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10 **IN THE UNITED STATES DISTRICT COURT**
DISTRICT OF ARIZONA

11
12 Maria M. Gonzalez, et al.,
13 Plaintiffs,
14 v.
15 State of Arizona, et al.,
16 Defendants.
17

No. CV06-1268 PHX ROS
No. CV06-1362 PCT JAT (Cons)
No. CV06-1575 PHX EHC (Cons)

**STATE’S REPLY IN SUPPORT
OF ITS MOTION TO VACATE
HEARING**

(Assigned to the Honorable Roslyn O.
Silver)

18
19 Last week’s decision in *Purcell v. Gonzalez*, Nos. 06-532 and 06-533, 549 U.S.
20 ___ (2006) (per curiam), dissolved the Ninth Circuit’s interlocutory injunction and
21 permitted Arizona to continue implementing its voter identification requirements
22 through the general election. Though the State and counties directed their stay
23 applications to Justice Kennedy, the entire Court weighed in for its first decision of this
24 fall term and made clear that any disruption of the voter identification rules in Arizona
25 for the time being is over. *See id.* at 5 (“our action today shall of necessity allow the
26 election to proceed without an injunction suspending the voter identification rules”).

27 The Court strongly cautioned against interlocutory orders that upset the status quo
28 when an election is imminent. “Court orders affecting elections, especially conflicting

1 orders, can themselves result in voter confusion and consequent incentive to stay away
2 from the polls. As an election draws closer, that risk will increase.” *Id.* at 4; *see also*
3 *Southwest Voter Registration Education Project v. Shelley*, 344 F.3d 914, 919 (9th Cir.
4 2003) (“Interference with impending elections is extraordinary, and interference with an
5 election after voting has begun is unprecedented.”). This rationale supported the Court’s
6 decision to dissolve the Ninth Circuit injunction entered more than two weeks earlier. It
7 applies with greater force to the Navajo Nation Plaintiffs’ effort to go forward with a
8 preliminary injunction hearing scheduled five days before the election.

9 The Navajo Nation Plaintiffs do not address the concerns that obviously arise
10 from a hearing scheduled just days before the general election. Indeed, after the
11 decision of the U.S. Supreme Court in *Purcell*, simply holding a hearing next week
12 about voter identification in Arizona risks voter confusion, even if that hearing concerns
13 only the Navajo Nation. The Navajo Nation Plaintiffs try to assign blame to the *Purcell*
14 decision for confusing voters by virtue of lifting the Ninth Circuit stay. Their theory is
15 no basis for ignoring a decision of the Supreme Court.

16 It makes no difference, moreover, that “the Navajo Nation Plaintiffs’ case was
17 before neither the Ninth Circuit nor the Supreme Court.” Navajo Nation Plaintiffs’
18 Response at 3. The unanimous decision in *Purcell* gives guidance to this and any other
19 court that considers pre-election claims. Moreover, the record before the Supreme Court
20 was clear that the Navajo Nation Plaintiffs also were seeking preliminary injunctive
21 relief against the voter identification provisions of Proposition 200 when the Supreme
22 Court stepped in.

23 In his concurrence, Justice Stevens stated that “[a]llowing the election to proceed
24 without enjoining the statutory provisions at issue will provide the courts with a better
25 record on which to judge their constitutionality.” *Purcell*, 549 U.S. at 5 (Stevens, J.,
26 concurring). The Navajo Nation Plaintiffs desire another hearing on their Civil Rights
27 Act and Voting Rights Act claims based on a previous order of this Court. But as long
28 as they seek relief in the form of a preliminary injunction—and they do—it makes no

1 sense to move ahead just days before the first general election in Arizona under
2 Proposition 200.

3 RESPECTFULLY SUBMITTED this 27th day of October, 2006.

4 TERRY GODDARD
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11 ORIGINAL of the foregoing filed
12 electronically this 27th day of October, 2006.

13 COPY of the foregoing mailed with a Notice of
14 Electronic Filing this 27th day of October, 2006 to:

15 The Honorable Roslyn O. Silver
16 United States District Court
17 Sandra Day O'Connor U.S. Courthouse, Suite 624
18 401 West Washington Street, SPC 59
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