utility bills can be used, and although these utilities may involve a fee paid to the

1 provider, that cost is a fee for service, is beyond the control of the State, and existed long
2 before Prop 200. For those who do not have those items, many counties send official
3 election mail and voter registration cards to registered voters, and inform voters that they
4 may use those mailings as acceptable forms of identification at the polls. [SOF 12]
5 These forms of identification are free. [SOF 12] In addition, Native American tribes are
6 free to provide their members with sufficient identification.

7 Finally, registered voters who are unable or unwilling to present identification at
8 the polls are free to vote early. They need not make any special showing to do so. *See*
9 A.R.S. § 16-541(A). They may vote by mail or go to an early-voting location, and they
10 can deliver their ballot any day within 33 days of the election, including the day of the
11 election itself. *See* A.R.S. § 16-548(A). Prop 200's voter identification at the polls
12 requirement does not constitute a poll tax, and this Court should enter judgment
13 accordingly on that claim.

14 **IV. PLAINTIFFS CANNOT ESTABLISH A VIOLATION OF THE CIVIL RIGHTS ACT.**

15 Plaintiffs allege violations of 42 U.S.C. § 1971(a)(2)(A) and (B), which are part
16 of the Civil Rights Act.⁶ [ITCA Compl. ¶¶ 68-74; Navajo Nation Compl. ¶¶ 125-129]
17 Subsection (A) provides that no person acting under the color of law shall —

18 in determining whether any individual is qualified under State law or laws
19 to vote in any election, apply any standard, practice, or procedure different
20 from the standards, practices, or procedures applied under such law or
21 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.

22 Both the ITCA and Navajo Nation Plaintiffs assert that Prop 200 violates
23 subsection (A) because individuals voting in person are required to present
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25 ⁶ Several courts have held that there is no private right of action to enforce 42 U.S.C.
26 § 1971. *See McKay v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000); *Mixon v. State of*
27 *Ohio*, 193 F.3d 389 (6th Cir. 1999); *Gilmore v. Amityville Union Free School*, 305 F.
28 *Supp. 2d* 271 (E.D.N.Y. 2004); *Spivey v. Ohio*, 999 F. Supp. 987, 996 (N.D. Ohio
1998); *Willing v. Lake Orion Cmty. Sch. Bd. of Trustees*, 924 F. Supp. 815, 820 (E.D.
Mich. 1996); *Good v. Roy*, 459 F. Supp. 403 (D. Kan. 1978); *but see Schwier v. Cox*,
340 F.3d 1284 (11th Cir. 2003).

1 identification, while those who vote early are not. [ITCA Compl. ¶ 70; Navajo Nation
2 Compl. ¶ 127] As noted by the Court in its October 11, 2006, Order, early voting “is an
3 *inherently* different procedure from voting in person, requiring a state which allows both
4 in-person and absentee voting to apply different ‘standards, practices, or procedures’ to
5 these two groups of voters.” [October 11, 2006 Order (quoting *Indiana Democratic*
6 *Party v. Rokita*, 458 F. Supp. 2d 775, 840 (S.D. Ind. 2006)) (internal quotation marks
7 omitted)].⁷ The application of different standards for two inherently different
8 procedures does not violate subsection (A).

9 The ITCA and Navajo Nation Plaintiffs also assert that the voter identification at
10 the polls requirement violates § 1971(a)(2)(B), which states that no person acting under
11 color of law may

12 deny the right of any individual to vote in any election because of an error
13 or omission on any record or paper relating to any application, registration,
14 or other act requisite to voting, if such error or omission is not material in
15 determining whether such individual is qualified under State law to vote in
16 such election.

17 Specifically, Plaintiffs complain that the identification at the polls and proof of
18 citizenship requirements violate subsection (B) because requiring such identification is
19 not material in determining whether or not a voter is qualified to vote. [ITCA Compl.
20 ¶¶ 73-74; Navajo Nation Compl. ¶ 129]

21 However, the identity of a voter is a material component in determining that
22 voter’s eligibility to vote; the voters of Arizona clearly believed so when they passed
23 Prop 200. *E.g., Gonzalez*, 2007 WL 1163440, at *6 (holding that the NVRA permits
24 states to require identifying information, including citizenship status, as necessary to
25 determine eligibility to vote). As one district court concluded, the presentation of
26 identification in order to prove one’s identity by definition “is not ‘an error or omission
27 on any record or paper relating to any application, registration or other act requisite to
28 voting.’” *Common Cause/Georgia, League of Women Voters of Georgia, Inc. v. Billups*,

⁷ In an opinion authored by Judge Posner, the Seventh Circuit affirmed the *Rokita*
decision earlier this year in *Crawford v. Marion County Election Bd.*, 472 F.3d 949 (7th

1 439 F. Supp. 2d 1294, 1358 (N.D. Ga. 2006) (quoting 42 U.S.C. § 1971(a)(2)(B)).

2 In addition, because only citizens may vote, proof of citizenship is material to
3 whether an individual is qualified to register to vote. Subsection (B) was intended to
4 prevent requiring unnecessary information for voter registration in order to increase the
5 numbers of possible errors and omissions on the applications, thus affording an excuse
6 to deny the application. *See Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003)
7 (citing *Condon v. Reno*, 913 F. Supp. 946, 949-50 (D.S.C. 1995)). “For example, one
8 ‘such tactic[] [was to] disqualify[] an applicant who failed to list the exact number of
9 months and days in his age.’” *Id.* Obviously, the exact number of months and days in a
10 person’s age is not material to determining his or her eligibility to vote. But here, proof
11 of citizenship is plainly material to determining eligibility and, therefore, does not fit
12 under the language of subsection (B). The Court should grant summary judgment on
13 Plaintiffs’ claims based on 42 U.S.C. § 1971(a)(2)(A) and (B).

14 **V. DEFENDANTS DID NOT VIOLATE SECTION 5 OF THE VOTING RIGHTS ACT.**

15 The Gonzalez Plaintiffs assert that Defendants violated Section 5 of the Voting
16 Rights Act (“VRA”) by failing “to secure federal preclearance of their practice of
17 rejecting mail voter registration forms prescribed by the U.S. Election Assistance
18 Commission.” [Gonzalez Compl. ¶ 96] Section 5 requires covered jurisdictions such
19 as Arizona to obtain federal approval of legislative or other changes affecting voting
20 before implementing such changes. *See* 42 U.S.C. § 1973c(a); 28 C.F.R. Part 51, App.
21 (identifying Arizona as a covered jurisdiction).

22 In earlier proceedings in this litigation, the Court addressed Plaintiffs’ Section 5
23 claim and denied injunctive relief based on that claim. [*See* Op. & Order dated 6/19/06,
24 at 13-14] The Court noted that the parties agree that Prop 200 was in fact precleared by
25 the DOJ. [*See id.*] Indeed, there are no disputed facts regarding the steps the State took
26 to obtain DOJ preclearance for the requirements of Prop 200. Moreover, nothing in the
27 factual record before the Court has changed since the Court initially ruled against
28 Plaintiffs on their Section 5 claim. As explained below, the Court should enter

Cir. 2007).

1 judgment on that claim.

2 On December 9, 2004, following the adoption of Prop 200 by the Arizona voters,
3 the Arizona Attorney General's Office sent an extensive Section 5 submission to the
4 DOJ. [SOF 3-6] The submission requested preclearance of Prop 200's amendments to
5 Arizona election law. [SOF 3] That submission included copies of the new law, as well
6 as copies of the existing statutes to be amended by Prop 200. [SOF 6]

7 The preclearance request letter also included an "Analysis by Legislative
8 Council," which explicitly set forth the identification requirements of Prop 200. That
9 analysis stated, "Proposition 200 would require that evidence of United States
10 citizenship be presented by every person to register to vote." [SOF 5] The analysis
11 further set forth the forms of identification specified by Prop 200 that would constitute
12 satisfactory evidence of U.S. citizenship. [SOF 5] Based upon the materials submitted
13 by the State, the DOJ precleared Prop 200's changes to the election laws on January 24,
14 2005. [SOF 7]

15 Arizona voting registration officials have used and accepted the federal mail-in
16 voter registration form since the inception of the NVRA in 1995. [SOF 8] That policy
17 and practice have not changed since the implementation of the proof of citizenship
18 requirement. Registration applicants are free to use the federal form to register to vote.
19 They must provide proof, however, of their U.S. citizenship along with their application.
20 The DOJ plainly knew of that requirement and precleared it. [SOF 9-10]

21 Moreover, as explained above in Section II, the Ninth Circuit has since
22 determined that the NVRA "does not prohibit documentation requirements." *Gonzalez*,
23 2007 WL 1163440, at *6. The DOJ precleared the proof of citizenship requirement,
24 which the Ninth Circuit subsequently held does not violate the NVRA. Accordingly,
25 summary judgment should be entered on Plaintiffs' claim based on Section 5 of the
26 VRA.

1 **VI. PLAINTIFFS CANNOT ESTABLISH CLAIMS UNDER ARIZONA STATUTORY LAWS.**

2 The Gonzalez Plaintiffs allege that the proof of citizenship requirement violates
3 Arizona Revised Statutes (“A.R.S.”) §§ 16-151(B) and 16-121.01. [Gonzalez Compl.
4 ¶¶ 104-109] There is no genuine dispute about the facts regarding those claims.
5 Accordingly, the Court should decide those claims as a matter of law.

6 **a. Summary Judgment Is Appropriate on Plaintiffs’ Claim Based on**
7 **A.R.S. § 16-151(B).**

8 Section 16-151(B) provides that “[t]he secretary of state shall make available for
9 distribution through governmental and private entities the voter registration forms that
10 are prescribed by the federal election commission.” Plaintiffs allege that the Secretary
11 does not make such federal mail-in voter registration applications available. [Gonzalez
12 Compl. ¶ 108] The undisputed evidence, however, establishes that the Secretary *does*
13 make such forms available to anyone who requests it. [SOF 10] In addition, that form is
14 readily accessible on the Election Assistance Commission’s website for downloading
15 and printing. [SOF 10] Moreover, Plaintiffs do not allege that they ever requested such
16 form from the Secretary and were denied it.

17 **b. Summary Judgment Is Appropriate on Plaintiffs’ Claim Based on**
18 **A.R.S. § 16-121.01.**

19 Plaintiffs also allege that A.R.S. § 16-121.01 requires that a person be registered
20 upon “completion of a registration form that includes, among other things, an
21 affirmation of U.S. citizenship without the submission of further documentary proof.”
22 [Gonzalez Compl. ¶ 105] That statutory section, however, can (and should) be read in
23 harmony with related registration provisions. *E.g., Trickel v. Rainbo Baking Co. of*
24 *Phoenix*, 100 Ariz. 222, 228, 412 P.2d 852, 855 (1966) (“It is a fundamental rule that
25 statutes are to be construed together and where different statutes bearing upon the same
26 subject matter exist they must be construed so as to give effect to all.”).

27 Section 16-121.01(A) sets forth requirements for proper registration. It provides:

28 A person is presumed to be properly registered to vote *on*
completion of a registration form as prescribed by § 16-152 that contains
at least the name, the residence address or the location, the date of birth

1 and the signature or other statement of the registrant as prescribed by § 16-
2 152, subsection A, paragraph 20 and a checkmark or other appropriate
3 indicator that the person answered “yes” to the question regarding
4 citizenship.

4 (Emphasis added.)

5 Section 16-152(A), in turn, sets forth the content required for the registration
6 form. That form must contain “[a] statement that the applicant shall submit evidence of
7 United States citizenship with the application and that the registrar shall reject the
8 application if no evidence of citizenship is attached.” A.R.S. § 16-152(A)(23). The
9 registrant must sign that form. *Id.* § 16-152(A)(19). In addition, the county recorder
10 “shall reject any application for registration that is not accompanied by satisfactory
11 evidence of United States citizenship.” *Id.* § 16-166(F).

12 Those sections are related statutory provisions that comprise part of the election
13 laws pertaining to voter registration. Accordingly, they should be construed together as
14 though they constitute part of the same law. *E.g., Moreno v. Jones*, 213 Ariz. 94, 99,
15 139 P.3d 612, 617 (2006) (interpreting election law provisions; “If the statutes relate to
16 the same subject or have the same general purpose—that is, statutes which are in *pari*
17 *materia*—they should be read in connection with, or should be construed together with
18 other related statutes, as though they constituted one law.”). Read together, the statutory
19 provisions require a completed registration form, which as provided in § 16-152(A)
20 includes the statement that the applicant “shall submit evidence” of citizenship with the
21 application, and require the counties to reject any applications that are not accompanied
22 by such evidence.

23 An interpretation of § 16-121.01(A) that permits voter registration without the
24 applicant’s providing proof of citizenship would contradict and defeat the requirements
25 expressly set out in §§ 16-152(A)(23) and 16-166(F). Moreover, such an interpretation
26 would contravene the legislative intent of the Arizona citizens who plainly intended to
27 require each registrant to provide proof of citizenship. *E.g., State v. Estrada*, 201 Ariz.
28 247, 251, 34 P.3d 356, 360 (2001) (interpreting legislation adopted by initiative, and
stating that “even where statutory language is clear and unambiguous, we will not

1 employ a plain meaning interpretation that would lead to . . . a result at odds with the
2 legislature’s intent.”) (internal quotation marks and alterations omitted).

3 **VII. THIS ACTION IS NOT PROPERLY A MANDAMUS ACTION.**

4 The Navajo Nation Plaintiffs seek mandamus relief to prevent Defendants from
5 requiring voters at the polls to present identification. [Navajo Nation Compl. ¶¶ 102-
6 106] “Mandamus is an extraordinary remedy issued by a court to compel a public
7 officer to perform an act which the law specifically imposes as a duty.” *Sears v. Hull*,
8 192 Ariz. 65, 68, 961 P.2d 1013, 1016 (1998) (quoting *Board of Educ. v. Scottsdale*
9 *Educ. Ass’n*, 109 Ariz. 342, 344, 509 P.2d 612, 614 (1973)).

10 Summary judgment is appropriate on Plaintiffs’ mandamus claim for at least two
11 reasons. First, Plaintiffs do not seek to compel Defendants to perform any ministerial
12 act. Plaintiffs are requesting that the Defendants be ordered to cease from requiring
13 identification of Navajo voters who vote in person on the reservations. [See Navajo
14 Nation Compl. ¶¶ 106(A), 109] Such injunctive relief cannot be the subject of a
15 mandamus action. *E.g.*, *Sears*, 192 Ariz. at 68, 961 P.2d at 1016 (“[T]his court has long
16 held that mandamus will lie only ‘to require public officers to perform their official
17 duties when they refuse to act,’ and not ‘to restrain a public official from doing an
18 act.’”).

19 Second, apart from the injunctive nature of the relief improperly sought by
20 Plaintiffs’ mandamus claim, they cannot identify any ministerial duty imposed by law
21 that would make mandamus relief appropriate here. Mandamus relief is not available
22 “to compel an officer to perform acts not authorized or required by some plain provision
23 of the law.” *Kahn v. Thompson*, 185 Ariz. 408, 411, 916 P.2d 1124, 1127 (Ct. App.
24 1995). There is no “plain provision of the law” that requires Defendants to refrain from
25 requiring voters at the polls to present identification. Instead, Defendants are *following*
26 the “plain provision of the law” by requiring such identification for in-person voters.

27 Nor are the Defendants required by any provision of law to ignore Arizona’s
28 voter identification requirement in order to treat in-person voters the same as early
voters. [See Navajo Nation Compl. ¶ 106] To the contrary, as the Court previously

1 noted in this case, “[e]arly voting is an inherently different procedure from voting in
 2 person, requiring a state which allows both in-person and absentee voting to apply
 3 different standards, practices, or procedures to these two groups of voters.” [Order dated
 4 10/11/06 (quoting *Rokita*, 485 F. Supp. 2d at 840) (internal quotation marks omitted)]

5 **Relief Requested**

6 For the foregoing reasons, the Court should grant summary judgment in favor of
 7 Defendants State of Arizona and the Arizona Secretary of State and against Plaintiffs as
 8 stated in this memorandum and as summarized in the chart below.

9

Claim	Plaintiff	Challenged requirement
10 National Voter 11 Registration Act (42 12 U.S.C. § 1973gg-4)	Gonzalez (Eighth Cause) Inter Tribal Council (Count Six)	Proof of citizenship
13 Supremacy Clause	Gonzalez (First Cause)	Proof of citizenship
14 Poll Tax	15 Gonzalez (Third Cause) 16 Inter Tribal Council 17 (Count Two, in part) Navajo Nation (Fourth Claim)	Both requirements
18 Civil Rights Act 19 (42 U.S.C. § 20 1971(a)(2)(A))	Inter Tribal Council (Count Three) Navajo Nation (Fifth Claim)	ID at the polls
21 Civil Rights Act 22 (42 U.S.C. § 23 1971(a)(2)(B))	Inter Tribal Council (Count Four) Navajo Nation (Fifth Claim)	Both requirements
24 Voting Rights Act § 5	Gonzalez (Sixth Cause of Action)	Proof of citizenship
25 A.R.S. § 16-151(B)	Gonzalez (Tenth Cause)	Proof of citizenship
26 A.R.S. § 16-121.01	Gonzalez (Ninth Cause)	Proof of citizenship
27 Mandamus	Navajo Nation (First Claim)	ID at the polls

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RESPECTFULLY SUBMITTED this 4th day of June, 2007.

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19 /s Elizabeth A. Stark

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