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13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF ARIZONA**

15 MARIA M. GONZALEZ, et al.,

16 Plaintiffs,

17 v.

18 STATE OF ARIZONA; et al.

19 Defendants.

No. CV 06-1268-PHX-ROS (LEAD)  
CV 06-1362-PHX-ROS  
CV 06-1575-PHX-ROS

(Consolidated)

**IMPACT OF CRAWFORD V.  
MARION DECISION ON  
PLAINTIFFS NAVAJO NATION AND  
AGNES LAUGHTER**

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24 The Court ordered that the parties to this consolidated litigation submit simultaneous  
25 briefing on the impact of *Crawford v. Marion County Election Board*, 553 U.S. \_\_\_\_ (April  
26 28, 2008) on the instant case. The Navajo Nation and Agnes Laughter (the “Navajo  
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1 Plaintiffs”), by and through undersigned counsel, hereby submit their brief regarding the  
2 impact of *Crawford* on Case No. CV06-1575-PHX-ROS to the Court.

3 **BRIEF**

4 **I. Status of Navajo Plaintiffs’ Case**

5 On June 20, 2006, the Navajo Plaintiffs filed a lawsuit challenging the voter  
6 identification requirement of Proposition 200, "The Arizona Taxpayer and Citizen  
7 Protection Act" in federal district court. Proposition 200 changed (i) the voter registration  
8 requirement to include more stringent demonstration of citizenship and (ii) the in-person  
9 voting procedures to require all in-person voters to produce certain identification prior to  
10 receiving a regular ballot. The lawsuits were filed in anticipation of the problems that  
11 would occur in the first elections using the new requirements: the Primary and General  
12 Elections of September and November 2006. The Navajo Nation requested the court to  
13 enjoin the voter identification requirement on the Navajo Reservation.

14 In the Primary and General Elections of September and November 2006, several  
15 hundred Navajo voters failed to present identification and were provided conditional  
16 provisional ballots. Very few of those ballots were subsequently counted. The Court  
17 denied the Navajo Plaintiffs a preliminary injunction and the Navajo plaintiffs were  
18 preparing for trial scheduled for Summer 2008.

19 In April 2008, the Navajo Plaintiffs reached a settlement agreement with the State of  
20 Arizona and Arizona Secretary of State, Janice Brewer (the “State Defendants”) and with  
21 Coconino, Apache and Navajo Counties (the “County Defendants”). The settlement  
22 agreement provides for revisions to the identification at the polls requirement that is part of  
23 the Arizona Secretary of State’s Elections Instructions and Procedures Manual (the  
24 “Revised Procedures”). The Revised Procedures identify a non-exhaustive list of  
25 documents that may serve as tribal identification for Native American electors.

26 The State Defendants submitted the Revised Procedures to the United States  
27 Department of Justice for preclearance on April 16, 2008. The State Defendants requested  
28

1 that the United States Department of Justice expedite its review to avoid further litigation  
2 and to ensure adequate time to implement the revised procedures for the 2008 fall elections.  
3 The Navajo Plaintiffs, the State Defendants and the County Defendants have agreed to  
4 dismiss Case No. CV06-1575-PHX-ROS upon notice to the Court that the U.S. Department  
5 of Justice has pre-cleared the Revised Procedures.

6 **II. Crawford v. Marion County Election Board**

7 On April 28, 2008, the United States Supreme Court upheld the State of Indiana’s  
8 election law which requires citizens voting in person to present government-issued photo  
9 identification. *Crawford v. Marion County Election Board*, 533 U.S. at \_\_\_ (slip op. at 5).  
10 Justice Stevens, announced the decision of the Court and delivered an opinion in which he  
11 was joined by Chief Justice Roberts and Justice Kennedy. Justice Stevens commented on  
12 the facial attack on the Indiana statute, noting that the magnitude of the impact on indigent  
13 voters was not known and, therefore, the Court could not conclude that the “statute imposes  
14 ‘excessively burdensome requirements’ on any class of voters.” *Crawford*, slip op. at 18.  
15 It leaves open the ability for future challenges by Indiana voters to the Indiana statute as  
16 applied. Only the separate concurrence by Justices Scalia, Thomas and Alito would reject  
17 challenges to the voter identification statute as applied. Justice Scalia’s concurrence  
18 concluded that individual impacts or those of a class are not relevant to the analysis as the  
19 Indiana statute is “a generally applicable, nondiscriminatory voting regulation. *Crawford*,  
20 slip op., J. Scalia concurring at 2-4. The burden of acquiring identification is not severe  
21 and the State’s interests are sufficient. *Id.* at 6.

22 A majority of the Justices -- Stevens, Roberts, Kennedy, Souter, Ginsburg and  
23 Breyer -- would not bar the challenges brought in the instant case to the Arizona statute as  
24 applied in the 2006 Primary and General Elections and those elections that have followed.  
25 The Navajo Plaintiffs’ claims are supported by evidence from the 2006 Elections. The  
26 claims brought against the Arizona statute, as applied, by the Navajo Plaintiffs, are not  
27 foreclosed by the *Crawford* decision.

1 **III. Conclusion**

2 Notwithstanding the analyses of the Justices in the *Crawford* decision, the Navajo  
3 Plaintiffs are satisfied that the Revised Procedures will ameliorate the severe, adverse  
4 impact on Navajo voters. The Revised Procedures will meet the needs of the Navajo  
5 Plaintiffs while meeting the voter identification requirement of Proposition 200 and will  
6 result in an acceptable outcome in time for the Fall 2008 Elections. Nothing in the  
7 *Crawford* decision would undermine the settlement reached by the Navajo Plaintiffs with  
8 the State Defendants and the County Defendants in the instant case.

9 DATED this 13<sup>th</sup> day of May, 2008.

10 SACKS TIERNEY P.A.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 2008, a complete, duplicate copy of this document was forwarded directly to Judge Roslyn O. Silver by First Class Mail, at the following addresses:

Hon. Roslyn O. Silver  
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\_\_\_\_\_  
s/ Judith M. Dworkin

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