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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 The Navajo Nation, a federally recognized
15 Indian Tribe; Joyce Nez, an individual; Denise
16 Johnson, an individual; Ashley Atene, Sr., an
17 individual; Irene Roy, an individual; Bonnie
Tsosie, an individual; and Dale Smith an
individual,

18 Plaintiffs,

19 v.

20 Michele Reagan, in her official capacity as
Secretary of State for the State of Arizona;
21 Edison J. Wauneka, in his official capacity as
Apache County Recorder; Angela Romero in
22 her official capacity as Apache County
Elections Director; Doris Clark in her official
23 capacity as Navajo County Recorder, Rayleen
Richards, in her official capacity as Navajo
24 County Elections Director; Mark Mayrand in
his official capacity as Coconino County
25 Elections Director; and Patty Hansen, in her
official capacity as Coconino County
26 Recorder,

27 Defendants.

No.

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

1 taken prior to the general election to allow a voter to confirm their early ballot vote.” Thus,
2 if the signature on the voter registration does not match that on the sealed envelope, all
3 counties in the State of Arizona allow voters to fix, or cure, it up to five (5) business days
4 after Election Day. This concession does not apply to these Tribal Members who failed to
5 sign the affidavit on their early ballot envelopes.

6 5. Navajo Nation voters in the Counties of Apache, Coconino, and Navajo were
7 not given the same opportunities to cure mismatched and unsigned ballots as other voters in
8 the State of Arizona.

9 6. Navajo County initially stated that it would allow voters to cure their unsigned
10 ballot affidavits, and then it stated it would not allow voters to cure the ballot affidavits.³

11 7. Apache County did not allow voters who lacked signatures to cure their ballots.
12 They allegedly allowed voters with mismatched signatures to cure ballots. However,
13 Apache County was closed on November 9, 2018, one of the business days provided for
14 curing ballots.

15 8. Coconino County allowed voters with mismatched signatures to cure their
16 ballots but did not allow voters with unsigned ballots to cure the ballot deficiency.

17 9. Maricopa County, the most populated county in the State of Arizona, allows
18 voters to cure unsigned ballot affidavits.⁴

19 10. The signature on a voter’s early ballot is considered a voter’s identification
20 (“ID”).

21 11. Voters who fail to present ID when voting in person on Election Day have five
22 (5) business days to return to the county recorder’s office or another designated location to
23 bring ID and have their ballot counted.
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25 ³*Maricopa County Republican Party v. Regan*, Parties’ Joint Stipulated Factual Statement
26 ¶7, CV 2018-013963 (Maricopa County Sup. Ct., Nov. 8, 2019); *see also* Declaration of
27 Jennifer Crow ¶¶ 21-25, attached as Exhibit 1 to Plaintiffs’ Memorandum of Points and
28 Authorities in Support of Emergency Motion for Temporary Restraining Order.

⁴ Maricopa County Recorder’s Website, FAQ 12 available at
<https://recorder.maricopa.gov/site/faq.aspx>.

1 12. The Navajo Nation requested that the Counties establish additional voter
2 registration and early voting sites on the Reservation in order to assist Tribal Members with
3 the electoral process. For various and unsubstantiated reasons, the Counties denied the
4 Nation’s request. The inadequate early voting sites resulted in Tribal Members making
5 mistakes on their ballots. Workers at an early voting site could have identified and
6 corrected the signature issues. The lack of in-person voter registration sites on the
7 Reservation resulted in inequality of access to voter registration for Tribal Members.

8 13. Defendants’ failure to establish additional in-person voter registration sites and
9 early voting sites on the Reservation, provide translators for early voting, and allow
10 additional time during which Tribal Members could cure their ballot inadequacies had, and
11 will continue to have, a significant disparate impact on the Navajo Nation’s Tribal
12 Members’ voting power. It will also deny them their voting rights and is an apparent effort
13 to dilute their voting strength. Plaintiffs allege that this failure to act, if allowed, would
14 reinforce a “history of official racial discrimination in voting.”

15 14. Ballot translations in the Navajo language are only provided orally.
16 Instructions as to how to complete an early ballot in the Navajo language are only provided
17 orally. Upon information and belief, there were no oral instructions provided to Navajo
18 voters who received early ballots by mail, and there were no radio announcements or other
19 communication in the Navajo language explaining the requirements of completing the
20 ballot affidavit form to Navajo language speakers. Navajo language speakers did not have
21 an equal opportunity to participate in early voting opportunities.

22 15. If the State and Counties’ action and inaction is allowed, the ability of these
23 Tribal Members to effectively participate in the political process will be hindered.

24 16. Plaintiffs seek declaratory and injunctive relief, both temporary and permanent,
25 compelling the Defendants to (a) allow Tribal Members whose ballots were excluded
26 because of missing or mismatched signatures an opportunity to remedy the inadequacy
27 within five (5) business days of the issuance of a Court Order similar to the period the State
28 of Arizona has allowed for remedying ID issues, (b) provide translators certified as

1 proficient in the Navajo language for all future early voting and election-day polling sites,
2 (c) provide translation of instructions for casting an early ballot in Navajo over the radio for
3 the 30 days leading up to an election, (d) establish additional in-person voter registration
4 sites, and (e) establish additional early voting sites on the Reservation for all future
5 elections that are open for consistent hours (at a minimum, each Monday through Friday
6 from 8 a.m. until 6 p.m. with no interruption during the lunch hour) during the 30 days
7 leading up to the election. This relief is sought on the grounds that failure to provide the
8 requested relief is a denial of the equal right to vote.

9 17. The failure to establish this relief will result in Navajo Nation citizens having
10 less opportunity than non-Navajo citizens to participate in the political process and elect
11 candidates of their choice for federal, state and county offices.

12 18. The State has no legitimate interest in enforcing an agreement between political
13 parties that allows early voters to correct some deficiencies and not others. This is
14 particularly so because Defendants' interest in enforcing this agreement is weak given the
15 lack of clear, consistently applied, and accurate voting systems in Apache, Navajo and
16 Coconino Counties.

17 19. Accordingly, Plaintiffs ask this Court to grant them declaratory and injunctive
18 relief set forth in Paragraph 16.

19 **B. AUTHORITY**

20 20. This action is brought by the Plaintiffs pursuant to Sections 2 and 12(d) of the
21 Voting Rights Act of 1965, as amended, 52 U.S.C. § 10301 (formerly codified at 42 U.S.C.
22 1973); 42 U.S.C. § 1983, providing for civil action for deprivation of rights; the Fourteenth
23 Amendment to the United States Constitution; the First Amendment of the United States
24 Constitution, 28 U.S.C. §§ 2201-2202 providing for declaratory relief and other necessary
25 or proper relief; and Article 2, Section 21 of the Constitution of the State of Arizona.⁵ This
26

27 ⁵ Article 1, Section 21. Free and equal elections. All elections shall be free and equal, and
28 no power, civil or military, shall at any time interfere to prevent the free exercise of the
right of suffrage.

1 Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear claims under the
2 Constitution and laws of the State of Arizona.

3 **C. JURISDICTION AND VENUE**

4 21. This case arises under the Constitution and laws of the United States. This
5 Court has original jurisdiction over this matter pursuant to 52 U.S.C. § 10301(a) and (b);
6 42 U.S.C. § 1983; 28 U.S.C. §1362; 28 U.S.C. § 1331; 28 U.S.C. § 1343(a)(3) and (4); and
7 28 U.S.C. § 2201 and 2202, along with Article III of the United States Constitution.

8 22. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

9 23. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because this
10 action is predicated upon a federal question and a substantial part of the events or
11 omissions giving rise to the claims alleged herein occurred, and will continue to occur, in
12 this District.

13 **D. PARTIES**

14 24. Plaintiff Navajo Nation is a federally recognized Indian Tribe with a
15 government-to-government relationship with the United States. The Navajo Reservation
16 was established by the Treaty of 1868 and was thereafter expanded by successive executive
17 orders. The Reservation consists of approximately 27,000 square miles of sovereign
18 territory. The Reservation is located in Apache, Navajo, and Coconino counties in
19 Arizona, as well as 5 counties in Utah and New Mexico. According to the 2010 census, the
20 population of the Reservation is 173,667 of whom 101,835 live on the Arizona portion of
21 the Reservation. The Navajo Nation has a voting age population of 67,252 living within
22 the Arizona portion of the Reservation.

23 25. The Navajo Nation's Tribal Members would have standing to sue in their
24 individual capacities for the allegations set forth in the Complaint. The Navajo Nation
25 helps to coordinate voter outreach and voter education on the Reservation. The Nation also
26 asserts the right to bring this claim on behalf of its members *parens patriae*.

27 26. Plaintiff, Joyce Nez is a resident of Chinle, Arizona, an Arizona elector in
28 Apache County, and an enrolled Tribal Member. Ms. Nez is a citizen of Arizona and is

1 registered to vote in local, state, and national elections in Arizona. Ms. Nez lives on the
2 Reservation. Ms. Nez voted by mail during the 2018 General Election and believed that
3 her ballot was counted. However, Ms. Nez's ballot was not counted for failure to complete
4 the ballot affidavit form. Ms. Nez does not recall being informed that she must complete a
5 ballot affidavit form, and she was not given an opportunity to cure her ballot deficiency.
6 Ms. Nez is a Navajo language speaker. *See* Joyce Nez Declaration attached as Exhibit 1.

7 27. Plaintiff Ashley Atene, Sr. is a resident of Kayenta, Arizona, located on the
8 Navajo Indian Reservation in Navajo County, Arizona. Mr. Atene is an enrolled member
9 of the Navajo Nation and is registered to vote in local, state, and national elections in
10 Arizona. Mr. Atene attempted to vote in the 2018 General Election. He obtained an early
11 ballot and returned it to the Kayenta polling place on Election Day. Mr. Atene asked at the
12 polling location if he needed to sign his ballot, and the pollworker told him that he did not
13 need to sign his ballot. Mr. Atene left the polling location believing that his ballot would
14 be counted. However, his ballot was not counted for failure to sign the ballot affidavit. He
15 was not given an opportunity to cure his ballot deficiency. Mr. Atene is a Navajo language
16 speaker. *See* Ashley Atene, Sr. Declaration attached as Exhibit 2.

17 28. Plaintiff Dale Smith is a resident of Kayenta, Arizona, located on the Navajo
18 Indian Reservation in Navajo County, Arizona. Mr. Smith is an enrolled member of the
19 Navajo Nation. He does not believe he is registered to vote in Arizona elections. Mr.
20 Smith does not believe he has the same access to voter registration and early voting as other
21 citizens who live in Navajo County. Mr. Smith would have to travel approximately 350
22 miles roundtrip to Holbrook to register to vote or participate in early voting outside of the
23 ten hours offered by Navajo County in Kayenta during the 2018 General Election. *See*
24 Dale Smith Declaration attached as Exhibit 3.

25 29. Plaintiff Denise Johnson is an enrolled member of the Navajo Nation living on
26 the Navajo Indian Reservation in Apache County, and she is a fluent Navajo language
27 speaker. Ms. Johnson is not registered to vote and believes it is a financial burden to
28 participate in voting. *See* Denise Johnson Declaration attached as Exhibit 4.

1 30. Plaintiff Irene Roy is an enrolled member of the Navajo Nation and an Arizona
2 elector in Apache County. Ms. Roy is a citizen of Arizona and is registered to vote in
3 local, state, and national elections in Arizona. Ms. Roy is a fluent Navajo language
4 speaker. Ms. Roy lives on a dirt road in Sweetwater on the Navajo Indian Reservation.
5 Ms. Roy does not receive mail at her home and does not have a car. She receives mail 35
6 miles from her home, and can only obtain mail during limited times. It would be a
7 financial burden for Ms. Roy to travel to St. Johns (198 miles one way), Fort Defiance (100
8 miles one way), or Chinle (66 miles one way) to participate in in-person early voting. *See*
9 Irene Roy Declaration attached as Exhibit 5.

10 31. Plaintiff Bonnie Tsosie is an enrolled member of the Navajo Nation. She lives
11 in Sweetwater on the Navajo Indian Reservation on an unpaved road, 15 miles from a
12 paved road. Ms. Tsosie does not receive mail at her home and must travel 35 miles to
13 receive her mail. She has attempted to register to vote unsuccessfully in the past. *See*
14 Bonnie Tsosie Declaration attached as Exhibit 6.

15 32. The Plaintiffs desire to participate in the electoral and political processes of
16 Arizona on an equal basis with non-Navajo voters.

17 33. Defendant Secretary of State Michele Reagan is the chief elections officer in
18 the state, and is responsible for supervising and issuing directives concerning the conduct
19 of all elections in the state. A.R.S. § 16-142. Her duties include certifying the results of the
20 elections. A.R.S. § 16-648. She is sued in her official capacity.

21 34. Defendant Edison J. Wauneka is the Recorder for Apache County and is sued
22 in his official capacity.

23 35. Defendant Doris Clark is the Recorder for Navajo County and is sued in her
24 official capacity.

25 36. Defendant Patty Hansen is the Recorder for Coconino County and is sued in
26 her official capacity.

27 37. Defendant Mark Mayrand is sued in his official capacity as the Elections
28 Administrator for Coconino County. He is in charge of conducting elections in Coconino

1 County.

2 38. Defendant Angela Romero is sued in her official capacity as the Elections
3 Director for Apache County, Arizona. She is in charge of coordinating and administering
4 elections in Apache County.

5 39. Defendant Rayleen Richards is sued in her official capacity as the Elections
6 Director for Navajo County, Arizona. She is in charge of conducting elections in Navajo
7 County.

8 **E. APPLICABLE LAW**

9 40. Article 2, Section 21 of the Constitution of the State of Arizona provides that
10 “[a]ll elections shall be free and equal, and no power, civil or military, shall at any time
11 interfere to prevent the free exercise of the right of suffrage.”

12 41. Section 203 of the Voting Rights Act (“VRA”), 42 U.S.C. § 1973aa-1a
13 (“Section 203”) provides:

14 Whenever any State or political subdivision subject to the
15 prohibition of subsection (b) of this section provides any registration
16 or voting notices, forms, instructions, assistance, or other materials
17 or information relating to the electoral process, including ballots, it
18 shall provide them in the language of the applicable minority group
19 as well as in the English language.

20 42. Section 2 of the VRA, 42 U.S.C.S. § 1973(a), provides that no voting
21 qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed
22 or applied by any State or political subdivision in a manner which results in a denial or
23 abridgement of the right of any citizen of the United States to vote on account of race or
24 color.

25 43. Section 4(f)(4) of the VRA provides in relevant part:

26 Whenever any State of political subdivision [subject to the bilingual
27 electoral requirements] . . . provides any registration or voting
28 notices, forms, instructions, assistance, or other materials or
information relating to the electoral process, including ballots, it
shall provide them in the language of the applicable language
minority group as well as in the English language.

44. A.R.S. § 16-541 provides that “[a]ny election called pursuant to the laws of this

1 state shall provide for early voting. Any qualified elector may vote by early ballot.”

2 45. A.R.S. § 16-542 (A) provides as follows:

3 Within ninety-three days before any election called pursuant
4 to the laws of this state, an elector may make a verbal or signed
5 request to the county recorder, or other officer in charge of elections
6 for the applicable political subdivision of this state in whose
7 jurisdiction the elector is registered to vote, for an official early
8 ballot. In addition to name and address, the requesting elector shall
9 provide the date of birth and state or country of birth or other
10 information that if compared to the voter registration information on
11 file would confirm the identity of the elector. If the request indicates
12 that the elector needs a primary election ballot and a general election
13 ballot, the county recorder or other officer in charge of elections
14 shall honor the request.

15 46. A.R.S. § 16-542 (A) provides that “[t]he county recorder may also establish
16 any other early voting locations in the county the recorder deems necessary.”

17 47. A.R.S. § 16-547(A) provides in relevant part:

18 The early ballot shall be accompanied by an envelope bearing on the
19 front the name, official title and post office address of the recorder or
20 other officer in charge of elections and on the other side a printed
21 affidavit in substantially the following form:

22 I declare the following under penalty of perjury: I am a
23 registered voter in _____ county Arizona, I have not
24 voted and will not vote in this election in any other county or
25 state, I understand that knowingly voting more than once in
26 any election is a class 5 felony and I voted the enclosed ballot
27 and signed this affidavit personally unless noted below.

28 48. A.R.S. § 16-547(C) provides that “[t]he county recorder or other officer in
charge of elections shall supply printed instructions to early voters that direct them to sign
the affidavit, mark the ballot and return both in the enclosed self-addressed envelope that
complies with section 16-545.”

49. A.R.S. § 16-547(C) provides that the instructions shall include the following
statement:

In order to be valid and counted, the ballot and affidavit must be
delivered to the office of the county recorder or other officer in
charge of elections or may be deposited at any polling place in the
county no later than 7:00 p.m. on election day.

50. A.R.S. § 16-548(A) provides as follows:

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The early voter shall make and sign the affidavit and shall then mark his ballot in such a manner that his vote cannot be seen. The early voter shall fold the ballot, if a paper ballot, so as to conceal the vote and deposit the voted ballot in the envelope provided for that purpose, which shall be securely sealed and, together with the affidavit, delivered or mailed to the county recorder or other officer in charge of elections of the political subdivision in which the elector is registered or deposited by the voter or the voter's agent at any polling place in the county. In order to be counted and valid, the ballot must be received by the county recorder or other officer in charge of elections or deposited at any polling place in the county no later than 7:00 p.m. on election day.

51. A.R.S. § 16-550 mandates that “[u]pon receipt of the envelope containing the early ballot and the completed affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on his registration form.”

52. The State of Arizona’s Election Procedures Manual (“SOS Manual”) provides that “[t]he County Recorder or other officer in charge of elections shall supply printed instructions both in English and Spanish to early voters that direct them to sign the affidavit, mark the ballot and return both in the enclosed self-addressed envelope.”⁶

53. The SOS Manual also provides how the voter must mark and return the early ballot:

After voting the early ballot in accordance with the instructions provided by the County Recorder, the voter must: complete and sign the affidavit, place the voted ballot in the envelope provided for that purpose, securely seal it, deliver or mail the envelope to the appropriate County Recorder or officer in charge of elections, or deposit it at any polling place within the county of residence no later than 7:00 p.m. on election day, in order to be counted as valid.⁷

54. The SOS Manual delineates the responsibilities of the Recorder as follows:

The County Recorder or officer in charge of elections shall:

- compare the signatures on the affidavit on every early ballot affidavit envelope with every elector's signature on the registration form.

⁶ Office of the Secretary of State, State of Arizona Election Procedures Manual at 58 (2014).

⁷ SOS Manual at 59.

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- if **satisfied** that the signatures were made by the same person, the County Recorder or officer in charge of elections shall:
 - place a distinguishing mark on the unopened affidavit envelope to indicate that the signature is sufficient,
 - hold the early ballot in the unopened affidavit envelope,
 - deliver them to the early ballot board.
- if not satisfied that the signatures were made by the same person, the County Recorder or officer in charge of elections shall:
 - make a reasonable and meaningful attempt to contact the early voter[,]
 - place a distinguishing mark on the unopened affidavit envelope to indicate that the signatures are insufficient,
 - separate these envelopes from the “sufficient” ballot envelopes, and hold them separately from the “sufficient” ballots,
 - hold these ballot envelopes until delivered to the early ballot board.

If it is determined that the voter was sent an incorrect ballot and there is sufficient time to mail a new ballot and receive the correct voted ballot back from the voter, the Recorder shall issue a corrected ballot.⁸

55. Individuals returning or depositing early ballots are not required to show identification.⁹

56. Conditional provisional ballots are issued to voters who vote in person at the polls and do not present ID as follows:

If the elector does not provide identification as required by ARS § 16-579(A), the elector shall be issued a conditional provisional ballot. The conditional provisional ballot shall be placed in a provisional ballot envelope. The provisional ballot envelope shall indicate that the elector did not provide identification. The poll worker shall notify the elector that he or she must provide identification as required by ARS § 16-579(A) to the County Recorder or to an official deemed acceptable by the County Recorder. The poll worker shall provide the elector with instructions on how, when, and where the elector can provide proof of identification. The proof of identification must be received by the County Recorder's office by 5:00 p.m. on the fifth business day after a general election that includes an election for a

⁸ SOS Manual at 59-60.

⁹ SOS Manual at 150.

1 federal office or 5:00 p.m. on the third business day after any other
2 election for the provisional ballot to be processed and counted.¹⁰

3 57. Ballots are rejected if the affidavit on the envelope is insufficient, or the
4 registrant is not a qualified elector of the voting precinct or district.¹¹

5 **F. VOTING IN ARIZONA**

6 58. Voting in Arizona is conducted by early in-person voting, early voting by mail,
7 and traditional, in-person voting at polling places on Election Day. Arizona voters do not
8 need an excuse to vote early and Arizona permits early voting both in person and by mail
9 during the 27 days before an election. A.R.S. § 16-541.

10 59. For those voters who prefer to vote early and in-person, all Arizona counties
11 operate at least one in person early voting location. Some of these locations are open on
12 Saturdays.

13 60. Arizona has allowed early voting by mail for over 25 years, and it has since
14 become the most popular method of voting, accounting for approximately eighty percent
15 (80%) of all ballots cast in the 2016 election.

16 61. In 2007, Arizona implemented permanent no-excuse early voting by mail,
17 known as the Permanent Early Voter List (“PEVL”). Arizonans now may vote early by
18 mail either by requesting an early ballot on an election-by-election basis, or by joining the
19 PEVL, in which case they will be sent an early ballot as a matter of course no later than the
20 first day of the 27-day early voting period. A.R.S. §§ 16-542-544.

21 62. To be counted, an early ballot must be received by the county recorder by
22 7:00 p.m. on Election Day. A.R.S. § 16-548(A).

23 63. Early ballots contain instructions that inform voters of the 7:00 p.m. deadline.
24 Voters may return their early ballots by mail postage-free, but they must mail them early
25 enough to ensure that they are received by this deadline.

26 64. Additionally, some Arizona counties provide special drop boxes for early
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28 ¹⁰ SOS Manual at 153.

¹¹ SOS Manual at 168.

1 ballots, and voters in all counties may return their early ballots in person at any polling
2 place, vote center, or authorized election official’s office without waiting in line.

3 65. In an Advisory Memorandum of the Arizona Advisory Committee to the
4 U.S. Commission on Civil Rights (July 2018), it was noted that there has been substantial
5 closure of polling locations across the State. Election officials justified these closures due
6 to a decrease in demand because of an increase in early voting preference; cost pressures
7 associated with maintaining polling locations and voting equipment; and fewer locations
8 willing to serve as polling locations because of increased liability, lack of security, lack of
9 compliance with the Americans with Disabilities Act (ADA), and insurance concerns.

10 **G. POVERTY OF THE NAVAJO NATION**

11 66. The Navajo Nation is the largest reservation in the United States and is located
12 within the states of Arizona, New Mexico, and Utah.¹²

13 67. The poverty rate on the Reservation is thirty-eight (38%), twice the poverty
14 rate in the State of Arizona.¹³

15 68. The median household income on the Navajo Nation’s Reservation is \$27,389
16 “which is approximately half that of the State of Arizona.”¹⁴ Thirty-two percent (32%) of
17 the population lives below the poverty level.¹⁵ Only seven percent (7%) of the Tribal
18 membership have obtained a college degree.¹⁶

19 **H. BACKGROUND OF DISCRIMINATION**

20 69. In addition to the depressed socio-economic status of Indians in Navajo
21 country, there is a long history of racial discrimination against Indians in Arizona.

22 70. Prior to 1924, Indians were denied citizenship and the right to vote based on
23 the underlying trust relationship between the federal government and the tribes and on their
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25 ¹² navajobusiness.com/FastFacts/Overview.htm

26 ¹³ Ariz. Rural Policy Institute, Demographic Analysis of the Navajo Nation Using 2010
27 Census and 2010 American Community Survey estimates at 34, available at
https://gotr.azgovernor.gov/sites/default/files/navajo_nation_0.pdf.

28 ¹⁴ *Id.* at 29.

¹⁵ *Id.*

¹⁶ *Id.* at 57.

1 status as citizens of their tribes. Indians could only become citizens through naturalization
2 “by or under some treaty or statute.”¹⁷

3 71. It was not until Congress passed the Indian Citizenship Act of 1924 that all
4 Indians were granted United States citizenship.¹⁸ Enactment of the 1924 Act ended the
5 period in United States history in which United States citizenship of Indians was
6 conditioned on severance of tribal ties and renunciation of tribal citizenship and
7 assimilation into the dominant culture.¹⁹

8 72. Notwithstanding the passage of the Indian Citizenship Act, states continued to
9 discriminate against Indians by denying them the right to vote in state and federal elections
10 through the use of poll taxes, literacy tests, and intimidation.²⁰

11 73. Even after 1924, Arizona Indians were prohibited from participating in
12 elections. The Arizona Supreme Court upheld the prohibition finding that Indians living on
13 reservations could not vote because they were wards of the federal government and, as such
14 were “persons under guardianship” and were thereby prohibited from voting in Arizona.²¹

15 74. Reservation Indians in Arizona did not achieve the right to vote in state
16 elections until 1948 when the Arizona Supreme Court overturned the *Porter v. Hall*
17 decision.²²

18 75. The State of Arizona continued its discrimination through its imposition of
19 English literacy tests which were not repealed until 1972.²³ Only those Indians who could
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21 ¹⁷ *Elk v. Wilkins*, 112 U.S. 94, 103 (1884).

22 ¹⁸ An Act of June 2, 1924, 43 Stat. 253, Pub. L. 175 (1924) (codified as amended at 8 U.S.C.
§ 1401(b)).

23 ¹⁹ COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, § 14.01[3], n. 42-44. (2005
Ed.)

24 ²⁰ Continuing Need for Section 203’s Provision for Limited English Proficient Voters:
Hearing Before the S. Comm. on the Judiciary, 109th Cong. 309 (2006) (letter from Joe
Garcia, NCAI).

25 ²¹ *Porter v. Hall*, 34 Ariz. 308, 331-332, 271 P. 411, 419 (Ariz. 1928).

26 ²² *Harrison v. Laveen*, 67 Ariz. 337, 196 P.2d 456 (Ariz. 1948) (holding that Indians living
on Indian reservations should in all respects be allowed the right to vote).

27 ²³ See ARIZ. REV. STAT. ANN. § 16-101(A)(4)-(5) (1956); Voting Rights Act: Evidence of
28 Continued Need, Vol. I: Hearing Before the Subcomm. on the Constitution of the H.
Comm. on the Judiciary, 109th Cong. 1372 (2006) (appendix to the statement of Wade
Henderson).

1 read the United States Constitution in English and write their names were eligible to vote in
2 state elections.

3 76. The enactment of the VRA included a temporary prohibition of literacy tests in
4 covered jurisdictions. Apache County, Arizona was included in the original list of
5 jurisdictions covered by Section 5 of the VRA.²⁴

6 77. On November 19, 1965, Navajo and Coconino Counties also became covered
7 by Section 5.²⁵

8 78. As a result of this coverage, the Arizona literacy tests were suspended in each
9 of these three counties.

10 79. In 1966, these three Counties became the first jurisdictions to successfully bail
11 out from coverage under Section 5 after the U.S. District Court for the District of Columbia
12 held that Arizona's literacy test had not been discriminatorily applied against Indians in the
13 preceding five years.²⁶

14 80. When the VRA was amended in 1970, it included a nationwide ban on literacy
15 tests, which again preempted the operation of Arizona's literacy tests.²⁷ Arizona became
16 one of the states to unsuccessfully challenge the ban on literacy tests. In upholding the ban
17 and striking down literacy tests, the Supreme Court noted that Arizona had "a serious
18 problem of deficient voter registration among Indians."²⁸ The Court recognized that non-
19 English speakers may make use of resources in their native languages in order to
20 responsibly and knowledgeably cast a ballot.²⁹

21 81. The VRA amendments of 1970 included, as one of the measures of voting
22 discrimination, registration and turnout in the 1968 presidential election. As a result,
23

24 ²⁴Determination of the Attorney General Pursuant to Section 4(b)(1) of the Voting Rights
25 Act of 1965, 30 Fed. Reg. 9897 (Aug. 7, 1965).

26 ²⁵ Determination of the Director Pursuant to Section 4(b)(2) of the Voting Rights Act of
27 1965, 30 Fed. Reg. 14505 (Nov. 19, 1965).

28 ²⁶*Apache County v. United States*, 256 F. Supp. 903, 910911 (D.D.C. 1966).

29 ²⁷The Voting Rights Act, 42 U.S.C. § 1973aa (1970) (current version at 42 U.S.C. § 1973b
(2008)).

²⁸ *Oregon v. Mitchell*, 400 U.S. 112, 117, 132, 153 (1970).

²⁹ 400 U.S. *Id.* at 146.

1 Apache, Coconino and Navajo Counties again became covered by Section 5 along with five
2 (5) other Arizona counties.

3 82. Even after 1970, there were a number of challenges to Indians' right to vote
4 and to hold office. Many of these cases challenged activities in Apache County, one of only
5 a few counties within the United States in which the predominant languages spoken are
6 American Indian. Of these languages, the most commonly used is Navajo, a historically
7 unwritten language.³⁰

8 83. The Arizona Supreme Court quashed a permanent injunction by the lower court
9 against the seating of Tom Shirley, a Navajo Indian living on the Navajo Reservation, who
10 had been elected to the Apache County Board of Supervisors.³¹ The Arizona Court
11 reaffirmed the right of Indians to vote, vacated the injunction and directed the Apache
12 County Board of Supervisors to certify Shirley as the elected supervisor from District 3.³²

13 84. Apache County also discriminated against Indian voters by racially
14 gerrymandering the districts for the three seats on the County's Board of Supervisors. In
15 the early 1970's, Apache County District 3 had a population of 26,700 of whom 23,600
16 were Indian, while District 1 had a population of 1,700 of whom only 70 were Indian and
17 District 2 had a population of 3,900 of whom only 300 were Indian. Several Indian voters
18 challenged Apache County for violating the one-person, one-vote rule.³³ Apache County
19 claimed that Indians are not citizens of the United States and the Indian Citizenship Act
20 granting them citizenship was unconstitutional.³⁴ The federal court rejected the County's
21 arguments, noted that the County must be redistricted in accordance with one-person, one-

22 _____
23 ³⁰ Considering the Navajo Reservation as a whole, including parts of the States of Arizona,
24 New Mexico and Utah, over one-third of the voting age citizens on the Navajo Nation
25 Reservation are limited-English proficient and over one-quarter are illiterate. Voting Rights
26 Act: Evidence of Continued Need, Vol. I: Hearing Before the Subcomm. on the
27 Constitution of the H. Comm. on the Judiciary, 109th Cong. 1403-1404 (2006) (appendix to
28 the statement of Wade Henderson).

³¹ *Shirley v. Superior Court for Apache County*, 109 Ariz. 510, 516, 513 P.2d 939, 945
(Ariz. 1973).

³² *Id.* at 516, 513 P.2d at 945.

³³ *Goodluck v. Apache County*, 417 F. Supp. 13, 14 (D. Ariz. 1975), *aff'd*, 429 U.S. 876
(1976).

³⁴ 417 F. Supp. at 14.

1 vote standards and granted plaintiff's motion for summary judgment.³⁵

2 85. In 1976, Apache County attempted to avoid integration of its public schools to
3 include Indian students by holding a special bond election to fund a new school in the
4 almost entirely non-Indian southern part of the county. Although the special election
5 affected Indian students who would be denied equal schooling, Indian turnout for the
6 election was abnormally low. Investigation demonstrated that the low turnout was a result
7 of the closing of nearly half of the polling places on the reservation, the total lack of
8 language assistance, the absence of Navajo language informational meetings regarding the
9 bond election and the use of English-only in the implementation of absentee voting
10 procedures.³⁶

11 86. In 1988, the United States filed a complaint to enforce Sections 2 and 4(f)(4) of
12 the VRA. The complaint alleged that various election standards, practices, and procedures
13 by the State of Arizona, the Apache County Board of Supervisors and Navajo County
14 Board of Supervisors unlawfully denied or abridged the voting rights of Navajo citizens
15 residing in Apache and Navajo counties. The challenged practices included discriminatory
16 voter registration, use of absentee ballots, and voter registration cancellation procedures, as
17 well as failure to implement effective bilingual election procedures, including the effective
18 dissemination of election information in Navajo and providing for a sufficient number of
19 adequately trained bilingual persons to serve as Navajo translators on election day. This
20 litigation ended in a Consent Decree, which established the Navajo Language Election
21 Information Program required the counties to employ two full-time bilingual outreach
22 workers and to agree to a number of changes to increase voter registration and the
23 dissemination of election procedures.³⁷

24 87. Six Arizona counties are subject to Section 203 for Indian languages: Apache,
25 Coconino, Gila, Graham, Navajo, and Pinal and must provide all election materials,

26 _____
27 ³⁵417 F. Supp. at 16.

28 ³⁶*Apache County High School No. 90 v. United States*, No. 77-1815 (D.D.C. June 12, 1980).

³⁷*U.S. v. Arizona*, Consent Decree, CIV 88-1989 (May 22, 1989).

1 including assistance and ballots, in the language of the applicable language minority
2 group.³⁸ This includes the Navajo language in Apache, Coconino, and Navajo Counties.

3 88. Over seventy percent (70%) of the households on the Navajo Reservation
4 speak a language other than English, and over eighteen percent (18%) of individuals over
5 the age of five speak English less than very well.³⁹

6 89. Current voting practices utilized in Arizona discriminate against the Navajo
7 Nation's Tribal Members. Navajo voters have less access than other voters to in-person
8 voter registration sites. Navajo voters have less opportunity than other voters to participate
9 in early voting. Upon information and belief, no Navajo translators were provided to give
10 guidance to the Tribal Members in the preparation of their early ballots. The SOS Manual
11 only requires that instructions be given in English and Spanish. Considering over one-third
12 of the voting age citizens on the Reservation are limited-English proficient and over one-
13 quarter are illiterate, this failure to provide translators had a significant disparate impact on
14 the Navajo Nation's Tribal Members' voting power, denied them their voting rights and
15 was an apparent effort to dilute their voting strength. Second, the counties refused to
16 provide additional early voting sites on the Reservation which would have allowed workers
17 at such sites to provide guidance to Navajo voters who do not use the English language in
18 completing their early ballots. Finally, and most importantly, over 100 votes cast by
19 members of the Navajo Nation were disqualified, because they failed to sign the envelope
20 containing the ballot or the signature did not match. Voters that failed to include other data
21 on their early ballots were allowed until November 14, 2018, to correct their errors. This
22 concession did not cover the Tribal Members who properly filled out the ballot but failed to
23 sign the envelope.

24 90. Voting in and around Indian reservations and communities is, to a significant
25

26 ³⁸ Voting Rights Act Amendments of 2006, Determinations under Section 203, 81 See. Reg.
27 87532, 87533 (Dec. 5, 2016).

28 ³⁹ Ariz. Rural Policy Institute, Demographic Analysis of the Navajo Nation Using 2010
Census and 2010 American Community Survey estimates at 59, *available at*
https://gotr.azgovernor.gov/sites/default/files/navajo_nation_0.pdf.

1 extent, racially polarized.

2 91. There have been no Native Americans elected to the national offices from
3 Arizona or to the offices of Governor, Attorney General, or Secretary of State, four
4 representatives to the 90-seat state legislature are Native American, and the extent to which
5 tribal members have been elected to other State elected offices and offices of the political
6 subdivisions in and around Indian reservations and communities is significantly
7 disproportionate or minimal in relation to the percentage of tribal members in the total
8 population of the state and political subdivisions in and around Indian reservations and
9 communities.

10 **I. FACTUAL BACKGROUND**

11 92. On August 8, 2018, Russell Begaye, President of the Navajo Nation, sent
12 requests for additional voter registration sites and early voting sites to the recorders of
13 Apache, Coconino and Navajo Counties. *See* Exhibits 7, 8, and 9. He informed the
14 respective recorders that the Nation would help recruit Navajo Tribal Members to staff the
15 locations and assist in obtaining HAVA funds for its operations. *Id.* He asked that they
16 respond by August 17, 2018, so that the Navajo Nation could assist the counties. *Id.* These
17 requests were cc:ed to the Secretary of State, Michelle Regan.

18 93. On August 20, 2018, Defendant Patty Hansen sent a memorandum to President
19 Begaye denying his request for additional early voting sites. *See* Exhibit 10. She claims
20 that Coconino County recently entered into a settlement agreement with the Department of
21 Justice that requires all early voting sites established after the effective date of the
22 agreement be handicapped accessible. The Agreement would allow the County to use
23 current non-compliant facilities for the 2018 elections but prohibited them from
24 establishing any new non-compliant facilities. *Id.* The County did agree to accept assistance
25 from the Navajo Nation in obtaining additional HAVA funding. *Id.*

26 94. On August 23, 2018, Defendant Secretary of State notified President Begaye
27 that Coconino County Recorder's statement that the Secretary of State would not make
28 HAVA funding available to enhance their election security was incorrect. *See* Exhibit 11.

1 95. On September 10, 2018, Defendant Doris Clark notified the Navajo Nation that
2 its request for additional early voting sites on the Reservation was denied, because of the
3 County's interest in ballot security. *See* Exhibit 12.

4 96. The decision to determine whether and if to establish temporary and permanent
5 polling places is statutorily left to the discretion of the individual recorders.

6 **J. CLAIMS**

7 97. Navajo Nation Tribal Members bear the effects of discrimination on the basis
8 of race and tribal status in education, housing, employment, and health services which have
9 resulted in a lower socioeconomic status which hinders their ability to participate
10 effectively in the political process.

11 98. Over seventy percent (70%) of households on the Reservation speak a language
12 other than English, and when translators are not provided by the Counties, this hinders the
13 ability of these Tribal Members to participate effectively in the political process.

14 99. Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, in relevant
15 part, states that it is a violation of the Voting Rights Act, if,

16 based on the totality of the circumstances, it is shown that the
17 political processes leading to nomination or election in the State or
18 political subdivision are not equally open to participation by
members of a class of citizens protected... in that its members have
less opportunity than other members of the electorate to participate
in the political process and to elect representatives of their choice.

19 Thus, Section 2 of the Voting Rights Act, as amended, protects Indians from voting
20 practices which have a disparate impact on their right to vote.

21 100. The crux of Plaintiffs' § 2 claim is that Tribal Members have less opportunity
22 than other Arizona citizens to participate in the political process by exercising their voting
23 franchise.

24 101. The legitimate interests of the Defendants will not be undermined in the event
25 that the Court grants the relief prayed for herein.

26 102. Plaintiffs have no adequate remedy at law.

27 103. Plaintiffs will suffer irreparable harm as a result of the violations complained
28 of herein, and that harm will continue unless Defendants' failure to establish in-person

1 voter registration and early voting sites, provide translators, and have Plaintiffs’ votes
2 counted in the 2018 election is declared unlawful and enjoined by this Court.

3 **FIRST CLAIM FOR RELIEF**
4 **VIOLATION OF THE 14TH AMENDMENT OF THE**
5 **UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983**

6 104. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
7 herein.

8 105. Section 1 of the Fourteenth Amendment of the United States Constitution
9 provides: “No...State shall . . . deny to any person within its jurisdiction the equal
10 protection of the law.”

11 106. Defendants have no legitimate, non-racial reason for rejecting the Nation’s
12 request that early voting sites be established within the boundaries of the Reservation.

13 107. Defendants refused and continue to refuse to establish additional in-person
14 voter registration and early voting sites within the boundaries of the Reservation.

15 108. Defendants have failed to provide translators at early voting sites located on the
16 Reservation who are proficient in the Navajo language.

17 109. Defendants have refused to count the ballots cast by Navajo Nation Tribal
18 Members for the 2018 election, because they failed to sign their envelopes or because of a
19 signature mismatch. Other early ballot deficiencies were authorized to be corrected by
20 November 14, 2018. Failure to allow Navajo voters the same opportunity to cure their
21 ballots violates equal protection under the law.

22 110. By engaging in the acts and/or omissions alleged herein, Defendants acted and
23 continue to act under color of state law to deprive the Plaintiffs their rights that are
24 guaranteed by the Fourteenth Amendment to the United States Constitution and Section 2
25 of the VRA and will continue to violate said rights absent relief granted by this Court.

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SECOND CLAIM FOR RELIEF
VIOLATION OF THE ARIZONA CONSTITUTION

111. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

112. The Defendants have acted under color of state law to deprive the voters of the Navajo Nation equal elections by arbitrarily failing to establish additional in-person voter registration sites, failing to establish additional in-person early voting sites on the Reservation, failing to provide translators and allowing some early voters to correct the deficiencies in their early ballots while refusing members of the Navajo Nation the same opportunity.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE VOTING RIGHTS ACT OF 1965

113. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

114. Section 2 of the VRA, 52 U.S.C. § 10301, protects Plaintiffs from denial or abridgment of the right to vote on account of race, color, or membership in a language minority group. Section 2 provides: “No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” or membership in a language minority group. 52 U.S.C. § 10301.

115. Indians are recognized as a language minority group under the VRA. Native Americans are a protected class under the VRA.

116. The Navajo Nation is a covered jurisdiction under Section 203 of the VRA.

117. Defendants’ failure to establish additional in-person voter registration sites and early voting sites on the Reservation denies members of the federally-recognized Tribe, including the Plaintiffs, the same rights of other members of the electorate to participate in the political process and elect representatives of their choice, in violation of Section 2 of

1 the VRA.

2 118. Defendants’ failure to provide translators to members of the Navajo Nation
3 denies Tribal Members, including the Plaintiffs, the same rights of other members of the
4 electorate to participate in the political process and elect representatives of their choice, in
5 violation of Section 2 of the VRA.

6 119. Defendants’ failure to count the early votes cast by Tribal Members absent the
7 opportunity to cure signature requirement deficiencies denies Tribal Members, including
8 the Plaintiffs, the same rights of other members of the electorate to participate in the
9 political process and elect representatives of their choice, in violation of Section 2 of the
10 VRA.

11 120. Plaintiffs will continue to suffer the violation of their rights as alleged in the
12 Complaint absent relief granted by the Court.

13 **FOURTH CLAIM FOR RELIEF**
14 **VIOLATION OF THE FIRST AMENDMENT**

15 121. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
16 herein.

17 122. Voting and participating in the electoral process is a form of speech and
18 expression. It is the ultimate form of political speech and association and is entitled to First
19 Amendment protection.

20 123. The Defendants’ implementation of the agreement executed between the
21 political parties has imposed insurmountable burdens on the right to vote for those Navajo
22 voters whose ballots were not counted, because they failed to sign the envelope which
23 contained the early ballot or because their signature did not match. These burdens violate
24 the First Amendment.

25 **RELIEF**

26 WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor as
27 follows:

- 28 1. That this Court assume jurisdiction;

1 2. That this Court declare that the Defendants’ failure to provide in-person voter
2 registration on the Reservation violates existing law, including, but not limited to, § 2 of the
3 VRA, as amended, the Fourteenth Amendment to the United States Constitution, and the
4 Arizona Constitution;

5 3. That this Court declare that Defendants’ failure to provide additional early
6 voting sites on the Reservation violates existing law, including, but not limited to, § 2 of the
7 VRA, as amended, the Fourteenth Amendment to the United States Constitution, and the
8 Arizona Constitution;

9 4. That this Court declare that the Defendants’ failure to provide translators for
10 early voting Tribal Members violates existing law, including, but not limited to, § 2 of the
11 VRA, as amended, the Fourteenth Amendment to the United States Constitution, and the
12 Arizona Constitution;

13 5. That this Court declare that the Defendants’ failure to count the early ballots
14 cast by Tribal Members in the 2018 election, because of the lack of a signature on an
15 envelope or due to signature mismatch, violates existing law including, but not limited to, §
16 2 of the VRA, as amended, the Fourteenth Amendment to the United States Constitution,
17 the First Amendment to the United States Constitution and the Arizona Constitution;

18 6. That this Court grant preliminary and permanent injunctive relief by ordering
19 Defendants to establish additional in-person voter registration and early voting sites on the
20 Reservation in Pinon, Kayenta, Dilkon, Shonto, Ganado, Sanders, Rock Point, Teec Nos
21 Pos, Leupp, Inscription House, and Cameron for all future elections, and further relief as
22 the interest of justice may require, such as consistent hours (e.g., Monday through Friday
23 from 8 a.m. until 6 p.m. with no interruption during the lunch hour) during the 30 days
24 leading up to the election;

25 7. That this Court grant preliminary and permanent injunctive relief by ordering
26 Defendants to provide translators certified as proficient in the Navajo language to Tribal
27 Members for all future early and regular elections, and further relief as the interest of
28

1 justice may require, such as translation of instructions for casting an early ballot in Navajo
2 over the radio for the 30 days leading up to an election;

3 8. That this Court grant preliminary and permanent injunctive relief by ordering
4 Defendants to allow Tribal Members whose ballots were excluded because of missing or
5 mismatched signatures an opportunity to remedy the inadequacy within five (5) business
6 days of the issuance of a Court Order;

7 9. That this Court grant plaintiffs reasonable attorneys' fees, litigation expenses
8 and costs pursuant to 42 U.S.C. § 1973(e) and § 1988; and

9 10. That this Court grant the Plaintiffs any further relief which may in the
10 discretion of the Court be necessary and proper to ensure that the voting rights of Tribal
11 Members are properly respected in accordance with the Orders of this Court.

12 DATED this 20th day of November, 2018.

13 SACKS TIERNEY P.A.

14 By: s/ Patty A. Ferguson-Bohnee

15 Patty A. Ferguson-Bohnee

16 Judith M. Dworkin

17 Joe Keene

18 and

19 Ethel B. Branch

20 Paul Spruhan

21 NAVAJO NATION DEPARTMENT OF JUSTICE

22 *Attorneys for the Navajo Nation*
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2018, I electronically transmitted the foregoing VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF to the Clerk’s Office using the CM/ECF System for filing.

s/Rebecca C. Urias

SACKS TIERNEY P.A., ATTORNEYS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

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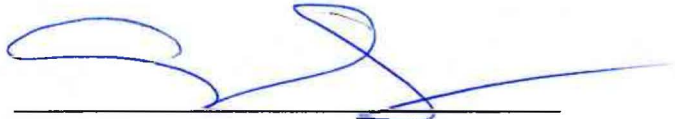
VERIFICATION

State of Arizona)
) ss
County of Apache)

I, Ethel Branch, being first duly sworn upon his/her oath, deposes and says:


I am Attorney General of the Navajo Nation, a Plaintiff in the above-captioned lawsuit, and as such, I am authorized to make this verification. I have read the foregoing Verified Complaint and know the contents thereof are true to my own personal knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Ethel Branch

SUBSCRIBED AND SWORN TO before me this 15th day of November 2018, by Ethel Branch, as Attorney General of the Navajo Nation.



Notary Public

My Commission Expires: 7/14/2019



EXHIBIT INDEX TO
VERIFIED COMPLAINT

Exhibit	Description
1	Declaration of Joyce Nez, November 15, 2018
2	Declaration of Ashley Atene, November 17, 2018
3	Declaration of Dale Smith, November 19, 2018
4	Declaration of Denise Johnson, November 17, 2018
5	Declaration of Irene Roy, November 18, 2018
6	Declaration of Bonnie Tsosie, November 18, 2018
7	Letter from Navajo President Russell Begaye and Attorney General Ethel Branch to Apache County Recorder Edison J. Wauneka, August 8, 2018
8	Letter from Navajo President Russell Begaye and Attorney General Ethel Branch to Coconino County Recorder Patty Hansen, August 8, 2018
9	Letter from Navajo President Russell Begaye and Attorney General Ethel Branch to Navajo County Recorder Doris Clark, August 8, 2018
10	Letter from Coconino County Recorder Patty Hansen to Navajo President Russell Begaye and Attorney General Ethel Branch, August 20, 2018
11	Letter from Secretary of State Michelle Regan to President Russell Begaye and Attorney General Ethel Branch, August 23, 2018
12	Letter from Navajo County Recorder Doris Clark to Navajo President Russell Begaye and Attorney General Ethel Branch, September 10, 2018

EXHIBIT 1

DECLARATION OF JOYCE NEZ

I, Joyce Nez, declare and state as follows:

1. I have personal knowledge of the facts stated below.
2. I am an enrolled member of the Navajo Nation. I am a natural-born citizen of the United States.
3. I am a resident of Chinle, Arizona and reside on the Navajo Nation Reservation.
4. I am duly registered to vote in Apache County, Arizona.
5. I am 81 years old.
6. I am a fluent Navajo language speaker.
7. I have voted in county, state, and federal elections, and I intend to continue voting in county, state, and federal elections.
8. I participated in the early voting process during the 2018 General Election by voting by mail. I completed my ballot and mailed it back to the county.
9. I was not advised that I was required to complete a ballot affidavit form.
10. I believed that I had cast a ballot for the 2018 General Election, and that my vote would be counted.
11. I was never advised by county officials that there were problems with my ballot.
12. I am concerned that the ballot I completed for the November 6, 2018 General Election will not count.
13. I believe that if some voters have the opportunity to correct ballot affidavit deficiencies, all voters should be able to correct ballot affidavit deficiencies.
14. I would like the opportunity to correct my ballot deficiency.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 15, 2018.


Joyce Nez

Declaration of Joyce Nez

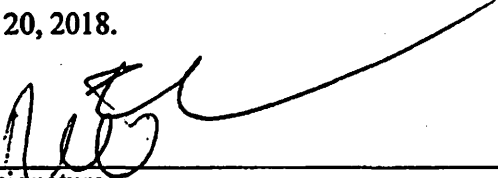
DECLARATION OF TRANSLATOR

I, Neomi M. Gilmore, declare and state as follows:

1. I am an enrolled member of the Navajo Nation. I am conversant in the Navajo language and the English language.
2. I translated the Declaration of Joyce Nez, dated November 15, 2018 into the Navajo language and read it to Joyce Nez, who does not speak English so well. She acknowledged to me that the contents of the Declaration were true to the best of her knowledge.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 20, 2018.



(signature)

Neomi M. Gilmore
(printed name)

EXHIBIT 2

DECLARATION OF ASHLEY ATENE

I, ASHLEY ATENE, declare and state as follows:

1. I have personal knowledge of the facts stated below.
2. I am an enrolled member of the Navajo Nation. I am a natural-born citizen of the United States.
3. I am a resident of [County], Arizona and reside on the Navajo Nation Reservation.
4. I am duly registered to vote in [County], Arizona.
5. I am 65 years old.
6. I participated in the ~~early~~-voting process during the 2018 General Election by:
 Voting ~~early~~ in-person at the KAYENTA ~~Early~~ Voting Location.
 Voting early by mail by depositing my early ballot in the U.S. mail.
 Voting early by dropping off/having my early ballot dropped at a polling location on Election Day.
7. [I am a Navajo language speaker.]
8. I was not advised that I was required to complete a ballot affidavit form.
9. I am concerned that the ballot I completed for the November 6, 2018 General Election will not count.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 17, 2018.

Ashley Atene
(signature)

ASHLEY ATENE
(printed name)

I went in to the Kayenta polling place and turned in my ballot. I asked at the polling place if I was supposed to sign my ballot & the lady said ~~no~~ NO.

Ashley Atene

EXHIBIT 3

DECLARATION OF DALE SMITH

I, Dale Smith, declare and state as follows:

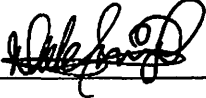
1. I have personal knowledge of the facts stated below.
2. I am an enrolled member of the Navajo Nation. I am a natural-born citizen of the United States.
3. I am a resident of Kayenta, Arizona and reside on the Navajo Nation Reservation.
4. I do not know if I am registered to vote in federal and state elections at my Kayenta address.
5. I did not vote in the 2018 federal, state, and county general election.
6. I am 62 years old.
7. I am a fluent Navajo language speaker and it is my primary language.
8. I can understand English.
9. I would like the opportunity to register to vote at an in person voter registration office so that I may ask questions of election officials regarding the voter registration process and to have those questions answered in the Navajo language.
10. I would have preferred to have the same opportunity to cast an in person early ballot in my community of Kayenta as was available to voters in Holbrook, Arizona and elsewhere in Arizona for the 2018 general election.
11. I would prefer to have the same opportunity to cast an in person early ballot in my community of Kayenta as is available to voters in Holbrook, Arizona and elsewhere in Arizona for future county, state, and federal elections.
12. I would prefer to have the opportunity to ask questions of election officials in person regarding the early balloting process and have the opportunity to have those questions answered in the Navajo language.
13. It is a financial burden for me to travel to Holbrook, Arizona.
14. Holbrook, Arizona is at least a 346 mile round trip from Kayenta.
15. The early voting locations in Kayenta were open for 10 hours total for the 2018 general election.
16. The early voting location in Holbrook, Arizona was open for 162 hours total for the 2018 general election.

17. There was no in person voter registration office in Kayenta for the last 30 days before the close of voter registration for the federal, state, and county 2018 general election.

18. I do not have the same opportunities to vote in federal, state, and county elections as other Arizona citizens.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 19, 2018.



Dale Smith

EXHIBIT 4

I Denise Johnson declare and state as follows:

I don't whether I am registered to vote.

I am an enrolled member of the Navajo Nation.
I am a natural born citizen of the U.S.

I am a resident of Apache County and I reside on the Navajo Nation.

I am 43 years old.

I am a fluent Navajo language speaker.

I think I last voted two years ago.

Because of the burden with voting or going to vote, I did not vote in the November, 2018 election.

We are in a remote area, so it is a financial burden to vote.

Pursuant to 28 USC § 1746, I declare under the penalty of perjury under the laws of the USA that the foregoing is true & correct.

Executed on 17, November, 2018.

Denise Johnson

Signature

Denise Johnson

Printed

EXHIBIT 5

DECLARATION OF Irene Roy

I, Irene Roy, declare and state as follows:

1. I have personal knowledge of the facts stated below.
2. I am an enrolled member of the Navajo Nation. I am a natural-born citizen of the United States.
3. I am over 18 years old.
4. I live in Sweetwater located in Apache County, Arizona and reside on the Navajo Nation Reservation. My residence is on a dirt road.
5. I am a fluent Navajo language speaker.
6. I am
 not registered to vote.
 duly registered to vote in Apache County, Arizona.
7. I do not receive mail at my home.
8. I receive mail at a post office located 35 from my home. This post office is only open M-F.
9. The two county offices that operate early voting and process voter registration are located in Fort Defiance and Chinle.
10. Fort Defiance is located over 100 miles from the Sweetwater Chapter House, and it takes over two hours to drive to Fort Defiance from Sweetwater.
11. Chinle is located 66 miles, and it takes over 1 1/2 hours to drive to Chinle from Sweetwater.
12. [I do not have a car].
13. I do not have the same access to voting as other Arizona citizens.

Irene Roy

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November ¹⁸~~13~~, 2018.
18

Irene Roy
(signature)

Irene Roy
(printed name)

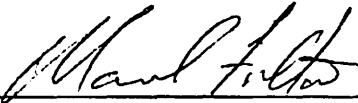
DECLARATION OF TRANSLATOR

I, Manuel Fulton, declare and state as follows:

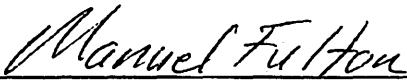
1. I am an enrolled member of the Navajo Nation. I am fully conversant in the Navajo language and the English language.
2. I translated the Declaration of Irene Roy, dated November 18, 2018 into the Navajo language and read it to Irene Roy, who does not speak English well. She acknowledged to me that the contents of the Declaration were true to the best of her knowledge.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 19th, 2018.



(signature)



(printed name)

EXHIBIT 6

DECLARATION OF BONNIE TSOSIE

I, BONNIE TSOSIE, declare and state as follows:

1. I have personal knowledge of the facts stated below.
2. I am an enrolled member of the Navajo Nation. I am a natural-born citizen of the United States.
3. I am over 18 years old.
4. I live in SWEETWATER located in Apache County, Arizona and reside on the Navajo Nation Reservation. My residence is 15 miles from a paved road.
5. I am a fluent Navajo language speaker.
6. I am not registered to vote in Federal, State, and County elections.
7. I attempted on several occasions to register and never received the forms to do so.
8. I do not receive mail at my home.
9. ^{at} I receive mail at a post office located 35 miles from my home. This post office is open Bas M-F.
10. I would register to vote if I could register in person with an election official so that I could ask questions about the voter registration process.
11. It is a financial burden for me to travel to St. Johns, Arizona.
12. It is a financial burden for me to travel to Fort Defiance, Arizona or to Chinle, Arizona.
13. I do not have the same access to voting as other Arizona citizens.
- 14.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 18, 2018.

Bonnie Tsosie
(signature)

Bonnie Tsosie
(printed name)

EXHIBIT 7



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

Delivered by E-mail to: ewauneka@co.apache.az.us

August 8, 2018

Edison J. Wauneka
Apache County Recorder
75 West Cleveland
P.O. Box 425
St. Johns, Arizona 85936

RE: Satellite Voter Registration and Early Voting Offices on the Navajo Nation for the 2018 general election.

Dear Recorder Wauneka:

We write on behalf of the Navajo Nation to request that Apache County establish satellite voter registration offices on the Navajo Nation for the last 30 days of Arizona's voter registration period staffed by temporary county staff. We are happy to work with you to recruit Navajo tribal members to fill these staffing positions. In addition to the Chinle and Fort Defiance locations we request that satellite voter registration offices be established at the following locations on the dates and for the hours noted for each location:

- **Ganado Chapter House, Ganado, AZ:** September 10 to October 8, 2018; Monday through Friday, 8am to 5pm.
- **Na'ha'ta Dził Chapter House, Sanders, AZ:** September 10 to October 8, 2018; Monday through Friday, 8am to 5pm.
- **Rock Point Chapter House, Rock Point, AZ:** September 10 to October 8, 2018; Monday through Friday, 8am to 5pm.
- **Tec Nos Pos Chapter House, Tec Nos Pos, AZ:** September 10 to October 8, 2018; Monday through Friday, 8am to 5pm.

We also request that Apache County establish satellite early voting offices on the Navajo Nation during the early voting period (from October 10 to November 2, 2018) staffed by temporary county staff. We are happy to work with you to recruit Navajo tribal members to fill these positions as well. We further request that these early voting offices allow for out-of-precinct voting as permitted under Arizona statute A.R.S. § 16-441(B)(4). In addition to the Chinle and Fort Defiance locations we suggest that satellite voter registration offices be established at the following locations on the dates and for the hours noted for each location:


- **Ganado Chapter House in Ganado, AZ:** October 10 to November 5, 2018; Monday through Friday, 8am to 5pm.
- **Na'ha'ta Dził Chapter House in Sanders, AZ:** October 10 to November 5, 2018; Monday through Friday, 8am to 5pm.
- **Rock Point Chapter House in Rock Point, AZ:** October 10 to November 5, 2018; Monday through Friday, 8am to 5pm.
- **Teec Nos Pos Chapter House in Teec Nos Pos, AZ:** October 10 to November 5, 2018; Monday through Friday, 8am to 5pm.


We also request that, for all Election Day poll locations on the Navajo Nation, that you allow for out-of-precinct voting as permitted under Arizona statute A.R.S. § 16-441(B)(4).

Help America Vote Act (HAVA) funds are available to assist in offsetting costs associated with this request. Please let us know if we can assist you in securing these funds.

Thank you for your consideration of this request. Please let us know how you wish to handle this request by August 17, 2018 so that we may work with you to establish these satellite offices for the general election.

Sincerely,


Russell Begaye, President
The Navajo Nation


Ethel Branch, Attorney General
The Navajo Nation

cc: Edbert Little, Navajo Election Administration Director
Dr. Joe Shirley, Jr. , Apache County Board of Supervisor, District I
Alton Joe Shepherd, Apache County Board of Supervisor, District II
Travis Simshauser, Apache County Board of Supervisor, District III
Michele Reagan, Arizona Secretary of State
Mark Brnovich, Attorney General of State of Arizona

EXHIBIT 8



THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**
JONATHAN NEZ **VICE PRESIDENT**

Delivered by E-mail to: phansen@coconino.az.gov

August 8, 2018

Patty Hansen
Coconino County Recorder
110 E. Cherry Ave.
Flagstaff, AZ 86001

RE: Satellite Voter Registration and Early Voting Offices on the Navajo Nation for the 2018 general election.

Dear Recorder Hansen:

We write on behalf of the Navajo Nation to request that Coconino County establish satellite voter registration offices on the Navajo Nation for the last 30 days of Arizona's voter registration period staffed by temporary County staff. We are happy to work with you to recruit Navajo tribal members to fill these staffing positions. In addition to the Tuba City location we request that satellite voter registration offices be established at the following locations on the dates and for the hours noted for each location:

- **Leupp Chapter House, Leupp, AZ:** September 10 to October 9, 2018; Monday through Friday, 8am to Noon.
- **Inscription House Chapter House, Inscription House AZ:** September 10 to October 9, 2018; Monday through Friday, 8am to Noon.
- **Cameron Chapter House, Cameron, AZ:** September 10 to October 9, 2018; Monday through Friday, 8am to Noon.

We also request that Coconino County establish satellite early voting offices on the Navajo Nation during the early voting period (from October 10 to November 2, 2018) staffed by temporary County staff. We are happy to work with you to recruit Navajo tribal members to fill these positions as well. We further request that these early voting offices allow for out-of-precinct voting as allowed under Arizona statute A.R.S. § 16-441(B)(4). In addition to the Tuba City location we request that satellite voter registration offices be established at the following locations on the dates and for the hours noted for each location:

- **Leupp Chapter House, Leupp, AZ:** October 10 to November 2, 2018; Monday through Friday, 8am to Noon.
- **Inscription House Chapter House, Inscription House AZ:** October 10 to November 2, 2018; Monday through Friday, 8am to Noon.


- **Cameron Chapter House, Cameron, AZ:** October 10 to November 2, 2018; Monday through Friday, 8am to Noon.

We also request that, for all Election Day poll locations on the Navajo Nation, you allow for out-of-precinct voting as permitted under Arizona statute A.R.S. § 16-441(B)(4).

Help America Vote Act (HAVA) funds are available to assist in offsetting costs associated with this request. Please let us know if we can assist you in securing these funds.

Thank you for your consideration of this request. Please let us know how you wish to handle this request by August 17, 2018 so that we may work with you to establish these satellite offices for the general election.

Sincerely,



Russell Begaye, President
The Navajo Nation



Ethel Branch, Attorney General
The Navajo Nation

cc: Edbert Little, Navajo Election Administration Director
Art Babbott – Coconino County Board of Supervisor - District 1
Liz Archuleta – Coconino County Board of Supervisor - District 2
Matt Ryan – Coconino County Board of Supervisor - District 3
Jim Parks – Coconino County Board of Supervisor - District 4
Lena Fowler – Coconino County Board of Supervisor - District 5
Michele Reagan, Arizona Secretary of State
Mark Brnovich, Attorney General of State of Arizona

EXHIBIT 9



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

Delivered by E-mail to: doris.clark@navajocountyaz.gov

August 8, 2018

Doris Clark
Navajo County Recorder
P.O. Box 668
100 East Code Talkers Drive
South Highway 77
Holbrook, AZ 86025

RE: Satellite Voter Registration and Early Voting Offices on the Navajo Nation
for the 2018 General Election

Dear Recorder Clark:

We write on behalf of the Navajo Nation to request that Navajo County establish satellite voter registration offices on the Navajo Nation for the last 30 days of Arizona's voter registration period staffed by temporary County staff. We are happy to work with you to recruit Navajo tribal members to fill these staffing positions. We request that these satellite voter registration offices be established at the following locations on the dates and for the hours noted for each location:

- **Bashas' at the Pinon Shopping Center, Pinon, AZ:** September 10 to October 9, 2018; Monday through Friday, 8am to 5pm.
- **Bashas' at the Kayenta Shopping Center, Kayenta, AZ:** September 10 to October 9, 2018; Monday through Friday, 8am to 5pm.
- **Bashas' at the Dilkon Shopping Center in Dilkon, AZ:** September 10 to October 9, 2018; Monday through Friday, 8am to 5pm.
- **Shonto Chapter House, Shonto, AZ:** September 10 to October 9, 2018; Monday through Friday 8am to 5pm.

We also request that Navajo County establish satellite early voting offices on the Navajo Nation during the early voting period (from October 10 to November 2, 2018) staffed by temporary County staff. We are happy to work with you to recruit Navajo tribal members to fill these positions as well. We request that the satellite early voting offices be established at the following locations and on the dates and for the hours noted for each location:

Letter to Doris Clark

RE: Satellite Voter Registration and Early Voting Offices on the Navajo Nation for the 2018 General Election

August 8, 2018

Page 2

- **Bashas' at the Pinon Shopping Center, Pinon, AZ:** October 10 to November 2, 2018; Monday through Thursday, 8am to 5pm.
- **Bashas' at the Kayenta Shopping Center, Kayenta, AZ:** October 10 to November 2, 2018; Monday through Thursday, 8am to 5pm.
- **Bashas' at the Dilkon Shopping Center in Dilkon, AZ:** October 10 to November 2, 2018; Monday through Thursday, 8am to 5pm.
- **Shonto Chapter House, Shonto, AZ:** October 10 to November 2, 2018; Monday through Thursday, 8am to 5pm.

Help America Vote Act (HAVA) funds are available to help assist in offsetting costs associated with this request. Please let us know if we can assist you in securing these funds.

Thank you for your consideration of this request. Please let us know how you wish to handle this request by August 17, 2018 so that we may work with you to establish these satellite offices for the general election.

Sincerely,



Russell Begaye, President
The Navajo Nation



Ethel Branch, Attorney General
The Navajo Nation

cc: Edbert Little, Navajo Election Administration Director
Lee Jack Sr., Navajo County Board of Supervisors – District 1
Jesse Thompson, Navajo County Board of Supervisors – District 2
Jason E. Whiting, Navajo County Board of Supervisors – District 3
Steve Williams, Navajo County Board of Supervisors – District 4
Dawnafe Whitesinger, Navajo County Board of Supervisors – District 5
Michele Reagan, Arizona Secretary of State
Mark Brnovich, Attorney General of State of Arizona

EXHIBIT 10



Coconino County ARIZONA
County Recorder



Patty Hansen
County Recorder

Donna Casner
Chief Deputy

August 20, 2018

Honorable Russell Begaye, President
Ethel Branch, Attorney General
The Navajo Nation
PO Box 7440
Window Rock, AZ 86515

Dear President Begaye and Attorney General Branch:

I am writing to you in response to your letter of August 8, 2018 requesting that our office establish satellite voter registration and early voting offices at three locations on the Navajo Nation. Your desire to provide additional voter registration and early voting opportunities for our Navajo citizens is commendable.

Coconino County recently signed an agreement with the U.S. Department of Justice (DOJ) which requires any new voter registration office, early voting office or polling location that is established after the effective date of the agreement completely comply with the accessibility standards of the Americans with Disabilities Act (ADA). As the agreement was just made earlier this year, the DOJ is allowing us to use facilities that are not in complete compliance for the August 28th Primary and November 6th General Elections. But that comes with the understanding that we will make the noncompliant locations meet the standards for the 2020 elections and that we would not add any new locations that are not in compliance for 2018. Thus, we cannot establish for this election cycle the locations you request.

Nonetheless, the County is looking forward to partnering with the Navajo Nation in 2019 to find a way we can bring our polling places into compliance for the 2020 elections.

In an effort to meet a portion of your request for expanding the voter registration opportunities for our Navajo Nation citizens, I'd like to offer to train the staff members at the three Chapter Houses to do voter registration for us. We have been proud to partner with the Navajo Election Administration during the past several years by having

our staff members at our Tuba City and Flagstaff Election Offices trained to be Navajo Nation voter registrars for the Navajo Nation elections. I know our offices were very busy registering Navajo Nation registrants, in addition to our own registrants, during the last week of voter registration for the upcoming August 28th Navajo Nation Primary Election. If you would like to have us train the Chapter House staff to do voter registration for us, please let me know who the correct people would be so we can schedule the training.

I'd like to share with you the early voting locations that are available to our Navajo voters. We have an Elections Office in Tuba City on Main Street in the basement of the Tuba City Library, open Monday through Friday from 8:00 am to 5:00 pm (Daylight Savings time) through November 14, 2018. We also have early voting available at the Page City Hall that is open Monday through Thursday, 7:00 am to 5:30 pm (Arizona time).

This year we were able to open a temporary Elections Office at the Flagstaff Mall on the east side of Flagstaff. It is open 10:00 am to 5:00 pm Monday through Friday until November 14, 2018. One of the reasons we wanted to open the Flagstaff Mall location was to make it more convenient for our Navajo voters. A large number of Navajo voters work and shop in Flagstaff so we are hopeful will make it easier for them to get to this office instead of having to travel to our downtown office.

Opening a temporary elections office at the Flagstaff Mall took a great deal of time, resources and planning. Elections security is something we take very seriously to ensure the integrity of our elections. We had to have our own internet network installed and put other security features put in place to ensure the voting equipment and ballots at the Flagstaff Mall office were secure. The Flagstaff Mall has 24-hour security onsite so that adds another level of security to that location.

You have requested that all of our Election Day polling locations allow for out-of-precinct voting. Unfortunately, we do not have the capability of having multiple-precinct voting for all of our polling places for the 2018 General Election. We will be purchasing new voting equipment in 2019 which would make this request possible for the 2020 elections.

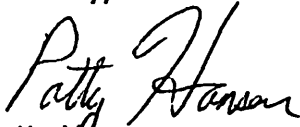
For the 2018 elections we are able to have three vote centers. The vote centers are an additional option for voters that may find it more convenient than voting at their precinct-assigned polling place. Voters will be able to choose if they want to vote at their precinct-assigned polling place or vote at one of the vote centers. The three vote centers are: the Tuba City High School, Tuba City; the Flagstaff Mall; and the NAU Walkup Skydome, Flagstaff.

Your letter also mentioned that you are aware of Help America Vote Act (HAVA) funds that are available to offset costs for establishing satellite voter registration and early

voting sites. Our Secretary of State has told the County Recorders that all of our HAVA funds have been spent. The only new HAVA funds that I have heard are available are for cybersecurity for the state voter registration system and voting equipment. Secretary of State Reagan has implied that she is not going to make any these new funds available to the counties for our security needs. I would appreciate it if you would assist us in obtaining the HAVA funding that you mention in your letter.

I am looking forward to partnering with the Navajo Nation and the Navajo Chapter officials in our County during 2019 to expand voting opportunities and ensuring that all of polling places meet the ADA requirements. If you have any questions, please do not hesitate to contact me.

Sincerely,



Patty Hansen
Coconino County Recorder

cc: Edbert Little, Navajo Election Administration Director
Art Babbott, Coconino County Supervisor – District 1
Elizabeth "Liz" Archuleta, Coconino County Supervisor – District 2
Matt Ryan, Coconino County Supervisor – District 3
Jim Parks, Coconino County Supervisor – District 4
Lena Fowler, Coconino County Supervisor – District 5
Michele Reagan, Arizona Secretary of State
Mark Brnovich, Attorney General of State of Arizona
Bill Ring, Coconino County Attorney
James Jayne, Coconino County Manager

EXHIBIT 11



MICHELE REAGAN
Secretary of State
State of Arizona

August 23, 2018



The Honorable Russell Begaye, President
The Honorable Ethel Branch, Attorney General
The Navajo Nation
PO Box 7440
Window Rock, Arizona 86515

Dear President Begaye and General Branch:

I write in regards the letter you received from the Coconino County Recorder, dated August 20, 2018. In that letter it was indicated that the Secretary of State's Office was not going to make any Help America Vote Act ("HAVA") funds available to Arizona's counties to enhance their election security. That statement is incorrect.

The United States Congress passed the HAVA in 2002. From time to time the Congress has appropriated funds to the Election Assistance Commission for distribution to the states, in the form of matching grants, to advance the objectives of HAVA. Here in Arizona, the counties together with the Secretary of State's Office, initially focused most of this funding on acquiring new voting equipment. Subsequently, State and county election officials have used HAVA funding to maintain a single, statewide, electronic voter registration system. It is an accurate statement to say that all HAVA funding received by Arizona prior to 2018 has or will be exhausted by the end of FY19.

We take the reference in your letter to the Recorder of August 8, regarding the availability of HAVA funds to support the plans you articulated, to mean new Federal grant dollars. In March of this year the Congress did appropriate new HAVA funds and Arizona's share totals \$7.4 million. As this is a grant program with a requirement for a five percent state contribution (\$340,000) a total of \$7.8 million in new dollars was available in Arizona's HAVA account at the end of the fiscal year.

Please be aware that *all* funds in the HAVA account are subject to State Legislative oversight and appropriation. Before the Secretary of State's Office may use any HAVA funds for any purpose it must submit a plan to the Joint Legislative Budget Committee ("JLBC") for their review, amendment and approval. In June of this year the Secretary of State presented JLBC with an initial spending plan for FY19. The approved spending plan authorized disbursing approximately \$2 million to complete the acquisition of a new, much more secure, statewide voter registration system as well as approximately \$400,000 for the Secretary's Office to undertake a comprehensive cyber risk and security assessment of the State's systems associated with voting. After that spending is complete there remains approximately \$5 million in the

1700 West Washington Street, Floor 7
Phoenix, Arizona 85007-2808
Telephone (602) 542-4285 Fax (602) 542-1575
www.azsos.gov

President Russell Begaye
Attorney General Ethel Branch
August 23, 2018
Page 2

HAVA account. I expect, and I have told Arizona's counties, that most of this balance can and should be sent to counties to enhance their own election security needs.

A pending issue is how these funds should be allocated among the counties. If we were to allocate funding amongst counties according to their percentage of voters Maricopa and Pima would claim the bulk of the funds. Alternatively we could provide the funds to counties on a grant-type basis where those with the greatest need could receive somewhat more funds than those counties whose larger populations provide them with more funds already. The mechanism for distributing HAVA funds to the counties is a matter that county officials and I are continuing to discuss.

The Secretary of State provides the Federal Elections Assistance Commission with periodic reports concerning HAVA spending. A copy of the most recent report is enclosed. I think the key number is that there remains \$5,080,335 left in the account. Spending any of these funds requires presentation of a plan to JLBC and their concurrence in the plan. I urge you to continue to work with the various county election officials that provide election services to the Nation to identify projects appropriate for the HAVA program that could benefit all voters in your communities.

Sincerely,

A handwritten signature in blue ink that reads "Michele Reagan". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

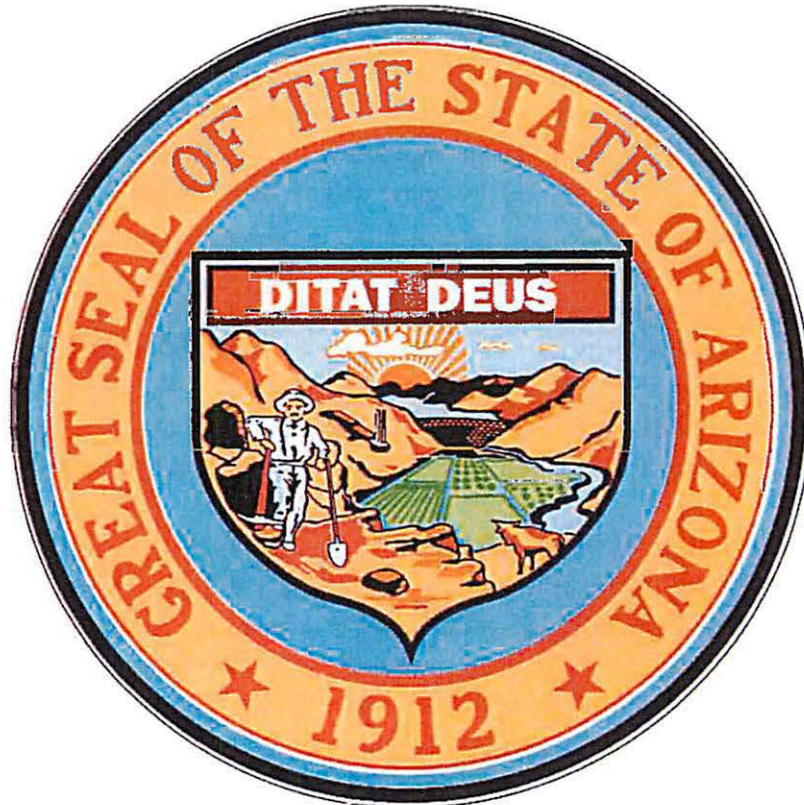
Michele Reagan
Secretary of State

Enclosure

cc: Edbert Little, Navajo Election Administration Director
Art Babbott, Supervisor District 1
Elizabeth Archulette, Supervisor District 2
Matt Ryan, Supervisor District 3
Jim Parks, Supervisor District 4
Lena Fowler, Supervisor District 5
Mark Brnovich, Attorney General of Arizona
Patti Hansen, Coconino County Recorder
Bill Ring, Coconino County Attorney
Jimmy Jayne, Coconino County Manager

Arizona

2018 HAVA Election Security Funds



Michele Reagan

Arizona Secretary of State
1700 West Washington Street
7th Floor

Phoenix, Arizona 85007

Toll-Free : 1-877-THE VOTE

Office: 1-602-542-8683

Fax: 602-542-6172

Email: elections@azsos.gov

Website: www.azsos.gov

Letter from Secretary Reagan

Election security and integrity have been the top priority for my administration and the hard work to update outdated systems has already begun. In November of 2017, a contract was issued to Sutherland Government Solutions, Inc. for the acquisition of a new statewide voter registration database ("AVID") that will replace our currently aging system ("VRAZII") on or before June 30, 2019. This new system will employ the most current security protocols. It will be hosted in the same environment that banks and the US Military maintain essential data. This shift maintains the highest level of integrity of the voter rolls in Arizona while still having the ability to grow as needs shift.

We live in a connected, albeit wireless, world. It's a world of great convenience but each new convenience creates new security risks and vulnerabilities. Arizona has utilized a portion of the new funding to undertake a comprehensive, industry standard evaluation of our entire IT network. Given that we are only as strong as our weakest link, we intend to release this wide ranging survey to the public to heighten their confidence in the results of any election.

Election security, regardless of the medium, is a culture that needs to be championed from the highest election official to the newest poll worker. Locally, the Department of State works closely with the fifteen counties of Arizona to help foster that culture of security. The human element is the largest unknown factor in any cyber security plan and providing ongoing training and forums for information sharing is a long-term goal. The bulk of Arizona's additional HAVA dollars will go towards training and process enhancement to further strengthen our culture of security.

Sincerely,



Michele Reagan
Arizona Secretary of State

Grant Funding Information

Amount of Award: \$7,463,675.

Matching Funds: \$373,184

Timeframe for Usage: 5 years

Immediate Improvement Plans

Voter Registration Database

Arizona began the acquisition of a new statewide voter registration database which ended in the award of a contract in November of 2017. The contract was issued to Sutherland Government Solutions, Inc. for the acquisition of a new statewide voter registration database ("AVID") that will replace our currently aging system ("VRAZII") on or before June 30, 2019. We will be using the grant funds to finance the purchase (or implementation) of the new system. The RFP focused on correcting user and security issues found during a current state assessment and future state assessment based on use cases gathered. A comprehensive security assessment of the proposed system has resulted in approval from outside consultants and the Arizona Department of Administration Strategic Enterprise Technology team. While technology is ever changing, the new AVID system will be adapt enough to meet the current needs of our county users and registered voters while maintaining the most robust security protocols.

Cyber Security

Security Assessment

The Arizona Secretary of State's Office has recently entered into an agreement to undergo an assessment of current IT infrastructure focusing on critical election systems. The deliverables include a public facing document (The Arizona Election Security Plan) that outlines best practices, engagement and training plans, and an incident response plan. The private facing document (STA Security Plan) will discuss remediation of found issues and an improvement plan that includes security controls and policies. The evaluation started on July 9, 2018 will be completed in mid-August and will provide a framework for future spending.

Information Sharing

The Department has begun the process of information sharing to help the fifteen counties of Arizona understand the multitude of security threats. Opening the communication channels and creating a culture of support is a vital task to ensure the same strong standards are used throughout the state. Bi-weekly meetings are led by experienced staff and include county election and recorder office staff as well as county IT personnel. Each call focuses on core issues that invoke discussion which produce best practices to be shared. The end goal of these meetings is to provide recommendations to election leadership on how to improve the process from ballot handling to IT infrastructure.

Long Term Improvements

Cyber Security

Sub-Grants

The Department is developing a new process, that will have significant county involvement, in deciding sub-grant awards within the framework of HAVA of 2002. This involvement includes the development of grant priorities, review of proposals, ongoing tracking, and ensuring completion of projects. The main focus of all sub-grants will be shoring up the security of elections. Each county in the state of Arizona is at different phases of IT and election security and by using a sub-grant process, each is allowed to focus on their individual needs while still allowing attention to oversight and guidance. A sub-grant process also allows for the combination of needs to generate buying power by leveraging quantity. It is also the hope that through the evaluation process, ideas and information is shared to create discussion points for the best practices of the state.

Security Personnel

The Department is in the process of creating a new position to the Secretary of State's Office that will be tasked with maintaining and understanding the state and county positions on elections security. There is a lot of information that is disseminated from the federal government down that this employee will help filter and distribute. The new position will work on best election security practices, hold roundtable exercises, lead the bi-weekly security updates, and be a resource for all of our stakeholders. Cybersecurity is a never ending mission that requires dedicated resources.

Budgets

JLBC Review Process

The Arizona Legislature requires that any spending of HAVA funds be approved by the Joint Legislative Budget Committee ("JLBC"). This process allows for a bi-partisan review and public comment on spending outside of the standard legislative cycle. On June 19, 2018, the Department presented a spending plan (Approved Spending Plan on page 5) and received favorable review. The Department plans on testifying before JLBC as more decisions are made in regards to spending of these funds throughout the 5 year spending cycle. In anticipation of the matching requirement, the Department has already started making preparations to spend 50% of the required match (\$186,592) in fiscal year 2019 and the second half in fiscal year 2020. JLBC does not provide oversight, past the standard budgetary approval cycle, on general fund spending for the Department.

Arizona: 2018 HAVA Election Security Funds

Approved Spending Plan

2018 HAVA ELECTION SECURITY GRANT

Budget Information	CFDA #90.404	Non-Construction Program
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Name of Organization:	Arizona Department of State	SECTION A - BUDGET SUMMARY	
Budget Period Start:	3/23/2018	FEDERAL & NON-FEDERAL FUNDS (Match)	<i>(Consolidated Budget for total project term-- up to 5 years as defined by grantee)</i>
Budget Period End:	12/31/2018		

BUDGET CATEGORIES	PROGRAM CATEGORIES								TOTALS	% Fed Total
	(a) Voting Equipment	(b) Election Auditing	(c) Voter Registration Systems	(d) Cyber Security	(e) Communications	(f) Other	(g) Other			
1. PERSONNEL (including fringe)	\$ -	\$ -		\$ 39,915.60	\$ -			\$ 39,915.60	2%	
2. EQUIPMENT	\$ -	\$ -		\$ -	\$ -			\$ -	0%	
3. SUBGRANTS- to local voting jurisdictions	\$ -	\$ -		\$ -	\$ -			\$ -	0%	
4. TRAINING	\$ -	\$ -		\$ -	\$ -			\$ -	0%	
5. ALL OTHER COSTS	\$ -	\$ -	\$ 2,165,936.03	\$ 380,000.00	\$ -			\$ 2,545,936.03	98%	
6. TOTAL DIRECT COSTS (1-5)	\$ -	\$ -	\$ 2,165,936.03	\$ 419,915.60	\$ -	\$ -	\$ -	\$ 2,585,851.63		
7. INDIRECT COSTS (if applied)								\$ -	0%	
8. Total Federal Budget	\$ -	\$ -	\$ 2,165,936.03	\$ 419,915.60	\$ -	\$ -	\$ -	\$ 2,585,851.63		
11. Non-Federal Match	\$ -	\$ -	\$ 102,636.03		\$ -			\$ 102,636.03		
12. Total Program Budget	\$ -	\$ -	\$ 2,268,572.06	\$ 419,915.60	\$ -	\$ -	\$ -	\$ 2,688,487.66		
13. Percentage By Category	0%	0%	84%	16%	0%	0%	0%			

Proposed State Match 4.0%

- A. Do you have an Indirect Cost Rate Agreement approved by the Federal government or some other non-federal entity?
If yes, please provide the following information:
- B. Period Covered by the Indirect Cost Rate Agreement (mm/dd/yyyy-mm/dd/yyyy):
- C. Approving Federal agency:
- D. If other than Federal agency, please specify:
- E. The Indirect Cost Rate is:

No
N/A
N/A
N/A
N/A

Arizona: 2018 HAVA Election Security Funds

5 Year Spending Projections

2018 HAVA ELECTION SECURITY GRANT

Budget Information CFDA # 90.404 Non-Construction Program

Name of Organization:

Budget Period Start: SECTION A - BUDGET SUMMARY

(Consolidated Budget for total project term-- up to 5 years as defined by grantee)

Budget Period End: FEDERAL & NON-FEDERAL FUNDS (Match)

BUDGET CATEGORIES	PROGRAM CATEGORIES							TOTALS	% Fed Total
	(a) Voting Equipment	(b) Election Auditing	(c) Voter Registration Systems	(d) Cyber Security	(e) Communications	(f) Other	(g) Other		
1. PERSONNEL (including fringe)	\$ -	\$ -		\$ 610,665.60	\$ -			\$ 610,665.60	8%
2. EQUIPMENT	\$ -	\$ -		\$ 105,000.00	\$ -			\$ 105,000.00	1%
3. SUBGRANTS-to local voting jurisdictions	\$ -	\$ -		\$ 3,391,521.83	\$ -			\$ 3,391,521.83	45%
4. TRAINING	\$ -	\$ -		\$ 81,500.00	\$ -			\$ 81,500.00	1%
5. ALL OTHER COSTS	\$ -	\$ -	\$ 2,653,887.57	\$ 621,100.00	\$ -			\$ 3,274,987.57	44%
6. TOTAL DIRECT COSTS (1-6)	\$ -	\$ -	\$ 2,653,887.57	\$ 4,809,787.43	\$ -	\$ -	\$ -	\$ 7,463,675.00	
7. INDIRECT COSTS (if applied)								\$ -	0%
8. Total Federal Budget	\$ -	\$ -	\$ 2,653,887.57	\$ 4,809,787.43	\$ -	\$ -	\$ -	\$ 7,463,675.00	
11. Non-Federal Match	\$ -	\$ -	\$ 102,636.03	\$ 270,547.97	\$ -			\$ 373,184.00	
12. Total Program Budget	\$ -	\$ -	\$ 2,756,523.60	\$ 5,080,335.40	\$ -	\$ -	\$ -	\$ 7,836,859.00	
13. Percentage By Category	0%	0%	36%	64%	0%	0%	0%		

Proposed State Match

- A. Do you have an Indirect Cost Rate Agreement approved by the Federal government or some other non-federal entity?
- B. Period Covered by the Indirect Cost Rate Agreement (mm/dd/yyyy-mm/dd/yyyy):
- C. Approving Federal agency:
- D. If other than Federal agency, please specify:
- E. The Indirect Cost Rate is:

EXHIBIT 12

100 E Code Talkers Dr.
Po Box 668
Holbrook, AZ 86025



Document Recording: (928) 524-4194
Voter Registration: (928) 524-4192
Fax: (928) 524-4308

Doris Clark
Navajo County Recorder

Lilene Sanchez
Navajo County Chief Deputy Recorder

Delivered by E-Mail to: mgarnenez@nndoj.org

September 10, 2018

Honorable Russell Begaye, President
Ethel Branch, Attorney General
The Navajo Nation
PO Box 7440
Window Rock, AZ 86515

Dear President Begay and Attorney General Branch:

This letter is in response to your request for satellite voter registration and early voting offices on the Navajo Nation for the 2018 General Election.

I apologize for the late reply we have been dealing with petition challenges, court proceedings in Phoenix the week before the Primary Election. We just canvassed the election on Thursday, Sept. 6th.

Thank you for your interest in the election process on the Navajo Nation. We have doubled our EV locations and have registration forms located at every chapter house with chapter personnel there to assist voters if they should need help.

To have early voting sites for days and weeks in a row, we would need a vault to secure the ballots. Ballot security is a priority to us.

I have enclosed our Early Voting schedule for the 2018 General Election. You may contact me at (928) 524-4191 or doris.clark@navajocountnaz.gov

Sincerely,

A handwritten signature in black ink that reads "Doris Clark".

Doris Clark
Navajo County Recorder

We Are Navajo County

www.navajocountnaz.gov



NAVAJO COUNTY EARLY VOTING SITES



2018 NOVEMBER 06 GENERAL

Kayenta Flea Market (South of Chevron Gas Station Hwy 160)	Wednesday, October 10, 2018	10:00 am—3:00 pm (DST)
Dilkon Flea Market (West of Bashas NR 15)	Thursday October 11, 2018	10:00 am—3:00 pm (DST)
Pinon Bashas Shopping Center (NR 4 & NR 41)	Friday October 12, 2018	10:00 am—3:00 pm (DST)
Shonto Chapter House (South NR 6320 & NR 221)	Monday October 15, 2018	10:00 am—3:00 pm (DST)
Showlow (City Hall Conference Room) 180 n 9th St	Monday October 15th—October 19th 2018	10:00 am—3:00 pm (MST)
Heber (Mogollon Navajo County Complex) 2188 Country Club Dr	Tuesday October 16, 2018	10:00 am—3:00 pm (MST)
Hopi Elections Office (Junction of NR 2 & Hwy 264)	Thursday October 18, 2018	10:00 am—12:00 pm (MST)
Hopi Circle M Store (West of Hwy 264 in Polacca)	Thursday October 18, 2018	1:00 pm —3:00 pm (MST)
Kayenta Bashas Shopping Center (North on Hwy 160)	Friday October 19, 2018	10:00 am—3:00 pm (DST)
Pinon Flea Market (West of Pinon Chapter)	Saturday October 20, 2018	10:00 am—3:00 pm (DST)
Dilkon Flea Marker (West of Bashas NR 15)	Sunday October 21, 2018	10:00 am—3:00 pm (DST)
Shonto Chapter House (South of NR 6320 & NR 221)	Monday October 22, 2018	10:00 am—3:00 pm (DST)
Cibecue Community Center Parking Lot (West of Cromwell Rd)	Tuesday October 23, 2018	10:00 am—3:00 pm (MST)
Whiteriver Bashas Parking Lot (South Chief Ave & Ponderosa St)	Wednesday October 24, 2018	10:00 am—3:00 pm (MST)
Holbrook Records Office (100 E Code Talkers Drive)	Monday—Friday October 10 to November 02, 2018	8:00 am—5:00 pm (MST)

1 Patty A. Ferguson-Bohnee (SBN 020996)
Patty.Ferguson@SacksTierney.com
2 Judith M. Dworkin (SBN 010849)
Judith.Dworkin@SacksTierney.com
3 Joe W. Keene (SBN 032623)
Joe.Keene@sackstierney.com
4 SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
5 Scottsdale, AZ 85251-3693
Telephone: 480.425.2600

6 Ethel B. Branch (No. 026717)
7 ebranch@nndoj.org
Paul Spruhan (No. 02513)
8 pspruhan@nndoj.org
Navajo Nation Dept. of Justice
9 P.O. Drawer 2010
Window Rock, Arizona 86515
10 Telephone: (928) 871-6210
Facsimile: (928) 871-6177
11 Attorneys for Plaintiffs

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 The Navajo Nation, a federally recognized
15 Indian Tribe; Joyce Nez, an individual;
16 Denise Johnson, an individual; Ashley Atene,
17 Sr., an individual; Irene Roy, an individual;
Bonnie Tsosie, an individual; and Dale
Smith, an individual,

18 Plaintiffs,

19 v.

20 Michele Reagan, in her official capacity as
Secretary of State for the State of Arizona;
21 Edison J. Wauneka, in his official capacity as
Apache County Recorder; Angela Romero in
22 her official capacity as Apache County
Elections Director; Doris Clark in her official
23 capacity as Navajo County Recorder, Rayleen
Richards, in her official capacity as Navajo
24 County Elections Director; Mark Mayrand in
his official capacity as Coconino County
25 Elections Director; and Patty Hansen, in her
official capacity as Coconino County
26 Recorder,

27 Defendants.

No.

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER AND MOTION TO SET
HEARING ON PRELIMINARY
INJUNCTION**

1 Plaintiffs Navajo Nation and Joyce Nez and Ashley Atene, Sr., by and through
2 undersigned counsel, respectfully move this Court for emergency relief under Federal
3 Rules of Civil Procedure 65(a) and 65(b) in order to secure the rights and privileges of
4 Navajo voters as guaranteed by the Fourteenth Amendment to the United States
5 Constitution and the Voting Rights Act. Plaintiffs request that this Court enter a
6 Temporary Restraining Order and Preliminary Injunction enjoining all Defendants from
7 rejecting ballots of voters in Navajo, Apache, and Coconino Counties who are otherwise
8 qualified to vote in order to allow Navajo voters an opportunity to cure deficiencies in the
9 early ballots cast in accordance with the rights of other Arizona voters. Plaintiffs are
10 substantially likely to succeed on the merits of all their claims. Without injunctive relief,
11 which is in the public interest and which does not disfavor the government Defendants,
12 Plaintiffs and their members will be irreparably harmed. Plaintiffs request a hearing to
13 address these issues and request that this Court issue an Order to Show Cause as to why the
14 requested relief should not be granted. In support thereof, Plaintiffs state as follows:

15 1. On November 20, 2018, Plaintiffs filed their Verified Complaint for
16 Injunctive and Declaratory Relief, alleging that individual Tribal Member Plaintiffs are
17 entitled to relief from this Court for violations of their rights, and Plaintiff Navajo Nation is
18 entitled to relief on behalf of its members and constituents – under the First and Fourteenth
19 Amendments to the United States Constitution, and pursuant to 42 U.S.C. § 1983, and 52
20 U.S.C. § 10301.

21 2. Plaintiffs seek a temporary restraining order and preliminary injunction
22 enjoining Defendants, their officers, employees, and agents; all persons acting in concert or
23 participation with Defendants, or under Defendants’ supervision, direction or control; and
24 all other persons within the scope of Federal Rule of Civil Procedure 65, from enforcing
25 Arizona Revised Statutes §16-642, §16-645, §16-646. Plaintiffs further request that the
26 Court toll the deadline for certifying the election results under Arizona Revised Statutes
27 §16-648 and §16-650, until this matter can be heard, in order to ensure that all unsigned
28 and mismatched early ballot voters are given an opportunity to correct the ballot

1 discrepancies and their ballots are included in the submitted results. If any Defendants
2 have already certified election results, Plaintiffs request that the Court direct these
3 Defendants to allow Navajo voters an opportunity to cure the deficiencies and to certify and
4 file corrected returns.

5 3. Federal Rule of Civil Procedure 65 provides for the issuance of a temporary
6 restraining order and preliminary injunction under circumstances such as those that exist in
7 the present case.

8 4. In support of this motion, Plaintiffs submit a Memorandum of Law
9 addressing all necessary elements for the entry of a preliminary injunction.

10 5. Plaintiffs request that the Court expeditiously rule on this motion to ensure
11 that no voters are unfairly and arbitrarily disenfranchised.

12 6. On November 9, 2018, the parties in *Maricopa County Republican Party v.*
13 *Reagan* reached a settlement in state court allowing additional time for all voters in
14 Arizona’s fifteen counties to cure signature match issues on early ballots. The Navajo
15 Nation subsequently learned that the ability to cure signature match issues in Navajo,
16 Apache, and Coconino County did not apply to early voters who failed to sign the ballot
17 affidavit, resulting in early ballots being rejected. Further, Apache County was closed
18 during the cure period, effectively denying Apache County voters with mismatched
19 signatures the opportunity to cure ballots.

20 7. As set forth in the contemporaneously-filed Complaint and Memorandum of
21 Points and Authorities, the acts and omissions of Defendants have already denied or
22 impaired Navajo Nation’s members’ right to vote in violation of federal and Arizona state
23 law, and threaten to disenfranchise hundreds of members of the Navajo Nation who
24 exercised their fundamental right to vote only to have their votes not counted.

25 Specifically, Defendants (i) refused the Navajo Nation’s request to establish early
26 voting sites on the Navajo Reservation (“Reservation”); (ii) failed to provide translators at
27 early voting sites on the Reservation who are proficient in the Navajo language; and
28 (iii) refused to count the ballots cast by Navajo Nation Tribal Members for the 2018

1 election because they failed to sign their envelopes or were disqualified due to signature
2 mismatch. Other early ballot deficiencies were authorized to be corrected by November 14,
3 2018. The Defendants' aforementioned acts deprived the Plaintiffs of their rights under the
4 Fourteenth Amendment to the United States Constitution, the Arizona Constitution, and
5 Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. Additionally, the Defendants' acts
6 violated the Plaintiffs' First Amendment rights because the Plaintiffs' political speech and
7 expression, their votes, were not counted.

8 8. Because the Election is over and ballots are now being counted, relief can
9 only be had by this Court. Unless this Court immediately issues an Order demanding that
10 the Navajo Nation members be provided an opportunity to cure ballot deficiencies and that
11 Trial Members' ballots be counted, the unlawful practices by Defendants will continue to
12 occur, permanently depriving Plaintiffs and other lawful voters of their right to vote in the
13 November 6, 2018 election. Such deprivation necessarily is an irreparable injury.

14 9. The balance of hardships, and the impact on the public interest, weigh
15 strongly in favor of granting emergency relief.

16 10. Absent emergency relief, the Navajo Nation members face the irreparable
17 loss of their votes being counted in the November 6, 2018 election. No other legal
18 remedies are available.

19 WHEREFORE, for the foregoing reasons, and for those set forth in Plaintiffs'
20 supporting memorandum of law,

21 A. Plaintiffs respectfully move that the Court enter a temporary restraining order
22 and preliminary injunction enjoining Defendants and their officers, employees, agents, and
23 all persons acting in active concert or participation with Defendants, or under Defendants'
24 supervision, direction, or control; and all other persons within the scope of Federal Rule of
25 Civil Procedure 65, from rejecting early ballots on the basis of signature mismatch or blank
26 affidavits.

27 B. Plaintiffs further request that Navajo voters in Apache, Coconino, and Navajo
28 Counties be given an effective opportunity to cure their ballot deficiencies.

1 C. Plaintiffs further request that the Court toll the deadline for certifying the
2 local and county elections in Apache, Coconino, and Navajo Counties as well as the state
3 elections until this matter can be heard, in order to ensure that all ballots are counted and
4 included in the official election results. If any Defendants have already certified election
5 results, Plaintiffs respectfully request that this Court order such Defendants to allow Navajo
6 voters an opportunity to cure the ballot deficiencies and to certify and file corrected returns
7 after the opportunity to cure has passed.

8 D. Plaintiffs request any further relief that the Court deems just and proper.

9 E. Plaintiff further moves for a waiver of security required under Fed. R. Civ. P.
10 65(c), or for a nominal security, because Defendants will suffer no significant harm by
11 being ordered to count the votes cast by Navajo Nation members.

12 The undersigned counsel for Plaintiff has provided notice of this Motion to
13 Defendants by sending email copies to each of the Defendants at publicly-available email
14 addresses and to the attorneys representing each of the defendant counties and to the
15 Attorney General.

16 DATED this 20th day of November, 2018.

17 SACKS TIERNEY P.A.

18 By: s/ Patty A. Ferguson-Bohnee

19 Patty A. Ferguson-Bohnee
20 Judith M. Dworkin
21 Joe Keene

22 and

23 Ethel B. Branch
24 Paul Spruhan
25 NAVAJO NATION DEPARTMENT OF JUSTICE
26 *Attorneys for the Navajo Nation*
27
28

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2018, I electronically transmitted the foregoing **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION TO SET HEARING ON PRELIMINARY INJUNCTION** to the Clerk's Office using the CM/ECF System for filing.

s/ Rebecca C. Urias

1 Patty A. Ferguson-Bohnee (SBN 020996)
Patty.Ferguson@SacksTierney.com
2 Judith M. Dworkin (SBN 010849)
Judith.Dworkin@SacksTierney.com
3 Joe Keene (SBN 032623)
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4 SACKS TIERNEY P.A.
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5 Scottsdale, AZ 85251-3693
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7 Ethel B. Branch (No. 026717)
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8 Paul Spruhan (No. 02513)
pspruhan@nndoj.org
9 Navajo Nation Dept. of Justice
P.O. Drawer 2010
10 Window Rock, Arizona 86515
Telephone: (928) 871-6210
Facsimile: (928) 871-6177
11 Attorneys for Plaintiffs

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14
15 The Navajo Nation, a federally recognized
Indian Tribe; Joyce Nez, an individual;
16 Denise Johnson, an individual; Ashley Atene,
Sr., an individual; Irene Roy, an individual;
17 Bonnie Tsosie, an individual; and Dale Smith
an individual,

18 Plaintiffs,

19 v.

20 Michele Reagan, in her official capacity as
Secretary of State for the State of Arizona;
21 Edison J. Wauneka, in his official capacity as
Apache County Recorder; Angela Romero in
22 her official capacity as Apache County
Elections Director; Doris Clark in her official
23 capacity as Navajo County Recorder, Rayleen
Richards, in her official capacity as Navajo
24 County Elections Director; Mark Mayrand in
his official capacity as Coconino County
25 Elections Director; and Patty Hansen, in her
official capacity as Coconino County
26 Recorder,

27 Defendants.

No.

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER**

1 **I. Introduction**

2 Plaintiff Navajo Nation, on its own behalf and on behalf of its members, Joyce Nez,
3 an individual, and Ashley Atene, Sr. an individual (collectively the “Plaintiffs”), under
4 Federal Rule of Civil Procedure 65(b), respectfully ask this Court to enter a temporary
5 restraining order/injunction prohibiting Defendant Michele Reagan, in her official capacity
6 as Secretary of State for the State of Arizona, the County Recorders (Apache, Navajo, and
7 Coconino), and the State’s County Election Directors (Apache, Navajo, and Coconino), and
8 their officers, managers, agents, servants, affiliates, and employees (collectively the
9 “Defendants”), from finalizing the counting of votes until such time as the Plaintiffs and
10 similarly situated Navajo voters whose early ballots were disqualified have the right to cure
11 in this the November 6, 2018 election (“Election”). As the Supreme Court has held, “[n]o
12 right is more precious in a free country than that of having a voice in the election of those
13 who make the laws under which, as good citizens, we must live,” and “[o]ther rights, even
14 the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376
15 U.S. 1, 17–18 (1964). In pursuit of this right, the Navajo Nation requests emergency
16 injunctive relief which orders the Defendants to allow Navajo voters an opportunity to cure
17 deficiencies in their early ballot and Plaintiffs request this TRO to prevent irreparable harm
18 to Navajo Nation voters wherein they have been denied the fundamental right to have their
19 votes counted.

20 **II. Factual Background**

21 Six Arizona counties are subject to the Voting Rights Act (“VRA”), Section 203, for
22 Indian languages: Apache, Coconino, Gila, Graham, Navajo, and Pinal and must provide all
23 election materials, including assistance and ballots, in the language of the applicable
24 language minority group.¹ Compl. ¶ 87. This includes the Navajo language in Apache,
25 Coconino, and Navajo Counties. *Id.* “Over 70% of the voting age population on the
26 Reservation speak a language other than English.” Compl. ¶ 2. Despite these facts, no

27 _____
28 ¹ Voting Rights Act Amendments of 2006, Determinations under Section 203, 81 See. Reg. 87532, 87533 (Dec. 5, 2016).

1 Navajo translators were provided to give guidance to the Navajo Nation members in the
2 preparation of their early ballots for the Election. *Id.* The Arizona Election Manual only
3 requires that instructions be given in English and Spanish. Compl. ¶ 89.

4 To prepare for the Election, “on August 8, 2018, Russell Begaye, President of the
5 Navajo Nation, sent requests for additional early voting sites to the recorders of Apache,
6 Coconino and Navajo Counties.” Compl. ¶ 92. “He informed the respective recorders that
7 the Nation would staff the locations and assist in obtaining HAVA [Help America Vote Act]
8 funds for its operations.” *Id.* “He asked that they respond by August 17, 2018, so that the
9 Navajo Nation could assist the counties.” *Id.* Establishing early voting sites was vitally
10 important for the Nation, because many Navajo Nation members live in remote regions and
11 it is a financial burden for these members to exercise their votes. *See* Compl. ¶ 29; Compl.,
12 Ex. 4, Johnson Decl. (“We are in a remote area, so it is a financial burden to vote.”); *See*
13 Compl. ¶ 31; Compl. Ex. 6, Tsosie Decl. (“It is a financial burden for me to travel to
14 [voting sites] Fort Defiance, Arizona or to Chinle, Arizona.”).

15 “On August 20, 2018, Defendant Patty Hansen sent a memorandum to President
16 Begaye denying his request for additional early voting sites.” Compl. ¶ 93, Compl. Ex. 10.
17 “She claims that Coconino County recently entered into a settlement agreement with the
18 Department of Justice that requires all early voting sites established after the effective date
19 of the agreement be handicapped accessible.” *Id.* “The Agreement would allow the County
20 to use current non-compliant facilities for the 2018 elections but prohibited them from
21 establishing any new non-compliant facilities.” *Id.* “The County did agree to accept
22 assistance from the Navajo Nation in obtaining additional HAVA funding.” *Id.*

23 “On August 23, 2018, Defendant Secretary of State notified President Begaye that
24 Coconino County Recorder’s statement that the Secretary of State would not make HAVA
25 funding available to enhance their election security was incorrect.” Compl. ¶ 94, Compl.
26 Ex. 11.

27 “On September 10, 2018, Defendant Doris Clark notified the Navajo Nation that its
28 request for additional early voting sites on the Reservation was denied, because of the

1 County’s interest in ballot security.” Compl. ¶ 95, Compl. Ex. 12. As shown above, the
2 counties denied the Navajo Nation’s request for additional early voting sites. *See* Bret
3 Healy Declaration (“Healy Decl.”), ¶ 8, attached hereto as Ex. 1.

4 Despite the denial of the early voting sites by the Defendants, Four Directions, a
5 501(c)(4) corporation who works with the Navajo Nation, engaged in early vote efforts on
6 the Navajo Reservation starting on Monday, October 15, 2018. Healy Decl. ¶ 10. The
7 “Apache County early vote offices in Chinle and Fort Defiance were closed each day from
8 noon until 1 PM Navajo Nation time.” Healy Decl. ¶ 11. Four Directions reached out to
9 the Apache County Recorder in an effort to make lunch hours early voting available to
10 Navajo Nation voters, but the Apache County Recorder declined assistance from Four
11 Directions and would not make the lunch hour available except for the last two Fridays at
12 the Fort Defiance location. Healy Decl. ¶ 12-14.

13 “On November 6, 2018, the State of Arizona held its General Election. Over 100
14 votes cast by members of the Navajo Nation residing in the Counties of Apache, Navajo,
15 and Coconino were not counted, because they did not sign the envelope containing the
16 early ballot or because the signatures on the envelopes did not match.” Compl. ¶ 2. These
17 Navajo Nation voters were not told that they had to complete the ballot affidavits form on
18 the envelope, and these members thought they had lawfully cast a ballot for the Election.
19 *See* Compl. ¶ 26; Compl. Ex. 1, Nez Decl (“Nez Decl.”). If these voters had resided in
20 Maricopa County, the officials there would have sent the ballot “back to the voter along
21 with a letter explaining why it was returned and a postage paid envelope for the voter to
22 send it back signed.” *See* Maricopa County Recorder Website, *Frequently Asked Questions*,
23 available at <https://recorder.maricopa.gov/site/faq.aspx>. The Navajo Nation voters never
24 received anything in the mail stating their ballot had a mistake. *See* Nez Decl. ¶11. In fact,
25 one Navajo Nation member turned in his early ballot at the Kayenta polling place and
26 asked if he was supposed to sign the ballot, and the election official told him “no.” *See*
27 Compl. ¶27, Compl. Ex. 2, Atene Decl. (“Atene Decl.”) (“I asked at the polling place if I
28 was supposed to sign my ballot and the lady said no.”). Other Arizona voters who had

1 ballot mistakes were “allowed until November 14, 2018, to correct their errors.” Compl. ¶
2 89. In a lawsuit filed in Maricopa County for voting violations, *Maricopa County*
3 *Republican Party v. Michele Reagan, et al.*, CV2018-013963, the Superior Court issued an
4 Order that stated that County Recorder Defendants must permit voters to “cure early ballots
5 until 5:00 p.m. on Wednesday, November 14, 2018.” Order, attached hereto as Ex. 2. This
6 Order apparently did not cover the Tribal Members who properly filled out the ballot but
7 failed to sign the envelope as Four Directions worker Jennifer Crow was specifically told
8 Navajo Nation members who did not sign their envelopes could not cure their ballots. *See*
9 Ex. 1 at Jennifer Crow Declaration (“Crow Decl.”) ¶ 25.

10 To illustrate the barriers that Navajo Nation members faced in trying to cure their
11 ballots and the utter confusion that these members faced, an encounter with the Apache
12 County Recorder’s Office shortly after the Election is worth describing. “Four Directions
13 learned that voters in Apache County would only have until 5:00 PM on Friday, November
14 9, 2018 to cure ballots” Healy Decl. ¶ 15. Four Directions learned that voters who
15 wanted to cure should call 928-337-7515. *Id.* Four Directions then informed their team
16 leaders to reach out to Navajo Nation members whose votes were not counted and urged
17 these members to call the 7515 number in order to cure their ballot. *Id.* Navajo Nation
18 members called the 7515 number and no one ever picked up the phone, the phone would
19 just “ring and ring.” Healy Decl. ¶ 16.

20 On Friday, November 9, 2018, Navajo Nation worker Donna Semans went to the
21 Apache County Recorder’s Office to request help in allowing Navajo Nation members to
22 cure their early votes. *See* Ex. 1 at Donna Semans Declaration (“Semans Decl.”) ¶ 6. To her
23 surprise, the Apache County Recorder’s Office was closed on this day, and Donna called
24 the Recorder’s Office for 45 minutes before finally speaking with someone from this office.
25 Semans Decl. ¶ 7. A lady named Geneva, the Registration Supervisor, finally spoke with
26 Donna and Donna asked Geneva how the Navajo Nation members could get their votes
27 cured. Semans Decl. ¶ 14. Geneva stated that the members could just call her. Semans
28 Decl. ¶ 15. Donna told Geneva that she had contacted 13 Navajo Nation members who had

1 vote discrepancies with their ballots and these people had tried to call but no one answered
2 the phone. Semans Decl. ¶ 16. Geneva asked Donna what number she had the 13 people
3 call, and Donna said the number she had been told to call, the 7515 number. Semans Decl.
4 ¶ 20. Geneva then asked Donna who told her that information, and said that information
5 did not come from her office. Semans Decl. ¶ 21. Donna told Geneva she wanted to speak
6 with someone in person and Geneva said she'd send her Chief Deputy Recorder to meet
7 with Donna in 20 minutes. Semans Decl. ¶ 22. The Chief Deputy Recorder never showed
8 up. Semans Decl. ¶ 23. Apache County officials did not meet with Donna until November
9 13, 2018, when she finally secured "the list of voters needing assistance to cure their
10 ballots." Semans Decl. ¶ 26.

11 As shown above, not only did Navajo Nation members never receive any
12 notifications that their early ballots had mistakes, but Defendants created obstacles to the
13 Plaintiffs' efforts to cure. The Defendants' failure to allow Navajo Nation members to cure
14 their ballots, deprived Plaintiffs of their opportunity to cast an early ballot compared to
15 other Arizona citizens. See Compl. ¶ 109. The denial of the ability of the Navajo Nation
16 members to vote in the Election compared to other Arizona citizens denied the Navajo
17 Nation members equal protection under the law.

18 **III. Legal Standard**

19 Immediate injunctive relief is appropriate here because Plaintiffs can establish all
20 four requisite factors this court must consider. See *Winter v. Nat. Res. Def. Council, Inc.*,
21 555 U.S. 7 (2008). Injunctive relief under Fed. Civ. P. 65(b) is appropriate where Plaintiff
22 can establish that it:

- 23 (1) is likely to succeed on the merits; (2) is likely to suffer irreparable
24 harm in the absence of preliminary relief; (3) that the balance of equities tips in
its favor; and (4) that an injunction is in the public interest.

25 *Winter*, 555 U.S. at 20.

26 For the reasons described below, Plaintiffs meet the *Winter* standard.
27
28

1 **IV. Argument**

2 **a. Plaintiff is likely to succeed on the merits.**

3 “Voting is a fundamental right subject to equal protection guarantees under the
4 Fourteenth Amendment.” *Idaho Coal. United for Bears v. Cenarrusa*, 342 F.3d 1073, 1076
5 (9th Cir. 2003) “There is no right more basic in our democracy than the right to participate
6 in electing our political leaders.” *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191
7 (2014). Indeed, the right “to exercise the franchise in a free and unimpaired manner is
8 preservative of other basic civil and political rights, [and] any alleged infringement of the
9 right of citizens to vote must be carefully and meticulously scrutinized. *Reynolds v. Sims*,
10 377 U.S. 533, 562 (1964). Like the United States Constitution, the Arizona Constitution,
11 Art. 2, § 21, provides for equal protection under the law for voting and states that “[a]ll
12 elections shall be free and equal, and no power, civil or military, shall at any time interfere
13 to prevent the free exercise of the right of suffrage.”

14 The Supreme Court holds that the Constitution protects not only the right to vote,
15 but also the counting of the votes. “It has been repeatedly recognized that all qualified
16 voters have a constitutionally protected right to vote . . . *and to have their votes counted.*”
17 *Reynolds v. Sims*, 377 U.S. 533, 554 (1964) (internal citation omitted) (emphasis added).
18 “The right to vote includes the right to have one’s vote counted on equal terms with
19 others.” *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 476 (6th Cir. 2008).
20 And the Supreme Court holds that the process of counting votes is important and a State
21 may not value certain voters over others. The Supreme Court notes:

22 The right to vote is protected in more than the initial allocation of the
23 franchise. Equal protection applies as well to the manner of its exercise.
24 Having once granted the right to vote on equal terms, the State may not, by
later arbitrary and disparate treatment, value one person's vote over that of
another.

25 *Bush v. Gore*, 531 U.S. 98, 104–05 (2000). “An individual’s right to vote . . . is
26 unconstitutionally impaired when its weight is in a substantial fashion diluted when
27 compared with votes of citizens living on other parts of the State.’ *Reynolds v. Sims*, 377
28 U.S. 533, 568 (1964).

1 Here, the Navajo Nation members’ right to vote and have their vote counted was
2 “unconstitutionally impaired” by the Defendants who (1) refused to open early voting sites
3 on the vast Reservation; (2) refused to provide translators proficient in the Navajo language
4 to assist Navajo Nation members with their early voting; (3) refused to count early voting
5 ballots by Navajo Nation members because the envelopes for the ballots were not signed or
6 mismatched; and (4) did not allow Navajo Nation members the ability to cure their ballots
7 like other Arizona citizens. Plaintiffs have shown with concrete evidence from the
8 Plaintiffs’ declarations that Navajo Nation members’ votes were not being counted, *See*
9 *Nez Decl.* ¶ 9; *Atene Decl.* ¶ 9, *Compl.* ¶¶ 26, 27 the Defendants not providing translators
10 to Navajo Nation early voters, *See Compl.* ¶ 2, the Defendants refusing to open early voting
11 sites on the Reservation, *See Healy Decl.* ¶ 8, and the lack of an opportunity by Navajo
12 Nation members to cure their ballots. *See Nez Decl.* ¶ 11-14; *Healy Decl.* ¶ 23. Thus, the
13 Plaintiff is likely to succeed on the merits of its claims alleging violations of the Fourteenth
14 Amendment, the First Amendment, 42 U.S.C. 1983, the VRA, and the Arizona
15 Constitution. A granting of a temporary restraining order is warranted. *See Obama for Am.*
16 *v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“When a party seeks a preliminary injunction
17 on the basis of a potential constitutional violation, the likelihood of success on the merits
18 often will be the determinative factor.”) (internal quotations omitted).

19 **i. Plaintiffs are likely to prevail on their VRA claims because**
20 **Defendants violated Section 2 of the VRA, by providing “less**
21 **opportunity” for Navajo Nation members to vote, as compared to**
22 **others.**

23 The VRA states that “[n]o voting qualification or prerequisite to voting or standard,
24 practice, or procedure shall be imposed or applied by any State or political subdivision in a
25 manner which results in a denial or abridgement of the right of any citizen of the United
26 States to vote on account of race or color” 52 U.S.C. § 10301(a). The VRA also
27 protects people who are “member[s] of a language minority group.” 52 U.S.C.
28 § 10303(f)(2). Indians are recognized as a language minority group under the VRA and are
a protected class under the VRA. Section 4(f)(4) of the VRA provides in relevant part:

1 Whenever any State of political subdivision [subject to the
2 bilingual electoral requirements] . . . provides any registration or
3 voting notices, forms, instructions, assistance, or other materials
4 or information relating to the electoral process, including ballots,
5 it shall provide them in the language of the applicable language
6 minority group as well as in the English language.

7 52 U.S.C. § 10303(f)(4). Section 2 of the VRA provides that it is a violation of the VRA if,
8 based on the totality of circumstances, it is shown that the
9 political processes leading to nomination or election in the State
10 or political subdivision are not equally open to participation by
11 members of a class of citizens protected by subsection (a) in that
12 its members have *less opportunity than other members of the*
13 *electorate* to participate in the political process and to elect
14 representatives of their choice.

15 52 U.S.C. § 10301(b) (emphasis added).

16 The Supreme Court holds that the crucial question in a Section 2 claim “is whether
17 the use of a contested electoral practice or structure results in members of a protected group
18 having *less opportunity than other members of the electorate* to participate in the political
19 process and to elect representatives of their choice.” *Thornburg v. Gingles*, 478 U.S. 30, 63
20 (1986) (emphasis added).

21 The Defendants’ actions have violated Section 2 of the VRA because they have
22 created “less opportunity” for Navajo Nation members’ to have their votes be counted than
23 “other members of the electorate.” The Defendants’ failure to provide translators proficient
24 in the Navajo language, a violation of VRA § 4(f)(4), which lead to the errors in the early
25 voting process and failure to allow Navajo Nation members’ the ability to cure deficiencies
26 with their ballots, created hardships for the Navajo Nation members and effectively denied
27 them the equal right to vote afforded to other Arizona citizens.

28 As shown in the Complaint, the Defendants never provided translators to Navajo
Nation members who exercised their early voting rights, despite 70% of the population
speaking a language other than English. *See* Compl. ¶ 2. A language minority group is a
protected class under the VRA and the Defendants had an obligation to provide translators
and materials in the Navajo language. *See* VRA, 52 U.S.C. § 10303(f)(4) (the state “shall
provide [election forms] in the language of the applicable language minority group as well

1 as in the English language.”). Federal courts hold that “Section 2 claims may be brought to
2 challenge election officials’ failure to provide language assistance.” *United States v. Berks*
3 *Cty., Pennsylvania*, 277 F. Supp. 2d 570, 581 (E.D. Pa. 2003).

4 The limited early voting sites on the Reservation reduced the opportunities of
5 Navajo Nation members to remedy any early ballot voting problems. *See* Compl. Ex. 12,
6 Navajo County Early Voting Sites; Coconino County Early Voting Sites attached as Ex. 3;
7 Apache County Recorder’s Office Early Voting attached hereto as Ex. 4. The lack of early
8 voting sites created additional hardship for early voters to cure any mistakes Navajo Nation
9 members made when early voting. *See* Compl. ¶ 12. Furthermore, the few early voting
10 sites that were available only stayed open for a limited time. *See* Smith Decl. ¶ 14-16
11 (stating the Kayenta early location was open only 10 hours total, Holbrook’s early location
12 was open for 162 hours total, and there was no in person voter registration office at the
13 Kayenta location for the last 30 days before the close of voter registration for the Election.).
14 As Justice Scalia has stated, if “a county permitted voter registration for only three hours
15 one day a week, and that made it more difficult for blacks to register than whites, blacks
16 would have less opportunity ‘to participate in the political process’ than whites, and §2
17 would therefore be violated.” *Chisom v. Roemer*, 501 U.S. 380, 408 (1991) (Scalia, J.,
18 dissenting) (emphasis in original).

19 The lack of communication by Defendants to Navajo Nation members that there
20 were problems with their ballots effectively disenfranchised Navajo Nation voters. As
21 Navajo Nation member Joyce Nez stated, “I was never advised by county officials that
22 there were problems with my ballot.” Nez Decl. ¶ 11. This treatment is unlike voters in
23 Maricopa County wherein the officials there would send back the ballot “to the voter along
24 with a letter explaining why it was returned and a postage paid envelope for the voter to
25 send it back signed.” *See* Maricopa County Recorder Website, FAQ.

26 Navajo Nation members were also treated differently immediately after the election
27 in attempting to cure the deficiencies with their ballots. Donna Semans, a Four Directions
28 worker, attempted to acquire help from the Apache County Recorder’s Office to cure

1 ballots on Friday, November 9, 2018, only to find the Recorder’s Office closed. Semans
2 Decl. 7. Then when she finally spoke with a supervisor, this supervisor gave her no help at
3 all by having her wait for a person that never showed up. *See* Semans Decl. ¶ 23 (I “waited
4 to meet with the chief deputy recorder, but no one came out to meet with me nor contacted
5 me in any way.”). Other Arizona County Recorder Offices were open on Friday and
6 actively helped voters remedy any ballot issues.

7 As shown above, the disparate treatment of early voting activity for the Navajo
8 Nation compared to the electorate at large violates Section 2 of the VRA and is
9 unconstitutional.

10 **ii. Plaintiffs are likely to prevail on their Equal Protection claims**
11 **because the Defendants engaged in “disparate treatment” of**
Navajo Nation voters.

12 The Supreme Court holds that the right to vote is “implicit in our constitutional
13 system” and grants the Plaintiffs the right “to participate in state elections on an equal basis
14 with other qualified voters.” *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 36 n.
15 78 (1973). The Supreme Court notes that the equal protection clause “applies as well to the
16 manner of its [voting’s] exercise. Having once granted the right to vote on equal terms, the
17 State may not, by later arbitrary and disparate treatment, value one person’s vote over
18 that of another.” *Bush v. Gore*, 531 U.S. 98, 104–05 (2000).

19 The Defendants’ actions disadvantaged Navajo Nation members and did not allow
20 them the same opportunities to cast their ballots as other Arizona citizens. As shown
21 above, the Defendants refused to open early voting sites on the Reservation, refused to
22 provide Navajo language translators with early voting, and refused to provide an
23 opportunity to cure irregularities in the early ballots. In contrast, Arizona citizens in
24 Maricopa County were allowed to mail in a new ballot if they did not sign their original
25 early ballot. Over 100 Navajo Nation members’ ballots were uncounted because the
26 envelope was not signed or their signatures on their ballots were mismatched. *See* Compl. ¶
27 2.

28

1 **iii. Plaintiffs are likely to prevail on their Equal Protection claims**
2 **because the Defendants imposed an “undue burden” on Navajo**
3 **Nation voters by not opening early voting sites, requiring them to**
4 **sign the ballot envelope, and imposing obstacles on the ability to**
5 **cure a ballot.**

6 The Defendants’ actions to impose obstacles to cure irregularities in the early ballot,
7 such as the Friday, November 9 closure of the Apache County Recorder’s Office, violate
8 the Plaintiffs’ constitutional rights. When a State imposes a burden on the right to vote, this
9 Court must weigh:

10 [1] the character and magnitude of the asserted injury to the
11 rights protected by the First and Fourteenth Amendments that the
12 plaintiff seeks to vindicate’ against [2] the precise interests put
13 forward by the State as justifications for the burden imposed by
14 its rule, taking into consideration [3] the extent to which those
15 interests make it necessary to burden the plaintiff's rights.

16 *Democratic Nat'l Comm. v. Reagan*, 904 F.3d 686, 702–03 (9th Cir. 2018) (quoting
17 *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). In evaluating the severity of the
18 burden, “courts may consider not only a given law's impact on the electorate in general, but
19 also its impact on subgroups, for whom the burden, when considered in context, may be
20 more severe.” *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 n. 2 (9th Cir.
21 2016), *cert. denied sub nom. Pub. Integrity All., Inc. v. City of Tucson, Ariz.*, 137 S. Ct.
22 1331, 197 L. Ed. 2d 518 (2017).

23 First, the the court considers “whether the law has a heavier impact on subgroups,”
24 if the “plaintiff adduces evidence sufficient to show the size of the subgroup and quantify
25 how the subgroup's special characteristics makes the election law more burdensome.”
26 *Democratic Nat'l Comm. v. Reagan*, 904 F.3d 686, 703 (9th Cir. 2018). Plaintiffs have
27 provided significant evidence that Navajo Nation voters are not as proficient in the English
28 language as other voters and therefore may require explanation regarding the need for the
 signature on the early voting envelope in which the ballot is placed. Over 70% of the
 population on the Navajo reservation speaks a language other an English, *See Compl.* ¶ 2,
 and “over 18% of individuals over the age of five speak English less than very well.”
 Compl. ¶ 88. Because Navajo Nation voters do not understand English as well as the voting

1 electorate at large, they were more likely to fail to understand the exact procedures for
2 submitting an early ballot, more likely to submit the ballot without signing the envelope.
3 The lack of translators at early voting locations and Defendants’ failure to notify Navajo
4 Nation voters that their early ballots were deficient, *See* Nez Decl. ¶ 11, and the limited
5 times and locations to cure the deficiencies are evidence of Plaintiffs’ injury in trying to
6 exercise their voting franchise. As shown in the declarations submitted, the Navajo Nation
7 did not receive the list of voters whose ballots would be counted for Apache County until
8 Tuesday, November 13, 2018. *See* Semans Decl. ¶ 26.

9 Second, the court considers whether the State’s justifications is sufficient to burden
10 the plaintiff's rights. *Democratic Nat'l Comm. v. Reagan*, 904 F.3d 686, 703 (9th Cir.
11 2018). This step “involves a balancing and means-end fit framework . . . the severity of the
12 burden dictates the closeness of the fit required, and the more severe the burden, the more
13 compelling the state's interest must be.” *Id.* While Arizona has a strong interest in
14 preserving the integrity of its elections and has “the power to impose voter qualifications,”
15 *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972), the Navajo Nation members have a
16 “fundamental political right” to vote. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972)).
17 Furthermore, the “burden” imposed by Arizona here has to be considered within the
18 subgroup of the Native Americans, including Navajo Members, who have faced decades of
19 discrimination in voting which means any limitation placed on voting “may be more
20 severe.” *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 n. 2 (9th Cir.
21 2016), *cert. denied sub nom. Pub. Integrity All., Inc. v. City of Tucson, Ariz.*, 137 S. Ct.
22 1331, 197 L. Ed. 2d 518 (2017). The State’s justification for refusing to open early voting
23 sites staffed with Navajo translators and the failure to assist Navajo voters in curing
24 irregularities on their ballots, pales in comparison with the “fundamental right” of Navajo
25 Nation members to vote and have their votes counted. As of this filing, the State of Arizona
26 is continuing to count thousands of votes and Arizona law allows the canvassing or
27 verifying of votes up to twenty days past an election. *See* A.R.S. § 16-642 (“The governing
28 body holding an election shall meet and canvass the election not less than six days nor

1 more than twenty days following the election.”). Requiring the Defendants to extend the
2 time for Navajo voters to cure irregularities and for the Defendants to count the additional
3 Navajo Nation members’ votes poses little burden on the Defendants and does not impose
4 any substantial costs.

5 **b. Absent a restraining order, Plaintiff will suffer irreparable harm by not**
6 **having their votes counted.**

7 “It is well established that the deprivation of constitutional rights ‘unquestionably
8 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
9 (quoting *Elrod v. Burns*, 427 U.S. 347, 37 (1976)); *See also Obama for Am. v. Husted*, 697
10 F.3d 423, 436 (6th Cir. 2012) (“A restriction on the fundamental right to vote therefore
11 constitutes irreparable injury.”). This Court holds that “it is clear that abridgement of
12 the right to vote constitutes irreparable injury. “*Arizona Democratic Party v. Arizona*
13 *Republican Party*, No. CV-16-03752-PHX-JJT, 2016 WL 8669978, at *11 (D. Ariz. Nov.
14 4, 2016). “Because there can be no ‘do-over’ or redress of a denial of the right to vote after
15 an election, denial of that right weighs heavily in determining whether plaintiffs would be
16 irreparably harmed absent an injunction.” *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir.
17 2016).

18 As shown in the Complaint and the declarations submitted, over 100 Navajo Nation
19 members’ votes “were not counted” because they did not sign the outside envelope of their
20 ballot or their early ballots had a mismatch of signatures. *See* Compl. ¶ 80. These Navajo
21 Nation members cannot redress this mistake and exercise their voting franchise absent
22 injunctive relief by this Court. The denial of the right to vote by Defendants constitutes
23 irreparable injury to the Navajo Nation members which warrants the issuance of injunctive
24 relief.

25 **c. The balance of equities tips in Plaintiff’s favor.**

26 “A State indisputably has a compelling interest in preserving the integrity of its
27 election process.” *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S. Ct. 5, 7, 166 L. Ed. 2d 1
28 (2006). But because Arizona is still counting votes in many precincts, any harm from

1 having to tally additional Navajo Nation member votes is *de minimis*. See A.R.S. §16-642
2 (“The governing body holding an election shall meet and canvass the election not less than
3 six days nor more than twenty days following the election.”).The Supreme Court is clear
4 that “[c]ountering the State's compelling interest in preventing voter fraud is the plaintiffs'
5 strong interest in exercising the ‘fundamental political right’ to vote.” *Purcell v. Gonzalez*,
6 549 U.S. 1, 4, 127 S. Ct. 5, 7, 166 L. Ed. 2d 1 (2006) (quoting *Dunn v. Blumstein*, 405 U.S.
7 330, 336 (1972)).

8 Here, the balance of equities tips strongly in favor the Navajo Nation members
9 because these members are exercising their “fundamental political right to vote.” Indeed,
10 currently in Apache County, for Ganado School Board #20, there is only a *three vote*
11 *difference* between the potential candidates for school board. See Apache County Website,
12 *2018 Midterm Unofficial Election Results*, available at
13 <https://www.co.apache.az.us/elections/apache-county-2018-election-results/>. Thus, the
14 ability of Navajo Nation members to participate in the selection of their political leaders by
15 having their votes counted is of vital importance and outweighs the harms suffered by the
16 State. See *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014) (“There is no
17 right more basic in our democracy than the right to participate in electing our political
18 leaders.”).

19 **d. Public interest.**

20 The Ninth Circuit Court of Appeals holds that “it is always in the public interest to
21 prevent the violation of a party's constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990,
22 1002 (9th Cir. 2012)(quoting *Sammartano v. First Judicial District Court*, 303 F.3d 959,
23 974 (9th Cir. 2002)). As shown above, the Plaintiffs have brought this suit seeking
24 injunctive relief to exercise their constitutional right to vote and have their votes counted.
25 The public interest favors an injunction.

26 **V. Conclusion**

27 For the foregoing reasons, the Plaintiffs respectfully request that this Court issue a
28 temporary restraining order/injunction ordering Defendants to permit Navajo voters the

1 opportunity to cure the deficiencies in the early ballots and to count the ballots cast in the
2 Election.

3 DATED this 20th day of November, 2018.

4 SACKS TIERNEY P.A.

5
6 By: s/ Patty A. Ferguson-Bohnee

Patty A. Ferguson-Bohnee

Judith M. Dworkin

7 Joe Keene

8 and

9 Ethel B. Branch

10 Paul Spruhan

11 NAVAJO NATION DEPARTMENT OF JUSTICE

12 *Attorneys for the Navajo Nation*

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2018, I electronically transmitted the foregoing **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER** to the Clerk's Office using the CM/ECF System for filing.

s/ Rebecca C. Urias

SACKS TIERNEY P.A., ATTORNEYS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

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EXHIBIT INDEX TO
MEMORANDUM OF POINTS & AUTHORITIES

Exhibit	Description
1	Declaration of Bret Healy, November 17, 2018
2	Maricopa County Superior Court Order re “cure” date for early ballots, November 9, 2018
3	Coconino County Early Voting Sites
4	Apache County Early Voting Sites

EXHIBIT 1

DECLARATION OF BRET HEALY

I, Bret Healy, declare and state as follows:

1. My name is Bret Healy.
2. I am 54 years of age.
3. I am a consultant for Four Directions, Inc., a 501c(4) organization.

Barbara and Oliver Semans, Sr. are the Co-Executive Directors of Four Directions.

4. Donna Semans is Four Directions' Director of Grassroots Organizing and was the Get-Out-The-Vote Coordinator for all Four Directions operations on Navajo Nation.

5. Jennifer Crow is Four Directions' Vote Protection lead and served in that capacity for Four Directions' efforts on Navajo Nation.

6. On or about June 6, 2018, I met with Navajo Nation Attorney General Ethel Branch to discuss the unequal access that Navajo Nation voters have to in person voter registration and in person early ballot voting.

7. After our meeting, I assisted in drafting the requests made by Navajo Nation President Begaye and Navajo Nation Ethel Branch to Coconino County, Navajo County, and Apache County for satellite in person voter registration offices and additional satellite in person early voting locations across Navajo Nation.

8. Coconino County, Navajo County, and Apache County all declined the requests made by Navajo Nation.

9. These requests were cc'd to Arizona Secretary Of State Michele Reagan and Arizona Attorney General Mark Brnovich.

10. Four Directions started Get-Out-The-Vote activity on Navajo Nation on Monday, October 15, 2018.

11. On or about October 22, 2018, I learned that the Apache County early vote offices in Chinle and Fort Defiance were closed each day from noon until 1 PM Navajo Nation time.

12. After learning of the closure during the lunch hour, I wrote to Apache County Recorder Wauneka on Monday, October 22, 2018 asking to speak with him Tuesday morning and offering to provide funding to train and staff the early voting locations over the lunch hour.

13. Apache County Deputy Recorder Bowen Udall wrote back to me on Wednesday, October 24, 2018. Attached are true and correct copies of emails regarding the closure of the early voting locations over the lunch hour and Four Directions' efforts to make lunch hours available to Navajo Nation voters at Chinle and Fort Defiance.

14. The Apache County Recorder's office declined assistance from Four Directions and would not make the lunch hour available to Navajo Nation voters – except for the last two Fridays at the Fort Defiance location.

15. Four Directions learned that voters in Apache County would only have until 5:00 PM on Friday, November 9, 2018 to cure ballots on the suspense list. I called Angela Romero's phone number and learned that voters should call 928-337-7515. I informed our team leaders to reach out to a small list of voters that we believed to be on the suspense list and urge those voters to call the 7515 extension in order to cure their ballots before the November 9, 2018 deadline.

16. One of our team leaders informed me that voters were telling her that the 7515 number would just ring and ring.

17. I then asked Donna Semans to travel to St. Johns, Arizona to learn what number we should have voters contact and to secure a "suspense" list from the Apache County Recorder's Office.

18. On Friday afternoon, November 9, 2018, Donna Semans informed me that the Apache County Recorder's Office was physically closed and that the number being given out by Angela Romero was not being answered.

19. Four Directions then learned late on Friday, November 9, 2018 of the litigation that resulted in the Apache County deadline to cure "suspense" ballots being extended to 5:00 PM, Wednesday, November 14, 2018.

20. Though the Apache County Recorder's Office had told Donna Semans that they would meet with her in person on Friday afternoon, November 9, 2018, they did not.

21. Because of the Apache County Recorder's Office failure to keep their word to meet with Donna Semans in person on November 9, 2018, Four Directions was unable to secure a full copy of the Apache County Early Ballot list until Tuesday, November 13, 2018 and had only 14 hours during which the Apache County Recorders Office was open on November 13th and 14th to attempt to assist Navajo Nation voters on the "suspense" list to cure their ballots.

22. Attached are true and correct copies of Donna Semans' declaration regarding her interaction with Apache County election officials.

23. Four Directions had learned on Friday, November 9, 2018 from the Navajo Nation Attorney General that Apache County would not allow a voter to cure an early ballot that was missing a signature.

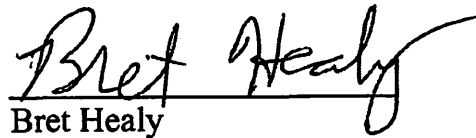
24. Four Directions had learned on Friday, November 9, 2018 from the Navajo Nation Attorney General that Navajo County was allowing voters to cure ballots that were missing signatures.

25. Because Four Directions had learned of the discrepancy between Navajo County and Apache County, I asked Jennifer Crow to travel to Holbrook and Flagstaff, Arizona on Tuesday, November 13, 2018 to inquire about the process for curing ballots with missing signatures in Navajo County and Coconino County.

26. Attached to this declaration are true and correct copies of Jennifer Crow's declarations regarding her interactions with the Coconino County Recorder and the Navajo County Recorder.

27. Four Directions, working under the guidance of the Navajo Nation, will assist the counties in contacting Navajo Nation voters to cure ballots with missing and mismatched signatures if the Court orders the State to allow time for Navajo Nation voters to cure ballot deficiencies.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of November, 2018.


Bret Healy



Bret healy <brethealysd@gmail.com>

FW: Apache County lunch breaks

Katherine Belzowski <kbelzowski@nndoj.org>
To: Ethel Branch <ebranch@nndoj.org>
Cc: Bret healy <brethealysd@gmail.com>

Mon, Oct 22, 2018 at 2:04 PM

FYI per the email below it appears people are trying to early vote during lunch hour and having difficulties. It seems like Recorder Wauneka could give his workers a lunch break not during lunch hour, like the post office does, so they can be open during lunch time when people are likely to try to vote. Not sure if the Nation wants to raise its own concerns about this issue.

Bret I don't know if you could help Recorder Wauneka find funds for another worker.

Sincerely,

Katherine

From: Easha Anand [mailto:eanand@azdem.org]
Sent: Friday, October 19, 2018 6:58 PM
To: Katherine Belzowski <kbelzowski@nndoj.org>
Subject: Apache County lunch breaks

We apparently had 32 people try to go vote on Thursday in Chinle during the poll workers' lunch break; the location closes from 12-1. I don't think there's anything that Recorder Wauneka can do—for ballot security, he wants two poll workers on duty at all times; because of labor law, he has to give them each a lunch break; and he doesn't seem to have the funds to hire another person—but thought I'd give you a heads up that we're complaining about it. Thank you!

--

Easha Anand

Director of Voter Protection

Arizona Democratic Party

Cell: 240-888-8857

Questions about voting? Call 833-AZ-VOTES



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

Bret healy <brethealysd@gmail.com>

Mon, Oct 22, 2018 at 4:00 PM

To: Katherine Belzowski <kbelzowski@nndoj.org>

Cc: Oliver Semans <tateota@hotmail.com>, ewauneka@co.apache.az.us, OJ Semans <tateota@gmail.com>

Recorder Wauneka,

Do you have time to talk first thing tomorrow am. It is my understanding that an early voting office is lacking staff over the lunch hour. We can provide resources so that no voter is waiting for election staff.

Thank you. I look forward to talking first thing tomorrow morning.

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

Bowen Udall <budall@co.apache.az.us>

Wed, Oct 24, 2018 at 9:02 AM

To: Bret healy <brethealysd@gmail.com>, Katherine Belzowski <kbelzowski@nndoj.org>

Cc: Oliver Semans <tateota@hotmail.com>, Edison Wauneka <ewauneka@co.apache.az.us>, OJ Semans <tateota@gmail.com>, "Geneva L. Jackson" <gjackson@co.apache.az.us>

Hello Mr. Healy,

Recorder Wauneka is out of the office this week attending funerals for some of his friends that recently passed.

We greatly appreciate the offer to help cover the lunch shift, but I believe it is too late in the game to implement it. There is less than a week and a half of early voting left, and we would have to have the helpers come to St. Johns for training. We would also require our limited staff to stop the other election duties we have to do at this time in order to train. By the time they were trained, they might be able to help for just a few days.

It is also not feasible because they would need to be Election Certified by the State of Arizona, or at least be a County employee governed by county policies and procedures in order to work the county early voting site.

I do appreciate the offer and concern, and maybe we can get things arranged for the 2020 elections, but I just don't see how we can do it this election.

Sincerely,

Bowen Udall

Apache County Chief Deputy Recorder

From: Bret healy <brethealysd@gmail.com>

Sent: Monday, October 22, 2018 4:01 PM

To: Katherine Belzowski <kbelzowski@nndoj.org>

Cc: Oliver Semans <tateota@hotmail.com>; Edison Wauneka <ewauneka@co.apache.az.us>; OJ Semans <tateota@gmail.com>

Subject: Re: Bret Healy

Recorder Wauneka,

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

Bret healy <brethealysd@gmail.com>

Wed, Oct 24, 2018 at 9:41 AM

To: budall@co.apache.az.us

Cc: Katherine Belzowski <kbelzowski@nndoj.org>, Oliver Semans <tateota@hotmail.com>, ewauneka@co.apache.az.us, OJ Semans <tateota@gmail.com>, gjackson@co.apache.az.us

Thank you for getting back to me. Is there any way the staff at the early voting sites can stagger their lunch break so that voters coming in over their lunch break can vote during the lunch hour?

Thank you so much.

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

Bowen Udall <budall@co.apache.az.us>
To: Bret healy <brethealysd@gmail.com>

Wed, Oct 24, 2018 at 9:44 AM

No. We are required to have two people with ballots at all times.

From: Bret healy <brethealysd@gmail.com>
Sent: Wednesday, October 24, 2018 9:41 AM
To: Bowen Udall <budall@co.apache.az.us>
Cc: Katherine Belzowski <kbelzowski@nndoj.org>; Oliver Semans <tateota@hotmail.com>; Edison Wauneka <ewauneka@co.apache.az.us>; OJ Semans <tateota@gmail.com>; Geneva L. Jackson <gjackson@co.apache.az.us>
Subject: Re: Bret Healy

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

brethealysd <brethealysd@gmail.com>
To: Bowen Udall <budall@co.apache.az.us>

Wed, Oct 24, 2018 at 10:39 AM

Can they then take a shorter lunch break (we would cover that cost) and have them take their then 30 min break at either 11 or 1?

Sent via my Samsung Galaxy, an AT&T 4G LTE smartphone

----- Original message -----

From: Bowen Udall <budall@co.apache.az.us>
Date: 10/24/18 11:44 AM (GMT-06:00)
To: 'Bret healy' <brethealysd@gmail.com>
Subject: RE: Bret Healy

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

Bowen Udall <budall@co.apache.az.us>
To: brethealysd <brethealysd@gmail.com>
Cc: "Geneva L. Jackson" <gjackson@co.apache.az.us>

Wed, Oct 24, 2018 at 1:01 PM

Hi Bret,

Statute says I have to give them an hour if they want an hour. We discussed this at the beginning of the election cycle and they decided they want an hour. I did ask if they would consider bringing a lunch and working through lunch, but it is their right to take an hour. I asked my Voter Registration Supervisor about the possibility of shifting the lunch to 11 or to 1, but she reminded me that the schedules have already been put out to the parties and public, and would cause confusion and possible legal issues if we shifted the lunch time.

I really do understand and appreciate what you are trying to accomplish. We should have been having these talks in April/May. Let's please have talks in advance of the next election. We're also working with the Navajo Nation to try to alleviate some of these things in future elections as well.

Sincerely,

Bowen

From: brethealysd <brethealysd@gmail.com>
Sent: Wednesday, October 24, 2018 10:40 AM
To: Bowen Udall <budall@co.apache.az.us>
Subject: RE: Bret Healy

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

brethealysd <brethealysd@gmail.com>
To: Bowen Udall <budall@co.apache.az.us>
Cc: "Geneva L. Jackson" <gjackson@co.apache.az.us>

Wed, Oct 24, 2018 at 11:25 AM

Would they be willing to work lunch if bonused?

Sent via my Samsung Galaxy, an AT&T 4G LTE smartphone

----- Original message -----

From: Bowen Udall <budall@co.apache.az.us>
Date: 10/24/18 3:01 PM (GMT-06:00)
To: 'brethealysd' <brethealysd@gmail.com>

[Quoted text hidden]

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

Bowen Udall <budall@co.apache.az.us>
To: brethealysd <brethealysd@gmail.com>
Cc: "Geneva L. Jackson" <gjackson@co.apache.az.us>

Wed, Oct 24, 2018 at 1:27 PM

Maybe. Let me talk to the Voter Registration Supervisor and if she doesn't see a problem, I'll ask the employees.

From: brethealysd <brethealysd@gmail.com>
Sent: Wednesday, October 24, 2018 11:25 AM
To: Bowen Udall <budall@co.apache.az.us>

[Quoted text hidden]

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

brethealysd <brethealysd@gmail.com>
To: Bowen Udall <budall@co.apache.az.us>
Cc: "Geneva L. Jackson" <gjackson@co.apache.az.us>

Wed, Oct 24, 2018 at 11:39 AM

Thank you!

Sent via my Samsung Galaxy, an AT&T 4G LTE smartphone

----- Original message -----

From: Bowen Udall <budall@co.apache.az.us>

[Quoted text hidden]

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

Bowen Udall <budall@co.apache.az.us>
To: brethealysd <brethealysd@gmail.com>

Thu, Oct 25, 2018 at 3:50 PM

Hi Bret,

The Human Resources director said that it is a hard "No". There are statutes and polices that would not allow for it.

It's just too short of a timeline to do it. I believe that with these problems/hurdles can be dealt with if we plan for it, but I just don't see a way at this point.

Sincerely,

Bowen

From: brethealysd <brethealysd@gmail.com>
Sent: Wednesday, October 24, 2018 11:25 AM
To: Bowen Udall <budall@co.apache.az.us>

[Quoted text hidden]

[Quoted text hidden]



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

Bowen Udall <budall@co.apache.az.us>
To: brethealysd <brethealysd@gmail.com>

Thu, Oct 25, 2018 at 3:54 PM

I did speak with Recorder Wauneka. What we have decided to do is that I will go to Fort Defiance tomorrow to cover lunch so we won't have to close. I am sending an employee from my St. Johns office to Fort Defiance for most of the day on the 2nd to cover lunch and help with what may be their busiest day. This will give two Fridays being open for lunch in Fort Defiance. I know it's not as much as you were trying to get, but it's all I am able to do at this point.

From: brethealysd <brethealysd@gmail.com>
Sent: Wednesday, October 24, 2018 10:40 AM
To: Bowen Udall <budall@co.apache.az.us>
Subject: RE: Bret Healy

[Quoted text hidden]

11/14/2018

Gmail - FW: Bret Healy



Bret healy <brethealysd@gmail.com>

FW: Bret Healy

Bret healy <brethealysd@gmail.com>
To: Bowen Udall <budall@co.apache.az.us>

Thu, Oct 25, 2018 at 4:09 PM

Thank you so much - so the Ft Defiance office is open tomorrow and on Friday the 2nd. Thank you again.
[Quoted text hidden]

DECLARATION OF DONNA SEMANS

I, Donna Semans, declare and state as follows:

1. My name is Donna Semans, and I am over 18 years of age
2. I am the Director of Grassroots Organizing for Four Directions and served as the Get-Out-The-Vote Coordinator during the November 6, 2018 general election (“Election”) for Four Directions’ efforts on the Navajo Nation. My tasks included assisting Navajo voters living on the Arizona portion of the Navajo Indian Reservation in Apache County to get to early voting locations starting on October 22, 2018 and to get to the Election Day polling locations on November 6, 2018.
3. After the Election, I was informed that a lawsuit was filed regarding the curing of ballots, and I sought to find out more information on how to cure ballots for Navajo voters.
4. I was working with thirteen Navajo voters who were attempting to cure their ballots for the county, state, and federal election but could not get through to the County Recorder’s office telephonically.

5. I called Angela Romero, the Apache County Election's Director, on **November 9, 2018** to try to learn how to resolve ballot discrepancies for Apache County voters. The deadline for curing ballot discrepancies in Apache County was 5 PM on Friday, November 9, 2018. Mrs. Romero did not answer; her voice message stated that if the call was about early or absent ballots to call (928) 337-7515. I left a message for her to call me back. She did not call me back on Friday, November 9, 2018. Attached is a transcript of her voice mail and my message which I recorded.

6. On Friday, November 9, 2018, I traveled to the Apache County Recorder's Office to request information on the process for curing ballots that were cast in the Election and to obtain a list of early voters whose ballots were on a "suspense" list. My intention was try to find out information so that I could assist Navajo voters in the process to cure their ballots and have them counted in the Election.

7. I arrived at the Apache County Recorder's Office located in St. Johns, Arizona around 2:00 PM. Upon arriving at the Recorder's office, I tried to enter but the building was locked. I tried to contact

someone in the Recorder's Office via phone, and it took approximately 45 minutes for someone to answer my call.

8. Someone finally answered the phone around 2:50 PM, and I asked to speak to Angela Romero, the Apache County Elections Director. The person who answered the call stated that Angela had left for the entire day about 30 minutes earlier. I have attached a transcript of my telephone conversation with Apache County officials, which I recorded.

9. I told the person on the call that I unsuccessfully tried to enter the building. She advised me that the building is closed on Fridays. I asked, "even on a Friday after an election?" The person on the call said yes, that the office is still closed.

10. I then asked what I needed to do to get a ballot cured. I stated that I work with the Navajo Nation and was trying to get Navajo Nation members' ballots fixed.

11. I was put on hold and waited to speak to an Apache County election official.

12. I spoke to an Apache County Voter Registration Supervisor named Geneva, and let her know that I wanted to see someone in person and that the building is locked up. Geneva stated that they were not open, and that is why the doors were locked.

13. I told Geneva that I did not understand why the Apache County Recorder's Office was not open on the Friday after an election. Geneva stated that she was at the Recorder's Office and asked if she could help me with anything.

14. I told Geneva I was working with Navajo Nation voters to get their ballots cured and that wanted to know what the discrepancies are and what the Recorder's office needs from them.

15. Geneva stated that the Navajo Nation members just need to call her. Geneva stated that she had called and contacted people who are having signature discrepancies with their ballots. Geneva said that these people need to call and let her know that they signed their signature.

16. I told Geneva that I had been in contact with thirteen (13) voters from Apache County that had signature discrepancies. I told

Geneva that these voters tried to call to cure their ballots but that no one answered the phone.

17. Geneva asked me what number I had the 13 people calling. I told Geneva that at first I had them calling the 7515 number, and then 7516, and then I tried 7532.

18. Although Geneva said that her office has been answering phones and cured several signatures this morning, I let her know that I had been calling all morning and had been calling for about 45 minutes and this is the first time that someone answered around 2:50 PM.

19. Geneva stated that they had been answering phones ringing on the 7516 and 7632 line.

20. I told Geneva that we were informed to tell Navajo Nation members to call 7515.

21. Geneva asked who told me that information. She said that information did not come from her office.

22. I told Geneva that I wanted to meet with someone in person. Geneva advised that I would be able to speak to the chief deputy recorder in person in 20 minutes because they were on a court call.

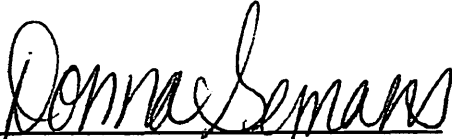
23. I waited to meet with the chief deputy recorder, but no one came out to meet with me nor contacted me in any way.

24. The closure of the Apache County Recorder's Office on Friday, November 9, 2018 and the failure by the Apache County Recorder's Office to answer a phone number that was given by Angela Romero as the phone number to call prevented voters from being able to cure their ballots.

25. Although a state court ordered that ballot discrepancies could continue to be cured until November 14, the Apache County offices were closed on November 9, 10, 11, and 12.

26. Apache County officials did not meet with me until November 13, 2018. I then secured the list of voters needing assistance to cure their ballots. I then tried to assist as many voters as I could. However, the County's closure on Friday and failure to answer the phone number given out by Angela Romero delayed our efforts to assist Navajo voters in Apache County to cure their ballots.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of November, 2018.


Donna Semans
Donna Semans

Angela Romero voice recording:

This is Angela Romero in the elections department, if this is regarding an early absentee ballot or voter registration, please call the county recorder's office at 928-337-7515 otherwise please leave a message and I will return your call, thank you

Donna Semans voicemail message:

Hi Angela my name is Donna Semans I was calling to see if I could speak with you. I'm here in front of the, um, recorder's office in Saint John's if you can give me a call my number is 928-797-0762, thank you.

Speaker 1: **** County Recorder's Office, how can I help you?

Donna Semans: Um, I'm trying to find out how I can speak with Angela.

Speaker 1: She actually left for the day.

Donna Semans: She left for the entire day?

Speaker 1: Yes. She le – I saw her leave the parking lot about 30 minutes ago.

Donna Semans: Okay. 'Cause I'm sitting out in front, well I was sitting out in front, and I tried to get in and your building's closed?

Speaker 1: Yeah, we are not open Monday through – we are not, we are not open on Fridays. We are only open Monday through Thursday.

Donna Semans: ****?

Speaker 1: What?

Donna Semans: Even after an election?

Speaker 1: Yes.

Donna Semans: So what do I need to do about the ballot that needs to be cured? I work with the Navajo Nation trying to get the, um, their ballot fixed.

Speaker 1: Give me just a second and let me see what the voter registration supervisor has to say. Okay?

Donna Semans: Thank you.

Speaker 1: You're welcome.

Other Apache County official: This is Geneva, how can I help you?

Donna Semans: Um, I'm calling to see how I can set up a, uh, to see someone in person. I was at the building, your, um, recorder office building and the doors are all locked up.

Geneva: Yes, our doors are locked because we're real – we're not open today.
Um, what're –

Donna Semans: **** but I don't understand.

Geneva: I'm sorry?

Donna Semans: I don't understand why it's not open at, after an election.

Geneva: Um, the recorder's office, we are here at the recorder's office, um, is there something I can help you with? I'm the voter registration supervisor.

Donna Semans: I am working with the Navajo Nation trying to get their ballots, ballots cured.

Geneva: Okay. Trying to get them cured? Uh, how –

Donna Semans: Um, does – I'm trying to see what the discrepancies are on what the, on what you need from them. Do they need to come in? What, of the –

Geneva: Okay. They just need to call me. The people that have the, um –

Donna Semans: This –

Geneva: – that we've called and contacted and that have the signatures that are having discrepancies.

Donna Semans: Uh huh.

Geneva: They need to call us and let us know that they signed their signature.

Donna Semans: Okay. Well, I've, I've given – I've contacted all the people that, uh, for Apache County that you have listed. I believe there are 13 that I needed to find, um –

Geneva: Okay.

Donna Semans: – and I found all 13, but every time they called there would, there would either, like ring and ring and ring and no one would pick up or it would just –

Geneva: What number were you having them call?

Donna Semans: This one.

Geneva: Uh –

Donna Semans: At first they're – I had them calling the 7515, and then I had them calling 7516, and then I tried the 7532, I believe it was.

Geneva: Okay. Um, we've been answering our phones and I've cured several signatures this morning.

Donna Semans: Okay. Um, I would just, well I've tried, I've been, since I was sitting out front of the annex building or whatever it is –

Geneva: **Okay.**

Donna Semans: – *the recorder's office, I've, I've tried calling and I've been here for about 45 minutes and this is the first time someone's answered.*

Geneva: **Okay, we've been answering our phone calls, ma'am, um.**

Donna Semans: *Okay, so you're calling me a liar, 'cause I've been sitting here calling you.*

Geneva: **No, I'm not calling you a liar. I'm just telling you, we've been answering the phones that we have that have been ringing on the 7516 and the 7632.**

Donna Semans: *7516 **** and what we were informed to tell the people in, on the Navajo Nation that they needed to call 7515.*

Geneva: **And I don't know who told you that, that did not come from our office.**

Donna Semans: *Okay, sounds good. I, uh, so I can't meet with anybody in person?*

Geneva: **Um, if you wanna give me – I'm in the court call right now. Um, if you wanna give me about 20 minutes, I can let you talk to my chief deputy recorder –**

Donna Semans: *Awesome.*

Geneva: **– as soon as we got off of, off the call but it'll be in about 20 minutes.**

Donna Semans: *Okay, in person?*

Geneva: **Yeah. In person.**

Donna Semans: *Sounds good. Thank you.*

Geneva: **All right. Thanks. Bye.**

DECLARATION OF JENNIFER CROW

I, Jennifer Crow, declare and state as follows:

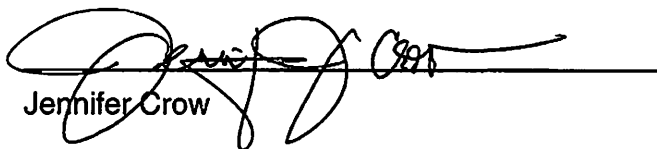
1. I have personal knowledge of the facts stated below.
2. I am a natural born citizen of the United States and a citizen of the State of Kansas.
3. I am a resident of Leavenworth County, Kansas.
4. I am an enrolled member of the Choctaw Nation of Oklahoma.
5. I am an attorney.
6. I am 46 years old.
7. I worked as the Voter Protection Coordinator on behalf of Four Directions on the Navajo Reservation in Arizona during the 2018 General Election
8. I visited the Navajo County Recorder's Office at about 9:30 am on Tuesday, November 13, 2018.
9. The County employees were preparing for their annual Thanksgiving celebration.
10. Doris from the Elections Office escorted me to the Recorder's Office.
11. The staff in the Recorder's Office had me fill out an Open Records Request.
12. I submitted the Request and was told that there were several other groups requesting the same information and that it would take some time to respond to those before mine.
13. I indicated that time was of the essence due to the work we are doing with the Nation and Navajo voters.
14. I left the complex and returned at 10:30 to obtain the open records I had requested.
15. The staff put me in the waiting room, and I overheard someone saying that I was waiting and would not leave.
16. Debra from the Recorder's Office came in to the waiting room and was very helpful in assisting me with my Request, which was for a list of the voters who submitted an unsigned ballot envelope and a list of the voters whose signatures were mismatched.
17. Both lists contained location information to assist us with finding those voters to assist them to correct their ballots.
18. The charge for the copies was .50 per page, so I ran to the ATM to get cash.
19. The staff provided paper copies, scanned the documents and emailed them to me with a receipt, as well as the 60-page list of provisional ballots cast.
20. Debra also let me sit at her desk while I waited, which was very nice.
21. When I returned, Debra and another lady explained the lists and said that both the mismatched and the unsigned ballots could be cured.
22. I left the governmental complex and emailed Debra to verify that unsigned ballots could be cured.

23. When I did not hear back from her, I returned to the Recorder's Office to ask about the unsigned ballots.
24. The Recorder's Office referred me to Doris in the Elections Office.
25. Doris indicated that they had been mistaken and that the unsigned ballots in fact could not be cured
26. I visited the Coconino County Recorder's Office on Tuesday, November 13, 2018 at about 2:00 pm.
27. I told the receptionist at the window that I was in from out of town and working on the election with the Navajo Nation.
28. The receptionist on several occasions referred to and contacted an employee named Donna to assist with my inquiries.
29. On my first visit, the receptionist made a phone call regarding my request for the list of voters who had submitted unsigned ballots.
30. After getting off the phone, the receptionist took my information and said that the lists would be emailed to me.
31. At 2:55 pm, the lists arrived in my email inbox from Patty Hansen, Coconino County Recorder.
32. The report showed the names and voter ID numbers for the early ballots they rejected because there wasn't a signature on the early ballot envelope.
33. I returned to the Recorder's Office window to obtain printed copies of the unsigned ballot list and also requested a copy of the list of mismatched signature ballots.
34. Patty Hansen came to the window with both lists and explained that the mismatched signature ballot list was instead in the form of a stack of individual voter sheets detailing their office's attempts to contact those voters whose ballot signatures were determined to be mismatched.
35. Upon recognizing that neither the list nor the sheets contained addresses for the voters, I returned to the Recorder's Office window and requested addresses for these voters.
36. Patty Hansen was called, came to the window and informed me that the county attorneys made it clear to them that they should not create something that doesn't exist.
37. Patty explained that they go through and designate the unsigned ballots and generate the list and said that they will not accept an unsigned ballot.
38. I asked Patty if she understood what I was working on for voters and the Navajo Nation, and she indicated that she did.
39. I asked how to go about locating these voters when no address or phone number is available on the unsigned ballot list and no address is available on the mismatched signature ballot list.
40. Patty offered me a seat at the computer to do that research and also indicated that the mismatched ballot sheets are what their office uses to track down voters.
41. I told Patty that Navajo County had provided a list with location information for unsigned ballots and mismatched signature ballots.

42. Patty asked me to show her those lists, so I returned to the car, obtained the lists and presented them to her.
43. Patty reiterated that I could sit down at the computer and search for the information, but that the Navajo County voter lists I had must have been created by Navajo County and that she had been advised to not create any documents other than the lists she provided me.
44. The rest of our interactions are memorialized in the attached emails wherein I asked for further clarification of the reason for the absence of voter contact information on both lists.
45. In the emails, Patty advised that she is not required by the public records law to create records that are not necessary for their processes and that the records I requested do not exist, so she was not able to supply records she does not have.

Pursuant to 28 U.S.C. §1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 19, 2018.


Jennifer Crow



Bret healy <brethealysd@gmail.com>

Fwd: Coconino County rejected early ballots - missing signature

Jennifer Crow <jennifer@summitstrategiesks.com>
To: brethealysd@gmail.com

Wed, Nov 14, 2018 at 6:39 PM

Sent from my iPhone

Begin forwarded message:

From: "Hansen, Patty" <phansen@coconino.az.gov>
Date: November 13, 2018 at 5:33:48 PM MST
To: Jennifer Crow <jennifer@summitstrategiesks.com>
Cc: Jennifer Crow <jennifer.j.crow@gmail.com>, "Winkeler, Rose" <rwinkeler@coconino.az.gov>
Subject: RE: Coconino County rejected early ballots - missing signature

Jennifer,

I am not required by the public records law to create records that are not necessary for our processes. The records you are requesting do not exist, so I am not able to supply records that I do not have.

I hope clarifies why your request could not be fulfilled.

Take care.

Patty Hansen

Coconino County Recorder

110 E Cherry Ave

Flagstaff, AZ 86001

928-679-7889

From: Jennifer Crow [mailto:jennifer@summitstrategiesks.com]
Sent: Tuesday, November 13, 2018 4:23 PM
To: Hansen, Patty <phansen@coconino.az.gov>
Cc: Jennifer Crow <jennifer.j.crow@gmail.com>; Winkeler, Rose <rwinkeler@coconino.az.gov>
Subject: Re: Coconino County rejected early ballots - missing signature

11/15/2018

Gmail - Fwd: Coconino County rejected early ballots - missing signature

Thank you! So, to further clarify, the County attorneys advise to not create something that doesn't exist, and documents that list the addresses for early voters with missing signatures or early voters that have signatures that do not match their voter registration records do not exist.

Sent from my iPhone

On Nov 13, 2018, at 3:56 PM, Hansen, Patty <phansen@coconino.az.gov> wrote:

That is correct. We do not have any reports or other documents that list the addresses for early voters with missing signatures or early voters that have signatures that do not match their voter registration records. You are welcome to use our public viewing computer to look up these voters addresses if you wish to do so.

Patty Hansen

Coconino County Recorder

110 E Cherry Ave

Flagstaff, AZ 86001

928-679-7889

From: Jennifer Crow [mailto:jennifer.j.crow@gmail.com]
Sent: Tuesday, November 13, 2018 3:38 PM
To: Hansen, Patty <phansen@coconino.az.gov>
Subject: Re: Coconino County rejected early ballots - missing signature

Hi Patty—

Thanks for your help with this. I need to clarify that the Absentee Reconciliation Detail Report without addresses and the Ballot Affidavit Signature Problem Sheets without addresses are the only available lists to me.

On Tue, Nov 13, 2018 at 2:55 PM Hansen, Patty <phansen@coconino.az.gov> wrote:

Jennifer,

Attached is a report that shows the names and voter ID numbers for the early ballots we rejected because there wasn't a signature on the early ballot envelope.

I hope this is the information you needed.

Take care.

11/15/2018

Gmail - Fwd: Coconino County rejected early ballots - missing signature

Patty Hansen

Coconino County Recorder

110 E Cherry Ave

Flagstaff, AZ 86001

928-679-7889

—
Jennifer J. Crow (785) 506-3036 www.SummitStrategiesKS.com

EXHIBIT 2

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARICOPA COUNTY REPUBLICAN
PARTY, et al.,
Plaintiffs,
v.
MICHELE REAGAN, in her official
capacity as Arizona Secretary of State, et
al.,
Defendants.

No. CV2018-013963

ORDER

(Assigned to Hon. Margaret R. Mahoney)

Pursuant to the Parties' agreement on the record in open court today,

IT IS HEREBY ORDERED as follows:

The County Recorder Defendants must permit voters to "cure" early ballots until 5:00 p.m. on **Wednesday, November 14, 2018**. "Cure" means the same governmental acts taken prior to the general election to allow a voter to confirm their early ballot vote.

SO ORDERED this 9th day of November, 2018.

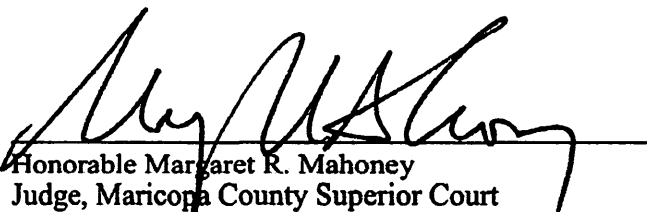

Honorable Margaret R. Mahoney
Judge, Maricopa County Superior Court

EXHIBIT 3

Early Voting Sites for the 2018 Primary and General Elections

Location	Early Ballot Precincts Voting At Location
Coconino County Elections Office 110 E Cherry Ave Flagstaff, AZ (Monday - Friday 8:00 am - 5:00 pm)	All Precincts
Coconino County Elections Office Eastside Office – Flagstaff Mall 4650 N. US Highway 89 Next to JCPenney Flagstaff, AZ 86004 (Monday – Friday 10:00 am – 5:00 pm)	All Precincts
Tuba City Elections Office Basement of Tuba City Library Tuba City, AZ (Monday - Friday 8:00 am - 5:00 pm Daylight Savings Time)	Bodaway 42, Cameron 43, Coppermine 47, Coalmine 48, Inscription House 61, Kaibeto 65, Lechee 67, Leupp 69, Moenkopi 70, Navajo Mountain 71, Tolani Lake 88, Tonalea 90, Tuba City Northeast 93, Tuba City Northwest 94 & Tuba City South 95
Williams City Hall 113 S 1 st St Williams, AZ (Monday - Thursday 7:30 am - 5:00 pm)	Kaibab North 64, Kaibab West 66, Parks 79, Williams Northside 98 & Williams Southside 99
Sedona City Hall 102 Roadrunner Dr Sedona, AZ (Monday - Thursday 7:00 am - 6:00 pm)	Sedona North 82 & Sedona South 83
Page City Hall 697 Vista Ave Page, AZ (Monday - Thursday 7:00 am - 5:30 pm)	Page Central 72, Page East 73, Page South 74, Page West 75, Lechee 67, Bodaway 42, Coppermine 47, Inscription House 61, Kaibeto 65 & Navajo Mountain 71
Fredonia Town Hall 25 N Main St Fredonia, AZ (Monday - Thursday 7:30 am - 5:30 pm)	Fredonia 58
Grand Canyon Schools Superintendent's Office Grand Canyon National Park 100 Boulder St Grand Canyon, AZ (Monday - Thursday 7:30 am – 5:00 pm)	Grand Canyon 59 & Tusayan 97

EXHIBIT 4



APACHE COUNTY RECORDER'S OFFICE

EARLY VOTING



Monday-Thursday

6:30am - 5:30pm

October 12th - November 4th, 2016

ST. JOHNS RECORDER'S OFFICE

Office: (928) 337-7516

Office: (928) 337-7632

Toll Free 1 (800) 361-4402

Monday-Thursday

7:00am - 5:30pm

October 12th - November 3rd, 2016

CHINLE VOTER OUREACH OFFICE

Chinle District 1 Road Yard

Office: (928) 674-4597

Cell: (928) 321-0220

Monday-Thursday

7:00am - 5:30pm

October 12th - November 3rd, 2016

FT. DEFIANCE OUTREACH OFFICE

Ft. Defiance District 2 Road Yard

Office: (928) 729-2089

Cell: (928)321-0222

GENERAL ELECTION

Early Voting Begins: October 12th, 2016

Ballots will be mailed October 12th, 2016

Early Voting Ends: November 7th, 2016

Election Day: November 8th, 2016

All Early Ballots Must be turn into the Apache County Recorder's Office by 7pm on Election day and can also be dropped off at any Apache County Polling Place or in the Drop Box located at Apache County Annex or the Springerville Annex

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

The Navajo Nation, a federally recognized Indian Tribe, Joyce Nez, an individual; Denise Johnson, an individual; Ashley Atene, Sr., an individual; Irene Roy, an individual; Bonnie Tsosie, an individual; and Dale Smith, an individual,

Plaintiffs,

v.

Michele Reagan, in her official capacity as Secretary of State for the State of Arizona; Edison J. Wauneka, in his official capacity as Apache County Recorder; Angela Romero in her official capacity as Apache County Elections Director; Doris Clark in her official capacity as Navajo County Recorder, Rayleen Richards, in her official capacity as Navajo County Elections Director; Mark Mayrand in his official capacity as Coconino County Elections Director; and Patty Hansen, in her official capacity as Coconino County Recorder,

Defendants.

No.
[PROPOSED]
**ORDER GRANTING
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER**

This Court, having considered Plaintiffs’ Emergency Motion for Temporary Restraining Order and Motion to Set Hearing on Preliminary Injunction (“Motion”), and accompanying declarations and exhibits, and for good cause, states:

IT IS HEREBY ORDERED that Plaintiffs’ Motion is **GRANTED**. Defendants are:

- 1. Temporarily restrained from rejecting early ballots cast by Navajo Nation members based on a blank affidavit or a signature mismatch;

1 2. Temporarily restrained from certifying the election results in Apache, Coconino,
2 and Navajo counties until this matter can be heard, in order to ensure that all ballots are
3 counted and included in the official election results.

4 This Order shall remain in effect for fourteen days from this date.

5 A Hearing on whether this Order should be modified, extended to a Preliminary
6 Injunction, and/or dismissed shall be held on _____, 2018, at __.m,
7 in courtroom _____, at _____, Phoenix, Arizona.

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1 Patty A. Ferguson-Bohnee (SBN 020996)
Patty.Ferguson@SacksTierney.com
2 Judith M. Dworkin (SBN 010849)
Judith.Dworkin@SacksTierney.com
3 Joe W. Keene (SBN 032623)
Joe.Keene@sackstierney.com
4 SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
5 Scottsdale, AZ 85251-3693
Telephone: 480.425.2600

6 Ethel B. Branch (No. 026717)
7 ebranch@nndoj.org
Paul Spruhan (No. 02513)
8 pspruhan@nndoj.org
Navajo Nation Dept. of Justice
9 P.O. Drawer 2010
Window Rock, Arizona 86515
10 Telephone: (928) 871-6210
Facsimile: (928) 871-6177
11 Attorneys for Plaintiffs

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 The Navajo Nation, a federally recognized
15 Indian Tribe; Joyce Nez, an individual;
16 Denise Johnson, an individual; Ashley Atene,
17 Sr., an individual; Irene Roy, an individual;
Bonnie Tsosie, an individual; and Dale
Smith, an individual,

18 Plaintiffs,

19 v.

20 Michele Reagan, in her official capacity as
Secretary of State for the State of Arizona;
21 Edison J. Wauneka, in his official capacity as
Apache County Recorder; Angela Romero in
22 her official capacity as Apache County
Elections Director; Doris Clark in her official
23 capacity as Navajo County Recorder, Rayleen
Richards, in her official capacity as Navajo
24 County Elections Director; Mark Mayrand in
his official capacity as Coconino County
25 Elections Director; and Patty Hansen, in her
official capacity as Coconino County
26 Recorder,

27 Defendants.

No.

**CORPORATE DISCLOSURE
STATEMENT**

1 This Corporate Disclosure Statement is filed on behalf of Navajo Nation and Joyce
2 Nez, Denise Johnson, Ashley Atene, Sr., Irene Roy, Bonnie Tsosie and Dale Smith, in
3 compliance with the provisions of Rule 7.1, Federal Rules of Civil Procedure, that a
4 nongovernmental corporate party to an action in a district court must file a statement that
5 identifies any parent corporation and any publicly held corporation that owns 10% or more
6 of its stock or states that there is no such corporation. The filing party hereby declares
7 there is no such corporation.

8 A supplemental disclosure statement will be filed upon any change in the
9 information provided herein.

10 DATED this 20th day of November, 2018.

11 SACKS TIERNEY P.A.

12
13 By: s/ Patty A. Ferguson-Bohnee
14 Patty A. Ferguson-Bohnee
15 Judith M. Dworkin
16 Joe Keene
17 and
18 Ethel B. Branch
19 Paul Spruhan
20 NAVAJO NATION DEPARTMENT OF JUSTICE
21 *Attorneys for the Navajo Nation*
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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2018, I electronically transmitted the foregoing **CORPORATE DISCLOSURE STATEMENT** to the Clerk's Office using the CM/ECF System for filing.

s/ Rebecca C. Urias

UNITED STATES DISTRICT COURT

for the

District of Arizona

The Navajo Nation, a federally recognized Indian Tribe; Joyce Nez, an individual; Denise Johnson, an individual; Ashley Atene, Sr. an individual; Irene Roy, an Individual; Bonnie Tsosie, an individual; and et al.,

Plaintiff(s)

v.

Michele Reagan, in her official capacity as Secretary of State for the State of Arizona; Edison J. Wauneka, in his official capacity as Apache County Recorder; et al.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Doris Clark, in her official capacity as Navajo County Reocrder Navajo County Government Complex 100 East Code Talkers Drive South Highway 77 Holbrook, AZ 86025

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patty A. Ferguson-Bohnee
Judith M. Dworkin
Joe Keene
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Arizona

The Navajo Nation, a federally recognized Indian Tribe; Joyce Nez, an individual; Denise Johnson, an individual; Ashley Atene, Sr. an individual; Irene Roy, an Individual; Bonnie Tsosie, an individual; and et al.,

Plaintiff(s)

v.

Michele Reagan, in her official capacity as Secretary of State for the State of Arizona; Edison J. Wauneka, in his official capacity as Apache County Recorder; et al.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Mark Mayrand, in his official capacity as Coconino County Elections Director
Coconino County Elections Office
100 East Cherry Avenue
Flagstaff, AZ 86001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patty A. Ferguson-Bohnee
Judith M. Dworkin
Joe Keene
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Arizona

The Navajo Nation, a federally recognized Indian Tribe; Joyce Nez, an individual; Denise Johnson, an individual; Ashley Atene, Sr. an individual; Irene Roy, an Individual; Bonnie Tsosie, an individual; and et al.,

Plaintiff(s)

v.

Michele Reagan, in her official capacity as Secretary of State for the State of Arizona; Edison J. Wauneka, in his official capacity as Apache County Recorder; et al.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Edison J. Wauneka, in his official capacity as Apache County Recorder
County Annex Building
75 West Cleveland Street
St. Johns, AZ 85936

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patty A. Ferguson-Bohnee
Judith M. Dworkin
Joe Keene
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Arizona

The Navajo Nation, a federally recognized Indian Tribe; Joyce Nez, an individual; Denise Johnson, an individual; Ashley Atene, Sr. an individual; Irene Roy, an individual; Bonnie Tsosie, an individual; and et al.,

Plaintiff(s)

v.

Michele Reagan, in her official capacity as Secretary of State for the State of Arizona; Edison J. Wauneka, in his official capacity as Apache County Recorder; et al.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Patty Hansen, in her official capacity as Coconino County Recorder
100 East Cherry Avenue
Flagstaff, AZ 86001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patty A. Ferguson-Bohnee
Judith M. Dworkin
Joe Keene
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
for the
District of Arizona

The Navajo Nation, a federally recognized Indian
Tribe; Joyce Nez, an individual; Denise Johnson, an
individual; Ashley Atene, Sr. an individual; Irene Roy,
an individual; Bonnie Tsosie, an individual; and et al.,

Plaintiff(s)

v.

Michele Reagan, in her official capacity as Secretary
of State for the State of Arizona; Edison J. Wauneka,
in his official capacity as Apache County Recorder;
et al.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Michele Reagan, in her official capacity as Secretary of State for the State of Arizona
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patty A. Ferguson-Bohnee
Judith M. Dworkin
Joe Keene
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Arizona

The Navajo Nation, a federally recognized Indian Tribe; Joyce Nez, an individual; Denise Johnson, an individual; Ashley Atene, Sr. an individual; Irene Roy, an Individual; Bonnie Tsosie, an individual; and et al.,

Plaintiff(s)

v.

Michele Reagan, in her official capacity as Secretary of State for the State of Arizona; Edison J. Wauneka, in his official capacity as Apache County Recorder; et al.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Angela Romero, in her official capacity as Apache County Elections Director
Apache County Elections Office
County Annex Building
75 West Cleveland Street
St. Johns, AZ 85936

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patty A. Ferguson-Bohnee
Judith M. Dworkin
Joe Keene
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
for the
District of Arizona

The Navajo Nation, a federally recognized Indian Tribe; Joyce Nez, an individual; Denise Johnson, an individual; Ashley Atene, Sr, an individual; Irene Roy, an Individual; Bonnie Tsosie, an individual; and et al.,

Plaintiff(s)

v.

Michele Reagan, in her official capacity as Secretary of State for the State of Arizona; Edison J. Wauneka, in his official capacity as Apache County Recorder; et al.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Rayleen Richards, in her official capacity as Navajo County Elections Director
Navajo County Elections Office
Navajo County Government Complex
100 East Code Talkers Drive
South Highway 77
Holbrook, AZ 86025

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patty A. Ferguson-Bohnee
Judith M. Dworkin
Joe Keene
SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: