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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; the Apache County Board
of Supervisors, a body politic; Alton Joe
Shepherd, in his official capacity as a
Chairman of the Apache County Board of
Supervisors; Doris Clark in her official
capacity as Navajo County Recorder, Rayleen
Richards, in her official capacity as Navajo
County Elections Director; the Navajo County
Board of Supervisors, a body politic; Jesse

No. CV-18-08329-PCT-DWL

**FIRST AMENDED VERIFIED
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Thompson, in his official capacity as a Chairman of the Navajo County Board of Supervisors; Mark Mayrand in his official capacity as Coconino County Elections Director; Patty Hansen, in her official capacity as Coconino County Recorder; and the Coconino County Board of Supervisors, a body politic; Art Babbott, in his official capacity as a Chairman of the Coconino Board of Supervisors.

Defendants.

A. NATURE OF THE CASE

1. “There is no right more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon v. FEC*, 134 S. Ct. 1434, 1440-41 (2014). The Supreme Court has recognized that “voting is of the most fundamental significance under our constitutional structure” and the right to an effective vote is protected by the Equal Protection Clause of the Fourteenth Amendment. *See Burdick v. Takushi*, 504 U.S. 428, 433-44 (1992). Indeed, the right to vote is the “fundamental political right . . . preservative of all rights.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

2. Voters who fail to sign an early ballot affidavit are not given the same opportunity to cure the deficiency as voters whose early ballot has a mismatched signature and voters who fail to provide ID on Election Day. All voters should have the same opportunity to cure ballot deficiencies in order to have their ballots counted.

3. In the November 6, 2018 General Election, over 100 votes cast by members of the Navajo Nation (the “Tribal Members”) residing in the Counties of Apache, Navajo, and Coconino (the “Counties”) were not counted, because they did not sign the envelope containing the early ballot or because the signatures on the envelopes did not match. Over seventy percent (70%) of the voting age population on the Navajo Indian Reservation (“Reservation”) speak a language other than English. Upon information and belief, no translators were provided to these individuals, and this failure resulted in the Tribal Members’ inability to read and understand the instructions for casting an early ballot. The

Counties implemented different standards for curing early ballots. Arizona procedures provide that mismatched signatures on early ballot affidavits can be cured, but are silent as to unsigned early ballot affidavits. The Counties do not provide the same opportunity for voters to cure unsigned ballot affidavits as it does for mismatched signatures on ballot affidavits. This disparate treatment has been found to be unconstitutional by a federal court.¹ Furthermore, federal courts have also held that the lack of notice and an opportunity to cure a ballot is unconstitutional because it violates a person's procedural due process rights.² The Counties' treatment of unsigned early ballots effectively denied voters the right to vote because they neither received notice nor an opportunity to cure.

4. The 2014 Election Procedures Manual ("Election Manual"), the manual in effect during the 2018 election, allows county recorders to contact voters to help cure a mismatched signature. The Election Manual provides that the county recorder "may attempt to contact the voter to ascertain whether the voter actually voted the early ballot and any reasons why the signatures don't match," but only "[i]f time permits." Ariz. Sec'y of State, Election Procedures Manual, 166 (2014). Voters who fail to sign their ballot affidavits are not contacted and have no opportunity to cure their defects. The Election Manual is silent on these ballots. These voters are left without recourse, and their votes are simply not counted.

5. Indeed, in *Maricopa County Republican Party v. Reagan*, twelve of the fifteen Arizona counties stipulated that they all have different standards for allowing voters to cure unsigned ballot affidavits or early ballots with mismatched signatures.³ The ability to cure ballot issues varies among the counties. This inconsistency impacts the right to vote.

¹ See *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL 6090943, at *1 (N.D. Fla. Oct. 16, 2016) ("The issue in this case is whether Florida's statutory scheme, which provides an opportunity to cure no-signature ballots yet denies that same opportunity for mismatched-signature ballots, is legally tenable. The answer is a resounding 'no.'").

² See e.g. *Raetzel v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990); *Saucedo v. Gardner*, No. 17-CV-183-LM, 2018 WL 3862704, at *15 (D.N.H. Aug. 14, 2018); *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at *10 (N.D. Ill. Mar. 13, 2006).

³ Parties' Joint Stipulated Factual Statement, CV 2018-013963 (Maricopa County Sup. Ct., Nov. 8, 2019).

6. Maricopa County Superior Court Judge Margaret Mahoney issued an order requiring county recorders to permit voters to cure early ballots until 5:00 PM on November 14, 2018.⁴ See Superior Court Order, attached as Exhibit 1. The Order defined “cure” to mean “the same governmental acts taken prior to the general election to allow a voter to confirm their early ballot vote.” Thus, if the signature on the voter registration does not match that on the sealed envelope, all counties in the State of Arizona allowed voters to fix, or cure, the signature up to five (5) business days after Election Day. This concession did not apply to voters who failed to sign the affidavit on their early ballot envelopes.

7. Navajo County initially stated that it would allow voters to cure their unsigned ballot affidavits, and then it stated it would not allow voters to cure the ballot affidavits.⁵

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

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

10. Maricopa County, the most populated county in the State of Arizona, allowed voters to cure unsigned ballot affidavits.⁶

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

12. Voters who fail to present ID when voting in person on Election Day have five (5) business days after a federal election to return to the county recorder’s office or another

⁴ *Maricopa County Republican Party v. Reagan*, CV 2018-013963 (Maricopa County Sup. Ct., Nov. 9, 2019).

⁵ *Maricopa County Republican Party v. Regan*, Parties’ Joint Stipulated Factual Statement ¶7, CV 2018-013963 (Maricopa County Sup. Ct., Nov. 8, 2019).

⁶ Maricopa County Recorder’s Website, FAQ 12 available at <https://recorder.maricopa.gov/site/faq.aspx>.

1 designated location to bring ID and have their ballot counted.

2 13. Voters who participate in early voting and fail to sign their ballot affidavit do not
3 have the same opportunity to cure their voting deficiency as voters who fail to present ID on
4 Election Day.

5 14. The Navajo Nation requested that the Counties establish additional voter
6 registration and early voting sites on the Reservation to assist Tribal Members with the
7 electoral process. For various and unsubstantiated reasons, the Counties denied the Nation's
8 request. The inadequate early voting sites resulted in Tribal Members making mistakes on
9 their ballots. Poll workers at an early voting site could have identified and corrected the
10 signature issues.

11 15. The lack of in-person voter registration sites on the Reservation results in
12 inequality of access to voter registration for Tribal Members.

13 16. Defendants' failure to establish additional in-person voter registration sites and
14 early voting sites on the Reservation, provide translators for early voting, and allow
15 additional time during which Tribal Members could cure their ballot inadequacies had, and
16 will continue to have, a significant disparate impact on the Navajo Nation's Tribal Members'
17 voting power. It will also deny them their voting rights and abridges their ability to
18 participate in elections. Plaintiffs allege that this failure to act, if allowed, would reinforce a
19 "history of official racial discrimination in voting."

20 17. Ballot translations in the Navajo language are only provided orally. Instructions
21 on how to complete an early ballot in the Navajo language are only provided orally. Upon
22 information and belief, there were no oral instructions provided to Navajo voters who
23 received early ballots by mail. Navajo language speakers did not have an equal opportunity
24 to participate in early voting opportunities.

25 18. If the State and Counties' action and inaction is allowed to continue, the ability
26 of these Tribal Members to effectively participate in the political process will be hindered.

27 19. Plaintiffs seek declaratory and injunctive relief, compelling the Defendants to (a)
28 allow early voters who do not sign their ballot affidavit to have the same opportunity to cure

1 the ballot deficiency that is provided to voters with a mismatched signature, (b) allow early
2 voters who do not sign their ballot affidavit to have the same chance to cure their ballot as
3 voters who vote by conditional provisional ballots, (c) provide translators certified as
4 proficient in the Navajo language for all future early voting and election-day polling sites,
5 (d) provide translation of instructions for casting an early ballot in Navajo over the radio for
6 the 30 days leading up to an election, (e) establish additional in-person voter registration
7 sites, and (f) establish additional early voting sites on the Reservation for all future elections
8 that are open for consistent hours (at a minimum, each Monday through Friday from 8 a.m.
9 until 6 p.m. with no interruption during the lunch hour) during the 30 days leading up to the
10 election. This relief is sought on the grounds that failure to provide the requested relief is a
11 denial of the equal right to vote.

12 20. Failing to establish this relief will result in Navajo Nation citizens having less
13 opportunity than non-Navajo citizens to participate in the political process.

14 21. Accordingly, Plaintiffs ask this Court to grant them declaratory and injunctive
15 relief set forth in Paragraph 19.

16 **B. AUTHORITY**

17 22. This action is brought by the Plaintiffs pursuant to Sections 2, 4(f)(4) and 203 of
18 the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10301 *et seq.* (formerly codified at
19 42 U.S.C. 1973); 42 U.S.C. § 1983, providing for civil action for deprivation of rights; the
20 Fourteenth Amendment to the United States Constitution; the First Amendment of the United
21 States Constitution, 28 U.S.C. §§ 2201-2202 providing for declaratory relief and other
22 necessary or proper relief; and Article 2, Section 21 of the Constitution of the State of
23 Arizona.⁷ This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) to hear claims
24 under the Constitution and laws of the State of Arizona.

25
26
27 ⁷ Article 1, Section 21. Free and equal elections. All elections shall be free and equal, and no
28 power, civil or military, shall at any time interfere to prevent the free exercise of the right of
suffrage.

1 **C. JURISDICTION AND VENUE**

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

6 24. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

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

10 **D. PARTIES**

11 26. Plaintiff Navajo Nation is a federally recognized Indian Tribe with a
12 government-to-government relationship with the United States. The Navajo Reservation was
13 established by the Treaty of 1868 and was thereafter expanded by successive executive
14 orders. The Reservation consists of approximately 27,000 square miles of sovereign
15 territory. The Reservation is located in Apache, Navajo, and Coconino counties in Arizona,
16 and 8 counties in Utah and New Mexico. According to the 2010 census, the population of
17 the Reservation is 173,667 of whom 101,835 live on the Arizona portion of the Reservation.
18 The Navajo Nation has a voting age population of 67,252 living within the Arizona portion
19 of the Reservation.

20 27. The Navajo Nation has associational standing to bring this lawsuit. Navajo
21 Nation Tribal Members would have standing to sue in their individual capacities for the
22 allegations set forth in the Complaint. The Navajo Nation helps to coordinate voter outreach
23 and voter education on the Reservation. The Navajo Nation Election Administration reviews
24 and approves Navajo language translations used by the Counties for use on Reservation
25 precincts. The translations include radio and print announcements, ballots, audio tapes, other
26 election material, and poll working training materials. The Nation also asserts the right to
27 bring this claim on behalf of its members *parens patriae*.

28 28. The Navajo Nation has a strong and demonstrated interest in ensuring its

1 members are able to exercise their right to vote on Election Day. If Navajo Nation members
2 are unable to vote, the collective power and voice of the Navajo Nation is reduced. The
3 Navajo Nation advocates on behalf of all its members to local, state, and federal
4 representatives. If some of its members are unable to vote, the Navajo Nation's overall
5 ability to advocate effectively for critical resources for the Navajo Nation is jeopardized.

6 29. Plaintiff, Joyce Nez, is a resident of Chinle, Arizona, an Arizona elector in
7 Apache County, and an enrolled Tribal Member. Ms. Nez is a citizen of Arizona and is
8 registered to vote in local, state, and national elections in Arizona. Ms. Nez lives on the
9 Reservation. Ms. Nez voted by mail during the 2018 General Election and believed that her
10 ballot was counted. However, Ms. Nez's ballot was not counted for failure to complete the
11 ballot affidavit form. Ms. Nez does not recall being informed that she must complete a ballot
12 affidavit form, and she was not given an opportunity to cure her ballot deficiency. Ms. Nez
13 is a Navajo language speaker. *See* Joyce Nez Declaration attached as Exhibit 2.

14 30. Plaintiff Ashley Atene, Sr. is a resident of Kayenta, Arizona, located on the
15 Navajo Indian Reservation in Navajo County, Arizona. Mr. Atene is an enrolled member of
16 the Navajo Nation and is registered to vote in local, state, and national elections in Arizona.
17 Mr. Atene attempted to vote in the 2018 General Election. He obtained an early ballot and
18 returned it to the Kayenta polling place on Election Day. Mr. Atene asked at the polling
19 location if he needed to sign his ballot, and the poll worker told him that he did not need to
20 sign his ballot. Mr. Atene left the polling location believing that his ballot would be counted.
21 However, his ballot was not counted for failure to sign the ballot affidavit. He was not given
22 an opportunity to cure his ballot deficiency. Mr. Atene is a Navajo language speaker. *See*
23 Ashley Atene, Sr. Declaration attached as Exhibit 3.

24 31. Plaintiff Dale Smith is a resident of Kayenta, Arizona, located on the Navajo
25 Indian Reservation in Navajo County, Arizona. Mr. Smith is an enrolled member of the
26 Navajo Nation. He does not believe he is registered to vote in Arizona elections. Mr. Smith
27 does not believe he has the same access to voter registration and early voting as other citizens
28 who live in Navajo County. Mr. Smith would have to travel approximately 350 miles

1 roundtrip to Holbrook to register to vote or participate in early voting outside of the ten hours
2 of early voting offered by Navajo County in Kayenta during the 2018 General Election. *See*
3 Dale Smith Declaration attached as Exhibit 4.

4 32. Plaintiff Denise Johnson is an enrolled member of the Navajo Nation living on
5 the Navajo Indian Reservation in Apache County, and she is a fluent Navajo language
6 speaker. Ms. Johnson is not registered to vote and believes it is a financial burden to
7 participate in voting. *See* Denise Johnson Declaration attached as Exhibit 5.

8 33. Plaintiff Irene Roy is an enrolled member of the Navajo Nation and an Arizona
9 elector in Apache County. Ms. Roy is a citizen of Arizona and is registered to vote in local,
10 state, and national elections in Arizona. Ms. Roy is a fluent Navajo language speaker.
11 Ms. Roy lives on a dirt road in Sweetwater on the Navajo Indian Reservation. Ms. Roy does
12 not receive mail at her home and has no car. She receives mail 35 miles from her home, and
13 can only obtain mail during limited times. It would be a financial burden for Ms. Roy to
14 travel to St. Johns (198 miles one way), Fort Defiance (100 miles one way), or Chinle (66
15 miles one way) to participate in in-person early voting. *See* Irene Roy Declaration attached
16 as Exhibit 6.

17 34. Plaintiff Bonnie Tsosie is an enrolled member of the Navajo Nation. She lives
18 in Sweetwater on the Navajo Indian Reservation on an unpaved road, 15 miles from a paved
19 road. Ms. Tsosie does not receive mail at her home and must travel 35 miles to receive her
20 mail. She has attempted to register to vote unsuccessfully in the past. *See* Bonnie Tsosie
21 Declaration attached as Exhibit 7.

22 35. The Plaintiffs desire to participate in the electoral and political processes of
23 Arizona on an equal basis with non-Navajo voters.

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

28 37. Defendant Edison J. Wauneka is the Recorder for Apache County and is sued in

1 his official capacity.

2 38. Defendant Doris Clark is the Recorder for Navajo County and is sued in her
3 official capacity.

4 39. Defendant Patty Hansen is the Recorder for Coconino County and is sued in her
5 official capacity.

6 40. Defendant Mark Mayrand is sued in his official capacity as the Elections
7 Administrator for Coconino County. He is in charge of conducting elections in Coconino
8 County.

9 41. Defendant Angela Romero is sued in her official capacity as the Elections
10 Director for Apache County, Arizona. She is in charge of coordinating and administering
11 elections in Apache County.

12 42. Defendant Rayleen Richards is sued in her official capacity as the Elections
13 Director for Navajo County, Arizona. She is in charge of conducting elections in Navajo
14 County.

15 43. Defendant Navajo County Board of Supervisors is the duly elected governing
16 body of Navajo County, a body politic, organized and existing under the laws of the State of
17 Arizona. The Board of Supervisors is charged with the overall responsibility of the county
18 election process, except for those functions designated by law to other elected officials. The
19 Board of Supervisors may appoint an officer in charge of all functions the board does not
20 direct personally. The officer in charge of elections shall be vested with the delegated
21 authority of the board and is responsible directly to the board for actions taken on its behalf.

22 44. Defendant Jesse Thompson is sued in his official capacity as a Chairman of the
23 Navajo County Board of Supervisors. Defendant Thompson is a person within the meaning
24 of 42 U.S.C. § 1983 and was acting under color of state law at all times.

25 45. Defendant Apache County Board of Supervisors is the duly elected governing
26 body of Apache County, a body politic, organized and existing under the laws of the State of
27 Arizona. The Board of Supervisors is charged with the overall responsibility of the county
28 election process, except for those functions designated by law to other elected officials. The

1 Board of Supervisors may appoint an officer in charge of all functions the board does not
2 direct personally. The officer in charge of elections shall be vested with the delegated
3 authority of the board and is responsible directly to the board for actions taken on its behalf.

4 46. Defendant Alton Joe Shepherd is sued in his official capacity as a Chairman of
5 the Apache County Board of Supervisors. Defendant Shepherd is a person within the
6 meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times.

7 47. Defendant Coconino County Board of Supervisors is the duly elected governing
8 body of Coconino County, a body politic, organized and existing under the laws of the State
9 of Arizona. The Board of Supervisors is charged with the overall responsibility of the county
10 election process, except for those functions designated by law to other elected officials. The
11 Board of Supervisors may appoint an officer in charge of all functions the board does not
12 direct personally. The officer in charge of elections shall be vested with the delegated
13 authority of the board and is responsible directly to the board for actions taken on its behalf.

14 48. Defendant Art Babbott is sued in his official capacity as a Chairman of the
15 Coconino County Board of Supervisors. Defendant Babbott is a person within the meaning
16 of 42 U.S.C. § 1983 and was acting under color of state law at all times.

17 **E. APPLICABLE LAW**

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

21 50. Section 203 of the Voting Rights Act (“VRA”), 52 U.S.C. § 10503(c)
22 (“Section 203”) provides:

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

27 51. Section 2 of the VRA, 52 U.S.C. § 10301(a), provides that no voting
28 qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed

1 or applied by any State or political subdivision in a manner which results in a denial or
2 abridgement of the right of any citizen of the United States to vote on account of race or
3 color.

4 52. Section 4(f)(4) of the VRA, 52 U.S.C. § 10303(f)(4), provides in relevant part:

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

11 53. A.R.S. § 16-541 provides that “[a]ny election called pursuant to the laws of this
12 state shall provide for early voting. Any qualified elector may vote by early ballot.”

13 54. A.R.S. § 16-542 (A) provides as follows:

14 Within ninety-three days before any election called pursuant to
15 the laws of this state, an elector may make a verbal or signed request
16 to the county recorder, or other officer in charge of elections for the
17 applicable political subdivision of this state in whose jurisdiction the
18 elector is registered to vote, for an official early ballot. In addition to
19 name and address, the requesting elector shall provide the date of birth
20 and state or country of birth or other information that if compared to
21 the voter registration information on file would confirm the identity
22 of the elector. If the request indicates that the elector needs a primary
23 election ballot and a general election ballot, the county recorder or
24 other officer in charge of elections shall honor the request.

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

27 56. A.R.S. § 16-246 provides that “[t]he county recorder or other officer in charge
28 of elections may establish on-site early voting locations at the office of the county recorder
or at other locations in the county deemed necessary or appropriate by the recorder.”

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

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

I declare the following under penalty of perjury: I am a
registered voter in _____ county Arizona, I have not
voted and will not vote in this election in any other county or
state, I understand that knowingly voting more than once in any

election is a class 5 felony and I voted the enclosed ballot and signed this affidavit personally unless noted below.

58. 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.”

59. 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.

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

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.

61. 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.”

62. The Election 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.”⁸

⁸ Office of the Secretary of State, State of Arizona Election Procedures Manual at 58 (2014).

63. The Election 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.⁹

64. The Election 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.
- 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.¹⁰

65. If an election official encounters a mismatched signature, and makes an initial

⁹ Election Manual at 59.

¹⁰ *Id.* at 59-60.

determination that the signatures on the ballot affidavit and the voter's registration do not match, the Election Manual states that the County Recorder "if time permits, may attempt to contact the voter to ascertain whether the voter actually voted the early ballot and any reasons why the signatures may not match."¹¹

66. The Election Manual is silent on whether an election official can contact a voter whose ballot affidavit is not signed.

67. Individuals returning or depositing early ballots are not required to show identification.¹² Their signature is equivalent to showing physical identification for verification of the voter's identification.

68. 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 federal office or 5:00 p.m. on the third business day after any other election for the provisional ballot to be processed and counted.¹³

69. Ballots are rejected if the affidavit on the envelope is insufficient, or the registrant is not a qualified elector of the voting precinct or district.¹⁴

F. VOTING IN ARIZONA

70. Voting in Arizona is conducted by early in-person voting, early voting by mail, and traditional, in-person voting at polling places on Election Day. Arizona voters need no

¹¹ *Id.* at 166.

¹² *Id.* at 150.

¹³ *Id.* at 153.

¹⁴ *Id.* at 168.

1 excuse to vote early and Arizona permits early voting both in person and by mail during the
2 27 days before an election. A.R.S. § 16-541.

3 71. For those voters who prefer to vote early and in-person, all Arizona counties
4 operate at least one in person early voting location. Some of these locations are open on
5 Saturdays.

6 72. Arizona has allowed early voting by mail for over 25 years, and it has since
7 become the most popular method of voting, accounting for approximately eighty percent
8 (80%) of all ballots cast in the 2016 election.

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

14 74. To be counted, an early ballot must be received by the county recorder by
15 7:00 p.m. on Election Day. A.R.S. § 16-548(A).

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

19 76. Additionally, some Arizona counties provide special drop boxes for early ballots,
20 and voters in all counties may return their early ballots in person at any polling place, vote
21 center, or authorized election official’s office without waiting in line.

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

1
2 **G. ARIZONA COUNTIES ALL USE DIFFERENT STANDARDS**

3 78. As put forth in a stipulation in the case of *Maricopa County Republican Party v.*
4 *Reagan*, twelve of the fifteen Arizona counties stipulated that they all have different
5 standards for allowing voters to cure early ballots with mismatched signatures. *See*
6 *Stipulation*, attached as Exhibit 8. An agreement was made to provide that all voters in
7 Arizona to have until November 13, 2018 to cure mismatched signatures on early ballot
8 affidavits. The agreement did not include a similar opportunity to cure unsigned early
9 ballots.

10
11 **H. POVERTY OF THE NAVAJO NATION**

12 79. The Navajo Nation is the largest reservation in the United States and is located
13 within the states of Arizona, New Mexico, and Utah.¹⁵

14 80. The poverty rate on the Reservation is thirty-eight (38%), twice the poverty rate
15 in the State of Arizona.¹⁶

16 81. The median household income on the Navajo Nation's Reservation is \$27,389
17 "which is approximately half that of the State of Arizona."¹⁷ Thirty-two percent (32%) of
18 the population lives below the poverty level.¹⁸ Only seven percent (7%) of the Tribal
19 membership have obtained a college degree.¹⁹

20 **I. BACKGROUND OF DISCRIMINATION**

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

23 83. Prior to 1924, Indians were denied citizenship and the right to vote based on the
24

25 ¹⁵ navajobusiness.com/FastFacts/Overview.htm

26 ¹⁶ 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 ¹⁷ *Id.* at 29.

¹⁸ *Id.*

¹⁹ *Id.* at 57.

1 underlying trust relationship between the federal government and the tribes and on their
2 status as citizens of their tribes. Indians could only become citizens through naturalization
3 “by or under some treaty or statute.”²⁰

4 84. It was not until Congress passed the Indian Citizenship Act of 1924 that all
5 Indians were granted United States citizenship.²¹ Enactment of the 1924 Act ended the
6 period in United States history in which United States citizenship of Indians was conditioned
7 on severance of tribal ties and renunciation of tribal citizenship and assimilation into the
8 dominant culture.²²

9 85. Notwithstanding the passage of the Indian Citizenship Act, states continued to
10 discriminate against Indians by denying them the right to vote in state and federal elections
11 through poll taxes, literacy tests, and intimidation.²³

12 86. Even after 1924, Arizona Indians were prohibited from participating in elections.
13 The Arizona Supreme Court upheld the prohibition finding that Indians living on reservations
14 could not vote because they were wards of the federal government and, as such were “persons
15 under guardianship” and were thereby prohibited from voting in Arizona.²⁴

16 87. Reservation Indians in Arizona did not achieve the right to vote in state elections
17 until 1948 when the Arizona Supreme Court overturned the *Porter v. Hall* decision.²⁵

18 88. The State of Arizona continued its discrimination through its imposition of
19 English literacy tests which were not repealed until 1972.²⁶ Only those Indians who could
20 read the United States Constitution in English and write their names were eligible to vote in
21

22 ²⁰ *Elk v. Wilkins*, 112 U.S. 94, 103 (1884).

23 ²¹ An Act of June 2, 1924, 43 Stat. 253, Pub. L. 175 (1924) (codified as amended at 8 U.S.C.
24 § 1401(b)).

25 ²² COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, § 14.01[3], n. 42-44. (2005
26 Ed.)

27 ²³ Continuing Need for Section 203’s Provision for Limited English Proficient Voters:
28 Hearing Before the S. Comm. on the Judiciary, 109th Cong. 309 (2006) (letter from Joe
Garcia, NCAI).

²⁴ *Porter v. Hall*, 34 Ariz. 308, 331-332, 271 P. 411, 419 (Ariz. 1928).

²⁵ *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).

²⁶ See ARIZ. REV. STAT. ANN. § 16-101(A)(4)-(5) (1956); Voting Rights Act: Evidence of
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 state elections.

2 89. The enactment of the VRA included a temporary prohibition of literacy tests in
3 covered jurisdictions. Apache County, Arizona was included in the original list of
4 jurisdictions covered by Section 5 of the VRA.²⁷

5 90. On November 19, 1965, Navajo and Coconino Counties also became covered by
6 Section 5.²⁸

7 91. Because of this coverage, the Arizona literacy tests were suspended in each of
8 these three counties.

9 92. In 1966, these three Counties became the first jurisdictions to successfully bail
10 out from coverage under Section 5 after the U.S. District Court for the District of Columbia
11 held that Arizona's literacy test had not been discriminatorily applied against Indians in the
12 preceding five years.²⁹

13 93. When the VRA was amended in 1970, it included a nationwide ban on literacy
14 tests, which again preempted the operation of Arizona's literacy tests.³⁰ Arizona became one
15 of the states to unsuccessfully challenge the ban on literacy tests. In upholding the ban and
16 striking down literacy tests, the Supreme Court noted that Arizona had "a serious problem of
17 deficient voter registration among Indians."³¹ The Court recognized that non-English
18 speakers may make use of resources in their native languages in order to responsibly and
19 knowledgeably cast a ballot.³²

20 94. The VRA amendments of 1970 included, as one of the measures of voting
21 discrimination, registration and turnout in the 1968 presidential election. As a result, Apache,
22 Coconino and Navajo Counties again became covered by Section 5 along with five (5) other
23

24 ²⁷Determination of the Attorney General Pursuant to Section 4(b)(1) of the Voting Rights Act
25 of 1965, 30 Fed. Reg. 9897 (Aug. 7, 1965).

26 ²⁸Determination of the Director Pursuant to Section 4(b)(2) of the Voting Rights Act of 1965,
30 Fed. Reg. 14505 (Nov. 19, 1965).

27 ²⁹*Apache County v. United States*, 256 F. Supp. 903, 910911 (D.D.C. 1966).

28 ³⁰The Voting Rights Act, 42 U.S.C. § 1973aa (1970) (current version at 42 U.S.C. § 1973b
(2008)).

³¹*Oregon v. Mitchell*, 400 U.S. 112, 117, 132, 153 (1970).

³²400 U.S. *Id.* at 146.

1 Arizona counties.

2 95. Even after 1970, there were a number of challenges to Indians' right to vote and
3 to hold office. Many of these cases challenged activities in Apache County, one of only a
4 few counties within the United States in which the predominant languages spoken are
5 American Indian. Of these languages, the most commonly used is Navajo, a historically
6 unwritten language.³³

7 96. The Arizona Supreme Court quashed a permanent injunction by the lower court
8 against the seating of Tom Shirley, a Navajo Indian living on the Navajo Reservation, who
9 had been elected to the Apache County Board of Supervisors.³⁴ The Arizona Court reaffirmed
10 the right of Indians to vote, vacated the injunction and directed the Apache County Board of
11 Supervisors to certify Shirley as the elected supervisor from District 3.³⁵

12 97. Apache County also discriminated against Indian voters by racially
13 gerrymandering the districts for the three seats on the County's Board of Supervisors. In the
14 early 1970's, Apache County District 3 had a population of 26,700 of whom 23,600 were
15 Indian, while District 1 had a population of 1,700 of whom only 70 were Indian and District
16 2 had a population of 3,900 of whom only 300 were Indian. Several Indian voters challenged
17 Apache County for violating the one-person, one-vote rule.³⁶ Apache County claimed that
18 Indians are not citizens of the United States and the Indian Citizenship Act granting them
19 citizenship was unconstitutional.³⁷ The federal court rejected the County's arguments, noted
20 that the County must be redistricted in accordance with one-person, one-vote standards and
21
22

23 ³³ 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 Constitution
27 of the H. Comm. on the Judiciary, 109th Cong. 1403-1404 (2006) (appendix to the statement
28 of Wade Henderson).

³⁴ *Shirley v. Superior Court for Apache County*, 109 Ariz. 510, 516, 513 P.2d 939, 945 (Ariz. 1973).

³⁵ *Id.* at 516, 513 P.2d at 945.

³⁶ *Goodluck v. Apache County*, 417 F. Supp. 13, 14 (D. Ariz. 1975), *aff'd*, 429 U.S. 876 (1976).

³⁷ 417 F. Supp. at 14.

1 granted plaintiff's motion for summary judgment.³⁸

2 98. 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 almost
4 entirely non-Indian southern part of the county. Although the special election affected Indian
5 students who would be denied equal schooling, Indian turnout for the election was
6 abnormally low. Investigation demonstrated that the low turnout was a result of the closing
7 of nearly half of the polling places on the reservation, the total lack of language assistance,
8 the absence of Navajo language informational meetings regarding the bond election and the
9 use of English-only in the implementation of absentee voting procedures.³⁹

10 99. In 1988, the United States filed a complaint to enforce Sections 2 and 4(f)(4) of
11 the VRA. The complaint alleged that various election standards, practices, and procedures
12 by the State of Arizona, the Apache County Board of Supervisors and Navajo County Board
13 of Supervisors unlawfully denied or abridged the voting rights of Navajo citizens residing in
14 Apache and Navajo counties. The challenged practices included discriminatory voter
15 registration, use of absentee ballots, and voter registration cancellation procedures, as well
16 as failure to implement effective bilingual election procedures, including the effective
17 dissemination of election information in Navajo and providing for a sufficient number of
18 adequately trained bilingual persons to serve as Navajo translators on election day. This
19 litigation ended in a Consent Decree, which established the Navajo Language Election
20 Information Program required the counties to employ two full-time bilingual outreach
21 workers and to agree to a number of changes to increase voter registration and the
22 dissemination of election procedures.⁴⁰

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

26 _____
27 ³⁸417 F. Supp. at 16.

28 ³⁹*Apache County High School No. 90 v. United States*, No. 77-1815 (D.D.C. June 12, 1980).

⁴⁰*U.S. v. Arizona*, Consent Decree, CIV 88-1989 (May 22, 1989).

1 assistance and ballots, in the language of the applicable language minority group.⁴¹ This
2 includes the Navajo language in Apache, Coconino, and Navajo Counties.

3 101. Over seventy percent (70%) of the households on the Navajo Reservation speak
4 a language other than English, and over eighteen percent (18%) of individuals over the age
5 of five speak English less than very well.⁴²

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

23 103. Voting in and around Indian reservations and communities is, to a significant
24 extent, racially polarized.
25

26 ⁴¹ Voting Rights Act Amendments of 2006, Determinations under Section 203, 81 See. Reg.
27 87532, 87533 (Dec. 5, 2016).

28 ⁴² 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.

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

9 **J. FACTUAL BACKGROUND ON DENIAL OF ADDITIONAL IN-PERSON**
10 **VOTER REGISTRATION AND IN-PERSON EARLY VOTING SITES BY**
11 **THE COUNTIES**

12 105. On August 8, 2018, Russell Begaye, President of the Navajo Nation, sent
13 requests for additional voter registration sites and early voting sites to the recorders of
14 Apache, Coconino and Navajo Counties. *See* Exhibits 9, 10, and 11. He informed the
15 respective recorders that the Nation would help recruit Navajo Tribal Members to staff the
16 locations and assist in obtaining HAVA funds for its operations. *Id.* He asked that they
17 respond by August 17, 2018, so that the Navajo Nation could assist the counties. *Id.* These
18 requests were cc:ed to the Secretary of State, Michelle Regan.

19 106. On August 20, 2018, Defendant Patty Hansen sent a memorandum to President
20 Begaye denying his request for additional early voting sites. *See* Exhibit 12. She claims that
21 Coconino County recently entered into a settlement agreement with the Department of
22 Justice that requires all early voting sites established after the effective date of the agreement
23 be handicapped accessible. The Agreement would allow the County to use current non-
24 compliant facilities for the 2018 elections but prohibited them from establishing any new
25 non-compliant facilities. *Id.* The County did agree to accept assistance from the Navajo
26 Nation in obtaining additional Help America Vote Act (“HAVA”) funding. *Id.*

27 107. On August 23, 2018, Defendant Secretary of State notified President Begaye that
28 Coconino County Recorder’s statement that the Secretary of State would not make HAVA
funding available to enhance their election security was incorrect. Secretary Regan also

1 indicated that the State had \$5 million dollars in HAVA funding that had not yet been
2 distributed. *See* Exhibit 13.

3 108. On September 10, 2018, Defendant Doris Clark notified the Navajo Nation that
4 its request for additional early voting sites on the Reservation was denied, because of the
5 County's interest in ballot security. *See* Exhibit 14.

6 109. The decision to determine whether and if to establish temporary and permanent
7 voter registration and polling places is statutorily left to the discretion of the individual
8 county recorders.

9 110. Coconino County is the largest county in the State of Arizona at 18,661 square
10 miles. Over 7,000 square miles (approximately 39%) are on tribal land, approximately
11 12.9% is privately-owned land, and the remainder is owned by the state and federal
12 governments.⁴³

13 111. Apache County is the third largest county in the State of Arizona at 11,218 square
14 miles. Fifty percent of the land in Apache County is tribal land, seventeen percent is
15 privately-owned land, while the remainder is owned by the state and federal governments.
16 *Sheperd v. Platt*, 865 P.2d 107 (Ariz. App. 1993).

17 112. Navajo County is the fourth largest county in the State of Arizona at 9,959 square
18 miles. Sixty-six percent of the land base is tribal land, approximately eighteen percent is
19 privately-owned land, and the remainder is owned by the state and federal governments. .

20 113. Navajo voters had limited access to in-person early voting during the 2018
21 election. *See* Coconino County early voting sites, attached as Exhibit 15; Apache County
22 early voting sites, attached as Exhibit 16; Navajo County early voting sites, attached as
23 Exhibit 14.

24 114. Navajo voters must travel great distances to register to vote. Tribal
25 identification/enrollment numbers are acceptable forms of proof of citizenship for proof of

26 _____
27 ⁴³ Coconino County, Coconino County Land Ownership, available at
28 <http://www.coconino.az.gov/DocumentCenter/View/923/County-Land-Composition-2-reduced?bidId=>.

1 registration. There is limited access to broadband on the Navajo Reservation.⁴⁴ However,
2 the online voter registration process does not allow the use of Tribal identification numbers
3 to complete the online voter registration process.

4 K. CLAIMS

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

9 116. Over seventy percent (70%) of households on the Reservation speak a language
10 other than English, and when translators are not provided by the Counties, this hinders the
11 ability of these Tribal Members to participate effectively in the political process. The
12 requisite language translations are not provided to Navajo language voters under Section 203
13 and Section 4(f)(4) of the Voting Rights Act.

14 117. Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, in relevant part,
15 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 political
17 processes leading to nomination or election in the State or political
18 subdivision are not equally open to participation by members of a
19 class of citizens protected... in that its members have less opportunity
20 than other members of the electorate to participate in the political
21 process and to elect representatives of their choice.

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

24 118. The crux of Plaintiffs' § 2 claim is that Tribal Members have less opportunity
25 than other Arizona citizens to participate in the political process by exercising their voting
26 franchise.

27 119. Many Navajo citizens have nontraditional addresses and do not receive mail at
28 their homes. Most Navajo citizens living on the Navajo Reservation must travel to obtain

⁴⁴ Federal Communications Commission, National Broadband Map, Navajo Nation,
available at <https://www.broadbandmap.gov/summarize/native-nations/navajo-nation>.

1 their mail.

2 120. There are over 14,000 miles of roads on the Navajo Reservation. Seventy-six
3 percent of the roads on the Navajo Reservation are unpaved dirt roads.

4 121. Transportation to post office locations, early voting locations, and voter
5 registration locations is challenging for many Navajo voting age citizens.

6 122. The lack of in-person early voting and in-person voter registration imposes a
7 discriminatory burden on Navajo voters, a protected class. This burden is “caused by or
8 linked to ‘social and historical conditions’ that have or currently produce discrimination
9 against members of the protected class.” *Husted*, 768 F.3d at 554.

10 123. Additionally, Arizona’s current voting procedures violate the Constitution. The
11 Election Manual, which allows voters to cure ballots that have a mismatched signature on
12 early ballots or no ID on Election Day but does not allow ballots to be cured where the voter
13 fails to sign their early ballot affidavit, cannot stand. This current practice of allowing some
14 voters to cure their ballots but not others has been ruled unconstitutional by courts.⁴⁵
15 Furthermore, the lack of notice and an opportunity to contest the denial of a ballot violates
16 Plaintiffs’ procedural due process rights. Federal courts have struck down laws like
17 Arizona’s which deny a voter an opportunity to correct their ballot.⁴⁶ Indeed, this Court held
18 in 1990 that Arizona’s absentee ballot process was unlawful because of “the absence of any
19 procedure which furnishes post-deprivation notice to an individual whose absentee ballot has
20 been disallowed, advising the individual of the disqualification and the reason therefore, and
21 providing some means for the individual to make his or her position on the issue a matter of
22

23 ⁴⁵ See *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL 6090943, at
24 *1 (N.D. Fla. Oct. 16, 2016) (“The issue in this case is whether Florida’s statutory scheme,
25 which provides an opportunity to cure no-signature ballots yet denies that same opportunity
for mismatched-signature ballots, is legally tenable. The answer is a resounding ‘no.’”).

26 ⁴⁶ See e.g. *Saucedo v. Gardner*, No. 17-CV-183-LM, 2018 WL 3862704, at *15 (D.N.H.
27 Aug. 14, 2018); *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at *10 (N.D. Ill. Mar.
28 13, 2006).

1 record before the appropriate election official.” *Raetzel v. Parks/Bellefont Absentee Election*
2 *Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990).

3 124. As shown by Plaintiff Ms. Nez, Ms. Nez’s early ballot was not counted during
4 the 2018 Election because she had failed to complete the ballot affidavit form. Ms. Nez was
5 never notified that her ballot had a problem, thus she was not allowed to cure her ballot. *See*
6 Joyce Nez Declaration attached as Exhibit 2. Plaintiff Atene was at a polling station and
7 asked if he had to sign his ballot, and the poll worker told him no. *See* Ashley Atene, Sr.,
8 Declaration attached as Exhibit 3. Mr. Atene left the polling station thinking his ballot was
9 counted and was not given an opportunity to cure his ballot. Had these voters had
10 mismatched signatures, they should been contacted by Defendants and had an opportunity to
11 cure their respective ballots.

12 125. The State and Counties have no legitimate, nor compelling interest in treating
13 ballots differently. Arizona should allow all voters to cure their ballots whether the ballot
14 has a mismatched signature or an unsigned affidavit. The legitimate interests of the
15 Defendants will not be undermined if the Court grants the relief prayed for herein.

16 126. Plaintiffs have no adequate remedy at law.

17 127. Plaintiffs have suffered irreparable harm as a result of the violations complained
18 of herein, and that harm will continue unless Defendants’ failure to establish in-person voter
19 registration and early voting sites, provide translators, and to allow voters to cure their
20 unsigned ballots is declared unlawful and enjoined by this Court.

21 **FIRST CLAIM FOR RELIEF**

22 **VIOLATION OF THE 14TH AMENDMENT OF THE**
23 **UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983**

24 ***Arbitrary and Disparate Treatment of Voters***

25 128. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
26 herein.

27 129. Section 1 of the Fourteenth Amendment of the United States Constitution
28

1 provides: “No...State shall . . . deny to any person within its jurisdiction the equal protection
2 of the law.”

3 130. The Supreme Court has held that “[h]aving once granted the right to vote on
4 equal terms, the State may not, by later arbitrary and separate treatment, value one person’s
5 vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 105 (2000).

6 131. Under the Equal Protection Clause, Defendants cannot utilize election practices
7 that arbitrarily treat voters differently. The actions outlined above treat voters differently.

8 132. Defendants refused to give Navajo tribal members the same opportunity to cure
9 unsigned early ballots as early voters with mismatched signatures on the ballot affidavit form.
10 See Joyce Nez Declaration attached as Exhibit 2. Mismatched signatures on early ballot
11 affidavits were authorized to be corrected by November 14, 2018 during the 2018 General
12 Election. Failure to allow Navajo voters the same opportunity to cure their ballots violates
13 equal protection under the law. See *Harper v. Va Bd. of Elections*, 383 U.S. 663, 665 (1966)
14 (“[O]nce the franchise is granted to the electorate, lines may not be drawn which are
15 inconsistent with the Equal Protection Clause of the Fourteenth Amendment.”).

16 133. Plaintiff Navajo Nation has a strong interest in ensuring that its members have
17 the right to vote and a strong interest in ensuring that its member be treated the same as other
18 voters in Arizona. If Navajo Nation members are denied their fundamental right to vote, the
19 Navajo Nation’s overall ability to advocate effectively for critical resources for the Navajo
20 Nation will be greatly diminished.

21 134. Furthermore, the current Arizona law framework, which denies voters an
22 opportunity to cure an unsigned ballot envelope, but allows voters to cure a mismatched
23 signature, violates the Equal Protection Clause of the Constitution. Federal courts have held
24 that current practices like Arizona’s are unconstitutional.⁴⁷ These laws which treat voters

25
26 ⁴⁷ See *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL
27 6090943, at *1 (N.D. Fla. Oct. 16, 2016) (“The issue in this case is whether Florida’s statutory
28 scheme, which provides an opportunity to cure no-signature ballots yet denies that same
opportunity for mismatched-signature ballots, is legally tenable. The answer is a resounding
‘no.’”).

1 differently do not serve any legitimate or compelling state interest and the State should treat
2 all voters the same. The State will incur little or no burden in allowing voters to cure unsigned
3 ballots because the State already has a notification and cure process for mismatched signature
4 and provisional ballots.

5 135. Allowing voters who present no ID on Election Day the opportunity present ID
6 to cure their ballot deficiency but not allowing voters who fail to sign their ballot affidavits
7 the opportunity to cure their ballot deficiency violates the Equal Protection Clause.

8 136. Plaintiffs have suffered direct and irreparable injury by Defendants' actions of
9 not allowing Plaintiffs to cure their ballot and by not counting Plaintiffs' votes cast in the
10 November 2018 election. Without relief, voters who cast early ballots and fail to sign the
11 ballot affidavit form will continue to be burdened and/or deprived of their right to vote going
12 forward.

13 137. By engaging in the acts and/or omissions alleged herein, Defendants acted and
14 continue to act under color of state law to deprive the Plaintiffs their rights that are guaranteed
15 by the Fourteenth Amendment to the United States Constitution.

16 **SECOND CLAIM FOR RELIEF**

17 **VIOLATION OF THE 14TH AMENDMENT OF THE** 18 **UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983**

19 ***Procedural Due Process***

20
21 138. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
22 herein.

23 139. Section 1 of the Fourteenth Amendment to the United States Constitution
24 prohibits states from depriving "any person of ... liberty ... without due process of law."
25 This due process principle protects the fundamental right to vote.

26 140. Plaintiffs were deprived of their right to vote by having their early ballots
27 rejected without notice, without an opportunity to cure, and without any meaningful way to
28 appeal

1 141. Plaintiff Navajo Nation has a strong interest in ensuring that its members' votes
2 count, and that its members' right to vote are not diminished.

3 142. As a result of Defendants' actions, Plaintiffs and other votes have suffered and
4 will continue to suffer irreparable harm—disenfranchisement.

5 143. Unless restrained by this Court, Defendants will continue to violate the
6 Fourteenth Amendment by treating voters differently, namely failing to provide early voters
7 with unsigned ballots the opportunity to cure ballots because the Election Manual is silent
8 with regards to any treatment of unsigned early ballots.

9 144. By engaging in the acts/or omissions alleged herein, Defendants acted and
10 continue to act under color of state law to deprive the Plaintiffs their rights that are guaranteed
11 by the Fourteenth Amendment to the United States Constitution.

12 **THIRD CLAIM FOR RELIEF**

13 **VIOLATION OF THE 14TH AMENDMENT OF THE**
14 **UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983**

15 ***Undue Burden on the Right to Vote***

16 145. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
17 herein.

18 146. Section 1 of the Fourteenth Amendment to the United States Constitution
19 prohibits states from depriving "any person of ... liberty ... without due process of law."
20 This due process principle protects the fundamental right to vote. If a state law imposes a
21 severe burden on the right to vote, it must be narrowly drawn to advance a compelling state
22 interest. *See Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428
23 (1992).

24 147. Plaintiff Navajo Nation has a strong interest in ensuring that its members have
25 an opportunity to vote, and that its members face no undue burdens in practicing their right
26 to vote.

27 148. Defendants have placed an undue burden on the right to vote by not notifying
28

1 Plaintiffs that ballots they cast would not count and not allowing Plaintiffs to cure their
2 ballots.

3 149. Defendants have placed an undue burden on the right to vote by rejecting the
4 Nation's request to establish early voting sites on the Reservation. As shown above, the
5 Navajo Nation is a very rural area and Navajo Nation members must travel very great
6 distances to vote. *See* Irene Roy Declaration, attached as Exhibit 6 (stating that the early
7 voting sites range from 130 miles round trip up to 400 miles round trip); Denise Johnson
8 Declaration, attached as Exhibit 5 (stating that it is a financial burden to vote.).

9 150. Voters who vote at in-person early voting locations do not have to show ID in
10 order to cast a ballot. The voter's signature counts as the ID.

11 151. Voters who require language assistance do not have equal opportunity to cast an
12 early ballot because all Navajo translations are oral.

13 152. Voting by mail is difficult for many Navajos because they do not receive mail at
14 their homes and must travel to obtain their mail.

15 153. Navajo voters prefer to vote in person.

16 154. Defendants have no legitimate, non-racial reason for rejecting the Nation's
17 request that early voting sites be established within the boundaries of the Reservation.

18 155. Defendants refused and continue to refuse to establish additional in-person voter
19 registration and early voting sites within the boundaries of the Reservation.

20 156. Defendants have failed to provide translators at early voting sites located on the
21 Reservation who are proficient in the Navajo language.

22 157. 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 guaranteed
24 by the Fourteenth Amendment to the United States Constitution and Section 2 of the VRA
25 and will continue to violate said rights absent relief granted by this Court.

26 **FOURTH CLAIM FOR RELIEF**

27 **VIOLATION OF THE ARIZONA CONSTITUTION**

28 158. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth

1 herein.

2 159. Article 2, Section 21, of the Arizona Constitution provides that “all elections
3 shall be free and equal” and guarantees that “no power, civil or military, shall at any time
4 interfere to prevent the free exercise of the right of suffrage.” Article 2, Section 21 is violated
5 when votes are not properly counted

6 160. Plaintiff Navajo Nation has a strong interest in ensuring that its members’ rights
7 under the Arizona Constitution are not violated and that its members can exercise the free
8 right of suffrage.

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

15 **FIFTH CLAIM FOR RELIEF**
16 **VIOLATION OF THE VOTING RIGHTS ACT OF 1965**

17 162. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
18 herein.

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

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

28 165. The Counties are covered jurisdictions under Section 203 of the VRA for the

1 Navajo language

2 166. Plaintiff Navajo Nation has a strong interest in ensuring that its members are not
3 denied their right to vote and that its members can exercise their fundamental rights to vote.

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

9 168. Defendants' failure to provide translators to members of the Navajo Nation
10 denies Tribal Members, including the Plaintiffs, the same rights of other members of the
11 electorate to participate in the political process and elect representatives of their choice, in
12 violation of Section 2 of the VRA.

13 169. Plaintiffs will continue to suffer the violation of their rights as alleged in the
14 Complaint absent relief granted by the Court.

15 **SIXTH CLAIM FOR RELIEF**

16 **VIOLATION OF THE FIRST AMENDMENT**

17 170. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
18 herein.

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

22 172. Plaintiff Navajo Nation has a strong interest in ensuring that its members' speech
23 and expression is upheld, and that its members' votes be counted.

24 173. The lack of curing of unsigned ballots poses insurmountable burdens on the right
25 to vote for those Navajo voters whose ballots are not counted, because they fail to sign the
26 ballot affidavit which contained the early ballot or because their signature does not match.
27 These burdens violate the First Amendment.
28

RELIEF

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

1. That this Court assume jurisdiction;

2. That this Court declare that all voters should be afforded due process and equal protection of the law by providing all voters an opportunity to cure ballot deficiencies.

3. That this Court declare the Election Manual, which denies Plaintiffs the opportunity to cure an unsigned ballot is unconstitutional because it violates the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

4. That this Court declare that allowing voters to cure conditional provisional ballots but not unsigned early ballots is unconstitutional because it violates the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

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

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

7. That this Court declare that the Defendants' failure to provide translators for early voting Tribal Members violates existing law, including, but not limited to, Section 2, Section 203, and Section 4(f)(4) of the VRA, as amended, the Fourteenth Amendment to the United States Constitution, and the Arizona Constitution;

8. That this Court grant permanent injunctive relief by ordering Defendants to establish additional in-person voter registration and early voting sites on the Reservation in Pinon, Kayenta, Dilkon, Shonto, Ganado, Sanders, Rock Point, Teec Nos Pos, Leupp,

1 Inscription House, and Cameron for all future elections, and further relief as the interest of
2 justice may require, such as consistent hours (e.g., Monday through Friday from 8 a.m. until
3 6 p.m. with no interruption during the lunch hour) during the 30 days leading up to the
4 election;

5 9. That this Court grant permanent injunctive relief by ordering Defendants to
6 provide translators certified as proficient in the Navajo language to Tribal Members for all
7 future early and regular elections, and further relief as the interest of justice may require,
8 such as translation of instructions for casting an early ballot in Navajo over the radio for the
9 30 days leading up to an election;

10 10. That this Court grant permanent injunctive relief by permanently enjoining
11 Defendants from treating voters differently, and to order Defendants to treat all ballots alike
12 going forward meaning that Defendants will notify and allow voters with no signature to cure
13 their ballots like voters with mismatched signatures and Election Day voters with no ID;

14 11. That this Court grant permanent injunctive relief by ordering Defendants to
15 promulgate, adopt, and enforce uniform standards and processes in a new Election Manual
16 that treat all voters in all counties of Arizona alike;

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

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

22 DATED this 11th day of December, 2018.

23 SACKS TIERNEY P.A.

24 By: s/ Patty A. Ferguson-Bohnee
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Patty A. Ferguson-Bohnee
Judith M. Dworkin
Joe Keene

and

Ethel B. Branch
Paul Spruhan
NAVAJO NATION DEPARTMENT OF JUSTICE

Attorneys for the Navajo Nation

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 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

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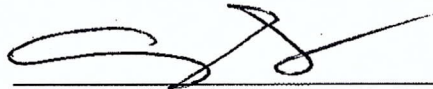
VERIFICATION

State of Arizona)
) ss
County of Apache)

I, Ethel Branch, being first duly sworn upon 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 First Amended Verified Complaint for Injunctive and Declaratory Relief 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 11th day of December 2018, by Ethel Branch, as Attorney General of the Navajo Nation.



Notary Public

My Commission Expires: 7/14/2019

