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14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE DISTRICT OF ARIZONA

16	Maria M. Gonzalez, et al.,	)	No. CV-06-1268-PHX-ROS(Lead)
		)	No. CV-06-1362-PCT-JAT(Cons.)
17	Plaintiffs,	)	No. CV-06-1575-PHX-EHC(Cons.)
		)	
18	vs.	)	GONZALEZ PLAINTIFFS'
		)	MOTION FOR LEAVE TO FILE
19	State of Arizona, et al,	)	CORRECTED POST-TRIAL BRIEF
20		)	
	Defendants.	)	(Assigned to the
21		)	Honorable Roslyn O. Silver)

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22  
23 **I. Introduction**

24 NOW COME Gonzalez Plaintiffs and file this Motion for Leave to File  
25 Corrected Post-Trial Brief. On July 30, 2008 State Defendants filed their Response to  
26

1 Plaintiffs' Closing Arguments. *See* Dkt. Entry No. 1032. In their Response State  
2 Defendants claim that certain depositions and trial transcripts cited by Gonzalez  
3 Plaintiffs do not support the propositions in Plaintiffs' Post-Trial Memorandum. *See id.*  
4 at Ex. A. Gonzalez Plaintiffs reviewed the citations identified by State Defendants,  
5 identified a smaller number of citations that should be corrected, and now seek leave of  
6 Court to submit their Corrected Post-Trial Memorandum. In support of their Motion  
7 Gonzalez Plaintiffs show as follows:

## 8 9 10 **II. Argument**

### 11 **1. Gonzalez Plaintiffs' use of Electronic Copies of Depositions Resulted in** 12 **Some Inaccurate Citations.**

13 Gonzalez Plaintiffs used their electronic files of the deposition designations to  
14 add some citations to their Post-Trial Memorandum. *See* Dkt. Entry No. 1029. After the  
15 Defendants filed their Response, Gonzalez Plaintiffs discovered these electronic copies  
16 differed slightly from the hard copy designations provided to the Court. This  
17 discrepancy explains why the Osborne, Collins, Yanofsky and Morrison-Flores  
18 depositions line citations are correct but the page citations are misaligned. *See* Dkt.  
19 Entry No. 1029 Ex. A at Nos. 3, 6, 7 and 11. Gonzalez Plaintiffs have corrected the  
20 misaligned page numbers in their Corrected Post-Trial Memorandum but have not  
21 otherwise changed the citations from the original Post-Trial Memorandum.

### 22 23 24 **2. Defendants Wrongly Identified Deposition Designations as not Supporting** 25 **the Propositions for Which They Are Cited by Gonzalez Plaintiffs.**

26

1 Defendants are incorrect in their claim that the certain citations do not support  
2 the propositions for which they are cited. Dkt. Entry No. 1029 Ex. A at Nos. 5, 8, 9, 10.  
3 First, Defendants contend that the citations to the statement below from Plaintiffs' Post-  
4 Trial Memorandum do not support the proposition:

5  
6 The Secretary of State does not know how many of these naturalized citizens  
7 hold licenses that are coded Type F in the MVD database but the Secretary of  
8 State does know that since January of 2005, Service Arizona, its online voter  
9 registration system, has rejected approximately 1300 voter registration applicants  
with either Type F licenses or who possess licenses issued before January 1,  
1996. [Kanefield 7/16/08 Tr. 711:4-712:17; Kanefield 1/11/08 Dep. 30:15-31:3].

10 *See* Dkt. Entry No. 1029 at 10; Ex. A at No. 1. Defendants are incorrect. Each  
11 citation is appropriate and fully supports a statement of fact in the preceding sentence.<sup>1</sup>  
12 That two citations are used to support a portion of the Memorandum that makes more  
13 than one point is of no consequence since it is thoroughly supported by the record.  
14 Gonzalez Plaintiffs have provided the Court with expanded sections of the relevant  
15 testimony to demonstrate that the designations are appropriate and support the  
16 propositions for which they are cited. *See* Ex. B.

17  
18  
19 Defendants also challenge Gonzalez Plaintiffs' citation to the January 16, 2008  
20 deposition of Laura Dean-Lytle:

21  
22 Contrary to the testimony of State Elections Director Joseph

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23 <sup>1</sup> In his deposition, Mr. Kanefield testified that January, 2005 was the correct  
24 date for his statistic that ServiceArizona had rejected 1,300 voter registration applicants.  
*See* Ex. B, Kanefield 1/11/08 Dep. 30:15-31:3. Mr. Kanefield later testified at trial that  
25 October 2005 was the correct date. *See* Ex. B, Kanefield 7/16/08 Tr. 711:4-712:17.  
26 Gonzalez Plaintiffs have reflected Mr. Kanefield's changed testimony in their Corrected  
Post-Trial Memorandum.

1 Kanefield, the County Recorders do not “back date” voter registration  
2 applications after receiving proof of citizenship. Instead, the date of registration  
3 is the date the applicant provided a new form and included documentary proof of  
4 citizenship, even if that date falls after the voter registration deadline for an  
5 upcoming election. [*Compare* Kanefield 7/16/08 Tr. 716:20-717:14 *with*  
6 Rodriguez 8/2/06 Dep. 23:16-22; Altaha 1/14/08 Dep. 22:14-23:3; Dean-Lytle  
7 1/16/08 Dep. 37:8-38:10].

8 *See* Dkt. Entry No. 1029 at 12; Ex. A at No. 10. Defendants are again incorrect, as Ms.  
9 Dean-Lytle explains in her deposition that Pinal County rejected voter registration  
10 applications without the requisite proof of citizenship after the passage and  
11 implementation of Proposition 200. *See* Ex. C.

12 Defendants contend that Gonzalez Plaintiffs’ deposition citations for Jasper  
13 Altaha also do not support the statement above. This is not the case, as Mr. Altaha’s  
14 deposition testimony addresses the issue of how counties do not “back date” voter  
15 registration applications without acceptable proof of citizenship. For the convenience  
16 of the Court, Gonzalez Plaintiffs have expanded their citation and attached the  
17 corresponding excerpts to this Motion for the sole purpose of contextualizing Mr.  
18 Altaha’s deposition testimony. *See* Ex. C.

19 Similarly, Defendants claim that the designated deposition testimony of Cindy  
20 Gage does not support the proposition below.

21 In fact, because the Type F license does not show its designation on its face,  
22 legal permanent residents of the U.S. do not realize they possess a Type F license,  
23 even after they become naturalized citizens and do not know that if they want to  
24 register to vote using their driver’s license number they would have to return to  
25 the MVD, show proof of U.S. citizenship and ask for their computer records to  
26 be updated. [*Yanofsky* 1/10/08 Dep. 67:9-12; *Gage* 1/10/08 Dep. 54:22-25, 90:7-  
22; *Collins* 1/10/08 Dep. 20:24-21:2].

1 Defendants are mistaken, as Ms. Gage’s deposition testimony that fully supports the  
2 proposition was properly designated and provided to the Court and all parties. *See Ex.*  
3 *D.*

4 As demonstrated by the deposition excerpts attached as exhibits to this Motion,  
5 Defendants’ position regarding the Kanefield, Dean-Lytle, Altaha and Gage citations  
6 discussed above is unfounded and Gonzalez Plaintiffs urge this Court to reject  
7 Defendants’ contentions.  
8

9  
10 **3. Gonzalez Plaintiffs Have Corrected Typographical Errors in Their**  
11 **Original Post-Trial Memorandum.**

12  
13 Gonzalez Plaintiffs have discovered that several citations are the result of  
14 typographical errors and have either corrected the citations or withdrawn them. *See Ex.*  
15 *A* at Nos. 1-2, 4. Although two citations have been withdrawn from the brief, Gonzalez  
16 Plaintiffs wish to note that the propositions associated with the two withdrawn citations  
17 remain supported by other citations adjacent to the withdrawn citations.  
18

19 **III. Conclusion**

20  
21 For the foregoing reasons, Gonzalez Plaintiffs urge this Court to grant their  
22 Motion for Leave to File Post-Trial Brief.  
23  
24  
25  
26

1 DATED this 31st day of July, 2008. Respectfully submitted,

2

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By: s/Diego M. Bernal  
Diego M. Bernal

4

Counsel for Plaintiffs  
Gonzalez, et al.

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CERTIFICATE OF SERVICE

7

8 I hereby certify that on the 31th day of July, 2008, I caused the foregoing  
9 document to be electronically transmitted to the Clerk's Office using the CM/ECF  
System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

10 COPY of the foregoing mailed with Notice  
11 of Electronic Filing this 31 day of July, 2008 to:

12 The Honorable Roslyn O. Silver  
13 United States District Court  
14 Sandra Day O'Connor U.S. Courthouse, Suite 624  
15 401 West Washington Street, SPC 59  
16 Phoenix, AZ 85003-2158

15

s/Diego M. Bernal  
Diego M. Bernal

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