

**Appeal No. 08-17094**

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**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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MARIA M. GONZALEZ, *ET AL.*,

*Plaintiffs-Appellants,*

v.

STATE OF ARIZONA, *ET AL.*,

*Defendants-Appellees.*

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Appeal from the United States District Court for the District of Arizona  
Case No. CV 06-01268-PHX-ROS

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**GONZALEZ PLAINTIFFS-APPELLANTS' RESPONSE TO MOTION TO  
CONSOLIDATE APPEALS BY DEFENDANT-APPELLEES STATE OF  
ARIZONA AND ARIZONA SECRETARY OF STATE**

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Come now Gonzalez Plaintiffs-Appellants, *Maria M. Gonzalez, et al.*, and file this Response to the Motion to Consolidate Appeals by Defendants-Appellees State of Arizona and Arizona Secretary of State seeking to consolidate civil appeals nos. 08-17094 and 08-1711.

For the reasons set out below, Gonzalez Plaintiffs-Appellants oppose that portion of the consolidation motion that requests an order for joint briefing in the appeals. Gonzalez Plaintiffs-Appellants respectfully request separate briefing for Plaintiffs-Appellants if the cases are consolidated.

This case was filed on May 9, 2006 by Gonzalez Plaintiffs-Appellants challenging the voting provisions of the Arizona Citizen and Taxpayer Protection Act (“Prop 200”). A later case, filed by the Intertribal Council of Arizona, et al. (“ITCA Plaintiffs-Appellants”) was consolidated with the *Gonzalez* action. Following two interlocutory appeals to this Court, the cases were tried simultaneously by independent plaintiffs and counsel.

The evidentiary record developed by Gonzalez Plaintiffs-Appellants at trial is substantial and addresses a broad scope of claims litigated by Gonzalez Plaintiffs-Appellants, including minority vote dilution in violation of the Voting Rights Act and discrimination against naturalized U.S. citizens in violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment, among others. Gonzalez Plaintiffs-Appellants presented the testimony of five expert witnesses and seven

lay witnesses and successfully moved the admission of 592 exhibits. ITCA Plaintiffs-Appellants presented their own separate witnesses and exhibits at trial.

Gonzalez Plaintiffs-Appellants appeal five claims: (1) the 14<sup>th</sup> Amendment to the U.S. Constitution; (2) Section 2 of the Voting Rights Act, 42 U.S.C. 1973 et seq.; (3) the Supremacy Clause of the U.S. Constitution; (4) the National Voter Registration Act, 42 U.S.C. 1973gg, et seq.; and (5) the 24<sup>th</sup> Amendment to the U.S. Constitution. ITCA Plaintiffs-Appellants appeal the last two claims mentioned above.

Because Gonzalez Plaintiffs-Appellants have appealed a number of claims not shared by ITCA Plaintiffs-Appellants and appellants have pursued separate and distinct strategies in their cases, it is appropriate to permit separate briefing on appeal. *See, e.g. U.S. v. Dupuy*, 760 F.2d 1492, 1496 fn. 1 (9<sup>th</sup> Cir. 1985) (“The appeals of Dupuy, Buzard, and Tercero were consolidated for oral argument. Dupuy and Buzard filed a joint brief. Tercero raised additional questions in a separate brief.”); *Beverly Hills Federal Sav. & Loan Ass'n v. Webb*, 406 F.2d 1275, 1276 (9<sup>th</sup> Cir. 1969) (“These are consolidated appeals from two judgments dismissing the action as to certain defendants for lack of subject matter jurisdiction. . . The Webb group and the Title Company have filed separate appellees' briefs in this court.”).

Thus, Gonzalez Plaintiffs-Appellants respectfully request separate briefing for Plaintiffs-Appellants if the cases are consolidated.

DATED: October 31, 2008

Respectfully submitted,

/s Nina Perales

Nina Perales

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**Certificate of Service**

I hereby certify that on this 31<sup>st</sup> day of October, 2008, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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