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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)  
17 ) No. CV-06-1362-PCT-JAT(Cons.)  
Plaintiffs, ) No. CV-06-1575-PHX-EHC(Cons.)  
18 )  
19 vs. ) REPLY IN SUPPORT OF  
20 State of Arizona, et al, ) GONZALEZ PLAINTIFFS'  
MOTION FOR LEAVE TO FILE  
21 Defendants. ) CORRECTED POST-TRIAL BRIEF  
)  
) (Assigned to the  
22 Honorable Roslyn O. Silver)

23 NOW COME Gonzalez Plaintiffs and file this Reply in Support of their Motion  
24 for Leave to File Corrected Post-Trial Brief and Motion for Leave to File Corrected  
25 Response.  
26

1 Defendants' Response is not a response to Gonzalez Plaintiffs' Motion for  
2 Leave, but instead an attempt to argue new issues outside the briefing schedule. For  
3 example, all pages following the first page of Defendants' Exhibit A to their Response  
4 (Doc. 1038-2) do not address Gonzalez Plaintiffs' Motion for Leave but instead address  
5 Gonzalez Plaintiffs' Consolidated Response to Defendants' Post Trial Memoranda. For  
6 this reason, it is an improper filing and Gonzalez Plaintiffs request that Defendants'  
7 Response be struck.  
8

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10 Furthermore, almost all of the citations listed by Defendants in Exhibit A to their  
11 Response are in fact correct citations by Gonzalez Plaintiffs. *See* Ex. A to this Reply.  
12 For example, there are several instances in both the Post-Trial Memorandum and  
13 Response where Gonzalez Plaintiffs make a number of statements of fact within one  
14 sentence and then properly support those facts with more than one citation. *See* Ex. A.  
15 Defendants seemingly argue that any citation that does not support each and every  
16 proposition that it follows is incorrect by default. Defendants are mistaken, as the  
17 propositions in Gonzalez Plaintiffs' Response are supported by correct citations, and in  
18 many occasions by several. *See Id.* at Nos. 1-3,5; Exs. B-E.  
19

20  
21 Gonzalez Plaintiffs also assert that the propositions with single citations called  
22 into question by Defendants are also correct. For example, Defendants argue that the  
23 trial transcript citation 07/17/08 Tr. 800:24-800:17 cannot support Gonzalez Plaintiffs'  
24 statement that "Defendants... claim that in light of the total number of registered voters,  
25  
26

1 the thousands of excluded registrants are unimportant.” Exs. A at No. 6; F. This is not  
2 correct, as Dr. Zax explained that,

3  
4 A. This difference is not nearly large enough, in my estimation, to be  
5 thought of as substantively important. He doesn't -- Dr. Lanier doesn't  
6 provide us with the statistical significance test, nor does he provide us with  
7 what we would need in order to precalculate that test. But recognizing, if  
8 nothing else, that his identification of Hispanic identity for each of these  
9 registrants is an estimate -- he uses the passive word "index" to identify  
10 who's Hispanic and who's not. My impression is that that's a pretty good  
11 estimate. But it's by no means infallible. So some of his identifications of  
12 who is Hispanic and who is not are clearly wrong. We don't know which  
13 ones. But when you factor in that there's some uncertainty about the actual  
14 number of Hispanics and non-Hispanics in this 31,550 pool, then you have  
15 to reference that the difference between 13.7 and 13.8 percent is so small  
16 that it is probably overwhelmed by the uncertainty associated with the  
17 original identification of who's Hispanic and who's not.

18 07/17/08 Tr. 800:24-800:17; Ex. A at No. 6; F. In fact, Dr. Zax reiterated his  
19 opinion on cross-examination that the thousands of rejected voter registrants are  
20 not important:

21 Q. And do you recall testifying on direct that with respect  
22 to the number of Latinos who remain unregistered after their  
23 voter registrations were rejected pursuant to Prop 200 that the  
24 resulting difference in the electorate is not important in a  
25 scientific sense?

26 A. Again, I don't remember my exact phrasing but that is  
certainly the sense of what I would have said.

Zax, 7/18/08 Tr. 921:1-7.

Similarly, with respect to the testimony of Ms. Preiss, which Defendants  
claim do not demonstrate her ability to afford the requisite proof of citizenship to  
register to vote, the trial transcript portions cited by Gonzalez Plaintiffs include

1 statements by Ms. Priess that she is low-income and of very limited financial  
2 means. *See* Exs. A at 9; G.

3  
4 Post-trial briefing has concluded in this case. However, Defendants continue to  
5 pursue a strategy of red herrings, distraction and confusion in an attempt to draw the  
6 Court's attention away from the facts in this case. These efforts waste judicial  
7 resources, are not credible and do nothing to change the fact that Defendants offered no  
8 evidence, through their expert or otherwise, to counter Plaintiffs' showings of fact.<sup>1</sup>

9  
10 Defendants have no response to the evidence that the overwhelming majority of  
11 individuals whose voter registration applications were rejected pursuant to Prop 200  
12 swore under oath that they were native born citizens of the United States.<sup>2</sup> Instead,

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13  
14 <sup>1</sup> For example, Defendants continue to try to persuade the Court that voter  
15 registration applications rejected under Prop 200 are not "rejected" and will be  
16 backdated after the applicant provides documentary proof of citizenship so the applicant  
17 does not miss the opportunity to vote in any elections. On the contrary, Maricopa  
18 County again today reiterated to the public through its Federal Compliance Officer that  
19 "Any new registration not containing this [Prop 200] documentation is rejected" and  
20 furthermore rejected applications will not be backdated to allow a voter to participate in  
21 the Primary Election even if he or she 'cures' the deficient application with documentary  
22 proof of citizenship. Instead "The registrant will receive notice from [Maricopa County  
23 Elections Department] but they will not be registered for the Primary. They will need to  
24 complete a new form containing the correct information in order to participate in the  
25 General Election in November" Ex. I.

26  
<sup>2</sup> In his analysis, Dr. Lanier relied on the voter registration forms rejected by  
Defendants to report that over 90% of the rejected voter applicants swore that they were  
born in the United States. *See* Ex. 896 and 884 (Table 3). The remaining applicants  
similarly swore under penalty of perjury that they were citizens of the United States and  
born outside the United States. Although Dr. Lanier did not rely on the oaths of  
citizenship for his analysis, the sworn statements are nevertheless admissible as reliable  
and probative of a material fact under the residual hearsay exception of Fed. R. Civ. P.  
807.

1 Defendants claim that this information should not be considered by the Court. Even the  
2 most cursory review of the sworn voter registration applications in Ex. 896 reveals that  
3 the rejected applicants reflect the demographics of Arizona in general; most of the  
4 rejected applicants are not Latino, many have just moved to Arizona from the Midwest,  
5 or California, or other states, and almost all applicants indicate that they were born in  
6 the United States. The Court noted at trial that the fact that the rejected voter forms are  
7 sworn statements does have an effect on the Court's consideration of the information on  
8 the forms. *See* 7/15/08 Tr. 340:18-21. Defendants' suggestion that these applicants are  
9 non-citizens is simply untenable.  
10

11  
12 Similarly, in their Response, Defendants once again attempt to explain away the  
13 disparate impact of Prop 200 on Latino voter registrants by claiming that this effect is  
14 somehow due to an alleged decrease in Latino population growth in Arizona.  
15

16 First and most importantly, Plaintiffs have demonstrated that Latinos suffered a  
17 disparate impact because they were more likely to be rejected under Prop 200 and less  
18 likely to join the voter rolls after being rejected under Prop 200 when compared to non-  
19 Latinos. *See, e.g.,* Tr. Ex. 884 (Tables 2 and 5) and 7/10/08 Tr. 235:23–248:12;  
20 262:10–263:1. This evidence, based on the rejected voter registration forms themselves,  
21 is not affected by population growth because it is based on an examination only of  
22 individuals who applied to register to vote, not an estimate of a pool of individuals  
23 eligible to register to vote.  
24  
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1           Second, the pool of persons eligible to register to vote in Arizona is much larger  
2 than those who join the citizen voting age population in one particular year. Dr.  
3 Chapa's analysis demonstrated that although 77% of eligible non-Latinos are registered  
4 to vote in Arizona, only 56% of eligible Latinos are registered to vote. *See* Ex. 862  
5 (Table 8b). Thus, there is an existing pool of thousands of unregistered and eligible  
6 Latinos whose decision to apply to register to vote is unrelated to the growth of Latino  
7 population in Arizona. Defendants have provided no evidence to support their claim  
8 that the rate of Latino voter registration is tied to trends in Latino population growth as  
9 opposed to trends within the existing population of Latinos eligible to register to vote.  
10

11  
12           Finally, Dr. Chapa, the only expert to offer opinions on the significance of the  
13 Census data regarding Latino population growth, testified that he would not rely on one  
14 data point from 2005-2006 to form conclusions about whether Latino population growth  
15 is slowing in Arizona, particularly in light of the overall trend of population increase for  
16 Latinos:

17  
18           I think you have to take these data as a whole, as different point  
19 estimates over this period of time. And so any one point estimate  
20 may vary due to sampling error or non-sampling error. But if you  
21 look for the pattern for these different point estimates in the  
22 consistent trend, I would say taken as a whole, I think it's  
23 unambiguously clear the total Hispanic citizen voting age population  
24 grew at a very rapid rate, much more rapid rate than the white non-  
25 Hispanic CVAP.

26           7/9/08 Tr. 40:2 -41:12; *see also* 35:18- 36:4. The American Community Survey  
data for 2007, which will provide the next data point in the series presented by Dr.

1 Chapa in his Table 9e, will not be released by the U.S. Census until September 2008.<sup>3</sup>  
2 Defendants introduced none of their own evidence or expert analysis, instead claiming  
3 without support that Latino population growth has slowed after Prop 200.<sup>4</sup>  
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5 For the foregoing reasons, Gonzalez Plaintiffs urge this Court to strike  
6 Defendants' Response and grant the Motion for Leave to File Post-Trial Brief.  
7

8 DATED this 4th day of August, 2008. Respectfully submitted,

9  
10 By: s/Nina Perales  
Nina Perales

11 Counsel for Plaintiffs  
12 Gonzalez, et al.

13 CERTIFICATE OF SERVICE

14 I hereby certify that on the 4th day of August, 2008, I caused the foregoing  
15 document to be electronically transmitted to the Clerk's Office using the CM/ECF  
16 System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

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

19 The Honorable Roslyn O. Silver  
20 United States District Court  
Sandra Day O'Connor U.S. Courthouse, Suite 624

21 <sup>3</sup> See [http://www.census.gov/Press-Release/www/releases/archives/american\\_community\\_survey\\_acs/012268.html](http://www.census.gov/Press-Release/www/releases/archives/american_community_survey_acs/012268.html).  
22

23 <sup>4</sup> Defendants again raise a red herring when they claim Gonzalez Plaintiffs  
24 should not characterize the population data from the years 2000-2004 as 'before' Prop  
25 200 when no party disputes that Prop 200 was enacted in November 2004. Dkt. Entry  
26 No. 1038 at 2. Although it suits their purposes to include post Prop-200 Census data in  
their analysis of Latino population growth, it is not accurate for Defendants to attribute  
Latino population growth following November 2004 to the period 'before' Prop 200.

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s/Nina Perales  
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