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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)

**RESPONSE TO GONZALEZ  
PLAINTIFFS' MOTION FOR  
RECONSIDERATION OF PORTION  
OF ORDER EXCLUDING TRIAL  
WITNESSES**

(Assigned to the Honorable  
Roslyn O. Silver)

1 Pursuant to the Court's order dated July 9, 2008, dkt. 932, Defendants State of  
2 Arizona and Arizona Secretary of State ("State Defendants") hereby respond to  
3 Gonzalez Plaintiffs' Motion for Reconsideration of Portion of Order Excluding Trial  
4 Witnesses ("Motion for Reconsideration"). As explained below, permitting the  
5 declarations and depositions of untimely disclosed witnesses would be highly  
6 prejudicial to Defendants, who have had no opportunity to take discovery on or  
7 depositions of those witnesses and who would have no opportunity to cross-examine  
8 them at trial.

9 A motion for reconsideration should be granted only if (1) the Court has patently  
10 misunderstood a party; (2) the Court has made a decision outside the adversarial issues  
11 presented to it; (3) the Court has made an error not of reasoning but of apprehension; or  
12 (4) where there has been a controlling or significant change in the law or facts since the  
13 submission of the issue to the Court. *Saini v. I.N.S.*, 64 F. Supp. 2d 923, 925 (D. Ariz.  
14 1999).

15 **Luz Sarmina and Sal Martinez**

16 None of the above four factors weighs in favor of granting the Motion for  
17 Reconsideration. Although Defendants in their Motion in Limine Re Late Disclosure  
18 of Witnesses, dkt. 821, specifically named Luz Sarmina and Sal Martinez as persons  
19 who were disclosed late, Gonzalez Plaintiffs failed to address them in their Gonzalez  
20 Plaintiffs' Consolidated Response to Motions in Limine ("Consolidated Response").  
21 (Dkt. 867) Thus, the Court did not misunderstand or make a decision outside the  
22 adversarial issues presented to it, because nothing regarding these witnesses was  
23 presented by Plaintiffs.

24 Moreover, Gonzalez Plaintiffs have the burden to show why they did not timely  
25 disclose these witnesses by January 18, 2008. Gonzalez Plaintiffs admit that they knew  
26 of Sal Martinez and Luz Sarmina replacing Edmondo Hidalgo and Anita Luera by at  
27 least November 8, 2007 (Motion at 7). Gonzalez Plaintiffs do not explain why it was  
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1 impossible for them to disclose these persons by the fact discovery deadline two  
2 months later. Defendants' decisions regarding which of Plaintiffs' witnesses to depose  
3 are substantially dependent on who Plaintiffs disclose. Gonzalez Plaintiffs did not  
4 disclose these witnesses in a timely manner, have given no justification for not timely  
5 disclosing them, and because they were disclosed in an untimely manner, Defendants  
6 did not have an opportunity to depose them. Those individuals should not be allowed  
7 to testify.

8 **Martha Higuera, Herta Weber, Barbara Corke, Steve and Donna Fulton,**  
9 **Karen Lewsader, and Brenda Rogers**

10 Gonzalez Plaintiffs propose to introduce testimony through the declarations of  
11 seven untimely disclosed individuals whom Defendants had, and will have, no  
12 opportunity to cross-examine. Neither Defendants nor the Court will have any  
13 opportunity to learn all of the facts regarding the circumstances of their statements.  
14 Admission of such testimony would be patently unfair and unduly prejudicial to  
15 Defendants.

16 Gonzalez Plaintiffs could have and should have disclosed these witnesses earlier.  
17 Plaintiffs do not dispute that they received the rejected voter registration forms by at  
18 least late 2007. They also acknowledge that they received all of the conditional  
19 provisional ballot documents by March 2008. Plaintiffs were sending out letters to  
20 many individuals on *May 28, 2008*, and therefore cannot argue that they used diligence  
21 in attempting to locate witnesses. *See* Letters, attached as Exhibit A hereto. Notably,  
22 Plaintiffs do not inform the Court when they actually first contacted the seven  
23 individuals.

24 Accordingly, Plaintiffs' argument regarding those witnesses (Martha Higuera,  
25 Herta Weber, and Barbara Corke) testifying about their voter registration experience is  
26 unsupported. Similarly, Plaintiffs have offered no justification for their failure to  
27 disclose those witnesses offering statements about their voting experiences (Steve and  
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1 Donna Fulton, Karen Lewsader and Brenda Rogers).

2 In addition, Gonzalez Plaintiffs' argument on these witnesses in their Motion for  
3 Reconsideration is virtually a word-by-word rehash of their argument in their  
4 Consolidated Response, and is therefore improper under the motion for reconsideration  
5 standard set forth above.

6 **Michael Quinn and Gerri Ratliff**

7 Once again, Gonzalez Plaintiffs' Motion for Reconsideration offers nothing new  
8 on these witnesses. It is merely a reiteration of their argument in their Consolidated  
9 Response. Gonzalez Plaintiffs do not dispute that the depositions of these witnesses  
10 were taken months after the close of fact discovery and that they made no attempt to  
11 reopen discovery for those depositions. Defendants should be entitled to rely on the  
12 Court's orders regarding discovery deadlines, and in declining to attend the depositions  
13 of Quinn and Ratliff, they were doing just that. Defendants will be prejudiced by the  
14 introduction of the deposition testimony of these witnesses.

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

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 9<sup>th</sup> day of July, 2008, I electronically transmitted the  
3 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:  
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**COPY** served the 9th day of July, 2008, via U.S. mail, with Notice of Electronic Filing, on:

The Honorable Roslyn O. Silver  
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/s Elizabeth Stark

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