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

13 **MARIA M. GONZALEZ; JESUS M. No. CV06-1268-PHX ROS (Lead)**
GONZALES; BERNIE ABEYTIA; No. CV06-1362-PCT-JAT
14 **LUCIANO VALENCIA; DEBBIE No. CV06-1575-PHX-EHC**
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.**

**DEFENDANTS' MOTION IN
LIMINE REGARDING
UNTIMELY DISCLOSURES**

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

1 Defendants State of Arizona; Secretary of State Jan Brewer; Maricopa County
2 Recorder Helen Purcell and Maricopa County Elections Director Karen Osborne;
3 Apache County Recorder LeNora Johnson and Apache County Elections Director Penny
4 L. Pew; Cochise County Recorder Christine Rhodes and Cochise County Elections
5 Director Thomas Schelling; Gila County Recorder Linda Haught Ortega and Gila
6 County Elections Director Dixie Mundy; Graham County Recorder Wendy John and
7 Graham County Elections Director Judy Dickerson; Greenlee County Recorder Berta
8 Manuz and Greenlee County Elections Director Yvonne Pearson; La Paz County
9 Recorder Shelly Baker and La Paz County Elections Director Donna Hale; Mohave
10 County Recorder Joan McCall and Mohave County Elections Director Allen Tempert;
11 Pima County Recorder F. Ann Rodriguez and Pima County Elections Director Brad R.
12 Nelson; Santa Cruz County Recorder Suzie Sainz and Santa Cruz County Elections
13 Director Melinda Meek; Yavapai County Recorder Ana Wayman-Trujillo and Yavapai
14 County Elections Director Lynn A. Constabile; and Yuma County Recorder Susan
15 Hightower Marler and Yuma County Elections Director Patti Madrill (collectively
16 “Defendants”), by and through undersigned counsel, hereby respectfully move in limine
17 to exclude evidence that was untimely disclosed, including testimony from witnesses
18 first submitted following the close of discovery. This witness testimony was submitted
19 in violation of court deadlines imposed on both parties and for no good cause shown.
20 The Motion is supported by the following Memorandum of Points and Authorities.

21 **RESPECTFULLY SUBMITTED** this 16th day of June, 2008.

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

TERRY GODDARD
ARIZONA ATTORNEY GENERAL

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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, “[a]ll fact
9 discovery, including answers to interrogatories, production of documents, depositions,
10 and requests to admit” shall be completed by January 18, 2008. [Dkt. 740 ¶ F]. Plaintiffs
11 have long been aware of this deadline and never complained about it in any manner. On
12 April 15, 2008, nearly three months after the close of discovery, Gonzalez Plaintiffs
13 noticed a Rule 30 (b) (6) deposition of the U.S. Citizenship and Immigration Services
14 (hereinafter “USCIS”). Defendants timely objected.

15 A. The depositions were untimely and should be excluded

16 The Final Amended Scheduling Order entered by the Court is clear that all fact
17 discovery, including depositions, were closed on January 18, 2008. [Dkt. 740 ¶ F]. In
18 addition, counsel for Gonzalez Plaintiffs recognized that, “[W]e finished fact discovery
19 on January 18.” 03-21-08 Hearing Transcript at pg. 24. Gonzalez Plaintiffs did not
20 notice this Rule 30(b)(6) deposition until April 15, 2008, three months after the
21 discovery deadline. *See* April 15, 2008 USCIS NOD, attached hereto as Exhibit 1 and
22 incorporated herein by reference. On behalf of the Defendants, the State immediately
notified Plaintiffs that the deposition was untimely, that Defendants would not
participate, and that Defendants would object to its use for any purpose. April 18, 2008
LaMar Letter, attached hereto as Exhibit 2 and incorporated herein by reference.
Admittance of any evidence, including any deposition testimony, taken after the
discovery cut-off, which was not waived and which was timely objected to by
Defendants, would be unfair and would result in prejudice to Defendants.

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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 Number 931, Deposition of Michael Quinn, for use at trial or for any purpose at all.

RESPECTFULLY SUBMITTED this 16th day of June, 2008.

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TERRY GODDARD
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 16th 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.

2

3 COPY of the foregoing emailed via the Court's
Electronic Court Filing ("ECF") this 16th day of June, 2008 to:

4 The Honorable Roslyn O. Silver
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5 Sandra Day O'Connor U.S. Courthouse, Suite 624
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6 Phoenix, AZ 85003-2158

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8 /s/ H. Myers

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