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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**

**STATE AND TWELVE COUNTY  
DEFENDANTS' OBJECTION TO  
GONZALEZ PLAINTIFFS'  
MOTION IN LIMINE**

**(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 Object to Gonzalez  
17 Plaintiffs’ Motion in Limine. This Objection is accompanied by the Memorandum of Points  
18 and Authorities, filed herewith and incorporated fully by this reference.

17 **RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of June, 2008.

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19 **MARICOPA COUNTY ATTORNEY**

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

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6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. Preliminary Statement**

8 Gonzalez Plaintiffs misrepresent the “fact of consequence” in this case. Fed. R.  
9 Evid., Rule 401. While Gonzalez Plaintiffs would like to narrow the relevant State  
10 interest in this case to solely non-citizen voting, or even undocumented alien voting, the  
11 State’s interest is much more broad. First, the State has an interest in preventing voter  
12 fraud in all areas in order to promote public confidence in the electoral system. The  
13 Supreme Court has maintained that states must structure the electoral process “to  
14 maintain the integrity of the democratic system.” *Burdick v. Takushi*, 504 U.S. 428, 441  
15 (1992)(quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). The Supreme Court  
16 has also long recognized the importance of an electorate confident in the integrity of its  
17 election systems. “Preserving the integrity of the electoral process, preventing  
18 corruption, and sustain[ing] the active, alert responsibility of the individual citizen in a  
democracy for the wise conduct of government are interests of the highest importance.  
Preservation of the individual citizen's confidence in government is equally important.”  
*First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 789 (1978) (internal quotes  
omitted).

19 The State has interests in “preventing both actual corruption and the appearance  
20 of corruption.” *FEC v. National Right to Work Committee*, 459 U.S. 197, 210 (1982).  
21 In the 2005 report issued by the Commission on Federal Election Reform detailing  
22 election reform efforts, the Commission identified a confident electorate as one of the

1 keystones of a functional democracy. *See* Commission on Federal Election Reform,  
2 *Building Confidence in U.S. Elections*, September 19, 2005, available at  
3 <http://www.american.edu/ia/cfer>. “Building confidence in U.S. elections is central to our  
4 nation's democracy.” *Id.* at iv.

5 Voter fraud - whether real or perceived, widespread or isolated - has a debilitating  
6 effect on lawful participation. Recognizing that voter fraud cancels out legitimate votes,  
7 the Court remarked that “the right of suffrage can be denied by debasement or dilution  
8 of the weight of a citizen's vote just as effectively as by wholly prohibiting the free  
9 exercise of the franchise.” *Reynolds v. Sims*, 377 U.S. 533 (1964). Even the appearance  
10 of corruption erodes public confidence and deters legitimate voters from voting.  
11 “Confidence in the integrity of our electoral processes is essential to the functioning of  
12 our participatory democracy. Voter fraud drives honest citizens out of the democratic  
13 process and breeds distrust of our government. Voters who fear their legitimate votes  
14 will be outweighed by fraudulent ones will feel disenfranchised.” *Purcell v. Gonzalez*,  
15 549 U.S. 1, 127 S.Ct. 5, 7 (2006). Therefore, the pertinent query for relevance and  
16 admissibility is not whether the County Defendants’ Exhibits relate directly to non-  
17 citizen voting, but whether the Exhibits have a tendency of making the State’s  
18 compelling interest in detecting and deferring voter fraud more or less probable. *See*  
19 *Fed. R. Evid.*, Rule 401.

## 20 **II. The Documents Objected to are Not Hearsay**

21 Evidence is only considered hearsay if it is (1) an out of court statement and (2)  
22 offered to prove the truth of the matter asserted. *Fed. R. Evid.*, Rule 801. The  
documents offered here are not offered to prove the truth of the matter asserted. They  
are offered only to prove that voter fraud has been enough of a prevailing concern  
among elections officials in Arizona to begin tracking instances of voter fraud. The  
changes implemented by Proposition 200 are not the only steps that Arizona has taken to  
combat voter fraud. As explained more fully herein, Arizona has a compelling interest

1 to detect and deter instances of voter fraud and enact practices that will assist in  
2 promoting public confidence in the electoral system. The documents offered by County  
3 officials are offered to prove the State’s interest and to show that Maricopa County is  
4 keeping track of instances of voter fraud. While the content of the documents is also  
5 subject to a hearsay exception, the documents must be admitted because they are not  
6 offered to prove the truth of the matter asserted and therefore are not hearsay.

7 **III. Authenticated Governmental Documents are an Exception to Hearsay**

8 It should be beyond question that non-citizens do not have the right to vote, in the  
9 United States whether they are documented or undocumented. Maricopa County has  
10 kept records of non-citizens who have requested their voting record as a part of their  
11 journey toward citizenship – some of the individuals on this list have a voting record and  
12 some do not. Gonzalez Plaintiffs seek to preclude all of these records on the bases of  
13 relevance and hearsay. These records not hearsay because they are not offered to prove  
14 the truth of the matter asserted. However, they are separately excepted from the hearsay  
15 rule under Rule 803 (6), (8). Rule 803 (6) creates an exception to the hearsay rule for  
16 records that are kept in the course of regularly conducted business. Furthermore, Rule  
17 803 (8) creates a broad hearsay exception for those governmental records “setting for (a)  
18 the activities of the office or agency, or (B) matters observed pursuant to duty imposed  
19 by law as to which matters there was a duty to report..., or (C) in civil actions and  
20 proceedings..., factual findings resulting from an investigation made pursuant to  
21 authority granted by law...” The records that Gonzalez Plaintiffs seek to exclude are  
22 governmental records kept in the normal course of business. In addition, they are the  
result of information obtained through the detection of voter fraud, which the Maricopa  
County Election’s Office has a duty to report. Finally, the documents contain a data

1 compilation of information resulting from investigations into voter fraud. These  
2 documents are thus clearly exceptions to the hearsay rules and should not be excluded.

3 In addition, the fact that ICE or USCIS was asking for the voting record of these  
4 individuals tends to make it more probable that one or more of these individuals  
5 registered to vote without being a citizen. While Gonzalez Plaintiffs offer a multitude of  
6 alternatives for why ICE or USCIS could be asking for their voting records, those are  
7 arguments more properly made at trial and are not reasons for wholesale preclusion of  
8 evidence. It is up to the Court as trier of fact to determine the credibility of each  
9 argument and reach its own conclusion.

#### 9 **IV. Preventing Voter Fraud is a Compelling State Interest**

10 One of the compelling interests being advanced by the changes implemented by  
11 Proposition 200 is maintaining public confidence in the electoral system by preventing  
12 voter fraud. There is no disputing the fact that concerns of voter fraud are widespread  
13 throughout the United States. “[F]lagrant examples of such fraud in other parts of the  
14 country ... documented throughout this Nation's history by respected historians and  
15 journalists ... demonstrate that not only is the risk of voter fraud real but that it could  
16 affect the outcome of a close election.” *Crawford v. Marion County Election Bd.*, 128  
17 S.Ct. 1610, 1619 (U.S., 2008). The *Crawford* Court further recognized that there “is no  
18 question about the legitimacy or importance of the State's interest in counting only the  
19 votes of eligible voters.” *Id.* at 1619.

19 The “electoral system cannot inspire public confidence if no safeguards exist to  
20 deter or detect fraud or to confirm the identity of voters.” *Id.* at 1620 (quoting  
21 Commission on Federal Election Reform, Report, Building Confidence in U.S.  
22 Elections § 2.5 (Sept.2005), App. 136-137 (Carter-Baker Report)). While a State need

1 not show evidence of recent or imminent fraud in order to take anti-fraud steps, the  
2 reality of voter fraud in Arizona makes it all the more important that Proposition 200's  
3 changes be implemented fairly and evenly in order to preserve public confidence in the  
4 electoral system. *See Crawford*, 128 S. Ct. at 1619; *National Right to Work Committee*,  
5 459 U.S. at 210. Gonzalez Plaintiffs wrongfully claim, without any support, that the  
6 instances of voter fraud in the areas of convicted felons and forged or fabricated voter  
7 registrations are irrelevant to the case at hand. Because voter fraud, in all of its forms,  
8 goes to support the compelling state interest advanced by Arizona, all of the evidence of  
9 voter fraud is relevant to the case at hand. Further, it is important and relevant to  
10 understanding why the changes made by Proposition 200, which are not unduly  
11 intrusive or targeted at any particular group, are necessary to protect the integrity of the  
12 voting system in Arizona.

12 *a. Felon and fabricated voter registrations*

13 Plaintiffs seek to preclude County Defendants' Exhibits regarding: (1)  
14 cancellations upon receipt of felon notifications from the Jury Commissioner; (2)  
15 charging documents of people criminally prosecuted for voter fraud; and (3)  
16 governmental records documenting rejected voter registration forms, that include  
17 fabricated voter registrations. There is no doubt that there has been voter fraud in  
18 Arizona. Regardless of the preminent source of the fraud, the State has a compelling  
19 interest in deterring and detecting voter fraud in all areas. *Crawford* at 1619; Carter-  
20 Baker Report. Not only does the reality of voter fraud make it important to eliminate  
21 fraudulent registrations of all types to promote confidence in the electoral system, but it  
22 also makes polling-place identification requirements even more necessary. Prior to the  
passage of Proposition 200 there was no system in place to ensure that a fabricated

1 registration was not entered into the voter roles. Thus, the implementation of  
2 Proposition 200 gave election officials two new important mechanisms with which to  
3 battle voter fraud.

4 Furthermore, evidence regarding the threat of voter fraud by fabrication helps to  
5 clarify one of the problems that the Proposition 200 changes are addressing. By creating  
6 a proof of citizenship requirement, the law now automatically tests for fabricated voter  
7 registration forms. This prong of Proposition 200, therefore, combats the very real threat  
8 of voter fraud by testing each voter registration form for accuracy before the voter is  
9 placed on the voter rolls. The identification at the polls requirement similarly assists in  
10 detecting and deterring voter fraud. Since prior to Proposition 200 voter registration  
11 forms could only be rejected for incomplete information or clear forgery, there are likely  
12 fraudulent registrations that were added to the voter roles prior to the implementation of  
13 any system that could test the accuracy of the registration. The identification at the polls  
14 requirement deters would-be frauds from utilizing the names of non-existent registrants  
15 to cast votes in an election.

16 The State's compelling interests in preventing, detecting, and deterring voter  
17 fraud, as well as in promoting public confidence in Arizona's electoral system, are most  
18 certainly at issue in this case. As such, the evidence of all voter fraud is relevant to show  
19 the need for State action. While no showing of fraud is actually necessary for Arizona to  
20 have implemented the Proposition 200 changes, the existence of actual instances of voter  
21 fraud in the State supports the State's position that it has a compelling interest in  
22 detecting and deterring voter fraud in all areas. *Crawford*, 128 S. Ct. at 1619. The  
Exhibits regarding: (1) cancellations upon receipt of felon notifications from the Jury  
Commissioner; (2) charging documents of people criminally prosecuted for voter fraud;

1 and (3) governmental records documenting rejected voter registration forms are,  
2 therefore, admissible under Fed.R.Evid., Rules 401-02.

3 Finally, Gonzalez Plaintiffs' argument that the relevant evidence contained in the  
4 challenged records should nonetheless be excluded so that it will not "confuse" this  
5 court as the trier of fact is not persuasive and is frankly insulting. Gonzalez MIL at ¶  
6 21. The issues in this case have been set out clearly and repeatedly and the evidence at  
7 issue falls squarely into the category of supporting the State interests that must be shown  
8 as a defense to Plaintiffs claims. Furthermore, Rule 403 specifically cautions against  
9 confusing the jury. The trier of fact in this case is the Court and not a jury. There is  
10 very little likelihood that confusion will result by permitting relevant evidence to be  
11 admitted.

11 **V. Conclusion**

12 For all of the above reasons, the County Defendants respectfully request that the  
13 Court deny Gonzalez Plaintiffs' Motion in Limine and permit all evidence listed by  
14 Defendants to be offered at trial.

15 **RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of June, 2007.

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3 CERTIFICATE OF SERVICE

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8 /s Tonya Mills

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