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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.

**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*

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