

1 Nina Perales, TX SBN: 24005046
Diego Bernal, TX SBN: 24048350
2 David H. Urias, NM SBN: 14718
MEXICAN AMERICAN LEGAL
3 DEFENSE AND EDUCATIONAL FUND
110 Broadway, Suite 300
4 San Antonio, TX 78205
Ph: (210) 224-5476
5 nperales@maldef.org
dbernal@maldef.org
6 durias@maldef.org

7 Daniel R. Ortega, Jr., SBN: 005015
ROUSH, MCCracken, GUERRERO,
8 MILLER & ORTEGA
650 North Third Avenue
9 Phoenix, Arizona 85003
Ph: (602) 253-3554
10 danny@rmgmoinjurylaw.com

11 Karl J. Sandstrom
PERKINS COIE, LLP
12 607 Fourteenth Street, N.W., Suite 800
13 Washington, D.C. 20005
Ph:(202)434-1639
14 ksansdstrom@perkinscoie.com

15 Attorneys for Gonzalez Plaintiffs

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF ARIZONA

18 Maria M. Gonzalez, et al.,) No. CV-06-1268-PHX-ROS(Lead)
19) No. CV-06-1362-PCT-ROS
Plaintiffs,) No. CV-06-1575-PCT-ROS
20)

21 vs.)

**PLAINTIFFS' JOINT STATUS
REPORT**

22 State of Arizona, et al,)

(Assigned to the
Honorable Roslyn O. Silver)

23 Defendants.)
24)
25)
26)
27)

1 NOW COME consolidated Plaintiffs in this case and, pursuant to the Court's
2 Amended Scheduling Order dated February 14, 2008, submit Plaintiffs' Joint Status
3 Report. Consolidated Plaintiffs have been unable to reach agreement with State
4 Defendants regarding the language of this document and have been unable to confirm
5 the position of some County Defendants regarding the issues presented below:
6

7
8 **I. Pending Motions**

9 There are two Motions pending before the Court that have been fully
10 briefed:

- 11 1. State Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P.
12 12(b)(1) (Lack of Standing) Directed to Agnes Laughter (Doc. #
13 433); and
- 14 2. State Defendants' Motion to Dismiss Pursuant to Fed R. Civ. P.
15 12(b)(1) (Lack of Standing) Directed to Gonzalez Plaintiffs (Doc. #
16 434);
- 17 3. Motion to Supplement the Record in Support of State Defendants'
18 Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) (Lack of Standing) Directed to
19 Gonzalez Plaintiffs (Doc. # 616).

20 In addition, Gonzalez Plaintiffs intend to file a motion for leave to file a
21 sur-reply to the Motion to Supplement the Record in Support of State Defendants'
22 Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) (Lack of Standing) Directed to
23 Gonzalez Plaintiffs (Doc. # 616).

24 **II. Status of Discovery**

- 25 A. Case No. CV06-01268-PHX-ROS (Gonzalez)

26
27 For Plaintiffs.
28

1 Gonzalez Plaintiffs have sought and received multiple orders from this Court
2 compelling production of discovery responses by Defendants. *See* 8/30/07 Hr'g Tr. at
3 25:20 – 26:24 (ordering County Defendants to produce unredacted rejected voter
4 registration forms); Dkt. No. 554 (ordering County Defendants to produce copies of
5 uncounted conditional provisional ballot envelopes); Dkt. Entry No. 661 (denying
6 motions to quash or objections filed by Graham, Pima, Pinal, Yavapai, Greenlee,
7 Maricopa, La Paz, and Santa Cruz County Treasurers [Docs. 614, 619, 620, 631, 634,
8 637, 644, 646] and ordering them to produce copies of uncounted conditional
9 provisional ballot envelopes).
10
11

12
13 Despite being ordered to produce the requested discovery documents, County
14 Defendants did not complete production of rejected voter registration forms until late
15 November, 2007. *See* Exhibit A to Dkt. No. 451 (emails showing late disclosures of
16 voter registration forms by County Defendants); *see also* Dkt. Nos. 465 (Yavapai
17 County late responses to written discovery on 12/06/07); 470 (Pinal County late
18 responses to written discovery on 12/10/07); 471 (Apache County late responses to
19 written discovery on 12/10/07). The production of uncounted provisional and
20 conditional provisional ballots by the County Treasurers is not yet complete, despite the
21 Court's order that the Treasurers produce these documents by March 7, 2008. *See* Dkt.
22 Entry No. 661. Gonzalez Plaintiffs have yet to receive complete disclosures of
23 uncounted conditional provisional ballot envelopes from Cochise County, Graham
24 County, Navajo County, Yavapai County, Pima County, Gila County, Santa Cruz
25 County and Mojave County.
26
27
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1 Because they have not yet received the disclosure of critical documents in the
2 case, Gonzalez Plaintiffs timely disclosed five expert witnesses and their preliminary
3 reports to Defendants on January 4, 2008. In their reports, Gonzalez Plaintiffs' experts
4 stated that they plan to supplement their reports with further analysis. On March 7,
5 2008, Gonzalez Plaintiffs timely served expert rebuttal reports. Gonzalez Plaintiffs
6 intend to provide their experts the information provided by Defendants and the County
7 Treasurers in their disclosures to Plaintiffs.
8

9
10 State Defendants have propounded requests for production and interrogatories on
11 Gonzalez Plaintiffs, who have responded to those requests. State Defendants also took
12 depositions of some of the Gonzalez Plaintiffs. Gonzalez Plaintiffs deposed several
13 Defendants and Defendants' representatives. State Defendants identified its expert with
14 its expert report. State Defendants took the deposition of one of the Gonzalez Plaintiffs'
15 experts on February 27, 2008. Gonzalez Plaintiffs deposed Defendants' expert on
16 March 12, 2008.
17
18

19
20 B. Case No. CV06-01362-PHX-ROS (ITCA)

21 For Plaintiffs.

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23 The ITCA Plaintiffs have served interrogatories and requests for production on
24 Defendant Secretary of State and on the Counties, which have responded to those
25 discovery requests. The Secretary has propounded interrogatories and requests for
26 production on the ITCA Plaintiffs, who have responded to those requests. The ITCA
27 Plaintiffs disclosed the identity of their trial expert with a preliminary expert report. The
28

1 ITCA Plaintiffs' expert is in the process of conducting a telephone survey of individuals
2 whose voter registration forms were rejected for failure to provide proof of citizenship
3 and individuals who voted conditional provisional ballots.
4

5 C. Case No. CV06-01575-PHX-ROS (Navajo Nation)

6 The Navajo Plaintiffs have served interrogatories and requests for production on
7 the Secretary and have responded to interrogatories and produced a number of
8 documents requested by the Secretary. Navajo Plaintiffs disclosed the identity of their
9 trial expert with the expert report. The Secretary has served interrogatories and requests
10 for production on the Navajo Plaintiffs and has responded to interrogatories and
11 produced a number of documents requested by the Navajo Plaintiffs. The Secretary
12 disclosed the identity of their trial expert with the expert report. The Navajo Plaintiffs
13 and the Secretary have discussed scheduling the depositions of their experts.
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15
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17 **III. Status of Settlement**

18 A. Case No. CV06-01268-PHX-ROS (Gonzalez)

19 Gonzalez Plaintiffs and Defendants have not engaged in settlement discussions.
20

21 B. Case No. CV06-01362-PHX-ROS (ITCA)

22 Two of the ITCA Plaintiffs, the Inter-Tribal Council of Arizona, Inc. and the Hopi Tribe,
23 have engaged in settlement discussions with the State Defendants with regard to certain
24 claims in Case No. CV06-01362-PHX-ROS. The remaining ITCA Plaintiffs have not
25 engaged in settlement discussions with defendants.
26

27 C. Case No. CV06-01575-PHX-ROS (Navajo Nation)

1 The Navajo Plaintiffs and the Arizona Secretary of State have engaged in
2 settlement discussions with regard to Case No. CV 06-1575-PHX-ROS. The Navajo
3 Plaintiffs and the Secretary of State appear to be in agreement in principle on basic
4 elements of a settlement, however, the specific terms of settlement have not yet been
5 resolved.
6

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8 **IV. Possible Motions.**

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10 For Plaintiffs.

11 Plaintiffs do not anticipate filing any dispositive motions at this time.
12

13 **C. Scheduling Matters.**

14 For All Plaintiffs.
15

16 This Court has stated that it will wait for a decision by the U.S. Supreme Court in
17 *Crawford v. Marion County Election Board* before setting a trial in this case. *See*
18 Transcript of Proceedings for Scheduling Conference held on 9/28/07 at 35. Plaintiffs
19 agree that it is appropriate to wait for a decision from the Supreme Court in *Crawford*
20 before setting the trial date. Plaintiffs believe that it will be most helpful to the Court to
21 receive briefs from the parties discussing the guidance offered by the *Crawford* decision
22 before trial commences. For these reasons, Plaintiffs do not believe a July trial is
23 appropriate.
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27 A. Case No. CV06-01268-PHX-ROS (Gonzalez)
28

1 Because Gonzalez Plaintiffs have been forced to seek repeated orders from the
2 Court compelling disclosure by Defendants of critical documents in the case, and
3 because Defendants have not yet completed their court-ordered disclosures, Plaintiffs
4 have produced timely preliminary expert reports and plan to supplement their expert
5 reports based on the information gathered from the disclosures. For this reason,
6 Gonzalez Plaintiffs recommend an extension of the deadline to supplement expert
7 reports in order to accommodate the late disclosures by Defendants.
8
9

10 DATED this 14th day of March, 2008.

Respectfully submitted,

11
12 By: s/Nina Perales
13 Nina Perales

14 Counsel for Plaintiffs
15 Gonzalez, et al.

16 David J. Bodney
17 Karen J. Hartman-Tellez
18 Collier Center
19 201 East Washington St., Ste. 1600
20 Phoenix, Arizona 85004-2382

21 OSBORN MALEDON, P.A.
22 David B. Rosenbaum
23 Thomas L. Hudson
24 Sara S. Greene
25 2929 North Central Ave., 21st Floor
26 Phoenix, Arizona 85012-2793

27 Attorneys for ITCA Plaintiffs
28 SACKS TIERNEY PA

By _____
Judith M. Dworkin
Marvin S. Cohen
Javier G. Ramos
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, Arizona 85251

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2008, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

COPY of the foregoing mailed with Notice of Electronic Filing this 14th day of March, 2008 to:

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/Diego Bernal
Diego Bernal