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11  
12 **IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

13 **MARIA M. GONZALEZ; JESUS M.  
GONZALES; BERNIE ABEYTIA;  
14 LUCIANO VALENCIA; DEBBIE  
LOPEZ, SOUTHWEST VOTER  
15 REGISTRATION EDUCATION  
PROJECT; VALLE DEL SOL;  
16 FRIENDLY HOUSE; CHICANOS POR  
LA CAUSA, INC.; and ARIZONA  
17 HISPANIC FORUM,**

18 **Plaintiffs,**

19 **v.**

20 **STATE OF ARIZONA, JAN BREWER,  
in her official capacity as the Secretary of  
21 State of the State of Arizona, et al.,**

22 **Defendants.**

**No. CV06-1268-PHX ROS (Lead)  
No. CV06-1362-PCT-JAT  
No. CV06-1575-PHX-EHC**

**STATE AND TWELVE COUNTY  
DEFENDANTS' SUPPLEMENT  
TO MOTION IN LIMINE  
REGARDING UNTIMELY  
DISCLOSURES**

**(Assigned to the  
Honorable Roslyn O. Silver)**

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Defendants State of Arizona; Secretary of State Jan Brewer; Maricopa County Recorder Helen Purcell and Maricopa County Elections Director Karen Osborne; Apache County Recorder LeNora Johnson and Apache County Elections Director Penny L. Pew; Cochise County Recorder Christine Rhodes and Cochise County Elections Director Thomas Schelling; Gila County Recorder Linda Haught Ortega and Gila County Elections Director Dixie Mundy; Graham County Recorder Wendy John and Graham County Elections Director Judy Dickerson; Greenlee County Recorder Berta Manuz and Greenlee County Elections Director Yvonne Pearson; La Paz County Recorder Shelly Baker and La Paz County Elections Director Donna Hale; Mohave County Recorder Joan McCall and Mohave County Elections Director Allen Tempert; Pima County Recorder F. Ann Rodriguez and Pima County Elections Director Brad R. Nelson; Santa Cruz County Recorder Suzie Sainz and Santa Cruz County Elections Director Melinda Meek; Yavapai County Recorder Ana Wayman-Trujillo and Yavapai County Elections Director Lynn A. Constabile; and Yuma County Recorder Susan Hightower Marler and Yuma County Elections Director Patti Madrill (collectively “Defendants”), by and through undersigned counsel, hereby respectfully supplement their Motion in Limine to exclude evidence that was untimely disclosed. The Motion is supported by the following Memorandum of Points and Authorities, which is incorporated herein by reference.

**RESPECTFULLY SUBMITTED** this 17th day of June, 2008.

**ANDREW P. THOMAS**  
**MARICOPA COUNTY ATTORNEY**

**TERRY GODDARD**  
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## 6 MEMORANDUM OF POINTS AND AUTHORITIES

### 7 Relevant Procedural Background

8 Pursuant to the Court's scheduling order entered on March 27, 2008, all fact  
9 discovery was to have been completed by January 18, 2008, with final supplementation  
10 of all witnesses and exhibits to be completed by June 4, 2008. [Dkt. 740 ¶ F]. Plaintiffs  
11 have long been aware of this deadline and never complained about it in any manner. On  
12 June 16, 2008 at 5:49 PM, Gonzalez Plaintiffs sent a new exhibit list, adding two  
13 exhibits never before disclosed. Defendants timely objected.

#### 14 A. Gonzalez Plaintiffs' Exhibits 963 and 964 were disclosed 15 untimely and should be excluded

16 The Final Amended Scheduling Order entered by the Court is clear that all fact  
17 discovery was to close on January 18, 2008 and final supplementation of witness and  
18 exhibit lists to be completed by June 4, 2008. [Dkt. 740 ¶ F]. Despite these deadlines,  
19 Plaintiffs have continued to disclose witnesses and documents for the first time, months  
20 after the discovery period has closed.

21 On June 16, 2008 at 5:49 PM, Arizona time, Gonzalez Plaintiffs sent an e-mail  
22 purporting to include their final exhibit list. *See* 06-16-08 N. Perales E-mail, attached  
hereto as Exhibit 1 and incorporated herein by reference. Defendants timely objected  
and Plaintiffs refused to withdraw the new exhibits. *See* 06-16-08 E-mail exchange  
between K. Rapp and N. Perales, attached hereto as Exhibit 2 and incorporated herein by  
reference. These documents have not been previously disclosed to Defendants, were not  
included in Gonzalez Plaintiffs' Final Pretrial Disclosure Statement, which was due on  
June 4, 2008, and were not included in Plaintiffs' production of trial exhibits. In fact,

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Defendants still do not have a copy of these exhibits. In addition, this latest disclosure comes after the deadline for Defendants to file their Motions in Limine, making it particularly prejudicial for Defendants. These late disclosures are in clear violation of the spirit of discovery, the Rules of Federal Procedure, and the Orders of the Court. To permit the inclusion of such delinquent evidence would be unfair and would result in prejudice to the Defendants.

**Relief Requested**

For the foregoing reasons, Defendants respectfully request that the Court exclude any use by Gonzalez Plaintiffs' of anything referenced within or contained in Exhibit Numbers 963 and 964, for use at trial or for any purpose at all.

**RESPECTFULLY SUBMITTED** this 17th day of June, 2008.

**ANDREW P. THOMAS**  
**MARICOPA COUNTY ATTORNEY**

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 17th day of June, 2008, I caused the foregoing  
3 document to be electronically transmitted to the Clerk's Office using the CM/ECF  
4 System for filing and transmittal of a Notice of Electronic Filing to the following

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1 COPY of the foregoing filed electronically  
this 16th day of June, 2008.

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3 COPY of the foregoing mailed with Notice of  
Electronic Filing this 29th day of May, 2008 to:

4 The Honorable Roslyn O. Silver  
United States District Court  
5 Sandra Day O'Connor U.S. Courthouse, Suite 624  
401 West Washington Street, SPC 59  
6 Phoenix, AZ 85003-2158

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8       /s Hilary Myers      

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