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Attorneys for County Defendants

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' OBJECTION TO  
GONZALEZ PLAINTIFFS'  
MOTION TO AMEND WITNESS  
LIST**

**(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 object to Gonzalez  
18 Plaintiffs’ Motion for Leave to Amend Witness List to include a witness who has never  
19 been disclosed to Defendants and whose testimony would result in extreme prejudice to  
20 the Defendants.

21 **RESPECTFULLY SUBMITTED** this 27th day of June, 2008.

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

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

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and the Arizona Secretary of State*

## 6 MEMORANDUM OF POINTS AND AUTHORITIES

### 7 Relevant Procedural Background

8 Pursuant to the Court’s Scheduling Order, dated March 27, 2008, all factual  
9 discovery closed on January 18, 2008. That Order stated that final *supplementation* of  
10 disclosures was to be completed by June 4, 2008. [Dkt. 740 ¶ F]. In addition, counsel  
11 for Gonzalez Plaintiffs recognized that, “[W]e finished fact discovery on January 18.”  
12 03-21-08 Hearing Transcript at pg. 24. Prior to January 18, 2008 the Gonzalez  
13 Plaintiffs had served only one Disclosure Statement. Since the January cutoff, the  
14 Gonzalez Plaintiffs continued to add hundreds of witnesses, including the latest witness,  
15 Barbara Corke, who Plaintiffs disclose for the first time four days before trial is  
16 scheduled to begin.

#### 17 A. These witnesses were untimely disclosed

18 The Final Amended Scheduling Order entered by the Court provides that “[a]ll  
19 fact discovery, including answers to interrogatories, production of documents,  
20 depositions and requests to admit shall be completed by January 18, 2008.” [Dkt. 740  
21 ¶ F] Despite the fact that this litigation has been on-going since 2005, the Gonzalez  
22 Plaintiffs waited until four days before trial to disclose the existence of a witness who  
has never been previously disclosed at any time. Defendants were denied the  
opportunity to depose this, and all other untimely disclosed witnesses, since fact  
discovery has been closed for over six months. These late disclosures are in clear  
violation of Rule 26, Federal Rules of Civil Procedure, the Court’s Scheduling Order,  
and the spirit of professionalism and common courtesy. Thus, Defendants request that

1 the Court deny Plaintiffs' Motion for Leave to Amend Witness List and strike all  
2 untimely disclosed witnesses from Plaintiffs' witness list.

3 **B. The Defendants will be severely prejudiced if this witness is permitted  
4 to testify**

5 In addition to the untimely nature of the witness disclosure, Plaintiffs have not  
6 provided sufficient information about the relevance this witness has to this case. The  
7 witness is not a named plaintiff, nor is any alleged burden on a single individual enough  
8 to achieve their burden of proof on any of Gonzalez Plaintiffs' remaining claims. In  
9 light of the fact that collectively Plaintiffs have been able to produce only one other  
10 witness who claims not to have proof of citizenship, the addition of this witness adds  
11 nothing to Gonzalez Plaintiffs' case. Due to the utter failure to disclose this witness at  
12 any time<sup>1</sup> of these witnesses, Defendants did not have the opportunity to depose or  
13 otherwise conduct fact discovery on this surprise witness prior to the close of discovery.  
14 Defendants had no prior knowledge of the existence of this witness and permitting  
15 Gonzalez Plaintiffs' leave to amend their witness list, in light of these factors, would be  
16 unfair and would result in extreme prejudice to Defendants.

17 **C. Plaintiffs could have produced this witness earlier**

18 Gonzalez Plaintiffs have continually argued that their inexcusably late disclosure  
19 of witnesses and other discoverable information was a direct result of Defendants'  
20 failure to provide them with unredacted copies of rejected voter registration forms. This  
21 excuse is, at best, unpersuasive. The truth is that County Defendants produced redacted  
22 copies of thousands of rejected voter registration forms to Plaintiffs as early as summer  
of 2006. While the counties were required by law to redact portions of the voter  
registration forms,<sup>2</sup> the name and address of the applicant were not redacted from any of

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20 1 Plaintiffs failed to previously disclose even the names of individuals to whom they had sent  
21 letters, which would have at least given Defendants some idea of which rejected applicants  
might later pop up as surprise witnesses.

22 2 It should also be noted that when the Court did order the counties to provide some of the  
otherwise protected information, it did not order the counties to provide unredacted copies of  
the rejected voter registration forms. Plaintiffs have complained about the time it took the

1 the forms. Gonzalez Plaintiffs have had these names and addresses for nearly two years  
2 and yet did not make any attempt to send letters to these individuals until 2008. Indeed,  
3 despite the fact that fact discovery closed January 18, 2008, Plaintiffs have been sending  
4 out letters trolling for witnesses as late as *May 28, 2008*. See Letters, attached as Exhibit  
5 A hereto. This undue delay was solely within Plaintiffs' purview to remedy and they  
6 chose to do nothing with the information disclosed by Defendants until early 2008. As  
7 such, Plaintiffs should be denied the opportunity to amend their witness list and all of  
8 Plaintiffs' untimely disclosed witnesses should be stricken.

7 **Relief Requested**

8 For the foregoing reasons, Defendants respectfully request that the Court deny  
9 Gonzalez Plaintiffs' Motion to Amend Witness List.

9 **RESPECTFULLY SUBMITTED** this 27th day of June, 2008.

10 **ANDREW P. THOMAS**  
11 **MARICOPA COUNTY ATTORNEY**

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21 counties to comply with the Court's order, but these complaints are not reasonable in light of the  
22 fact that the counties had to re-redact tens of thousands of rejected voter registration forms and  
county them before they could be turned over to Plaintiffs.

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 27th day of June, 2008, I caused the foregoing  
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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this 27th day of June, 2008.

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3 COPY of the foregoing mailed with Notice of  
Electronic Filing this 27th day of June, 2008 to:

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7

8 /s Tonya Mills

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