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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**  
**DEFENDANTS' MOTION IN  
LIMINE RE LATE DISCLOSURE  
OF WITNESSES**

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

1 **MOTION**

2 Defendants State of Arizona; Secretary of State Jan Brewer; Maricopa County  
3 Recorder Helen Purcell and Maricopa County Elections Director Karen Osborne;  
4 Apache County Recorder LeNora Johnson and Apache County Elections Director Penny  
5 L. Pew; Cochise County Recorder Christine Rhodes and Cochise County Elections  
6 Director Thomas Schelling; Gila County Recorder Linda Haught Ortega and Gila  
7 County Elections Director Dixie Mundy; Graham County Recorder Wendy John and  
8 Graham County Elections Director Judy Dickerson; Greenlee County Recorder Berta  
9 Manuz and Greenlee County Elections Director Yvonne Pearson; La Paz County  
10 Recorder Shelly Baker and La Paz County Elections Director Donna Hale; Mohave  
11 County Recorder Joan McCall and Mohave County Elections Director Allen Tempert;  
12 Pima County Recorder F. Ann Rodriguez and Pima County Elections Director Brad R.  
13 Nelson; Santa Cruz County Recorder Suzie Sainz and Santa Cruz County Elections  
14 Director Melinda Meek; Yavapai County Recorder Ana Wayman-Trujillo and Yavapai  
15 County Elections Director Lynn A. Constabile; and Yuma County Recorder Susan  
16 Hightower Marler and Yuma County Elections Director Patti Madrill (collectively  
17 “Defendants”), by and through undersigned counsel, respectfully move in limine to  
18 exclude witnesses who were untimely disclosed and whose testimony would result in  
19 extreme prejudice to the Defendants.

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

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

**TERRY GODDARD**  
**ARIZONA ATTORNEY GENERAL**

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and the Arizona Secretary of State*

## MEMORANDUM OF POINTS AND AUTHORITIES

### Relevant Procedural Background

6 Pursuant to the Court’s Scheduling Order, dated March 27, 2008, all factual  
7 discovery closed on January 18, 2008. That Order stated that final supplementation of  
8 disclosures was to be completed by June 4, 2008. [Dkt. 740 ¶ F]. In addition, counsel  
9 for Gonzalez Plaintiffs recognized that, “[W]e finished fact discovery on January 18.”  
10 03-21-08 Hearing Transcript at pg. 24. Prior to January 18, 2008 the Gonzalez  
11 Plaintiffs had served only one Disclosure Statement. Since the January cutoff, the  
12 Gonzalez Plaintiffs served a flurry of four additional Disclosure Statements, purporting  
to add new witnesses that had never been previously disclosed within the parameters of  
the Court Order in effect, and without permission of the Court.

#### A. These witnesses were untimely disclosed

13 The Final Amended Scheduling Order entered by the Court provides that “[a]ll  
14 fact discovery, including answers to interrogatories, production of documents,  
15 depositions and requests to admit shall be completed by January 18, 2008.” [Dkt. 740  
16 ¶ F] Despite the fact that this litigation has been on-going since 2005, the Gonzalez  
17 Plaintiffs waited until May and June of this year, just before trial, to add nearly one  
18 hundred additional witnesses that had not been previously disclosed at any time. Exhibit  
19 A, attached hereto and incorporated herein by reference, details the identity of the  
20 purported witnesses and when the Gonzalez Plaintiffs initially disclosed them.<sup>1</sup>  
Defendants were denied the opportunity to depose these purported witnesses, since fact

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21 1 Gonzalez Plaintiffs also failed to properly and timely disclose their intended use of multiple  
22 parties and State and County officials. However, since those witnesses were properly identified  
by either the State or County Defendants, there is no known prejudice and those late witnesses  
are not the subject of this motion.

1 discovery had closed some four or five months prior to these disclosures. These late  
2 disclosures are in clear violation of Rule 26, Federal Rules of Civil Procedure and the  
3 Court's Scheduling Order. Thus, these purported witnesses should be stricken from  
4 Plaintiffs' witness list and should be barred from testifying at trial in any way.

5 **B. The Defendants will be severely prejudiced if these witnesses are  
6 permitted to testify**

7 In addition to the untimely nature of the witness disclosure, Plaintiffs have not  
8 provided sufficient information about at least sixty-nine of these witnesses for  
9 Defendants to be able to glean what relevance they might have to the case. Due to the  
10 untimely disclosure of these witnesses, Defendants did not have the opportunity to  
11 depose or otherwise conduct fact discovery on these witnesses prior to the close of  
12 discovery. Defendants had no prior knowledge of the existence of these witnesses.  
13 Permitting testimony from these witnesses, in light of these factors, would be unfair and  
14 would result in extreme prejudice to Defendants.

15 **Relief Requested**

16 For the foregoing reasons, the Court should exclude the witnesses listed on  
17 Exhibit A from testifying in the above-captioned matter and should bar any testimony  
18 referring to these witnesses.

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

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

22 **TERRY GODDARD**  
**ARIZONA ATTORNEY GENERAL**

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and the Arizona Secretary of State*

4 CERTIFICATE OF SERVICE

5 I hereby certify that on the 16th day of June, 2008, I caused the foregoing  
6 document to be electronically transmitted to the Clerk's Office using the CM/ECF  
7 System for filing and transmittal of a Notice of Electronic Filing to the following

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5 COPY of the foregoing filed electronically  
this 16<sup>th</sup> day of June, 2008.

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

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

11

12           /s Hilary Myers          

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