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7 *Attorneys for Apache County and the Apache County Board of Supervisors*

8  
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
10 **IN AND FOR THE COUNTY OF APACHE**  
11

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

14 Plaintiff,

15 v.

16 LARRY NOBLE , in his official capacity  
17 as Apache County Recorder; RITA  
18 VAUGHAN, in her official capacity as  
19 Apache County Elections Director; and  
20 Apache County Board of Supervisors,  
21 Defendants.

Case No. S0100CV202400242

**DEFENDANTS' MOTION TO DISMISS  
AND OPPOSITION TO REQUEST FOR  
TEMPORARY RESTRAINING ORDER**

The Honorable. Michael Latham

22 Defendants Larry Noble, in his official capacity as Apache County Recorder, Rita  
23 Vaughan, in her official capacity as Apache County Elections Director, and the Apache  
24 County Board of Supervisors (the "Apache County Defendants") hereby move to dismiss the  
25 Complaint and oppose the request for temporary restraining order filed by the Navajo Nation.  
26 Plaintiff fails to state a claim, the Complaint is barred by laches and this issue was already  
27 decided by the Arizona Supreme Court. *See Am. Civ. Liberties Union of Arizona v. Richer*,  
28 No. CV-24-0263-SA (Ariz. Nov. 10, 2024).

**MEMORANDUM**

**I. FACTUAL BACKGROUND**

Arizona law requires that all early ballots must be accompanied by a return envelope  
that contains a printed affidavit. A.R.S. § 16-547. This return envelope is called the "early

1 ballot affidavit envelope.” To cast her early ballot, the voter must sign the affidavit, by which  
2 she attests under penalty of perjury that she is a registered voter in her county of residence,  
3 she has not already voted in the election, and she will not vote again in the election in any  
4 other county or state. A.R.S. §§16-547(A), -548(A). She then must place her ballot in the  
5 early ballot affidavit envelope, seal the envelope, and mail or deliver it to the Recorder.  
6 A.R.S. § 16-548(A).

7       Once delivered to the Recorder, the law requires the Recorder to determine whether  
8 the signature on the early ballot affidavit envelope is “inconsistent” with the voter’s signature  
9 in her voter registration record. A.R.S. §§ 16-550(A); -552(B). If the Recorder determines  
10 that the signature on the early ballot affidavit envelope is consistent, the Early Board opens  
11 the envelope, removes the ballot, and forwards it for tabulation. *Id.*; *see also* Arizona  
12 Elections Procedures Manual (“EPM”) (2023) at 83 (providing that early ballot affidavit  
13 envelopes bearing signatures that are consistent with the signatures in the voters’ registration  
14 record are transferred to the officer in charge of elections for further processing and  
15 tabulation). But if the Recorder determines that the signature is “inconsistent” with the voter’s  
16 registration record, or if the signature is missing, the Recorder leaves the envelope unopened  
17 and must “make reasonable efforts” to contact the voter and advise her that her ballot cannot  
18 be counted unless she cures the problem with her signature. A.R.S. § 16-550(A).

19       Voters may cure missing signatures by providing their signature to the Recorder by 7  
20 p.m. on Election Day. *Id.* They may cure signatures that are inconsistent with the signatures  
21 in their voter registration record, by correcting or confirming their signature by the fifth day  
22 after elections with federal offices on the ballot. *Id.* For the 2024 General Election, this  
23 deadline was 5:00 p.m. on Sunday, November 10, 2024 (the “Cure Deadline”). Early ballot  
24 affidavit envelopes with missing or inconsistent signatures, which are not cured by the voter,  
25 cannot lawfully be opened, but must remain sealed and the ballots inside them must remain  
26 uncounted. A.R.S. §§ 16-550; -552; *see also* EPM (2019) at 84 (stating that affidavit  
27 envelopes containing ballots to be rejected must remain unopened).

28

1 At approximately 9:00 p.m. on Tuesday, November 12, 2024, more than 48 hours after  
2 the cure deadline and the Arizona Supreme Court issuing its decision addressing the exact  
3 same relief requested, the Navajo Nation filed its Complaint and Emergency Request for  
4 Temporary Restraining Order (the “Pleadings”). Plaintiff provides no explanation for its  
5 delay and, more importantly, fails to offer any admissible evidence to support its assertion  
6 that Apache County failed to timely make a reasonable effort to contact voters with missing  
7 or mismatched signatures as required or that any voters who desired to “cure” their ballots  
8 were not given an opportunity to do so. Instead the pleadings and attached declarations are  
9 based entirely on speculation or misstate facts, many of which were already addressed by the  
10 Apache County Defendants in their Joinder and Response to Emergency Petition for Special  
11 Action (attached as Exhibit 1, (the “Joinder and Response”)) filed in *Am. Civ. Liberties Union*  
12 *of Arizona v. Richer*, No. CV-24-0263-SA (Ariz. Nov. 10, 2024) (attached as Exhibit 2).

13 Indeed, the primary basis for Plaintiff’s requested relief is an allegation that Apache  
14 County Deputy Recorder Craig Tsosie “indicated”, on a phone call on November 9, 2024,  
15 that, “that the Recorder’s Office was instructed by Apache County Election office not to  
16 process any early ballots after Election Day until it received the okay from the Election’s  
17 Office.” *See* Navajo Nation Application for Temporary Restraining Order, p. 4. First, this is  
18 inadmissible hearsay and should not be considered by the Court. Moreover, Mr. Tsosie’s  
19 Declaration submitted by Apache County in support of the Joinder and Response clearly  
20 contradicts this inadmissible “evidence” and Plaintiff, improperly, failed to alert this Court  
21 to this testimony already considered by the Arizona Supreme Court. Specifically, Mr. Tsosie  
22 testified,

- 23 • Apache County started the process of verifying signatures on mail-in and  
24 early in-person ballots on approximately October 21, 2024;
- 25 • Processing continued, uninterrupted, until completed on November 9, 2024;
- 26 • Apache County did not stop processing mail-in and early in-person ballots  
27 between November 6, 2024, and November 8, 2024, as asserted;
- 28 • All mail-in and early in-person ballots have been signature verified in Apache  
County;
- Apache County made significant efforts, as required, to contact all voters with  
inconsistent signatures within the applicable deadline;

- Currently, Apache County has 175 total ballots that require “curing”; and
- The Apache County Recorder’s Office has attempted contact with each of these 175 voters at least once.

See Exhibit 1, Joinder and Motion, Craig Tsosie Declaration.

As to the “direction” received from the Elections Department, as set forth in Election Director Rita Vaughan’s Declaration, she never instructed the Recorder’s Office to stop or pause the processing of early ballots. See Exhibit 3, Declaration of Rita Vaughan. Rather, after the close of all polling locations on November 5, 2024, “Election Day”, all Early and Provisional Ballots received on Election Day were taken from the Election Department to the Recorder’s Office to be processed. *Id.* The Recorder’s Office began processing those ballots starting the morning of Wednesday, November 6, 2024. *Id.* At the same time, the Election Department located and “set up” all Poll Books so that it could upload all voter credits to the Arizona Secretary of States’ AVID system. At that time, Ms. Vaughn determined that four (4) precincts had not returned Poll Books with ballots, as instructed, on Election night. *Id.* One of these locations was Dennehotso, which had been required to stay open until 9:00 p.m. on Election Day. *Id.* The Recorder’s Office’s Ballot Runners were immediately sent to retrieve the missing poll books. Because of this issue, Ms. Vaughn instructed the Recorder’s Office that they should wait to update the Secretary of State’s AVID system with information regarding the status of processing early ballots until she could complete her upload of voter credits, as required. Ms. Vaughn never instructed the Recorder’s Office to stop processing early or provisional ballots during this time and the processing of early and provisional ballots continued during this period. *Id.*; Craig Tsosie Declaration.

## LEGAL ARGUMENT

### II. PLAINTIFF FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Plaintiff requests the extraordinary relief of re-opening the deadline for curing inconsistent early ballot affidavit signatures provided by our legislature in A.R.S. § 16-550(A), more than 48-hours *after* the deadline has passed and *after* the Arizona Supreme

1 Court has already ruled on this issue having reviewed the same evidence, namely Mr. Tsosie’s  
2 Declaration, that is before this Court. In that case, the Supreme Court concluded last Sunday:  
3 “[T]he Court is not presented with evidence that any voters will be prevented from curing a  
4 defective ballot by today’s 5:00 p.m. deadline. In short, there is no evidence of  
5 disenfranchisement before the Court.” *Am. Civ. Liberties Union of Arizona v. Richer*, No.  
6 CV-24-0263-SA (Ariz. Nov. 10, 2024) at 4. Plaintiff’s request should be denied.

7 First, Plaintiff’s request is unquestionably barred by the doctrine of laches. *See e.g.*,  
8 *Harris v. Purcell*, 193 Ariz. 409, 412, 973 P.2d 1166, 1169 (1998); *Mathieu v. Mahoney*, 174  
9 Ariz. 456, 458-59, 851 P.2d 81, 83–84 (1993). Plaintiff offers no explanation for its  
10 unreasonable delay, waiting until long after the cure deadline had passed, to seek this relief.  
11 Moreover, re-opening the cure deadline for 48 hours and requiring the County to continue  
12 making efforts to contact voters who have already been contacted by phone or e-mail would  
13 cause significant hardship to the County as it works to meet its statutory deadline to complete  
14 tabulation and canvass the election, that is less than one week away.

15 Moreover, Plaintiff offers no admissible evidence to even remotely suggest Apache  
16 County voters were not provided a meaningful opportunity to cure their inconsistent  
17 signatures and, as a result, were disenfranchised. Indeed, they do not have a single declaration  
18 from a single voter who has stated he or she desires to cure a ballot signature but was not  
19 alerted in time to do so. In fact, the declarations submitted by Plaintiffs serve to prove just  
20 the opposite, that, in addition to the Recorder’s Office’s efforts to contact voters, the political  
21 parties and Plaintiffs themselves engaged in substantial efforts to contact voters. Plaintiffs  
22 seem to suggest that the Recorder’s Office is required to send staff to personally attempt to  
23 contact each voter in-person. *See e.g.*, Declaration of Orlando Manuelito submitted with the  
24 Pleadings. But there is no such statutory requirement. In fact, the EPM defines “reasonable  
25 and meaningful attempts” as contacting the voter by “mail, phone, text message and/or  
26 email.” EPM at 83. For these reasons Plaintiffs have failed to state a claim upon which relief  
27 can be granted.

28

1 **Conclusion**

2 For the foregoing reasons, this Court should dismiss Plaintiffs Complaint in its entirety  
3 and deny all requested relief.

4 RESPECTFULLY SUBMITTED: November 13, 2024.

5 **THE BURGESS LAW GROUP**

6 By: /s/ Emily Craiger  
7 Emily Craiger  
8 *Attorneys for Apache County*

9 ELECTRONICALLY FILED via  
10 AZTurboCourt eFiling system with  
11 the Clerk of the Court this day 13th  
12 of November, 2024 and transmitted  
13 via AZTurboCourt eFiling system to:

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15 **INDIAN LEGAL CLINIC**  
16 **ASU PUBLIC INTEREST LAW FIRM**  
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20 111 E. Taylor St., Mail Code 8820  
21 Phoenix, AZ 85004  
22 *Counsel for Plaintiff*

23 **NAVAJO NATION DEPARTMENT OF JUSTICE**  
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*Arizona Attorney General's Office*

/s/Angie Renteria

# **EXHIBIT 1**

RETRIEVED FROM DEMOCRACYDOCKET.COM

**ARIZONA SUPREME COURT**

American Civil Liberties Union of  
Arizona; League of United Latin  
American Citizens-Arizona, ,

*Petitioners,*

v.

STEPHEN RICHER, et al.,

*Respondents.*

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LARRY NOBLE, in his official capacity  
as Apache County Recorder; APACHE  
COUNTY, et al.,

Respondents,

---

Supreme Court  
No. CV-24-0263-SA

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**JOINDER AND RESPONSE TO EMERGENCY PETITION FOR  
SPECIAL ACTION**

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*Attorneys for Apache County Defendants*

November 10, 2024



Defendant Larry Noble, in his official capacity as the Apache County Recorder, and Apache County (the “Apache County Defendants”) hereby join the Maricopa County Defendants’ Response in Opposition to Emergency Petition for Special Action (the “Response”). The Apache County Defendants share the positions presented by the Maricopa County Defendants in the Response. The Apache County Defendants further submit that, as of the time of this filing, Apache County has completed signature verification on all mail-in and early in person ballots it received. *See* Exhibit 1, Declaration of Craig Tsosie. In addition, it made significant efforts, as required, to contact all voters with inconsistent signatures within the applicable deadline. Currently, Apache County has 175 total ballots that require “curing”. The Apache County Recorder’s Office has attempted contacted each of the 175 voters at least once.

Respectfully submitted,

THE BURGESS LAW GROUP

By: /s/ Emily Craiger

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*Attorneys for Apache County*  
*Respondent*

November 10, 2024

**IN THE SUPREME COURT**

**STATE OF ARIZONA**

American Civil Liberties Union of  
Arizona; League of United Latin  
American Citizens-Arizona,

*Petitioners,*

v.

STEPHEN RICHER, et al.,

*Respondents.*

---

LARRY NOBLE, in his official capacity  
as Apache County Recorder; APACHE  
COUNTY, et al.,

Respondents,

---

Supreme Court  
No. CV-24-0263-SA

---

**DECLARATION OF CRAIG TSOSIE**

---

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THE BURGESS LAW GROUP  
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Phoenix, Arizona 85016  
Telephone: (602) 806-2100  
*Attorneys for Apache County Defendants*

## Declaration of Craig Tsosie

I, Craig Tsosie, declare as follows:

1. I am over the age of 18 years old and fully competent to make the following declaration:
2. I am a resident of Apache County and am currently the Chief Deputy Recorder.
3. Apache County started the process of verifying signatures on mail-in and early in-person ballots on approximately October 21, 2024.
4. Processing continued, uninterrupted, until completed on November 9, 2024.
5. Apache County did not stop processing mail-in and early in-person ballots between November 6, 2024, and November 8, 2024, as asserted.
6. All mail-in and early in-person ballots have been signature verified in Apache County.
7. Apache County made significant efforts, as required, to contact all voters with inconsistent signatures within the applicable deadline.
8. Currently, Apache County has 175 total ballots that require “curing”.
9. The Apache County Recorder’s Office has attempted contact with each of these 175 voters at least once.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on November 10, 2024

\_\_\_\_\_  
Craig Tsosie  
Craig Tsosie

Signature:   
Craig Tsosie (Nov 10, 2024 16:09 MST)

Email: [ctsosie@apachecountyaz.gov](mailto:ctsosie@apachecountyaz.gov)

## **EXHIBIT 2**

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SUPREME COURT OF ARIZONA

American Civil Liberties Union ) Arizona Supreme Court  
of Arizona; League of United ) No. CV-24-0263-SA  
Latin American Citizens-Arizona, )  
)  
Petitioners, )

v. )

STEPHEN RICHER, in his official )  
capacity as Maricopa County )  
Recorder; MARICOPA COUNTY; LARRY )  
NOBLE, in his official capacity )  
as Apache County Recorder; APACHE )  
COUNTY; DAVID W. STEVENS, in his )  
official capacity as Cochise )  
County Recorder; COCHISE COUNTY; )  
PATTY HANSEN, in her official )  
capacity as Coconino County )  
Recorder; COCONINO COUNTY; )  
SADIE JO BINGHAM, in her official )  
capacity as Gila County Recorder; )  
GILA COUNTY; POLLY MERRIMAN, in )  
her official capacity as Graham )  
County Recorder; GRAHAM COUNTY; )  
SHARIE MILHEIRO, in her official )  
capacity as Greenlee County )  
Recorder; GREENLEE COUNTY; )  
RICHARD GARCIA, in his official )  
capacity as La Paz County )  
Recorder; LA PAZ COUNTY; LYDIA )  
DURST, in her official capacity )  
as Mohave County Recorder; MOHAVE )  
COUNTY; MICHAEL SAMPLE, in his )  
official capacity as Navajo )  
County Recorder; NAVAJO COUNTY; )  
GABRIELLA CÁZARES-KELLY, in her )  
official capacity as Pima County )  
Recorder; PIMA COUNTY; DANA )  
LEWIS, in her official capacity )  
as Pinal County Recorder; PINAL )  
COUNTY; ANITA MORENO, in her )  
official capacity as Santa Cruz )  
County Recorder; SANTA CRUZ )  
COUNTY; MICHELLE BURCHILL, in her )  
official capacity as Yavapai )  
County Recorder; YAVAPAI COUNTY; )

FILED 11/10/2024

RICHARD COLWELL, in his official )  
capacity as Yuma County Recorder; )  
and YUMA COUNTY )  
)  
Respondents. )  
)  
\_\_\_\_\_ )

**O R D E R**

On November 9, 2024, Petitioners American Civil Liberties Union of Arizona and League of United Latin American Citizens-Arizona filed an *Emergency Petitioner for Special Action (Special Action Relief, Declaratory Judgment) Expedited Review Requested*. Petitioners point out that the deadline for mail-in voters to cure inconsistent signatures on their ballot envelope affidavits is 5:00 p.m. on November 10, 2024, pursuant to Laws 2024, Ch. 1, § 6, eff. Feb. 9, 2024; Laws 2024, Ch. 2, § 2, eff. March 6, 2024, A.R.S. § 16-550. Petitioners request that this Court grant declaratory relief and extend the deadline for Respondents (the County Recorders of Arizona's fifteen counties) to allow voters additional time to cure any inconsistent signatures. Regular business hours include at a minimum 8:00 a.m. until 5:00 p.m. during the Friday and weekend before and the Friday and weekend after the election. Laws 2024, Ch. 2, § 2, eff. March 6, 2024.

Because the petition was filed outside of Court hours, on November 9, 2024, Court staff informally asked for responses from Respondents and any amicus curiae briefs to be filed on or before November 10, 2024, at 12:00 p.m. As of 4:35 p.m., the Court received

responses from the Coconino County Recorder, the Pima County Recorder, the Maricopa County Recorder, the La Paz County Recorder, the Yuma County Recorder, the Santa Cruz County Recorder, the Navajo County Recorder, and the Apache County Recorder. The Court has also received an amicus brief from Arizona State Senate President Warren Petersen and Speaker of the Arizona House of Representatives Ben Toma; a motion to intervene and response from the Republican National Committee and Republican Party of Arizona (collectively "RNC") that the Court treats as an amicus brief; and the Navajo Nation's Motion to File Amicus Brief and Amicus Curiae Brief of the Navajo Nation.

No responding county requests the extension of time sought by Petitioners. Instead, the responding counties assert they have notified all voters with inconsistent signatures and have given those voters a reasonable time to "cure" any deficiencies in their ballots by 5:00 p.m. today. The responding counties point out that 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. See A.R.S. § 16-550; Laws 2024, Ch. 1, §§ 6, 22 eff. Feb. 9, 2024; Laws 2024, Ch. 2, §§ 2, 4 eff. March 6, 2024. All responding counties advise that all such affected voters have received at least one telephone call along with other messages by emails, text messages or mail. Although the Navajo Nation advises, "On Saturday November [9] 2024, the list of Navajo individuals in Apache County who needed to cure their ballots was over 182 people,"

the Court has no information to establish in fact that any such individuals did not have the benefit of "reasonable efforts" to cure their ballots. Thus, the Court is not presented with evidence that any voters will be prevented from curing a defective ballot by today's 5:00 p.m. deadline. In short, there is no evidence of disenfranchisement before the Court.

Upon consideration, by the full Court,

**IT IS ORDERED** denying the motion to intervene by the RNC and accepting the amicus briefs filed by Arizona State Senate President Warren Petersen and Speaker of the Arizona House of Representatives Ben Toma, the RNC, and the Navajo Nation.

Lacking any evidence that "reasonable efforts" were not made to contact voters for the purpose of curing inconsistent signatures, and in light of the responding counties' assertions that they have been able to comply with the statutory notice requirements,

**IT IS FURTHER ORDERED** declining special action jurisdiction.

DATED this 10th day of November 2024.

\_\_\_\_\_  
/s/  
WILLIAM G. MONTGOMERY  
Duty Justice



TO:

Jared G Keenan  
Lili Nimlo  
Danielle Lang  
Sarah Brannon  
Sophia Lin Lakin  
Joseph E La Rue  
Jack O'Connor  
Rosa Aguilar  
Celeste M Robertson  
Paul Correa  
William P Ring  
Joe A Albo  
Jessica Scibelli  
Jean Anne Roof  
Gary Griffith  
Scott Adams  
Jeremy O Ford  
Rachel F Shackelford  
Ryan Henry Esplin  
Jason Mitchell  
Jason S Moore  
Daniel S Jurkowitz  
Scott Matthew Johnson  
Matthew Cannon  
Thomas M Stoxen  
Michael J Gordon  
William J Kerekes  
Kory A Langhofer  
Thomas J Basile  
Patricia Ferguson-Bohnee  
Ethel Billie Branch  
Katherine Claire Belzowski  
Sage Metoxen  
Frances R Sjoberg  
Julianne Begay  
David Rothschild  
Harmeet K. Dhillon  
Michael A. Columbo  
Jesse Franklin-Murdock  
Rose Winkeler  
Jessica Holzer  
Emily Craiger

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# **EXHIBIT 3**

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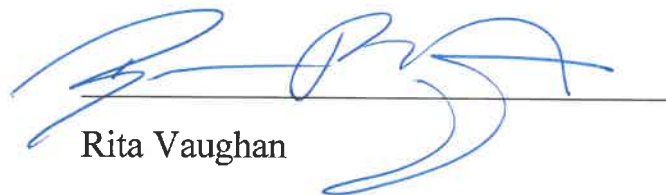
## Declaration of Rita Vaughan

I, Rita Vaughan, declare as follows:

1. I am over the age of 18 years old and fully competent to make the following declaration:
2. I am a resident of Apache County and am currently the Elections Director.
3. After the close of all polling locations on November 5, 2024, "Election Day", all Early and Provisional Ballots received on Election Day were taken from the Election Department to the Recorder's Office to be processed.
4. The Recorder's Office began processing those ballots starting the morning of Wednesday, November 6, 2024.
5. At the same time, the Election Department located and set up all Poll Books so that it could upload all voter credits to the Arizona Secretary of States' AVID system.
6. At that time, I determined that four (4) precincts had not returned Poll Books with ballots, as instructed, on Election Day after the polls closed. One of these locations was Dennehotso, which had been required to stay open until 9:00 p.m. on Election Day.
7. The Recorder's Office immediately sent Ballot Runners to retrieve the missing poll books.
8. Because of this issue, I instructed the Recorder's Office that they should wait to update the Secretary of State's AVID system with information regarding the status of processing early ballots until I could complete my upload of voter credits, as required.
9. I never instructed them to stop processing early or provisional ballots during this time and, to my knowledge, the processing of early and provisional ballots continued during this period.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on November 13, 2024



Rita Vaughan

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