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

NAVAJO NATION, a federally recognized
Indian Tribe, on behalf of itself and all
others similarly situated,

Plaintiff,

v.

Larry Noble in his official capacity as
Apache County Recorder; Apache
County Board of Elections; Rita Vaughn
in her official capacity as Apache
County Elections Director; and Apache
County Board of Supervisors

Defendants.

Case No.

**APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

(Expedited Election matter)

Plaintiff Navajo Nation, by and through undersigned counsel, respectfully moves this Court for emergency relief to secure the due process rights of Navajo voters as guaranteed by Article II of the Arizona Constitution. Plaintiff respectfully moves this Court for a Temporary Restraining Order, pursuant to Rule 65 of the Arizona Rules of Civil Procedure, restraining all Defendants from rejecting ballots of voters in Apache County who are otherwise qualified to vote, in order to allow Navajo voters a meaningful opportunity to cure deficiencies in the early ballots cast in accordance with the rights of other Arizona voters. This Application is supported by the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

The 2023 Arizona Elections Procedures Manual (“2023 EPM”) requires that county recorders or other officers in charge of elections are responsible for verifying signatures on early ballot envelopes. 2023 EPM at 83. Once an early ballot is received, the County Recorder’s office will review the signature to determine if it is sufficient. If it is sufficient, the ballot and affidavit will be transferred to the officer in charge of elections. 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, or if before the election, to notify the voter of the missing signature. *Id.*

The County Recorder “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); 2023 EPM at 84. This system must be provided on the county’s website. *Id.* Apache County did not provide a tracking system on its website; however, the Secretary of State did provide a tracking system on its website. Secretary of State, Voter Information Portal, *available at* <https://my.arizona.vote/AbsenteeTracker.aspx> (last visited Nov. 10, 2024). Prior to Election Day and on Election Day, early voters who had already cast their early ballots would not be able to identify their ballots as received on the Secretary of State’s ballot tracker. *See* Branch Decl. 1 and Dolan Decl. Many voters on the Navajo Nation dropped off their ballots at early ballot dropboxes because of the delays in mail delivery on the Navajo Nation. As of 6:25 p.m. on Wednesday, November 6, Apache County had 8,185 ballots to process, of which 4,780 were early ballots. *Arizona Secretary of State Ballot Progress*, <https://apps.arizona.vote/electioninfo/BPS/47/0>, checked on 11/8/2024 at 4:39 pm. As of 5:20 p.m. Saturday, November 9, 2024, there were 4,305 unprocessed ballots in Apache County. Those uncounted ballots comprised 900 early ballots and 3,405 provisional ballots that had yet to be processed. *See* <https://apps.arizona.vote/electioninfo/BPS/47/0>, checked on 11/10/2024 as of 11:30 am.

On Friday, November 8, 2024, the Navajo Nation Department of Justice submitted a Public Records Request to the Apache County Recorder’s Office, requesting a list of all

the voters whose early and election day ballots needed to be cured by the statutory deadline for ballot-curing on Sunday, November 10 at 5p.m. *See* November 8 Public Record's Request. On Friday, November 8 at approximately 5 p.m., the Apache County Recorder's Office provided the Department of Justice a list that identified only three early ballots that needed to be cured. *See* Apache County Early Ballot Reject List ("First List"); Sjoberg Decl.

On Saturday, November 9, 2024, at approximately 5 p.m., the Navajo Nation Department of Justice, and other voting rights groups, had a call with Deputy Recorder Craig Tsosie and his staff to ask him questions about the status of the list of ballots. *See* Parrish Decl 1; Eis Decl; and Branch Decl 2. During that call, Mr. Tsosie and his staff indicated that the number of early ballots that needed to be cured had gone up to 182. When asked why these 182 were not included on the response to the public records request on Friday, Deputy Tsosie indicated that the Recorder's Office was instructed by the Apache County Election Office not to process any early ballots after Election Day until it received the okay from the Election's Office. The Recorder's Office received the okay from the Election Office on Friday, November 8. Once the County started to process the early ballots, only two days before the early ballot cure deadline, the Recorder's Office characterized numerous ballots as having mismatched signatures. Deputy Tsosie indicated that this number would change again by Sunday, the same day as the early ballot cure deadline, after more early ballots were processed. *Id.* Of the 900 unprocessed early ballots,

on Saturday November 9, at least 143 ballots belong to individuals residing on or near the Navajo Nation who need to cure their ballots due to mismatched signatures. Voters had until 5 p.m., November 10, to cure their ballots. H.B. 2785, 56th Leg., 2nd Regular Sess. (Az. 2024); S.B. 1285, 56th Leg., 2nd Regular Sess. (Az. 2024); A.R.S. § 16-550.

On Sunday November 10, 2024, at 9 a.m., the Navajo Nation Department of Justice submitted a second public records request for the names of voters whose ballots needed to be cured by 5 p.m. *See* November 10 Public Records Request. No response was ever provided by Apache County to this request. The Navajo Nation Department of Justice instead procured a list from the Democratic Party of Democratic voters whose ballots needed to be cured. *See*, Democratic Party Rejected Voter List November 9. Based on that list, the Navajo Nation Department of Justice, in conjunction with other voter right groups, instituted a voter out-reach campaign in attempt to reach voters whose early ballots were in need of curing. This emergency stopgap solution is unacceptable because it did not provide the Navajo Nation Department of Justice a complete list of all affected Navajo voters, but only those selected by the Democratic Party.

Outreach workers worked with local Navajo officials to attempt to locate and contact voters. In performing this outreach, the Navajo Nation Department of Justice noticed that many of the individuals did not have phone numbers associated with their voter registration, and for the ones that did, many numbers did not work or did not have voicemail. The Navajo Nation Department of Justice also sought volunteers to attempt to

visit the voters at their residence. However, many voters have descriptive addresses and residences remotely located on dirt road. One day did not allow enough time to drive to all the voters' residences as it may take an hour drive to even one remote residence. Additionally, many Navajo families were not home on Sunday because they were on travel for Veterans Day holiday weekend. *See* Parrish Decl. 2; Sjoberg Decl.; and Manuelito Decl.

LEGAL STANDARD

Rule 65 of the Arizona Rules of Civil Procedure provides for the issuance of a temporary restraining order ("TRO"). Arizona courts consider four factors in deciding whether to grant a TRO: "(1) A strong likelihood that [the Plaintiff] will succeed at trial on the merits; (2) The possibility of irreparable injury to [the Plaintiff] not remediable by damages if the requested relief is not granted; (3) A balance of hardships favors [the Plaintiff]; and (4) Public policy favors the injunction." *Shoen v. Shoen*, 167 Ariz. 58, 63 804 P.2d 787, 792 (App. 1990).

"The critical element in this analysis is the relative hardship to the parties." *Id.* "To meet this burden, the moving party may establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and 'the balance of hardships tip[s] sharply' in his favor." *Id.*

ARGUMENT

I. There is a Strong Likelihood Plaintiff Will Succeed on the Merits of the Claims at Trial.

By failing to make reasonable and meaningful efforts to notify voters of their inconsistent signatures, Defendants have deprived Plaintiff's citizens and similarly situated voters of the right to vote in free and equal elections, due process, and equal protection. As discussed below, such failure amounts to a clear violation of A.R.S. § 16-550(A), 2023 EPM §VI(A), and Article II of the Arizona Constitution. Thus, Plaintiff has a strong or substantial likelihood of success on the merits, thereby warranting preliminary relief.

A. Plaintiffs are likely to Prevail on their Claims because Apache County has Deprived Navajo Voters of their Right to Vote by Failing to Provide Navajo Voters Meaningful and Reasonable Opportunity to Cure their Ballots.

i. Legal Basis

The Arizona Constitution establishes the fundamental right to vote in “free and equal” elections. ARIZ. CONST. art II, §21. This right, “is implicated when votes are not properly counted,” or “if any substantial number of persons entitled to vote are denied the right to do so.” *See Chavez v. Brewer*, 222 Ariz. 309, 320 (App. 2009).

Arizona statute requires county recorders' offices to verify signatures on early ballot envelopes by comparing them to voter signatures on registration records and other official election documents. *See* A.R.S. §16-550(A); 2023 EPM at 83. This verification process shall begin “on receipt” of the early ballot. *Id.* If there is an inconsistency in a voter's signatures, county recorders must make “reasonable efforts” to contact the voter, advise

them of the inconsistent signature, and allow them to correct the inconsistent signature or allow the county to confirm the inconsistent signature. A.R.S. §16-550(A). The county recorders' "reasonable efforts" to contact voters must also be "meaningful" and can be made by "mail, phone, text message, and/or e-mail." 2023 EPM at 83. Lastly, county recorders must contact voters "as soon as practicable" using the contact information available in the voter's record and any other sources "reasonably available to the county recorders." *Id.*

Arizona statute normally gives county recorders five *business* days to notify voters of their inconsistent signatures and to allow them an opportunity to correct, i.e. "cure", their inconsistent signatures during the county recorders' regular business hours, which are, at a minimum 8 a.m. to 5 p.m. A.R.S. §16-550(A). However, this cure period was temporarily amended to five *calendar* days for elections in the years of 2024, 2025, and 2026. H.B. 2785 § 13, 56th Leg., 2nd Regular Sess. (Az. 2024); S.B. 1285 § 22.1, 56th Leg., 2nd Regular Sess. (Az. 2024). Thus, the deadline to cure inconsistent signatures on early ballots cast in the 2024 general election was Sunday, November 10, at 5 p.m.

2. Delay in Processing Early Ballots

The Apache County Recorder's Office delayed processing and verifying signatures for early ballots, and this delay prevented the Apache County Recorder's Office from making "reasonable" and "meaningful" efforts to notify voters on the Navajo Nation of their inconsistent signatures. Plaintiff knows that the Apache County Recorder's Office

delayed processing early ballots because of statements made by Apache County Deputy Recorder Craig Tsosie on Saturday, November 9. Decl. of Branch 2, Decl. of Parrish 1; Decl. of Eis. Mr. Tsosie stated that his office could not process any early ballots until given “the okay” from the Apache County Elections Director and that, based on this instruction, his office did not process any ballots between Wednesday, November 6, and 5 p.m. Friday, November 8 because his office did not receive “the okay” to process ballots until 5 p.m. Friday, November 8. *Id.* Because Mr. Tsosie did not receive “the okay” to process early ballots until 5 p.m. on Friday, November 8, the number of early ballots that needed to be cured due to inconsistent signatures sharply increased from 3 on the First List as of Friday, November 8, to 143 on the Second List as of Saturday, November 9. *See Id.*

Plaintiff also knows that Apache County delayed processing early ballots because of the experience of voter Ethel Branch who cast an early ballot by delivering it to the Sanders Justice Court on Friday. Branch Decl. 1. As of Saturday, November 9, Ms. Branch’s early ballot had yet to be received or processed by Apache County. *Id.* After calling Apache County five times, including one call that occurred after an Apache County employee hung up on her, Ms. Branch finally received confirmation from Apache County on November 9 that her early ballot was received and would be counted. *Id.*

Because of Apache County’s deliberate delay in processing early ballots and the sharp increase in early ballots with inconsistent signatures after Apache County resumed processing early ballots on November 8, Plaintiff has reason to believe that a significant

portion of the 900 early ballots left to be processed as of 5:20 p.m. on November 9 included ballots that required curing due to inconsistent signatures. However, because of the change in meaning of the phrase “left to be processed” and Apache County’s failure to respond to Navajo Nation Department of Justice’s public records request submitted on Sunday, November 10, Plaintiff had no way of knowing exactly how many early ballots required curing due to inconsistent signatures, nor did it have any way of knowing whether these voters received “reasonable” and “meaningful” contact and an opportunity to cure from Apache County before 5 p.m. on November 10.

3. Apache County’s Delay in Processing Early Ballots Made Reasonable and Meaningful Efforts to Contact Voters Impossible.

With 900 unprocessed ballots as of 5:20 p.m. on November 9, the Apache County Recorder’s Office had just under 24 hours to verify signatures on the early ballot envelopes, provide “reasonable” and “meaningful” notice of inconsistent signatures to voters, and allow voters an opportunity to cure their ballots. County recorders’ offices are only obligated to remain open during “regular business hours” during the cure period, which for Apache County is 6:30 a.m. to 5:30 p.m. Therefore, Apache County likely only had approximately 11 hours to process and verify signatures for 900 early ballots, notify voters of their inconsistent signatures, and allow voters to cure their inconsistent signatures.

Apache County could not have provided voters on the Navajo Nation “reasonable” and “meaningful” notice and an opportunity to cure inconsistent signatures on their early ballots in 11 hours between November 9 and 10. The implausibility of Apache County

accomplishing this is compounded by the fact that many voters on the Navajo Nation live in areas with inconsistent cell phone service and in rural areas that are a significant distance from the Apache County Recorder's Office. With these conditions, "reasonable" and "meaningful" notice would have required notice and an opportunity to cure inconsistent signatures more than 11 hours before 5:00 p.m. on November 10 through various communication methods.

The experience of volunteers who contacted Navajo Nation voters in Apache County on November 10 to notify them of their inconsistent signatures demonstrates what "reasonable" and "meaningful" efforts would have looked like for this group of voters. Frances Sjoberg made at least 37 phone calls to voters and was able to leave voicemails with only 20 of those voters; 10 of the voters had no voicemail service, 2 had numbers not in service; and 2 had wrong numbers. *See* Sjoberg Decl. Orlando Manuelito drove to 11 residences and, out of those visits, Mr. Manuelito was only able to make contact with one voter who had an inconsistent ballot signature that had to be cured. *See* Manuelito Decl. While some of voters reported to Ms. Sjoberg and Mr. Manuelito that Apache County contacted them to notify them of their inconsistent signatures, there is no indication of when Apache County provided this notification. However, since these voters were not on the list of voters whose ballots required curing that Apache County disclosed at 5 p.m. on November 8, the earliest these voters would have received notice of their inconsistent signatures would have been some time on Saturday, November 9, giving them less than 48

hours to contact Apache County by phone or in-person to cure their ballots. 48 hours' notice is not "reasonable" or "meaningful".

Apache County's failure to timely process early ballots has resulted in Navajo Nation voters being deprived of notice and an opportunity to cure inconsistent signatures on their early ballots, which means their ballots will not be counted in the 2024 general election. This is a deprivation of these Navajo Nation voters' right to vote in a "free and equal" election guaranteed by the Arizona Constitution. The violation of this right can only be remedied through injunctive relief.

Apache County's failure to make "reasonable" and "meaningful" efforts to contact voters would have resulted in at least 143 voters on the Navajo Nation being deprived of their right to have their vote counted in the 2024 general election but for volunteers who contacted many of these voters on Sunday, November 10.

B. Plaintiffs are Likely to Prevail on their Claims because Apache County has Deprived Navajo Nation Voters' Rights to Due Process and Equal Protection.

The majority of voters in Arizona cast their ballots using an early mail-in ballot. *See* Jeremy Duda, *Arizona Republicans Take Big Early Lead Into Election Day*, Nov. 4, 2024, <https://www.axios.com/local/phoenix/2024/11/05/arizona-republicans-take-big-early-voting-lead-into-election-day> and October Voter Registration Statistics Announced for the 2024 General Election (Oct. 25, 2024), <https://azsos.gov/news/869>. "In order to be valid and counted, the ballot and mail 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 not later than 7:00 p.m. on election day. The ballot will not be counted without the voter's signature on the envelope.” A.R.S. § 16-547(D)(1). Arizona law allows voters to cure ballots that have missing signatures until 7 p.m. on Election Day and mismatched signatures up to five days after Election Day. A.R.S. § 16-550 (A).

1. Apache County has Deprived Navajo Nation Voters’ Rights to Due Process.

Apache County’s conduct violates Navajo voters’ rights to procedural due process. 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. 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/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1357 (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).

Voters must be given a meaningful opportunity to cure defects to their early ballots. Failure to do so violates procedural due process. *Raetzel*, 762 F. Supp. at 1358. 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 U.S. v. Dusenbery*, 534 U.S. 161, 168 (2002). 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 deadline expired or provided the information so close to the deadline that voters did not have a meaningful opportunity to act.

2. Apache County has Violated Navajo Nation Voters’ Rights to Equal Protection.

Failure to give Navajo citizens 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 early ballots, and by failing to contact those voters and provide them with notice and meaningful opportunity to cure their ballots, Defendants deprived Navajo voters in Apache County of an equal opportunity to cure their ballots. *See Raetzel*, 762 F. Supp. at 1358. 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. “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 of Ohio v. Brunner*, 548 F.3d 463, 477 (6th Cir. 2008) (quoting *Bush v. Gore*, 531 U.S. 98 at 104)(2000) (internal quotations omitted). By Defendants failing to give Navajo voters the same opportunity to cure as others in, the state, Navajo voters are disparately impacted by Defendants’ delay in contacting them. *See Bush*, 531 U.S. at 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”).

II. Absent Preliminary Relief, Plaintiff Will Suffer Irreparable Injury Due to Apache County’s Denial of Navajo Citizens’ Fundamental Rights.

There are circumstances where “[m]onetary damages may provide an adequate remedy at law.” *IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P’ship*, 263 P.3d 69, 73 (Ariz. Ct. App. 2011) (citing *Cracchiolo v. State*, 660 P.2d 494, 498 (Ariz. Ct. App. 1983)). However, “[h]arm is irreparable when it is not remediable by damages.” *Toma v. Fontes*, P.3d 881, 899 (Ariz. Ct. App. 2024) (internal citations omitted). “Ordinarily, *ongoing* constitutional violations cannot be remedied through monetary damages, rendering the harm caused by such a violation irreparable.” *Id.* (emphasis in original).

“No right is more precious in a free country than that of having a voice in the election of those who make the laws.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). “[O]nce

the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin this law.” *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Thus, if potential voters, such as Plaintiff, are victims of Defendants’ actions that abridge their right to vote, they have suffered irreparable injury.

As discussed above, Defendants have failed to provide voters a reasonable or meaningful opportunity to correct ballot discrepancies as required under A.R.S. § 16-550(A) and 2023 EPM §VI(A). As such, Defendants are likely to move forward with certifying election results without first meeting their statutory and constitutional obligations. Because the Election is over and ballots have been counted, relief can only be provided by this Court. Unless this Court immediately issues an Order demanding that Navajo voters be provided an opportunity to cure ballot deficiencies and have their ballots be counted, the unlawful acts of Defendants will continue to occur, permanently depriving Plaintiffs and other lawful voters of their right to vote in the November 5, 2024 election. Such deprivation necessarily is an irreparable injury which warrants the issuance of injunctive relief.

III. Plaintiff’s Inability to Ensure Navajo Citizens’ Right to Vote Outweighs the Temporary Inconvenience an Injunction Might Cause to Defendants.

This factor requires a comparison of the hardships suffered by Plaintiff if preliminary relief is denied and any burdens imposed on Defendants if such relief is ordered.

“Voting is a fundamental right subject to equal protection guarantees under the Fourteenth Amendment.” *Idaho Coal. United for Bears v. Cenarrusa*, 342 F.3d 1073, 1076 (9th Cir. 2003) “There is no right more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014). Indeed, the right “to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, [and] any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); see also *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014) (asserting “the basic truth that even one disenfranchised voter . . . is too many”). The denial of relief here would render this fundamental right meaningless for Plaintiff and similarly situated voters.

On the other side of the ledger are the modest, and to some extent illusory, burdens imposed on Defendants in complying with a TRO to uphold their constitutional and other legal duties. The Supreme Court is clear that “[c]ounteracting the State's compelling interest in preventing voter fraud is the plaintiffs' strong interest in exercising the ‘fundamental political right’ to vote.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972)). In *League of Women Voters*, the Fourth Circuit was clear that the administrative burden of county boards of elections is unpersuasive when “the problem’s roots lie largely in boards of elections’ own procedures,” 769 F.3d at 244. In that case, the Court acknowledged “the problem of sacrificing voter enfranchisement at

the altar of bureaucratic (in)efficiency and (under-)resourcing. *Id.* In balancing hardships, the Court noted that the board of elections' burden is attenuated by the fact that the relief requested involves systems that "have existed, do exist, and simply need to be resurrected." *Id.* at 248; *see also Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1258 (N.D. Fla. 2016) (concluding the balance of hardship favors plaintiff because it is "nonsensical to prioritize" an interest in "administrative convenience" over "the fundamental right to vote"); *Action N.C. v. Strach*, 216 F. Supp. 3d 597, 647 (M.D.N.C. 2016) (finding minimal impact in requirement to change provisional ballot process where county boards of election "already verify every provisional ballot cast"); *Ga. Coalition of the People's Agenda v. Kemp*, 347 F. Supp. 3d 1251, 1268–69 (N.D. Ga. 2018) (finding the administrative burden of "disseminating information . . . and training poll managers" right before an election is "minimal compared to the potential loss of a right to vote altogether by a group of people"); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1340 (N.D. Ga. 2018) (concluding that the balance of equities and public interest support an injunction where the burden of implementing an appeal process for signature match rejections is outweighed by the assurance that "all eligible voters are permitted to vote"). Defendants cannot in good faith claim that they are "unable to cope" with a modest request, such as "three extra days of in-person early voting." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

Here, the balance of hardship favors the Plaintiff and Navajo citizens' right to cure inconsistent signatures on their early vote ballots. Apache County was not sufficiently

proactive in processing early vote ballots, and as a result Navajo citizens were not given reasonable and meaningful notice and an opportunity to cure. Apache County already has a notice and cure process in place, they merely need to extend that process to give themselves reasonable time to contact affected voters, so those voters can verify their signatures and have their votes counted. Additionally, the canvassing deadline for counties is November 21. Arizona Secretary of State Election Calendar 2023-2024, *available at* https://apps.azsos.gov/election/2024/2024_Election_Calendar.pdf.

Providing three (3) additional days for those voters who were not included on the November 8 list to cure will not result in delays of certification. Further, providing three (3) additional days to cure will not create undue hardship to Apache County because the list is minimal – likely less than 500. However, denying these voters a meaningful and equal opportunity to cure will result in a denial of their right to vote. Voters who need to cure would have had this opportunity but for the County’s actions in failing to identify and contact all voters with signature deficiencies prior to November 9.

Because Plaintiff citizens and similarly situated voters stand to lose the opportunity to exercise their most fundamental political right, and extending the time to cure ballots imposes no cognizable harm on Defendants or other voters, the balance of hardships weighs decidedly in favor of Plaintiff. As such, this factor weighs in favor of preliminary relief.

IV. Public Policy Favors Relief because Protecting Citizens' Right to Vote is the Highest Public Interest.

Ensuring that eligible voters can effectively participate in the electoral process is *always* in the public interest. “Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Purcell*, 549 U.S. at 4; *see also Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 91 (9th Cir. 2003) (finding that because of public interest concerns, the “law recognizes that election cases are different from ordinary injunction cases.”). Even more, the public interest “favors permitting as many qualified voters to vote as possible.” *Obama for Am.*, 697 F.3d at 437.

Extending a deadline to ensure “that every individual is entitled to vote on equal terms, and each individual’s vote carries the same value as every other vote” is likewise in the public interest. *Doe v. Walker*, 746 F. Supp. 2d 667, 682 (D. Md. 2010); *see Obama for Am.*, 697 F.3d at 436 (public interest weighs in favor of injunctive relief expanding early voting, where many voters’ “work schedules” make it difficult to vote on election day).

Crucially, these concerns do not just implicate the Plaintiff and other voters unable to participate in the November 5, 2024 federal election—they affect all voters in Arizona, even those who can successfully vote themselves, and the entire country. Without the requested relief, “public knowledge that legitimate votes” were not counted “due to no fault of the voters – and with no reasonable notice to the voters that their votes would not be

counted and no opportunity to correct that situation – would be harmful to the public’s perception of the election’s legitimacy. *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019). This carries even more weight when “public confidence in elections is deeply important—indeed, critical—to democracy.” *Id.* And it hardly needs stating that “[t]he public interest is always served by more equitable, easier access to the ballot.” *Madera v. Detzner*, 325 F. Supp. 3d 1269, 1283 (S.D. Fla. 2018). As such, “state and local officials serve the public interest when they conform their conduct to [the] law’s requirements”—which is all that Plaintiff seeks here. *Id.*

Ensuring eligible voters can effectively participate in the electoral process is the highest public interest. Accordingly, this court should order Defendants to meet their statutory and constitutional obligations to ensure Plaintiff’s citizens are not deprived of the equal opportunity to vote.

CONCLUSION

The acts and omissions of Defendants have already denied or impaired the rights of Navajo Nation citizens under Arizona state law, and threaten to disenfranchise citizens of the Navajo Nation who exercised their fundamental right to vote only to have their votes not counted. Plaintiffs request that the Court expeditiously rule on this Application to ensure that no voters are unfairly and arbitrarily disenfranchised.

WHEREFORE, for the foregoing reasons,

A. Plaintiff respectfully requests that the Court enter a temporary restraining order restraining Defendants and their officers, employees, agents, and all persons acting in concert or participation with Defendants, or under Defendants' supervision or direction, from violating A.R.S. §16-550(A), 2023 EPM §VI(A), and Article II of the Arizona Constitution.

B. Plaintiff further requests that the Court toll the deadline for certifying the Apache County 2024 general election results under A.R.S. §16-550, until this matter can be heard in order to ensure that all voters with mismatched signatures are given reasonable and meaningful notice and opportunity to cure early ballot signature discrepancies and have their cured ballots counted in the official election results.

C. Alternatively, if Defendants have already certified the 2024 general election results for Apache County, Plaintiffs respectfully requests that this Court order Defendants to allow Navajo voters an opportunity to cure their early ballot signature discrepancies and to certify and file corrected returns after the opportunity to cure has passed.

D. Plaintiffs request any further relief that the Court deems just and proper.

DATED this 12th day of November, 2024

By:  _____

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