

1 TERRY GODDARD
Attorney General
2 Firm Bar No. 14000
3 Mary O'Grady, No. 011434
Solicitor General
4 Steven A. LaMar, No. 004140
Senior Litigation Counsel
5 Carrie J. Brennan, No. 018250
6 Barbara A. Bailey, No. 018230
Assistant Attorneys General
7 1275 West Washington Street
Phoenix, Arizona 85007-2926
8 Tel: (602) 542-3333
9 Fax: (602) 542-8308
Attorneys for Defendants State of Arizona
10 and Arizona Secretary of State Janice Brewer

11 **IN THE UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 MARIA M. GONZALEZ, et al.,
14
Plaintiffs,
15 v.
16 STATE OF ARIZONA, et al.
17 Defendants.

No. CV06-01268 PHX ROS
No. CV06-1362 PCT ROS (Cons)
No. CV06-1575 PCT ROS (Cons)

**DEFENDANTS STATE OF
ARIZONA AND ARIZONA
SECRETARY OF STATE'S
RESPONSE TO GONZALEZ
PLAINTIFFS' MOTION FOR
LEAVE TO FILE CORRECTED
POST-TRIAL BRIEF**

(Assigned to the Honorable
Roslyn O. Silver)

23
24
25
26
27
28

1 Despite the Gonzalez Plaintiffs’ representations to the contrary, their
2 “Corrected” Post-Trial Brief (dkt. # 1037) retains citations that do not support the
3 proposition for which they are cited. State Defendants have attached as Exhibit A a
4 chart detailing plaintiffs’ continuing “clerical errors.”

5 Furthermore, as reflected in Exhibit A, the Gonzalez Plaintiffs have also
6 miscited the record in their Consolidated Response to Defendants’ Post Trial
7 Memoranda (dkt. # 1033) (“Consolidated Response”). The most serious of these
8 misstatements include a cite to Tr. Ex. 896 for the proposition that a “majority of
9 rejected voter registrants are native born citizens of the United States.” *See*
10 Consolidated Response at 8. As plaintiffs are well aware, that exhibit was admitted
11 with the condition that this citizenship information was not being offered for the truth
12 of the matter. [Tr. 337:4-340:22] This fact is clearly noted on the Court-filed Exhibit
13 List (dkt. # 993) (“w/ conditions as stated on the record”).¹ The Gonzalez Plaintiffs
14 also cite to declarations submitted in support of their response to the motion for
15 summary judgment—these declarations are not part of the trial record. *See*
16 Consolidated Response at 14-15.

17 Moreover, plaintiffs cite nonexistent percentages in an attempt to rewrite Dr.
18 Chapa’s testimony regarding the Hispanic population growth rate pre- and post-Prop
19 200. *See* Consolidated Response at 5 n.4. The Gonzalez Plaintiffs state that Table 9e
20 of Tr. Ex. 862 “show[s] Latino citizen population growing at an average annual rate of
21 4.2% per year before Prop 200 and 4.6% in the year following Prop 200.” *Id.* This is
22 false and gives the misleading impression that the Hispanic CVAP growth rate was
23 higher post-Prop 200 than pre-Prop 200. First, the numbers themselves do not appear
24 on Table 9e; plaintiffs have done additional math to get to them, but their calculations
25 omit critical information. It is true that the Hispanic CVAP growth rate between 2005
26 and 2006 was approximately 4.6% (calculated by subtracting the 2005 CVAP (647,612)
27 from the 2006 CVAP (677,525), and dividing the result by the 2005 CVAP (29,912 /
28 647,612)). Dr. Chapa testified that this was true. [Tr. 55:4-24] However, from 2000 to

¹ ITCA Plaintiffs also impermissibly attempt to use the information contained on the registration forms to prove the citizenship of the persons attempting to register. *See* ITCA Brief (dkt. #1024) at p. 14, ll. 3-7.

1 2005, the Hispanic CVAP growth rate was 26.8% (calculated by subtracting the 2000
2 CVAP (510,488) from the 2005 CVAP (647,612) and dividing the result by the 2000
3 CVAP (137,124 / 510,488)). When 26.8% is averaged across the years 2000 to 2005,
4 the average annual growth rate is 5.4%. It is not 4.2%, a percentage that plaintiffs
5 apparently obtained by omitting entirely the 2004-2005 CVAP increase, which by itself
6 was 8.7% (calculated by subtracting 2004 CVAP (595,965) from 2005 CVAP
7 (647,612) and dividing the result by the 2004 CVAP (51,647 / 595,965)). Thus,
8 contrary to plaintiffs' representations, the growth rate of Hispanic CVAP decreased
9 post-Prop 200.

10 RESPECTFULLY SUBMITTED this 1st day of August, 2008.

11 TERRY GODDARD
12 Arizona Attorney General

13 s/ Carrie J. Brennan
14 Mary O'Grady, Solicitor General
15 Steven A. LaMar, Senior Litigation Counsel
16 Carrie J. Brennan, Assistant Attorney General
17 Barbara A. Bailey, Assistant Attorney General
18 Attorneys for Defendants State of Arizona
19 and Arizona Secretary of State Janice Brewer
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 1st day of August, 2008, I electronically transmitted
3 the attached document to the Clerk's Office using the ECF System for filing, and
4 transmittal of a Notice of Electronic Filing to the following ECF registrants:
5

6 David J. Bodney
7 Karen J. Hartman-Tellez
8 Steptoe & Johnson LLP
9 201 East Washington St., Ste. 1600
10 Phoenix, Arizona 85004-2382
11 dbodney@steptoe.com
12 khartman@steptoe.com

13 David B. Rosenbaum
14 Thomas L. Hudson
15 Sara S. Greene
16 Osborn Maledon, P.A.
17 2929 N. Central, 21st Floor
18 Phoenix, Arizona 85012-2793
19 drosenbaum@omlaw.com
20 thudson@omlaw.com
21 sgreene@omlaw.com

22 Jon Greenbaum
23 Benjamin Blustein
24 Lawyers' Committee For
25 Civil Rights Under Law
26 1401 New York Avenue, Ste. 400
27 Washington, D.C. 20005
28 jgreenbaum@lawyerscommittee.org

29 Neil Bradley
30 ACLU Southern Regional Office
31 2600 Marquis One Tower
32 245 Peachtree Center Avenue
33 Atlanta, Georgia 30303
34 nbradley@aclu.org

1 Elliot M. Mincberg
2 People for the American
3 Way Foundation
4 2600 M Street, NW, Ste. 400
5 Washington, DC 20036
6 eminberg@pfaw.org

7 Daniel B. Kohrman
8 AARP Foundation Litigation
9 601 E Street, N.W., Ste. A4-240
10 Washington, DC 20049
11 dkohrman@aarp.org

12 Joe P. Sparks
13 Susan B. Montgomery
14 Sparks, Tehan & Ryley PC
15 The Inter Tribal Council of Arizona, Inc.
16 7503 First Street
17 Scottsdale, Arizona 85251
18 joe-sparks@qwest.net

19 David J. Becker
20 People for the American Way Foundation
21 2000 M Street, NW, Suite 400
22 Washington, D.C. 20036
23 dbecker@pfaw.org

24 Daniel R. Ortega, Jr.
25 Roush McCracken Guerrero
26 Miller & Ortega
27 650 N. 3rd Avenue
28 Phoenix, Arizona 85003
danny@rmgmoinjurylaw.com

Nina Perales
Mexican American Legal Defense and Education Fund
110 Broadway, Ste. 300
San Antonio, Texas 78205
nperales@maldef.org

1 M. Colleen Connor
2 MCAO Division of County Counsel
3 222 N. Central Avenue, Ste. 1100
4 Phoenix, Arizona 85003
connorc@mcao.maricopa.gov

5 Dennis I. Wilenchik
6 Kathleen Rapp
7 Wilenchik and Bartness, P.C.
8 2810 N. Third Street
9 Phoenix, Arizona 85004
diw@wb-law.com
kathleenr@wb-law.com

10 Judith M. Dworkin
11 Marvin S. Cohen
12 Patricia Ferguson-Bohnee
13 SACKS TIERNEY P.A.
14 4250 N. Drinkwater Blvd. 4th
15 Scottsdale, Arizona 85251-3693
Judith.Dworkin@sackstierney.com

16 Criss E. Candelaria
17 Bradley Carlyon
18 Apache County Attorneys Office
19 PO Box 637
20 St. Johns, Arizona 86025
bcarlyon@apachelaw.net

21 Melvin R. Bowers, Jr.
22 Lance B. Payette
23 Navajo County Attorneys Office
24 PO Box 668
25 Holbrook, Arizona 86025
lance.payette@co.navajo.az.us

26 Brenna L. Clani
27 Navajo County Department of Justice
28 PO Box 2010
Window Rock, Arizona 86515
brennalclani@navajo.org

1 Jean E. Wilcox
2 Coconino County Attorney's Office
3 110 East Cherry Ave.
4 Flagstaff, Arizona 86001
5 jwilcox@coconino.az.gov

6 **COPY** served the 1st day of August, 2008, via U.S. mail, with Notice of Electronic
7 Filing, on:

8 The Honorable Roslyn O. Silver
9 United States District Court
10 Sandra Day O'Connor U.S. Courthouse, Suite 624
11 401 West Washington Street, SPC 59
12 Phoenix, AZ 85003-2158

13 /s Elizabeth Stark

14
15 260664
16
17
18
19
20
21
22
23
24
25
26
27
28