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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE**

NAVAJO NATION, on behalf of itself and all
others similarly situated,

Plaintiff,

v.

LARRY NOBLE in his official capacity as
Apache County Recorder; RITA VAUGHAN in
her official capacity as Apache County
Elections Director; Apache County Board of
Supervisors,

Defendants.

No.

COMPLAINT

(Expedited Election Matter)

Plaintiff, for its Complaint against Defendants Apache County Board of Supervisors; Apache County Recorder Larry Noble; and Apache County Elections Director Rita Vaughan (collectively “Defendants”), allege as follows.

PRELIMINARY STATEMENT

1. Plaintiff has filed this action to preserve the rights of Navajo voters in Apache County, Arizona to vote and have their vote counted in the November 5, 2024 general election. These rights are secured by the laws in this State.

2. Apache County voters living on the Navajo Reservation were denied a reasonable and meaningful attempt to cure their early ballots, thereby denying these voters their right to vote.

3. As described below, upon information and belief, Defendants have engaged and continue to engage in an organized effort to deny Navajo voters and similarly situated voters the right to cure their ballots.

4. Apache County voters have a right to procedural due process, which means that voters whose ballots may not be counted should be informed of that fact and have a meaningful opportunity to cure any ballot defects so their vote will count.

5. Apache County voters have a right to the equal protection of the law, which means that Apache County voters whose ballots may not be counted should receive the same notice and opportunity to cure their ballot defects and have their votes count as other voters in the State.

6. “Arizona’s Constitution recognizes that ‘governments derive their just powers from the consent of the governed,’ and provides that “[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” *City of Tucson v. State*, 229 Ariz. 172, 179 (2012) (quoting ARIZ. CONST., art. 2, §§ 2, 21). Courts have interpreted “a ‘free and equal’ election as one in which the voter is not prevented from casting a ballot by intimidation or threat of violence, or any other influence that would deter the voter from exercising free will, and in which each vote is given the same weight as every other ballot.” *Chavez v. Brewer*, 222 Ariz. 309, 319-20 (App. 2009) (emphasis added) (“We conclude that Arizona’s constitutional right to a ‘free and equal’ election is implicated when votes are not properly counted.”). The failure to properly count all votes impedes the Constitutional right to a free and fair election.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action and the parties under Article VI, Section 14 of the Arizona Constitution.

8. Venue in this Court is proper because the events giving rise to the Plaintiff’s claims have occurred in this county and because one or more Defendants reside in this county. *See* A.R.S. § 12-401.

PARTIES

9. Plaintiff Navajo Nation (“Plaintiff” or “Nation”) is a federally recognized Indian Tribe with a government-to-government relationship with the United States.¹ The Navajo Reservation was established by the Treaty of 1868 and was thereafter expanded by successive executive orders. The Navajo Reservation (“Reservation”) comprises over 27,000 square miles of sovereign territory, which is larger than the state of West Virginia. *Roundtable on Voting Barriers and Election Administration on the Navajo Nation, Part III: Navajo Nation Council*, 118th Cong. (Feb. 19, 2024). The Reservation is located in Apache, Navajo, and Coconino counties in Arizona (“Arizona counties”), and 8 counties in Utah and New Mexico. Combined, the three Arizona counties have the largest proportion of federal Indian trust land of any counties in the United States. Of the 403,927 enrolled Navajo citizens, 145,334 live in Arizona. *Detailed Races and Ethnicities in the United States and Puerto Rico: 2020 Census*, U.S. Census Bureau (2023).

10. The Navajo Nation has associational standing to bring this lawsuit. The Navajo Nation helps to coordinate federal and state elections on the Navajo Reservation including government-to-government meetings with the Arizona counties and the Arizona Secretary of State. The Navajo Nation assists in voter outreach and education on the

¹ The Nation’s government-to-government relationship with the United States is recognized in the Treaty Between the United States of America and the Navajo Tribe of Indians, Sept. 9, of 1849, 9 Stat. 974 (ratified Sept. 24, 1850) (“Treaty of 1849”) and the Treaty Between the United States of America and the Navajo Tribe of Indians, June 1, of 1868, 15 Stat. 667-668 (ratified Aug. 12, 1868) (“Treaty of 1868”).

Nation. The Nation also asserts the right to bring this claim on behalf of its members *parens patriae*.

11. The Navajo Nation has many members who are registered voters who live in Apache County. 43,227 registered voters live on the Apache County portion of the Navajo Reservation. According to the U.S. Census, 99% of the residents of the Navajo Reservation are Native American.

12. At least some of Nation's members are unlawfully having their right to vote denied as a result of Defendants' failure to provide reasonable and meaningful curing opportunities and would have standing to sue in their own right. The interests at stake in this action are germane to the purpose of Plaintiff Navajo Nation because of its strong interest in ensuring its members can exercise their constitutional right to vote. If Navajo Nation members are unable to vote, the collective power and voice of the Navajo Nation is reduced. The Navajo Nation advocates on behalf of all its members to local, state, and federal representatives. If some of its members are unable to vote, the Navajo Nation's overall ability to advocate effectively for critical resources for the Navajo Nation and the Navajo people is jeopardized.

13. Defendants Apache County Recorder Larry Noble and Apache County Elections Director Rita Vaughan have acted at all relevant times under color of law and are sued in their official capacities for all purposes in this action.

14. Defendants Apache County Board of Supervisors; Apache County Recorder Larry Noble; and Apache County Elections Director Rita Vaughan are persons who, upon

information and belief, are presently acting to interfere with lawfully registered voters in the free exercise of their right to vote in the November 5, 2024 general election.

GENERAL ALLEGATIONS

15. Arizona law allows voters to cast an early ballot. A.R.S. §16-541(A). Early ballots can be cast in-person at an early voting location, mailed back to the county, dropped off at a dropbox, dropped off at the County Recorder's Office, or dropped off at voting locations on Election Day. All early ballots must be received by 7:00 p.m. on Election Day. A.R.S. §16-548(A).

16. Because voters on the Apache County portion of the Navajo Reservation do not receive mail at home, and it can take up to two weeks for mail to be delivered from Reservation locations to the county seat, having alternative ways to return a ballot is essential to returning a ballot on time. See Schroedel et al., *Structural Racism, the USPS, and Voting by Mail on- and Off-Reservation in Arizona*, Studies in American Political Development 121 (2023); Schroedel et al., *The 2020 Election in Indian Country: Progress, but Equity is Still Elusive*, American Political Science Association 9-10 (May 2021).

17. County Recorders or other officers in charge of elections are responsible for verifying signatures on early ballot envelopes that serve as the voter's ballot affidavit. A.R.S. §16-550(A); State of Arizona 2023 Election Procedures Manual ("EPM") 83. Once an early ballot is received, the County Recorder's Office will review the signature on the affidavit to determine if it is sufficient. If it is sufficient, the ballot and affidavit will be transferred to the officer in charge of elections.

18. A.R.S. § 16-550(A) requires “reasonable efforts” to contact any voter who has inconsistent signatures on the voter’s ballot affidavit and in the voter’s registration record. A.R.S. § 16-550(A). If the signature is not sufficient, “the County Recorder will make reasonable and meaningful attempts” to contact the voter “as soon as practicable” to notify the voter of the inconsistent signature. EPM at 83.

19. Arizona law requires that counties “shall provide an early ballot tracking system that indicates whether the voter’s early ballot has been received and whether the early ballot has been verified and sent to be tabulated or rejected.” A.R.S. § 16-550(F); EPM at 84. This system must be provided on the county’s website. *Id.*

20. Apache County did not provide a tracking system on its website; however, the Secretary of State did provide a tracking system on its website.

21. Prior to Election Day and on Election Day, Apache County voters expressed concerns about the status of their ballots because their early ballots were not showing up as received on the Secretary of State’s ballot tracker. Some of these voters had dropped off their ballots at early ballot dropboxes because of the delays in mail delivery on the Navajo Nation. These ballots should have been marked as received.

22. On Friday, November 8 at 3:18 p.m., the Navajo Nation submitted a public records request to the Apache County Recorder’s Office for a list of voters on the Nation who still needed to cure their ballots. This would include those who failed to provide ID on election day and those voters with inconsistent signatures on their early ballots. On Friday, November 8 at 5:22 pm., Apache County provided the Navajo Nation a list of 529 rejected early ballots entitled “Apache EBL Rejects.” (“November 8 list”). This list

included three (3) individuals with mismatched signatures, two (2) of whom live on the Navajo Reservation. Apache County did not provide a list of voters who failed to provide ID when they voted.

23. The November 8 list only included 20 ballots received between November 1 and November 5.

Number of Ballots Rejected	Date Received	Reason
2	11.1.24	Already Voted in Person
6	11.1.24	Returned as Undeliverable by USPS
11	11.3.24	Returned as Undeliverable by USPS
1	11.5.24	Returned by USPS – Temporarily Away

24. The November 8 list only included five (5) early ballots received at county dropboxes.

Number of Ballots Rejected	Date Received	Dropbox	Reason
1	10.23.24	Fort Defiance 19 EV	Nonmatching signature
1	10.24.24	Ganado Rd Yard EV	Ballot Missing from Envelope
3	11.1.24	Chinle 05 EV	Voter already voted

25. In the afternoon of Saturday, November 9, 2024, a nonprofit voter organization and the Navajo Nation participated in a call with the Apache County Recorder’s Office. During this call, Deputy County Recorder Craig Tsosie explained that

the number of individuals who needed to cure their ballots had grown from 3 to 182. During the call, Mr. Tsosie shared that his office did not process early ballots from Wednesday to Friday. *Id.*

26. The November 8 list provided by the County to the Navajo Nation failed to identify 179 voters who still needed to cure their ballots.

27. Upon information and belief, the County failed to contact these voters and inform them of their need to cure their mismatched signatures before November 9 because they were not included on the list of ballots that were rejected that was provided to the Nation.

28. On Sunday, November 10 at 9 a.m., the Navajo Nation submitted a second public records request for a list of voters who needed to cure their ballots by the 5 p.m. cure deadline on November 10. Apache County did not provide an updated list of voters with mismatched signatures to the Navajo Nation.

29. The Secretary of State database did not include an update from Apache County from Wednesday, November 6 at 6:25 p.m. until Saturday, November 9 at 5:20 p.m. On Wednesday, November 6, the Secretary of State database showed there were 4,780 unprocessed early ballots, and on Saturday, November 9, the database showed there were 900 unprocessed early ballots.

30. Upon information and belief, the County did not make reasonable and meaningful attempts to contact voters with mismatched signatures between Wednesday, November 6 and Saturday, November 9 and before.

31. At points during the early voting period, election day, and during the cure period, Apache County was not responding to phone calls. At times, the elections mailbox was full.

32. Upon information and belief, failure to answer and respond to phone calls deprived voters the opportunity to cure ballots.

33. These actions of Defendants violate Plaintiff's members' fundamental right to vote, and other crucial rights guaranteed by federal and state law.

34. The right to vote in an election is guaranteed by, *inter alia*, Article II, Sections 4 and 21 of the Arizona Constitution; Article VII, Section 2 of the Arizona Constitution; and the First and Fourteenth Amendments to the United States Constitution. Plaintiff Navajo Nation has standing to enforce these rights, and all rights asserted herein.

35. Furthermore, Arizona election laws must be construed in favor of allowing citizens to exercise their fundamental right to vote. *See Lemons v. Superior Court of Gila Cty.*, 141 Ariz. 502, 505 (1984) (“[T]he Legislature has directed that all statutes shall be liberally construed to effect their objects and to promote justice.” (citing A.R.S. § 1–211(B))).

36. The harm to Plaintiff, its members, and similarly situated voters who live in Apache County in being prevented or deterred from voting in the November 5, 2024 general election is irreparable, imminent, and substantial.

37. The hardships incurred by Plaintiff and those similarly situated in being prevented or deterred from voting in the November 5, 2024 general election far outweigh any modest burden on Defendants in complying with federal and State law.

38. The actions of Defendants are contrary to the public interest and unsupported by any legitimate interest.

COUNT 1 (A.R.S. § 16-550)

39. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

40. A.R.S. § 16-550(A) requires that counties provide voters a meaningful and reasonable opportunity to cure insufficient signatures on early ballot voter affidavits. Specifically, voters have a statutory right to cure early ballot affidavits that have mismatched signatures up to five days after Election Day.

41. A.R.S. § 16-550(C) provides that “[p]rocessing and tabulation of individual ballots may begin immediately after the envelope and completed mail ballot affidavit are processed pursuant to this section and delivered to the early election board and shall continue without delay until completed.”

42. Upon information and belief, failure to process early ballots or inform voters of mismatched signatures on their ballot affidavits denied voters in Apache County a reasonable and meaningful opportunity to cast a ballot in the November 5, 2024 general election.

43. The Defendants’ actions in failing to identify voters who needed to cure deficiencies and providing a reasonable and meaningful opportunity to cure their ballot affidavits violates A.R.S. § 16-550.

44. Unless this Court orders Defendants to extend the curing period, Defendants will unlawfully continue to severely burden and, in some cases, deprive a significant number of voters in Apache County the right to vote in the November 5, 2024 general election, in violation of A.R.S. § 16-550(A).

45. A.R.S. § 16-565 provides a private right of action. See *Chavez*, 222 Ariz. at 317–18 (“Arizona case law, which unlike the federal rule that generally prohibits recognition of a private right of action . . . , more broadly implies such a right when consistent with ‘the context of the statutes, the language used, the subject matter, the effects and consequences, and the spirit and purpose of the law.’”); see also *McCarthy*, 409 F. Supp. 3d at 820 (“Arizona law implies a private right of action more broadly than federal law.” (citation omitted)).

46. Unless the curing period is extended, Plaintiff, Plaintiff’s members, and other voters in Apache County will be denied their state constitutional right to uniform access to vote in the electoral process.

47. Alternatively, Plaintiff seeks a writ of mandamus, pursuant to A.R.S. § 12-2021, to compel Defendants to perform official duties required by law. *McClennen*, 238 Ariz. at 377 (“The mandamus statute reflects the Legislature’s desire to broadly afford standing on members of the public to bring lawsuits to compel officials to perform their ‘public duties.’”); *Chavez*, 222 Ariz. at 320 (“[A]ppellants may be entitled to injunctive and/or mandamus relief if they can establish that a significant number of votes . . . will not be properly recorded or counted.”); see *Welch*, 2020 WL 5988198 (“[A] superior court may issue a writ of mandamus to a person or board ‘to compel, when there is not a plain,

adequate and speedy remedy at law, performance of an act which the law specially imposes as a duty resulting from an office.”).

48. Absent injunctive relief, Plaintiff will suffer irreparable harm because there is no other opportunity to vote in this election. Plaintiff has no adequate remedy at law.

49. Article II, Section 21 and Article VII, Section 2 of the Arizona Constitution guarantee the right to vote. Article II, Section 21 states, “All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Ariz. Const. art. 2 § 21. Article VII, Section 2 states, “No person shall be entitled to vote at any general election . . . unless such person be a citizen of the United States of the age of eighteen years.” Ariz. Const. art. 7 § 2.

50. Additionally, A.R.S. § 16-550(F) provides that all counties shall create a tracking process for early ballots. Since Apache County did not provide a separate tracker and did not update the tracker timely, it denied Apache County voters an opportunity to track their ballots as required by law, and denied them an opportunity to know if their ballots had defects so that they could be cured timely. Unless the cure process is extended, Plaintiff’s members and other voters in Apache will be denied their state constitutional right to uniform access to vote in the electoral process.

56. Absent injunctive relief, Plaintiffs will suffer irreparable harm. Plaintiff has no adequate remedy at law.

COUNT 2 – (ARIZ. CONST. Art. IV, Sec. 2)

57. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

58. The Arizona Constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law.” ARIZ. CONST. art II, § 4.

59. Due process protects fundamental rights, *see Trisha A. v. Dep’t of Child Safety*, 247 Ariz. 84, 90 ¶ 25(2019), such as the right to have one’s lawful ballot counted, *see Arizona Farmworkers Union v. Agric. Emp. Rels. Bd.*, 148 Ariz. 47, 51 & n. 2, 3 (Ct. App. 1985) (collecting cases recognizing “the right to vote in normal governmental elections” as “fundamental”); *see also Raetzel v. Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1354, 1356 (D. Ariz. 1990) (“Because voting is a fundamental right, the right to vote is a ‘liberty’ interest which may not be confiscated without due process.”). Because the Due Process Clause protects this right, the State cannot deprive individuals of it without providing “notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Huck v. Haralambie*, 122 Ariz. 63, 65 (1979) (en banc) (*quoting Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)); *see Frederick v. Lawson*, 481 F. Supp. 3d 774, 798 (S.D. Ind. 2020) (holding that rejecting defective absentee ballots without notice placed undue burden on right to vote).

60. Voters must be given an opportunity to cure defects to their early ballots. Failure to do so violates procedural due process. *Raetzel v. Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990). Notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections or claims.” *Matter of Rts. to Use of Gila River*, 171 Ariz. 230, 236 (1992) (*quoting Mullane*, 339 U.S. at 314); *accord Dusenbery*, 534 U.S. at 168. Here, many voters did not receive constitutionally adequate

notice because the County failed to inform them of the need to cure their ballots before the cure deadline expired or provided the information so close to the deadline that voters did not have a meaningful opportunity to act.

COUNT 3 – (ARIZ. CONST. Art. II, Sec. 13)

61. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

62. The Arizona Constitution provides that voters should have an equal opportunity to cure their ballots. *See* ARIZ. CONST. art. II, § 13. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise.” *League of Women Voters v. Brunner*, 548 F.3d 463, 477 (6th Cir. 2008) (quoting *Bush v. Gore*, 531 U.S. 98 at 104) (internal quotations omitted).

63. Failure to give Navajo tribal members the same opportunity to cure their ballots as other Arizonans violates equal protection of the law. By failing to identify voters who need to cure their ballots and failing to contact those voters, Defendants deprived those voters of an equal opportunity to cure their ballots. *Raetzl v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990). Enforcing the ballot cure deadline against voters who have not been notified of a problem with their ballot would also violate the equal protection clause of the Arizona Constitution. *See* ARIZ. CONST. art. II, § 13.

64. Failure to give Navajo voters the same opportunity to cure their ballots as other Arizonans violates equal protection. *Bush v. Gore*, 531 U.S. 98, 105 (2000); *see also*

State v. Bonnewell, 196 Ariz. 592, 596, 2 P.3d 682, 686 (Ct. App. 1999) (federal and state constitution equal protection clauses are “essentially the same”).

PRAYER FOR RELIEF

Enter a Temporary Restraining Order or Writ of Mandamus that:

Orders Defendants to take all necessary steps to provide an additional three-day cure period for voters in Apache County who must cure defects to their mismatched signature due to the County’s failure to continually process early ballots without delay through the cure deadline and immediately inform voters of the problems with their ballots and provide them an opportunity to cure;

Directing Defendants to take such other measures as are necessary to ensure that Plaintiff and similarly situated qualified voters may engage in the lawful exercise of the franchise;

Orders Defendants to provide public notice of this extended cure period opportunity by notifying all local media and by posting sufficient notices of this opportunity at all affected poll locations and on Apache County’s website;

Award attorney’s fees and costs associated with this litigation; and

Provide any additional relief in favor of Plaintiffs and against Defendants that the Court deems just and proper.

RESPECTFULLY SUBMITTED this 12th day of November, 2024.

By:  _____

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