

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 State of Arizona and
10 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)

**STATE DEFENDANTS' RESPONSE
TO GONZALEZ PLAINTIFFS'
MOTION TO ADMIT DEPOSITIONS
AND DECLARATION TESTIMONY
AT TRIAL**

(Assigned to the Honorable
Roslyn O. Silver)

23
24
25
26
27
28

1 Defendants State of Arizona and Arizona Secretary of State (“State Defendants”)
2 do not oppose the admission of the relevant portions of the deposition of plaintiff
3 Georgia Morrison-Flores. Defendants oppose, however, the admission of her
4 declarations filed in this case. Ms. Morrison-Flores submitted a declaration after the
5 close of discovery in this case, in which she raises new facts about her voting
6 experience in the 2008 Presidential Preference Election. Ms. Morrison-Flores asserts
7 that she was not permitted to vote in that election due to the lack of identification. In
8 fact, Ms. Morrison-Flores conveniently omitted from her declaration that she is not
9 registered with a recognized political party and therefore was not eligible to vote in that
10 election.

11 Admission of her declaration testimony is unfair and prejudicial to Defendants,
12 who have no other means of cross-examining her statements. Plaintiffs’ argument that
13 Defendants “did not seek to re-depose Ms. Morrison-Flores,” by making another trip to
14 Yuma, Arizona, after the close of discovery is disingenuous. Only on the very day of
15 trial did plaintiffs move to admit that hearsay declaration in lieu of calling Ms.
16 Morrison-Flores to the stand. Defendants were not required to go to the expense and
17 effort of a second Yuma deposition in anticipation that plaintiffs would make an
18 eleventh hour attempt to introduce out of court statements at trial.

19 Moreover, the cases cited by plaintiffs do not support admission of Ms.
20 Morrison-Flores’ February 2008 declaration here. In *Mutuelles Unies v. Kroll &*
21 *Linstrom*, 957 F.2d 707, 713 (9th Cir. 1992), the court held that a declaration was
22 admissible but noted that such testimony is only admitted in “exceptional
23 circumstances” and that the opposing party was not prejudiced by the use of the
24 declaration. The court noted that the opposing party had been permitted to cross-
25 examine the declaration with a deposition. *Id.* at 713. That was not the case here.

26 Plaintiffs improperly cite the unpublished decision of *Finizie v. Principi*, 69 Fed.
27 Appx. 571, 572 (9th Cir. 2003), but the case does not support their argument in any
28 event. In that case, the opposing party had “not identified any way in which she was
prejudiced” by the admission of the prior testimony. Here, Defendants plainly are
prejudiced by not having the opportunity to cross-examine Ms. Morrison-Flores’ new

1 statements about the Presidential Preference Election. The Court should exclude Ms.
2 Morrison-Flores' February 2008 declaration because its admission would unfairly
3 prejudice Defendants. *E.g., Mutuelles Unies*, 957 F.2d at 713 (admission of prior
4 testimony must serve interests of justice).

5 With regard to the deposition testimony of Michael Quinn and Gerri Ratliff,
6 Defendants object to the use of those depositions at trial because those depositions were
7 taken months after the close of fact discovery, as acknowledged by plaintiffs. Plaintiffs
8 never offered any justification whatever for taking those depositions nearly two years
9 after filing this case. Defendants raised their objections with plaintiffs prior to the
10 taking of the deposition and received no response.

11 RESPECTFULLY SUBMITTED this 9th day of July, 2008.

12 TERRY GODDARD
13 Arizona Attorney General

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

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 9th day of July, 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

COPY served the 9th day of July, 2008, via U.S. mail, with Notice of Electronic Filing, on:

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

/s Elizabeth Stark

242704