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23 UNITED STATES DISTRICT COURT
24 DISTRICT OF ARIZONA

25 Maria M. Gonzalez, et al.,
26 Plaintiffs,

27 vs.

28 State of Arizona, et al.,
Defendants.

) No. CV06-01268-PHX-ROS (Lead)
) CV06-01362-PHX-ROS (Cons)
) CV06-01575-PHX-ROS (Cons)

) **ITCA PLAINTIFFS'**
) **MOTION FOR LEAVE TO**
) **INTRODUCE TESTIMONY OF**
) **NON-EXPERT WITNESSES BY**
) **HEARING TRANSCRIPT**

29 The Inter Tribal Council of Arizona, Inc. (the "ITCA"), the Hopi Tribe,
30 the Arizona Advocacy Network, the League of Women Voters of Arizona, the League
31 of United Latin American Citizens and Rep. Steve Gallardo (collectively, the "ITCA
32 Plaintiffs") respectfully request that the Court permit the ITCA Plaintiffs to introduce
33 the testimony of two of the non-expert witnesses who testified at the August 30 and 31,

1 2006 preliminary injunction hearing through the transcripts of that testimony. This
2 Motion is supported by the following Memorandum. A proposed Order is submitted
3 herewith.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 On July 3, 2008, the Court entered an Order that “the parties shall seek to
6 introduce all evidence upon which they rely in making their case on the merits
7 regardless of whether it was introduced at the preliminary injunction hearing.” [Doc.
8 914] During the August 2006 preliminary injunction hearing, the ITCA Plaintiffs
9 introduced the testimony of three non-expert witnesses – ITCA Executive Director John
10 Lewis, Coconino County Recorder Candace Owens and President of the League of
11 Women Voters of Arizona, Dr. Bonnie Saunders. Here, instead of re-calling two of
12 these three witnesses to testify live at trial, the ITCA Plaintiffs seek leave to introduce
13 the testimony of Ms. Owens and Dr. Saunders into evidence through the transcripts of
14 the preliminary injunction hearing. *See* Fed. R. Civ. P. 65(a)(2) (evidence that would be
15 admissible at trial “becomes part of the trial record and need not be repeated at trial”).

16 The Court has scheduled six days for the trial of this case. Assuming that
17 trial time is split evenly, both Plaintiff groups together will have three days to present
18 their cases. The Gonzalez Plaintiffs have identified 32 witnesses, including five experts,
19 who they intend to call at trial. The ITCA Plaintiffs intend to call three non-expert
20 witnesses who did not testify at the preliminary injunction hearing and also plan to call
21 Mr. Lewis to testify again. Accordingly, the consolidated Plaintiffs will have three days
22 to present the testimony of up to 36 witnesses. Finding time to re-call two of the non-
23 expert witnesses who testified at the preliminary injunction hearing may substantially
24 prejudice the ability of the consolidated Plaintiffs to present the testimony of witnesses
25 who have not yet testified.

26 Defendants cross-examined each of the ITCA Plaintiffs’ non-expert
27 witnesses during the preliminary injunction hearing. In addition, Defendants had the
28 opportunity to make objections during their direct examination by Plaintiffs’ counsel.

1 [See 8/30/06 Hr'g Tr. at 12:25-13:2 ("The Court: No objections are waived, that's
2 correct, but I need to hear those objections before the end of the hearing.")] As such,
3 subject to any objections made by Defendants during the preliminary injunction hearing,
4 the testimony of the non-expert witnesses would be admissible at trial, and should be
5 included in the trial record. Fed R. Civ. P. 65(a)(2).

6 Conclusion

7 For the foregoing reasons, the ITCA Plaintiffs respectfully request that the
8 Court enter into evidence the transcripts of the August 30, 2006 testimony of Candace
9 Owens and Bonnie Saunders.

10 RESPECTFULLY SUBMITTED this 8th day of July, 2008.

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 8th day of July, 2008, I caused the attached
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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