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

**The Navajo Nation, a federally  
recognized Indian Tribe et. al.,**

Plaintiffs,

VS.

**Katie Hobbs, in her official capacity as  
Secretary of State for the State of  
Arizona; et. al.,**

Defendants.

Case No. 3:18-cv-08329-DWL

**ANSWER OF DEFENDANT NAVAJO  
COUNTY BOARD OF SUPERVISORS AND  
DEFENDANTS DORIS CLARK/RAYLEEN  
RICHARDS**

Defendant Navajo County Defendants Doris Clark, Rayleen Richards, and the Navajo County Board of Supervisors, in Answer to the First Amended Verified Complaint for Injunctive and Declaratory Relief, admits and denies the allegations as follows:

1.) Navajo admits the allegations contained in paragraph 1.

2.) Navajo County denies the allegations in paragraph number two. Navajo County

Defendants affirmatively alleges that voters in Navajo County who submit unsigned early ballots are given the opportunity to cure their ballots up until 7:00 p.m. on election night. It is and has been the policy of the Navajo County Recorder's Office

1 to contact and inform voters who submitted unsigned early ballots of the deficiency  
2 and to give them an opportunity to cure those ballots up until 7:00 p.m. on election  
3 night. Navajo County Defendants affirmatively alleges that there is currently no  
4 statute or provision of the Arizona Secretary of State's Procedures Manual that would  
5 allow an unsigned early ballot to be cured after the closing of the polls on election  
6 night, unlike the situation involving unsigned early ballots with mismatched  
7 signatures. Navajo County Defendant also affirmatively allege that to the extent this  
8 is an issue in this case, it has already been resolved and has been mooted by the  
9 Settlement Agreement between the Navajo Nation and the Arizona Secretary of State,  
10 which contemplates a modification of the Election Procedures Manual to specifically  
11 allow for the "curing" of unsigned early ballots up to five days after the end of the  
12 election.  
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15 3.) Navajo County has insufficient information to admit or deny the allegation contained  
16 in sentence one of paragraph three, as it has no information regarding unsigned early  
17 ballots from Apache or Coconino County. Navajo County can affirmatively allege  
18 however, that in the 2018 election there were a total of fourteen unsigned early mail-  
19 in ballots received that could not be cured prior to the closing of the polls on election  
20 night. Of those ballots, only four were from voters residing on the Navajo Nation.  
21 Two were from voters residing on the White Mountain Apache Reservation. The  
22 eight other ballots were all from voters residing off reservations. There is absolutely  
23 no evidence that voters residing on the Navajo Nation fail to sign their ballots at any  
24 higher rate than voters off the reservation, and the Plaintiffs fail to cite any such  
25 evidence in their Complaint.  
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1 As to the allegation in paragraph number three implying that seventy per cent of  
2 the Navajo population speaks the Navajo language, Navajo County denies that and  
3 affirmatively alleges that while approximately fifty percent of the Navajo population  
4 speaks some Navajo, only a very small percentage of that population could be  
5 considered “proficient” at speaking Navajo, and that English is the most widely  
6 utilized and understood language by residents of the Navajo Nation. Navajo County  
7 admits that no Navajo translators were sent to the homes of Navajos who requested  
8 early ballots to interpret the ballot for them, but affirmatively alleges that doing so  
9 would have been cost prohibitive and impossible. Further than that, Navajo County  
10 affirmatively alleges that Navajo participation in the early ballot process broke all  
11 previous records by wide margins in the 2018 election cycle, and that there is little if  
12 any problem with Navajos who request early ballots being able to read and  
13 understand them. As to the allegation that the Counties across Arizona applied  
14 different standards in allowing the cure of early ballots after 7:00 p.m. on election  
15 night, Navajo County denies the Plaintiffs allegations and affirmatively alleges that  
16 no Arizona County allowed the cure of an unsigned early ballot after 7:00 p.m. on  
17 election night. Navajo County Defendants deny the balance of the allegations in  
18 paragraph number three.

22 4.) Navajo County admits sentences one, two and four of paragraph four of the  
23 Complaint, but denies the balance of the allegations in that paragraph.

25 5.) Navajo County denies the allegations contained in paragraph numbers five and six of  
26 the Complaint as the Plaintiffs mischaracterize what the Stipulation and case in  
27 Maricopa County Republican Party v. Reagan was all about. Navajo County, as well  
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1 as Coconino and Apache County, were made parties to the recently decided Maricopa  
2 County Superior Court Case, Maricopa County Republican Party v. Reagan, CV-  
3 2018-013963. That case concerned whether a “cure” period was appropriate for  
4 early mail-in ballots for the November 6, 2018 election, and, if so, what exact cure  
5 period was appropriate. In that case, each of the Defendant Recorders stipulated and  
6 were ultimately ordered by the Maricopa County Superior Court to make “good-  
7 faith” efforts to contact voters whose early ballots they deem “*facially deficient*”  
8 through Wednesday, November 14, 2018. The purpose of that Order was to permit  
9 voters to “cure” defective early ballots and establish a uniform guideline for the  
10 “cure” period. There is no dispute, nor do the Plaintiffs allege, that any of the three  
11 named County Recorders failed to comply with the Court’s Order. Diligent good  
12 faith efforts were made by Navajo County to contact all voters who submitted early  
13 mail-in ballots with signatures that did not match the signature of the voter  
14 registration card on file. This opportunity to “cure” ballots with mismatched  
15 signatures was offered to voters on and off the Navajo Nation Reservation on equal  
16 terms. Because the terms of the Order were not ultimately interpreted by any County  
17 to include unsigned early ballots, no equal protection issues arose because the Court’s  
18 order was applied in a uniform way by all fifteen County Recorders in Arizona as to  
19 both voters on and off the reservation. Although the Stipulation in the earlier case  
20 was probably poorly worded, the fact is that the case involved mismatched signatures  
21 and County practices regarding mismatched signatures, not completely unsigned early  
22 ballots.  
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1 In any event, Navajo County alleges that any Complaints of the Navajo Nation in  
2 regard to unsigned early ballots in this case have been resolved by the State of  
3 Arizona's Stipulated Agreement in this matter in which the Secretary of State has  
4 agreed to amend the Elections Procedure Manual, which the Navajo County Recorder  
5 is required to follow, to allow a cure period after the closing of the polls for unsigned  
6 early ballots. Plaintiff's Complaints about unsigned early ballots have been made  
7 moot.  
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9 6.) Navajo County admits that there was initially some confusion about the term "facially  
10 deficient" in the Maricopa County Court's Order which cause some uncertainty as  
11 alleged in paragraph seven of the Complaint. However, that is ultimately irrelevant to  
12 Plaintiff's claims. For the Navajo County Recorder to have allowed for residents of  
13 the Navajo Nation to cure their unsigned early ballots, while other voters in other  
14 parts of Navajo County and the rest of the State were not afforded the same  
15 opportunity, would have created an equal protection problem rather than resolving  
16 one.  
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19 7.) Navajo County has insufficient information to admit or deny the allegations contained  
20 in paragraphs eight and nine of the Complaint as those paragraphs apply to Apache  
21 and Coconino Counties.  
22

23 8.) Navajo County denies paragraph ten of the Complaint. Navajo County's policy of  
24 giving the voter another chance to make their vote count, even when they forget to  
25 sign the ballot envelope, is remarkably similar to Maricopa County, which Plaintiffs  
26 try to hold up to this Court as an example of what Navajo County should be doing.  
27 Plaintiffs seriously mislead this Court however, by trying to imply there is any  
28 meaningful difference in policy between the two counties, and that Navajo voters are

1 not being given the same opportunities available to voters in Maricopa County or  
2 elsewhere in Arizona. Plaintiffs ignore that the Maricopa County's website does not  
3 address what happens if there is insufficient time to send the ballot back and forth in  
4 the mail prior to 7:00 p.m. on election day or otherwise cure the ballot in that time.  
5 Curiously, Plaintiffs offer absolutely no evidence that it is the policy of the Maricopa  
6 County Recorder's Office to "cure" no signature ballots after 7:00 p.m. on election  
7 night. In fact, the Maricopa County Recorder's website is clear that early ballots  
8 must be signed and must be received by 7:00 p.m. See:  
9 <https://recorder.maricopa.gov/site/faq.aspx>

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11 9.) Navajo County Defendants admit paragraphs eleven of the Complaint.

12 10.) Navajo County Defendants deny the allegation in paragraph twelve of the  
13 Complaint. Voters actually have until the 5th business day following a general  
14 election that includes an election for a federal office, or the 3rd business day  
15 following any election other than a general election to provide proper identification  
16 and have their ballot counted.

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18 11.) Navajo County Defendants deny the allegations in paragraph thirteen of the  
19 Complaint. Navajo County's policy regarding the cure of an unsigned early ballot  
20 has been set forth above and is incorporated herein by reference.

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22 12.) Navajo County denies the allegations contained in paragraphs fourteen through  
23 sixteen, except to admit that the Navajo Nation did make a very belated and  
24 unreasonable attempt during the 2018 election cycle to request additional and/or  
25 expanded early voting.

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27 13.) As to paragraph seventeen, Navajo County admits that Navajo is primarily an oral  
28 language, and that Navajo language translation for ballots is usually provided orally

1 for just that reason. The County also admits that it does not mail a translator with  
2 every early mail ballot requested by a Navajo voter. However, the “ballot by mail”  
3 process does not lend itself to mailing a translator or a recording in Navajo, and  
4 Plaintiffs suggest no rational way in which such a translation could be provided.  
5 Granted, a Navajo voter who wanted to obtain a Navajo translation could visit one of  
6 Navajo County’s early voting sites on the Reservation to obtain a Navajo translation.  
7 However, doing so would defeat the purpose of mail-in ballots . . . namely  
8 convenience. If a Navajo voter is going to travel to an early voting site, he or she  
9 may as well just cast a ballot at the site as opposed to obtaining a translation, filling  
10 out their mail-in ballot, and then mailing it. To the extent Plaintiffs suggest to the  
11 Court that traveling back and forth to an early voting site to obtain a solution to a  
12 problem associated with the voting by mail, they certainly seem to miss the point of  
13 the absentee voter provisions of Arizona law. The whole point is for the voter to  
14 avoid the polling site when they choose to receive a ballot and vote it by mail.  
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18 14.) Navajo County Defendants deny the allegations in paragraph eighteen and twenty  
19 of the Complaint.

20 15.) Paragraph nineteen and twenty-one of the Complaint constitute requests for relief  
21 by the Plaintiffs and require no response from Navajo County as they are not  
22 assertions of fact or law.  
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24 16.) Navajo County Defendants admit paragraphs twenty-two through twenty-eight.

25 17.) Navajo County Defendants generally deny the allegations contained in paragraphs  
26 twenty-nine through thirty-five of the Complaint, as the allegations therein are based  
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1 on assertions about individual tribal members which Navajo County has insufficient  
2 information about in order to be able to admit or to deny.

3 18.) Navajo County Defendants deny paragraph thirty-six of the Complaint, as  
4 Michele Reagan was replaced as Arizona's Secretary of State after the 2018 elections  
5 by Katie Hobbs, who has been substituted as the Defendant Secretary of State in this  
6 matter. Navajo County does admit that the allegations contained in paragraph thirty-  
7 six as to Ms. Reagan would now apply to Ms. Hobbs.  
8

9 19.) Navajo County Defendants admit paragraphs thirty-seven through seventy-six of  
10 the Complaint.  
11

12 20.) Navajo County Defendants have insufficient information to admit or deny the  
13 allegation contained in paragraph seventy-seven of the Complaint, and therefore  
14 denies the same.

15 21.) Navajo County Defendants deny the allegation in paragraph seventy-eight of the  
16 Complaint as Plaintiffs misconstrue the Stipulation referenced. Navajo County  
17 affirmatively alleges that all Arizona counties were consistent in not allowing the cure  
18 of an unsigned early ballot after 7:00 p.m. on election night, which is the salient issue  
19 raised by the Plaintiffs in this case and is the basis for both their equal protection and  
20 Voting Rights Act Claims. The case referenced was more specifically about county  
21 practices regarding mismatched signatures, which is not what this case is about. The  
22 Stipulation is utterly irrelevant and misapplied in this context.  
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25 22.) Navajo County does not dispute that substantial rates of poverty on the Navajo  
26 Nation exist as alleged in paragraphs seventy-nine through eighty-one of the  
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1 Complaint but is unable to admit or deny the specific poverty rates referenced by  
2 Plaintiffs.

3 23.) Without getting into the details of each allegation individually, Navajo County  
4 does not dispute that there has been historical discrimination against tribal members  
5 or that that actions have been taken in the past that have blocked or impaired the  
6 rights of the Navajo people to vote as alleged in paragraphs eighty-two through one-  
7 hundred. To deny the history of discrimination and efforts to impair the ability of  
8 Navajo tribal members to cast a vote running from 1924 up to the Consent Decree in  
9 1989 as alleged in the Complaint would be a fool's burden. However, Defendants  
10 affirmatively allege that the obviously discriminatory and racially motivated practices  
11 between 1924 and 1988 made in these paragraphs by Plaintiffs are not indicative of  
12 any current discriminatory practices toward the Navajo people and are instead  
13 designed to color the reader's judgment and perception about the allegations against  
14 the Defendants in the instant case.  
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17 Since the Plaintiffs ignore all history since 1989, the Navajo County Defendants  
18 will fill in the blanks for the Court regarding the thirty-year history since that time.  
19 The fact of the matter is that Navajo County has had a positive working relationship  
20 with the Navajo Nation ever since the entry of the referenced Consent Decree in  
21 1989. Navajo County continues to follow most of the contours of the long-expired  
22 Consent Decree regarding voter registration, voter outreach, early voting sites, and  
23 advertisements on Navajo Nation radio station KTNN regarding election issues.  
24 Navajo translation is provided for the ballots both at early voting sites on the Navajo  
25 Nation and at polling sites on election day. Up until the filing of the Complaint in  
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1 this matter and the request for Temporary Restraining Order and Permanent  
2 injunction, which were facially meritless and quickly dispatched by the Plaintiff itself  
3 once it realized the deficiencies in the case, Navajo County's relationship with the  
4 Nation has been entirely positive.

5 24.) Navajo County Defendants deny the allegations in paragraph 101 of the  
6 Complaint, and affirmatively allege that only a small portion of individuals residing  
7 on the Navajo Nation speak only Navajo. By far, most individuals residing on the  
8 Navajo Nation speak English rather than Navajo in their day to day lives. One telling  
9 fact is that the elections conducted by the Navajo Nation itself for tribal office are  
10 done without the same Navajo translation that Navajo County already provides, much  
11 less the additional translation the Plaintiffs ask for in their Complaint.  
12

13 25.) Navajo County Defendants deny paragraphs 102-103.  
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15 26.) Navajo County has insufficient information to admit or deny the allegations  
16 contained in paragraph 104 of the Complaint as it has done no studies of the racial  
17 backgrounds of individuals elected to state and national offices. However, Navajo  
18 County does affirmatively allege, that three of its five-member Board of Supervisors  
19 are tribal members. Supervisors Jesse Thompson and Lee Jack Sr. are both enrolled  
20 members of the Navajo Nation. Supervisor Dawnafe Whitesinger is an enrolled  
21 member of the White Mountain Apache Tribe. The County Recorder and Defendant  
22 in this matter, Doris Clark, is an enrolled member of the Navajo Nation. It is these  
23 tribal members who oversee elections in Navajo County, and whom this action has  
24 been filed against. The fact that this case involves the strange juxtaposition of Native  
25 Americans suing other Native Americans belies much of anything the Plaintiffs claim  
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1 about intentional suppression of the Native American vote. Quite to the contrary, the  
2 fact that these positions are held by Native Americans is proof that members of the  
3 Navajo Nation and other tribal nations in Navajo County can effectively exercise their  
4 right to vote.

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6 27.) As to the allegations contained in paragraphs 105-108 of the Complaint, the  
7 Navajo County Defendants respond only to the allegations concerning Navajo County  
8 and admit that the County Recorder received the letter from Russell Begaye dated  
9 August 8, 2018. Navajo County affirmatively alleges that this request for the 2018  
10 election cycle was received after early voting had already begun for the primary  
11 election on August 1, 2018. The request was received far too late in the election  
12 planning process in order to accommodate the Navajo Nation's request. Early voting  
13 sites and dates on the Navajo Nation had been budgeted for and established prior to  
14 Mr. Begaye's request. Voting had already begun for the primary a week prior.  
15 Planning an election cannot be done at the last minute, and there are several reasons  
16 the Nation's requests could not be granted, including ballot security issues, budgeting  
17 issues, polling place issues, staffing issues, etc. While Navajo County considers the  
18 Navajo Nation a partner and wants to facilitate voting on the reservation, the Nation's  
19 elected officials and/or department heads need to do their part in communicating what  
20 they believe will best serve the voters on reservation lands significantly in advance of  
21 an election in order for Navajo County to consider those requests and make an  
22 appropriate response.  
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26 28.) Navajo County denies the allegations in paragraph 109 of the Complaint.  
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1 29.) As to paragraphs 110-112 of the Complaint, Navajo County neither admits nor  
2 denies paragraphs 110 and 111 as these paragraphs apply to the Coconino and  
3 Apache County Defendants. Navajo County defendants admit the allegations in  
4 paragraph 112.

5 30.) As to paragraph 113, Navajo County Defendants admit that they made early  
6 voting available both on and off the Navajo Nation and deny the balance of the  
7 allegations.  
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9 31.) Navajo County Defendants deny the allegations of paragraph 114. Voter  
10 registration is readily available to Navajos who reside on the reservation through a  
11 number of avenues, including through the DMV (motor-voter registration), online  
12 avenues (while it speeds up the process, broadband internet is not a requirement of  
13 online voter registration as Plaintiffs imply), and through voter registration on the  
14 Navajo Nation that is and has been conducted through the Navajo County Recorder's  
15 Office voter outreach program since at least 1989. Further, Navajo County has  
16 historically provided voter registration forms to local chapter houses and local  
17 Department of Economic Security Offices, and Navajo tribal members can get  
18 assistance with registering to vote at those locations. Voter registration forms are also  
19 available at post offices (which Plaintiffs acknowledge many tribal members  
20 frequent) that can easily be accessed by tribal members, filled out, and then mailed to  
21 the County. Navajo County has even, in the past, trained individuals at Chapter  
22 houses to become registrars so that Navajo people can be registered right at the  
23 chapter house itself, although the willingness and ability of the various chapter houses  
24 to provide a person to provide these services has been spotty at best. In short, the  
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1 simple fact that someone lives in a remote area of the County, whether on or off the  
2 reservation, does not preclude them from registering to vote. While the County does  
3 not and can never provide service to the front door of every citizen in the County, it  
4 does the best it can with the resources it has available.

5 32.) Navajo County Defendants deny paragraphs 115, 116, 118, 121, 122-127 of the  
6 Complaint.

7 33.) Navajo County Defendants admit paragraphs 117 and 119. Navajo County  
8 Defendants have insufficient information to either admit or deny paragraph 120 of the  
9 Complaint.  
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11 34.) Navajo County Defendants admit and deny paragraph 128 as admitted and denied  
12 earlier in this Answer. Navajo County Defendants deny paragraphs 131-132 and 134-  
13 137 but admit paragraphs 129-130 and 133.

14 35.) Navajo County Defendants admit and deny paragraph 138 as previously admitted  
15 and denied in this Answer. Navajo County Defendants deny paragraphs 140 and 142-  
16 144 but admit paragraphs 139 and 141.

17 36.) Navajo County Defendants admit and deny paragraph 145 of the Complaint as  
18 previously admitted and denied above. Navajo County Defendants deny paragraphs  
19 146 and 148-149, 151-152 and 153-157. Navajo County Defendants admit  
20 paragraphs 147 and 150. Navajo County Defendants have insufficient information to  
21 admit or deny the allegations contained in paragraph 153, as there is no way readily  
22 available way to determine the subjective preferences of "Navajo voters."  
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24 37.) Navajo County Defendants admit and deny the allegations in paragraph 158 of the  
25 Complaint as previously admitted and denied in this Answer. Navajo County  
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1 Defendants deny paragraphs 159 and 161. Navajo County Defendants admit  
2 paragraph number 160.

3 38.) Navajo County Defendants admit and deny the allegations in paragraph 162 of the  
4 Complaint as previously admitted and denied in this Answer. Navajo County  
5 Defendants deny paragraphs 167-169 of the Complaint but admit paragraphs 163-  
6 166.

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8 39.) Navajo County Defendants admit and deny the allegations in paragraph 170 of the  
9 Complaint as previously admitted and denied in this Answer. Navajo County  
10 Defendants have insufficient information to either admit or deny the allegation  
11 contained in paragraph number 171. Navajo County Defendants deny the allegations  
12 contained in paragraphs 172-173.

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14 **AFFIRMATIVE DEFENSES**

15 Navajo County affirmatively alleges the affirmative defenses of lack of standing,  
16 estoppel, laches, and failure to join other necessary parties (namely the other twelve  
17 Arizona counties) to this action which would be required for the Plaintiffs to prove  
18 their equal protection or VRA claims.  
19

20 WHEREFORE, Navajo County Defendants respectfully request that:

- 21 1.) This Court deny all claims for relief requested by the Plaintiffs, and that they  
22 take nothing from their Complaint;  
23  
24 2.) Any and all other relief deemed just and reasonable.

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26 RESPECTFULLY SUBMITTED this 11<sup>TH</sup> day of September, 2019.  
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By: Jason S. Moore.