IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

League of United Latin America Citizens; Anna Ochoa O'Leary; Cordelia Chavez Candelaria Beveridge; Magdalena Schwartz; Jose David Sandoval; Jane C.H.P. Doe; Jane E. C.-J. Doe; Jane E.O. Doe; John and Jane Does 1-5, Plaintiffs, vs. State of Arizona; Janice K. Brewer, Governor of Arizona; William G. Montgomery; Joseph M. Arpaio; Barbara LaWall; Clarence W. Dupnik; Robert Halliday; Maricopa County; Pima County, Defendants.	No. CV 10-1453-PHX-SRB **ORDER**

Pending before the Court is Defendant Janice K. Brewer's Motion to Dismiss or, Alternatively, Stay Plaintiffs' First Amended Complaint (Doc. 40) ("MTD"). Defendant Brewer's Motion has been joined by Defendants Montgomery and Arpaio (Docs. 43-44).

I. BACKGROUND

In April 2010, the Arizona Legislature enacted Senate Bill 1070, later modified by House Bill 2162 (collectively "S.B. 1070"), a set of new statutes and statutory amendments with an effective date of July 29, 2010. Following the enactment of S.B. 1070, seven separate lawsuits were filed challenging its constitutionality. (*See Escobar v. Brewer*, CV 10-249-

PHX-SRB; *Frisancho v. Brewer*, CV 10-926-PHX-SRB; *Nat'l Coal. of Latino Clergy & Christian Leaders v. Arizona*, CV 10-943-PHX-SRB; *Salgado v. Brewer*, CV 10-951-PHX-SRB; *Friendly House v. Whiting*, CV 10-1061-PHX-SRB ("*Friendly House*"); *United States v. Arizona*, CV 10-1413-PHX-SRB ("*United States*"); and *League of United Latin Am. Citizens v. Arizona*, CV 10-1453-PHX-SRB.) On July 28, 2010, the Court preliminarily enjoined certain provisions of S.B. 1070 on federal preemption grounds in *United States*. (CV 10-1413-PHX-SRB, Doc. 87, Order at 4.) As of this writing, four lawsuits have been dismissed, leaving three remaining: the present matter, *Friendly House*, and *United States*. In this case, in an Order dated December 15, 2010, the Court granted Defendants' first Motion to Dismiss and dismissed the Complaint for lack of standing, but permitted Plaintiffs to amend the Complaint to correct the defects. Plaintiffs filed their First Amended Complaint ("FAC") on January 24, 2011. (Doc. 37.)

S.B. 1070 consists of a number of sections that create or amend statutes, and its stated intent is to "discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States." S.B. 1070 § 1. Within S.B. 1070, Subsection 2(B) requires peace officers to make a reasonable attempt, when practicable, to determine an individual's immigration status during any lawful stop, detention, or arrest where reasonable suspicion exists that the person is unlawfully present in the United States, and it provides that "[a]ny person who is arrested shall have the person's immigration status determined before the person is released." Ariz. Rev. Stat. § 11-1051(B). Subsection 2(A) prohibits Arizona officials, agencies and political subdivisions from limiting or restricting the enforcement of federal immigration laws, and Subsection 2(H) permits legal residents of Arizona to bring civil actions challenging "any official or agency of [Arizona] that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws . . . to less than the full extent permitted by federal law." *Id.* § 11-1051(A), (H). Section 3 creates a crime for the failure of an alien to apply for or carry registration papers, *id.* § 13-1509, Section 4 amends the crime for the smuggling of human beings, *id.* § 13-2319, and Section 5 creates crimes for the performance of work by unauthorized aliens

and the transport or harboring of unlawfully present aliens, *id.* §§ 13-2928, 13-2929. Section 6 permits a peace officer to arrest a person without a warrant if the officer has probable cause to believe that "the person to be arrested has committed any public offense that makes the person removable from the United States." *Id.* § 13-3883(A)(5).

The FAC contains the following claims, brought on behalf of named Plaintiffs and a class: (1) violation of the Supremacy Clause; (2) preemption; (3) denial of due process and equal protection and violation of 42 U.S.C. § 1983; (4) violation of the First Amendment; (5) violation of the Fourth Amendment; (6)[1] violation of 42 U.S.C. § 1981. (FAC ¶¶ 64-81.) The FAC alleges that Plaintiff League of United Latin America Citizens ("LULAC") is a civil rights organization with the goal of promoting and protecting "the legal and political rights of Latino people living in the United States, including immigrants both documented and undocumented." (*Id.* ¶ 13.) According to the FAC, LULAC provides undocumented residents of Arizona with training and information regarding their legal rights, advice about their ability to obtain legal status, and referrals for free or low cost legal assistance in seeking to legalize their immigration status. (*Id.*) Plaintiffs also allege that LULAC provides its members and potential members with a variety of types of assistance including referrals for benefits, home care services, direct legal services, and other forms of advocacy. (*Id.* ¶¶ 13-14.) The FAC alleges that LULAC has been and will be forced to divert scarce resources from its core programs in order to respond to its members' concerns about the effects of S.B. 1070. (*Id.* ¶¶ 15, 19.) The FAC further alleges that individual Plaintiffs Anna Ochoa O'Leary and Cordelia Chavez Candelaria Beveridge are taxpayers in Maricopa and Pima Counties. (*Id.* ¶¶ 21-22.) Plaintiffs O'Leary and Beveridge seek to challenge expenditures of municipal funds allegedly spent on "S.B. 1070-related trainings and briefings of its law-enforcement officials, and [on] implementation of S.B. 1070 to the extent implementation has been or will in the future be required." (*Id.*)

II. LEGAL STANDARDS AND ANALYSIS

[1] The FAC contains two claims labeled "Fifth Claim for Relief." (*See id.* ¶¶ 73-81.)

A. First Amendment Claim: Standing

Defendant Brewer argues that LULAC does not have standing to pursue the First Amendment claim in the FAC, nor do individual Plaintiffs O'Leary and Beveridge have standing to challenge S.B. 1070 as taxpayers. (MTD at 4-7.) "Article III of the Constitution limits the judicial power of the United States to the resolution of [c]ases and [c]ontroversies, and Article III standing . . . enforces the Constitution's case-or-controversy requirement." *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 597-98 (2007) (internal quotations and citations omitted). An analysis of standing requires an examination of "whether the particular plaintiff is entitled to an adjudication of the particular claims asserted." *Allen v. Wright*, 468 U.S. 737, 752 (1984). "'[A] plaintiff must demonstrate standing for each claim he seeks to press' and 'for each form of relief' that is sought." *Davis v. F.E.C.*, 554 U.S. 724, 734 (2008) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)); *see also Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 969 (9th Cir. 2009). Where claims are raised by one plaintiff who has standing, the court need not determine whether other plaintiffs asserting the same claims also have standing. *See, e.g., Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 607 F.3d 1178, 1183 (9th Cir. 2010); *see also Bates v. UPS, Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) ("In a class action, standing is satisfied if at least one named plaintiff meets the requirements.").

In evaluating standing, courts must accept all material allegations in the complaint as true and construe the complaint in favor of the plaintiff. *Graham v. FEMA*, 149 F.3d 997, 1001 (9th Cir. 1998) (citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975)). The plaintiff has the burden of establishing standing and must "'allege[] such a personal stake in the outcome of the controversy' as to warrant [the] invocation of federal-court jurisdiction and . . . justify exercise of the court's remedial powers." *Warth*, 422 U.S. at 498-99 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

In order to have standing pursuant to Article III, a plaintiff must show (1) an "injury in fact" that is concrete and particularized and actual or imminent (not conjectural or

hypothetical); (2) that the injury is fairly traceable to the challenged action of the defendant; and (3) that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also Summers v. Earth Island Inst.*, 129 S. Ct. 1142, 1149 (2009). Even when the constitutional minima of standing are present, prudential concerns may impose additional limitations. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11-12 (2004). Prudential standing limitations embody "'judicially self-imposed limits on the exercise of federal jurisdiction'" and include "'the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.'" *Id.* at 12 (quoting *Allen*, 468 U.S. at 750-51); *see also Alaska Right to Life Political Action Comm. v. Feldman*, 504 F.3d 840, 848-49 (9th Cir. 2007).

1. Organizational Standing

An organization has standing "to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy." *Warth*, 422 U.S. at 511. "An organization may establish a sufficient injury in fact if . . . a challenged statute or policy frustrates the organization's goals and requires the organization 'to expend resources in representing clients they otherwise would spend in other ways.'" *Redondo Beach*, 607 F.3d at 1183 (quoting *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 748 (9th Cir. 1992)); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). Where a statute "perceptibly impair[s]" an organization's ability to provide the services the organization was formed to provide, "there can be no question that the organization has suffered [an] injury in fact. Such concrete and demonstrable injury to the organization's activities–with the consequent drain on the organization's resources–constitutes far more than simply a setback to the organization's abstract social interests." *Havens*, 455 U.S. at 379.

The FAC alleges that LULAC "provides comprehensive services to undocumented

Latino immigrants residing in Arizona." (FAC ¶ 14.) LULAC's services include assistance with benefits, legal assistance with adjustment of status, home services, and numerous other forms of community outreach and advocacy. (*Id.*) LULAC also provides community education and training on immigrants' rights issues. (*Id.*) Plaintiffs allege that, on account of S.B. 1070, LULAC will be forced "to divert scarce resources from critical programs in order to educate and assist individuals affected by [the law.]" (*Id.* ¶ 15.) The FAC further alleges that "LULAC will have a far more difficult time encouraging undocumented immigrants to seek services in its various program areas to the extent that they involve interacting with government agencies and police." (*Id.*) Moreover, the FAC alleges that LULAC is concerned that members and potential members will be fearful of attending events, which "will significantly impact the ability of LULAC to protect its existing members and to organize new members." (*Id.* ¶ 17.) Finally, the FAC states, "LULAC has already been forced to suspend much of its work relating to the range of services described above . . . in order to respond to inquiries from LULAC members and community members about S[.]B[.] 1070[] and address fear and confusion created by S.B. 1070." (*Id.* ¶ 19.)

Defendant Brewer states that Plaintiffs here rely on the same type of standing allegations that this Court found insufficient in *Friendly House*. (MTD at 4.) However, Defendants misstate the Court's conclusion regarding standing for the First Amendment claims in *Friendly House*. There, the Court explained that the *Friendly House* plaintiffs asserted two different theories of standing for First Amendment purposes. (*See* No. CV 10-1061-PHX-SRB, Doc. 447, Order at 10.) The Court found that the *Friendly House* plaintiffs had made sufficient allegations to show an injury in fact to an organizational plaintiff whose mission was "perceptibly impaired by a statute criminalizing or chilling the clients' activity." (*Id.* (internal quotation and citations omitted).) The Court further found that individual plaintiffs and other organizational plaintiffs had *not* sufficiently alleged an injury for standing purposes, where those plaintiffs asserted that fear of "speak[ing] a foreign language or accented English around law enforcement officers" chilled their exercise of their First Amendment rights. (*See id.* at 10-11.)

The FAC does not allege precisely either of the injuries alleged in *Friendly House*. Instead, Plaintiffs allege that LULAC's ability to carry out its mission has been and will be impacted by the effect of S.B. 1070. The FAC also alleges that LULAC has been forced to redirect certain resources into public education related to S.B. 1070 that it would otherwise expend differently. These allegations substantiate an injury in fact to LULAC and support organizational standing to sue. An organization suing on its own behalf establishes injury when it shows it has suffered "'both a diversion of its resources and a frustration of its mission.'" *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, Nos. 08-56564, 09-55215, 2010 WL 4146114, at *4 (9th Cir. Oct. 22, 2010) (quoting *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 202 (9th Cir. 2002)); *see also Havens*, 455 U.S. at 379; *Redondo Beach*, 607 F.3d at 1183. Plaintiffs have alleged that LULAC's resources have been or will be diverted and that its mission has been or will be frustrated. This satisfies the requirement that Plaintiffs demonstrate an injury in fact in order to establish standing. Defendant Brewer does not challenge causation or redressability with regard to standing for the First Amendment claim. The Court finds that the allegations in the FAC support those two elements as well. Therefore, the Court finds that the FAC sufficiently alleges that LULAC has organizational standing to challenge Section 2 of S.B. 1070 on First Amendment grounds.

2. Taxpayer Standing

Plaintiffs O'Leary and Beveridge seek to challenge as taxpayers "the illegal expenditure of funds" by Pima and Maricopa Counties "through implementation of S.B. 1070." (FAC ¶¶ 21-22.) Federal or state taxpayers have no standing to challenge federal or state tax or spending decisions simply by virtue of being taxpayers, with the single exception of Establishment Clause challenges. *See, e.g.*, *Hein*, 551 U.S. at 609 ("We have declined to lower the taxpayer standing bar in suits alleging violations of any constitutional provision apart from the Establishment Clause." (citations omitted)). Plaintiffs O'Leary and Beveridge argue that they have standing because they "pay taxes into the county treasury," and "Arizona's counties will expend local taxpayer funds to enforce S.B. 1070." (Doc. 51, Pls.'

Opp'n to MTD ("Opp'n") at 3.) The Supreme Court has stated that "resident taxpayers may sue to enjoin an illegal use of the moneys of a municipal corporation." *Massachusetts v. Mellon*, 262 U.S. 447, 486 (1923).

Plaintiffs' theory of taxpayer standing is flawed because they seek to challenge a state law and county expenditures based on their status as *municipal* taxpayers. As Defendants point out, the Arizona Constitution distinguishes between counties and municipal corporations. (*See* Defs.' Reply at 2 (citing Ariz. Const. art. XII (governing counties) & art. XIII (governing municipal corporations)).) Simply put, Maricopa and Pima Counties are not municipal corporations, as defined by Arizona law, nor are the counties agents of Governor Brewer or any other Defendant. In addition to the distinctions set out in the Arizona Constitution, the Arizona Supreme Court has recognized that "ordinary municipal corporations" are defined as towns and cities, as distinguished from counties. *Associated Dairy Prods. Co. v. Page*, 206 P.2d 1041, 1043 (Ariz. 1949). "Arizona's counties and cities are separate legal entities, whose power is derived from different articles of the Arizona Constitution and from different statutes." *Home Builders Ass'n of Cent. Ariz. v. City of Maricopa*, 158 P.3d 869, 872 (Ariz. Ct. App. 2007) (citations omitted). Municipal corporations are organized for "special and local purposes independent of the general governmental activities of the state," while counties are created by the state legislature "for the purpose of exercising a certain portion of the general powers of the [state] government in specified localities." *Associated Dairy Prods.*, 206 P.2d at 1043 (citation omitted).

Furthermore, the remedy Plaintiffs seek–an injunction restraining "[D]efendants, their agents, employees, and successors in office from further implementing [Section 2 of S.B. 1070]"–does not correspond with their alleged basis for standing, undermining redressability. (FAC, Prayer ¶ 4.) Plaintiffs would need to tie their request for relief to "a definite expenditure of municipal funds" in order to have standing as municipal taxpayers. *Barnes-Wallace v. City of San Diego*, 530 F.3d 776, 787 (9th Cir. 2008). In the FAC, Plaintiffs O'Leary and Beveridge specifically challenge Pima and Maricopa Counties' alleged expenditure of funds used "in the creation of training materials related to S.B. 1070, through

S.B. 1070-related trainings and briefings of its law-enforcement officials." (FAC ¶¶ 21-22.) Therefore, the only relief they would have standing to seek would be an injunction of expenditure of funds for those specific purposes. *See Arakaki v. Lingle*, 477 F.3d 1048, 1060 (9th Cir. 2007) (observing that municipal taxpayer plaintiffs would be able to seek "an injunction against spending state tax revenues"). For these reasons, Plaintiffs have failed to allege facts plausibly establishing local taxpayer standing for Plaintiffs O'Leary and Beveridge.

B. Equal Protection and Section 1981 Claims

Governor Brewer moves to dismiss Plaintiffs' equal protection and § 1981 claims for failure to state a claim. (MTD at 7-8.) Governor Brewer argues that Plaintiffs do not include sufficient specific factual allegations related to these claims, assuming that the FAC asserts a claim similar to those in *Friendly House* that alleged that S.B. 1070 was motivated by improper racial animus. (MTD at 7-8.) In response, Plaintiffs assert that they are not proceeding under that theory, but rather are claiming that S.B. 1070 violates the Equal Protection Clause and § 1981 because

> S.B. 1070 irrationally distinguishes between two classes of immigrants: (1) [i]mmigrants whose applications for lawful status are pending before the federal government, whose presence in the United States is known to the federal government, who[m] the federal government is not trying to deport, and who have not been required to nor have they 'registered' with the federal authorities pursuant to 8 U.S.C. § 1302(a); and (2) immigrants who have been granted lawful status by the federal authorities.

(Opp'n at 9.) As such, Plaintiffs argue that they do not need to make any allegations regarding "a racially discriminatory intent or purpose in the enactment of S.B. 1070." (*Id.* at 10.) In her Reply, Governor Brewer responds that this claim was previously dismissed from the first Complaint for lack of standing, and those standing defects have not been remedied in the FAC. (Doc. 52, Def. Brewer's Reply in Supp. of MTD ("Reply") at 5.) In addition, Governor Brewer points out that the FAC eliminated the Plaintiffs from the original Complaint who were present in the United States without documentation and would be injured by this alleged violation. (*Id.*)

Although the standing argument was raised for the first time in the Reply, the Court

must address it before examining the merits of the claims, as it is a question of jurisdiction and can be considered at any time, even on the Court's own motion. *See Chapman v. Pier 1 Imports (U.S.), Inc.*, 631 F.3d 939, 954 (9th Cir. 2011) ("'[F]ederal courts are required *sua sponte* to examine jurisdictional issues such as standing.'" (quoting *Bernhardt v. County of L.A.*, 279 F.3d 862, 868 (9th Cir. 2002))). The requirement of Article III standing cannot be waived, and "[i]t must be demonstrated at the successive stages of the litigation." *Id.* (internal quotation and citations omitted). If a court determines at any time that it lacks subject matter jurisdiction, it must dismiss the case. Fed. R. Civ. P. 12(h)(3).

The only individual Plaintiffs in this action are the taxpayer Plaintiffs, O'Leary and Beveridge. (*See* FAC ¶¶ 21-22.) Plaintiffs O'Leary and Beveridge are both identified as "lawfully residing in the State of Arizona." (*Id.*) Neither of these Plaintiffs is in the group Plaintiffs allege is injured in the manner outlined above by S.B. 1070 because they have legal status in this country. However, the FAC alleges that LULAC's members include "immigrants both documented and undocumented" and that LULAC provides guidance and assistance to its members in obtaining legal status in this country, including "free or low cost legal services." (FAC ¶¶ 13-14.) An organization has "associational standing" to bring suit on behalf of its members "when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)).

Here, since LULAC advocates on behalf of its members with and without legal status, some of those members fall into the groups Plaintiffs have identified as being irrationally discriminated between by S.B. 1070 and would have standing to sue in their own right. (*See* Opp'n at 7; FAC ¶ 70(d).) The interests at stake are germane to LULAC's purpose, which is to advocate on behalf of "Latino people living in the United States." (FAC ¶ 13.) Finally, the participation of individual members is not necessary in this case either to prove the claims asserted or to fashion the relief requested because Plaintiffs' equal protection and § 1981

claims raise purely legal, facial challenges to S.B. 1070. Plaintiffs have also sufficiently alleged that the injury allegedly suffered by some of LULAC's members is fairly traceable to the conduct of Defendants and that the relief they request is likely to redress the injury. *See Lujan*, 504 U.S. at 560-61; (*see also* FAC ¶¶ 13-22, Prayer.) The Court finds that LULAC has associational standing to bring the equal protection and § 1981 claims contained within the FAC.

Turning to the merits of Plaintiffs' equal protection and § 1981 claims, the Federal Rules of Civil Procedure require "only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); *see also* Fed. R. Civ. P. 8(a)(2). Thus, dismissal for insufficiency of a complaint is proper if the complaint fails to state a claim on its face. *Lucas v. Bechtel Corp.*, 633 F.2d 757, 759 (9th Cir. 1980). "While a complaint attacked by a Rule 12(b)(6) motion does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations omitted).

A Rule 12(b)(6) dismissal for failure to state a claim can be based on either (1) the lack of a cognizable legal theory or (2) insufficient facts to support a cognizable legal claim. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990); *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). In determining whether an asserted claim can be sustained, all allegations of material fact are taken as true and construed in the light most favorable to the non-moving party. *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that 'recovery is very remote and unlikely.'" *Twombly*, 550 U.S. at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). However, "for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim

entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1952 (2009)). In other words, the complaint must contain enough factual content "to raise a reasonable expectation that discovery will reveal evidence" of the claim. *Twombly*, 550 U.S. at 556.

Governor Brewer argues, with respect to Plaintiffs' theory that S.B. 1070 irrationally discriminates between groups of similarly situated individuals, that the groups Plaintiffs describe (namely, people who are awaiting determination of applications to adjust their legal status and people who have legal status in the United States) are not similarly situated. (Reply at 6.) Governor Brewer contends that "Sections 1-6 of S.B.1070 distinguish between aliens who have complied with federal law or otherwise obtained authorization from the federal government to remain in the United States and those who have not." (*Id.*) Governor Brewer asserts that S.B. 1070 does not require people to obtain any documentation of their immigration status that they are not otherwise required to obtain under federal law. (*Id.* (citing Section 3 of S.B. 1070).)

The Supreme Court has defined the Equal Protection Clause as meaning "that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985) (internal quotation and citation omitted). Generally, courts apply rational basis review to distinctions drawn by statutes such as S.B. 1070. *See, e.g., Heller v. Doe*, 509 U.S. 213, 318-19 (1993). Classifications that do not involve fundamental rights or "proceed[] along suspect lines" are "accorded a strong presumption of validity." *Id.* at 319 (citations omitted). So long as there is a rational relationship between the disparity of treatment and a legitimate governmental purpose, such a classification does not violate the Equal Protection Clause. *Id.* at 320 (citations omitted).

A plaintiff alleging a differential treatment theory under the Equal Protection Clause must first identify the allegedly improper government classification, which Plaintiffs here have done. (*See* FAC ¶¶ 47, 54, 58, 70(d); Opp'n at 9); *see also Freeman v. City of Santa*

Ana, 68 F.3d 1180, 1187 (9th Cir. 1995). Next, the plaintiff must point to a "similarly situated" class against which the plaintiff's group can be compared. *Freeman*, 68 F.3d at 1187 (citations omitted). Here, the "control group"–immigrants who have legal status in the United States–is not similarly situated to the group allegedly disadvantaged by S.B. 1070–immigrants who are eligible and have applied for legal status but have not yet received a determination from the federal government on their status. The issue of whether a person has documentation of his or her legal status in the United States is central to Plaintiffs' claims regarding Section 3 of S.B. 1070, and people who have already had their legal status adjudicated in one way or another simply are not similarly situated to people who are awaiting that determination. The Court finds that Plaintiffs have not stated a claim plausibly entitling them to relief on this theory because the groups they have identified are not similarly situated. However, this dismissal is made without prejudice because Plaintiffs could amend the FAC to redefine the groups and plausibly state a claim along these lines.

C. Unnamed Plaintiffs

Governor Brewer moves to dismiss Plaintiffs John Does 1-5 and Jane Does 1-5 because "the FAC contains no allegations regarding these unidentified parties." (MTD at 3.) Upon review, the Court concludes that, as there are no allegations mentioning any unnamed Plaintiff, Plaintiffs have failed to state a claim plausibly entitling them to relief for any John or Jane Doe Plaintiff. *See Moss*, 572 F.3d at 969 (quoting *Iqbal*, 129 S. Ct. at 1952). The unnamed Plaintiffs in the FAC are dismissed without prejudice.

D. Duplication of Claims from Other Lawsuits

Governor Brewer argues that because "the remaining claims [P]laintiffs assert in the FAC duplicate claims asserted in *Friendly House* and *United States*," the Court should dismiss or stay the remaining claims until the other cases are resolved. (MTD at 8-10.) District courts are permitted to "decline jurisdiction over an action where a complaint involving the same parties and issues has already been filed in another district." *Barapind v. Reno*, 225 F.3d 1100, 1109 (9th Cir. 2000) (citations omitted). No precise rules govern this exercise of discretion, but "the general principle is avoid duplicative litigation and to promote

judicial efficiency." *Id.* (internal quotation and citations omitted). The Court declines to exercise its discretion to dismiss or stay the instant matter because of the pendency of *Friendly House* and *United States*. For one thing, those two cases are also pending in this district and, in fact, before this judge. For another, the parties and issues raised in the three lawsuits may overlap to some degree, but there are distinctions among them. It is common for multiple lawsuits related to the same general issue and involving some of the same parties to proceed in tandem. This portion of Defendant Brewer's Motion is denied.

III. CONCLUSION

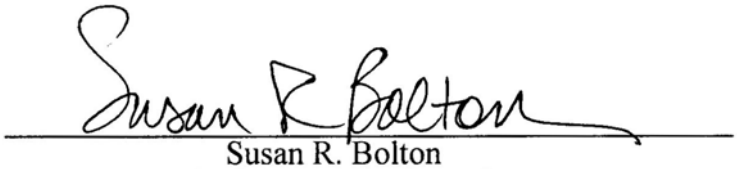
The Court grants in part and denies in part the portion of Governor Brewer's Motion seeking dismissal of Plaintiffs' First Amendment claim. The Court finds that LULAC has organizational standing to challenge S.B. 1070 on First Amendment grounds, but that the individual Plaintiffs lack standing to bring their taxpayer claims. The Court concludes that LULAC has associational standing to bring an equal protection or § 1981 claim related to differential treatment of different groups of immigrants, but finds that Plaintiffs' claims under the Equal Protection Clause and § 1981 fail to state a claim upon which relief can be granted. The Court dismisses the unnamed Plaintiffs because the FAC contains no allegations referencing these Plaintiffs. Finally, the Court declines to dismiss or stay any remaining claim in this case on the grounds that it is similar to or duplicative of claims in *Friendly House* or *United States*.

Rule 15(a) of the Federal Rules of Civil Procedure states that leave to amend a pleading "shall be freely given when justice so requires." These dismissals are made without prejudice, and if Plaintiffs choose, they may file one further amended Complaint. Any further amended Complaint must be in compliance with the legal standards outlined above and address the defects identified in this Order.

IT IS THEREFORE ORDERED granting in part and denying in part Defendant Janice K. Brewer's Motion to Dismiss or, Alternatively, Stay Plaintiffs' First Amended Complaint (Doc. 40).

IT IS FURTHER ORDERED granting Plaintiffs 30 days, including the date of entry of this Order, to file any further amended Complaint.

DATED this 26th day of August, 2011.



Susan R. Bolton
United States District Judge