

1 Nina Perales, TX SBN: 24005046
Diego Bernal, TX SBN: 24048350
2 David H. Urias, NM SBN: 14718
MEXICAN AMERICAN LEGAL
3 DEFENSE AND EDUCATIONAL FUND
110 Broadway, Suite 300
4 San Antonio, TX 78205
Ph: (210) 224-5476
5 nperales@maldef.org
dbernal@maldef.org
6 durias@maldef.org

7 Daniel R. Ortega, Jr., SBN: 005015
ROUSH, MCCracken, GUERRERO,
8 MILLER & ORTEGA
650 North Third Avenue
9 Phoenix, Arizona 85003
Ph: (602) 253-3554
10 danny@rmgmoinjurylaw.com

11 Karl J. Sandstrom
PERKINS COIE, LLP
12 607 Fourteenth Street, N.W., Suite 800
13 Washington, D.C. 20005
Ph:(202)434-1639
14 ksansdstrom@perkinscoie.com

15 Attorneys for Gonzalez Plaintiffs

16
17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE DISTRICT OF ARIZONA

19 Maria M. Gonzalez, et al.,
20 Plaintiffs,

21 vs.

22 State of Arizona, et al,
23 Defendants.
24

) No. **CV-06-1268-PHX-ROS(Lead)**
) No. CV-06-1362-PCT-ROS
) No. CV-06-1575-PCT-ROS
)
)
) GONZALEZ AND ITCA
) PLAINTIFFS' JOINT MOTION TO
) RE-OPEN THE RECORD TO
) REFLECT ADMISSION OF
) EXHIBITS
)
)
)

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26
27 (Assigned to the
Honorable Roslyn O. Silver)
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2 NOW COME Jesus Gonzalez, *et al.* (“Gonzalez Plaintiffs”) and Intertribal
3 Council of Arizona, *et al.* (“ITCA Plaintiffs”), and pursuant to Fed. R. Civ. P. 59, or in
4 the alternative Fed. R. Civ. P. 60, request that the Court re-open the record to enter an
5 order on Gonzalez Plaintiffs’ pending Consolidated Motion for Admission of Trial
6 Exhibits (Doc. 1001) and ITCA Plaintiffs’ Motion for Admission of Trial Exhibits
7 (Doc. 998). In support of their motion, Plaintiffs would show as follows:
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10 1. This case was filed in May, 2006 and challenged the voting related
11 provisions of the Arizona Taxpayer and Citizen Protection Act of 2004 (“Prop 200”).
12

13 2. During the trial of this case, held from July 9 to July 18, 2008, Plaintiffs
14 sought to admit a number of exhibits into evidence. Following extensive negotiations
15 with Defendants regarding the admission of exhibits, Gonzalez Plaintiffs filed the
16 following trial motions to admit exhibits (see Doc. 960, 965, 966, 970, 973, and 974).
17

18 3. On the last day of trial, and following additional agreements reached with
19 Defendants, Gonzalez Plaintiffs withdrew their trial motions to admit exhibits and filed
20 one consolidated motion to admit exhibits. *See* Doc. 1001. ITCA Plaintiffs also filed a
21 motion to admit exhibits that day. *See* Doc. 998.

22 4. The Court stated at the close of trial that it was aware of the pending
23 request to admit exhibits and would take the matter under advisement. *See* Tr. at
24 961:25-962:15. The Court further stated its understanding that Gonzalez Plaintiffs
25 would file a list of the exhibits in dispute so that the Court could rule on the
26 admissibility of the exhibits expeditiously. *See* Tr. at 963:23-964:7.
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1 5. Gonzalez Plaintiffs’ Consolidated Motion for Admission of Trial Exhibits
2 requests that the Court admit into evidence exhibits that were introduced and to which
3 there was no objection. In addition, the Motion requests that the Court admit into
4 evidence exhibits that were introduced and to which there was an objection by State or
5 County Defendants. *See* Doc. 1001. The Motion is accompanied by a spreadsheet
6 showing the status of all of the Gonzalez Plaintiffs’ exhibits. *See* Doc. 1001-2.
7

8 6. The Court entered its Order; Findings of Fact and Conclusions of Law on
9 August 20, 2008. In the Order, the Court references and relies upon a number of
10 exhibits that were not admitted at trial but are included in Gonzalez Plaintiffs’
11 Consolidated Motion for Admission of Trial Exhibits. *See* Doc. 1041 (referencing
12 Gonzalez Plaintiffs’ exhibits 4; 21; 147; 175; 305; 409; 672; 675; 676; 711; 715; 954
13 and 961).
14

15 7. Gonzalez Plaintiffs’ Consolidated Motion for Admission of Trial Exhibits
16 (Doc. 1001) and ITCA Plaintiffs’ Motion for Admission of Trial Exhibits (Doc. 998)
17 remain pending before the Court.
18

19 8. Fed. R. Civ. P. 59 (a) (2) provides “[a]fter a nonjury trial, the court may,
20 on motion for a new trial, open the judgment if one has been entered, take additional
21 testimony, amend findings of fact and conclusions of law or make new ones, and direct
22 the entry of a new judgment.” Rule 59 (e) provides “[a] motion to alter or amend a
23 judgment must be filed no later than 10 days after the entry of the judgment.”
24

25 9. Fed. R. Civ. P. 60 (a) further provides that “[t]he court may correct a
26 clerical mistake or a mistake arising from oversight or omission whenever one is found
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1 in a judgment, order, or other part of the record. The court may do so on motion or on
2 its own, with or without notice.”

3
4 10. It is within the sound discretion of the Court to re-open the record for the
5 purpose of including its ruling on the evidentiary motion filed by Gonzalez Plaintiffs
6 and taken under advisement by the Court at the close of trial. This is true even in
7 situations in which a party seeks to admit evidence following trial. *See Matthew Bender*
8 *& Co. v. West Publishing Co.*, 158 F.3d 674, 679 (2d Cir.1998) (“A district court's
9 decision to reopen the proof to allow a party to submit additional evidence is subject to
10 its sound discretion.”) (*citing Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S.
11 321, 331, (1971); *see also Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 144 (2d Cir.1998)
12 (remanding to district court to allow movant to admit additional evidence because the
13 district court had already found that the record lacked sufficient evidentiary support).

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16 11. In the case at hand, Plaintiffs moved their exhibits into evidence at trial
17 and did not delay in offering their evidence until after the record closed. *See, e.g.*
18 *Cargill, Inc. v. Sears Petroleum & Transport Corp.*, 388 F.Supp.2d 37 (N.D.N.Y. 2005)
19 (declining to revise jury’s calculation of damages when movant failed to offer evidence
20 at trial).

21
22 12. By granting this motion, and including its ruling on the exhibits offered at
23 trial by Plaintiffs, the Court will clarify the trial record in this case and serve the
24 interests of justice. *See Edward H. Bohlin Co., Inc. v. Banning Co., Inc.*, 6 F.3d 350,
25 355 (5th Cir. 1993) (“The district court has considerable discretion in deciding whether
26 to reopen a case under Rule 59(e). However, its discretion is not without limit. The
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1 court must strike the proper balance between two competing imperatives: (1) finality,
2 and (2) the need to render just decisions on the basis of all the facts.”) (footnotes
3 omitted).
4

5 13. With this Motion, Plaintiffs do not seek a change to the Court’s findings
6 of fact or conclusions of law. Plaintiffs seek here to re-open the record for the purpose
7 of including the Court’s ruling on the evidentiary motion reserved by the Court at the
8 close of trial and to clarify the contents of the record.
9

10 14. Based on the foregoing argument and authorities, Plaintiffs respectfully
11 request that the Court re-open the record for the purpose of including the Court’s ruling
12 on Doc. 998 and 1001.

13 DATED this 4th day of September, 2008.
14

15 Respectfully submitted,
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17 By: s/Nina Perales
18 Nina Perales

19 Counsel for Plaintiffs
20 Gonzalez, et al.
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September, 2008, I caused the foregoing 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.

COPY of the foregoing mailed with Notice of Electronic Filing this 4th day of September, 2008 to:

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

s/Nina Perales
Nina Perales