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

14 MARIA M. GONZALEZ, et al.,

15 Plaintiffs,

16 v.

17 STATE OF ARIZONA, et al.

18 Defendants.

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

(Consolidated)

**NAVAJO NATION PLAINTIFFS'  
RESPONSE TO STATE'S MOTION TO  
VACATE NOVEMBER 2, 2006  
HEARING**

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22 Plaintiffs Agnes Laughter and the Navajo Nation ("Navajo Nation Plaintiffs"), by  
23 and through undersigned counsel, hereby respond to the State's Motion to Vacate the  
24 November 2, 2006 hearing to consider additional facts on the Navajo Plaintiffs' Voting  
25 Rights Act and Civil Rights Act claims. The Navajo Plaintiffs oppose the State's Motion  
26 for the reasons explained below.

1 In denying the motions for Preliminary Injunction, this Court specifically ordered  
2 supplemental briefing and scheduled a hearing to revisit the Navajo Nation Plaintiffs'  
3 Motion for Preliminary Injunction and to consider additional facts on the Navajo Nation  
4 Plaintiffs' Voting Rights Act and Civil Rights Act claims. (dkt. 183; dkt. 217). The Court  
5 found that sufficient evidence was not presented to appropriately evaluate the Navajo  
6 Nation Plaintiffs' Voting Rights Act and Civil Rights Act claims. (dkt. 219 at 14-16). The  
7 Court noted, however, that "if Plaintiffs can show that Navajos will suffer disproportionate  
8 harm under Proposition 200, a preliminary injunction may be appropriate." *Id.* at 14.  
9 Subsequent evidence from the Primary Election and other evidence supporting the Navajo  
10 Plaintiffs' case have been gathered for the purpose of the supplemental hearing.

11 The hearing originally scheduled for October 19, 2006 was vacated because the  
12 voter identification requirements were enjoined.<sup>1</sup> The day after the scheduled hearing was  
13 to take place, the Supreme Court vacated the Ninth Circuit's decision. *See Purcell v.*  
14 *Gonzales*, Nos. 06A375 (06-532) and 06A379 (06-533) (U.S. Oct. 20, 2006).

15 The State believes that the *Purcell* decision should preclude this Court from  
16 deciding the Navajo Plaintiffs' claims.<sup>2</sup> The State's argument is not persuasive. First, the  
17 *Purcell* decision was not based on the merits. *See id.*, slip op. at 5 ("We underscore that we  
18 express no opinion here on the correct disposition, after full briefing and argument, of the  
19 appeals from the District Court's September 11 order or on the ultimate resolution of these  
20 cases"). The Supreme Court's decision was procedural and reversed the Ninth Circuit  
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22 <sup>1</sup> Notably, the State was not opposed to October 18 hearing, notwithstanding the possibility  
23 of reversal by the Supreme Court.

24 <sup>2</sup> The State assumes that all Arizona voters—even those living in remote areas on the  
25 Reservation without water, electricity, phones, internet, or television, and are limited  
26 English proficient—know that the voter identification requirements apply and the Supreme  
27 Court has reinstated the voter identification requirements. The Secretary of State has not  
28 provided any evidence that it has made efforts to inform voters of the reinstated voter  
identification requirements. The Supreme Court's decision has created more confusion for  
voters, and will create problems for voters who think the identification requirements are not  
in effect.

1 explaining that "[t]here has been no explanation given by the Court of Appeals showing the  
2 ruling and findings of the district court to be incorrect." *Id.* Second, and importantly, the  
3 Navajo Nation Plaintiffs' case was before neither the Ninth Circuit nor the Supreme Court.  
4 The Supreme Court did not have the opportunity to evaluate the primary election results or  
5 the Navajo Nation Plaintiffs' claims as this Court does.

6 The issue before the District Court is whether the voter identification requirements  
7 violate the right of Navajo voters to participate in elections under the Voting Rights Act  
8 and the Civil Rights Act. Unlike the Supreme Court in the *Purcell* case, this Court has the  
9 opportunity to evaluate the actual harm incurred by Navajo voters on Primary Election Day  
10 and additional evidence supporting the Navajo Nation Plaintiffs' Voting Rights Act and  
11 Civil Rights Act claims. The voter identification requirements, coupled with the historical  
12 discrimination in the areas of education and voting in the State of Arizona, serve as an  
13 impediment to Navajo voters from equally participating in the electoral process. The  
14 evidence that will be presented on November 2, 2006 will demonstrate that the disparities  
15 in education and socio-economic status have denied Navajo voters the ability to effectively  
16 participate in the electoral process. The Navajo Plaintiffs also intend to present further  
17 evidence to the Court as to why early voting is not available to many Navajos in order to  
18 circumvent the burdensome voter identification requirements. Thus, the Court, through  
19 supplemental briefing and the November 2 hearing, will have before it "historical facts"  
20 and evidence by which the Court can rule; these facts were not before the Supreme Court in  
21 *Purcell*. See State's Motion at 2. The evidence will demonstrate that the voter  
22 identification requirements violate the voting rights of Navajo voters.

23 The Navajo Nation Plaintiffs respectfully request that the Court deny the State's  
24 request and allow the Navajo Nation Plaintiffs' an opportunity to provide the Court with  
25 evidence supporting its claims so that Navajo citizens will not be denied the opportunity to  
26 participate in the General Election on November 7 for lack of identification.

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DATED this 25th day of October, 2006.

Sacks Tierney P.A.

By: s/ Judith M. Dworkin

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2006, 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

I hereby certify that on October 25, 2006, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants, if any:

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