

SUPREME COURT OF THE STATE OF ARIZONA

AMERICAN CIVIL LIBERTIES UNION OF
ARIZONA; LEAGUE OF UNITED LATIN
AMERICAN CITIZENS-ARIZONA,

Petitioners,

v.

STEPHEN RICHER, in his official
capacity as Maricopa County recorder,
et. al.

Respondents.

Arizona Supreme Court
Case No. CV-24-0221-SA

AMICUS CURIAE BRIEF OF THE NAVAJO NATION

FILED PURSUANT TO ARCAP 16(B)(1)(C) WITH MOTION TO FILE AMICUS

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TABLE OF CONTENTS

Interest of Amicus Curiae	3
Statement of Facts	4
Argument.....	6
Conclusion	6

INTEREST OF AMICUS CURIAE

Amicus Curiae Navajo Nation (“Nation”) is a federally recognized Indian Tribe.¹ The Navajo Nation is the largest tribe in the United States in both size and population. The Navajo Reservation comprises over 27,000 square miles, 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) (testimony of Hon. Crystalyne Curley, Speaker, Navajo Nation Council). The Arizona portion of the Nation is within Apache, Coconino, and Navajo Counties. Combined, these three counties have the largest proportion of Indian land held in trust of any counties in the United States. Of the approximately 403,927 enrolled Navajo citizens, a majority reside in Arizona, with 145,334 Navajo Nation living in Arizona. *Detailed Races and Ethnicities in the United States and Puerto Rico: 2020 Census*, U.S. Census Bureau (2023).

As a sovereign government, the Nation has a strong interest in ensuring its citizens have an equal opportunity with other citizens of the State of Arizona to participate in elections, and to cast a ballot and have their ballot count. Not only have Navajo voters suffered a long history of discrimination, but the Nation has fought repeated efforts by the State, and its political subdivisions, to dilute and deny

¹ The Nation’s government-to-government relationship with the United States is recognized by the Treaty of 1849 and the Treaty of 1868.

the Nation's citizens' votes. Yet, Navajo voters continue to face the threat of disenfranchisement. Respondents' conduct has threatened the Nation's citizens' fundamental right to vote by failing to provide sufficient notice and opportunity to cure ballots by the statutory deadline. The Nation has encouraged Navajo voters to participate in elections and to ensure that their ballots are counted.

STATEMENT OF FACTS

As of 6:25 p.m. on November 6, Apache County had 8,185 ballots to process, of which 4,780 were early ballots.² As of 5:20 p.m. November 9, 2024, there are 4,305 unprocessed ballots in Apache County. Those uncounted ballots are comprised of 900 early ballots and 3,405 provisional ballots that have yet to be processed.³ Of the 900 unprocessed early ballots, so far, at least 143 ballots belong to individuals residing on the Navajo Nation who need to cure their ballots due to mismatched signatures. Voters have until 5 p.m. today, November 10, to cure their ballots. *See* H.B. 2785 and 2024 Ariz. Legis. Serv. Ch. 2 (S.B. 1285).

County recorders' offices have an obligation to verify signatures on early ballots by comparing them to voter signatures on registration records and other official election documents. A.R.S. §16-550(A). If there is an inconsistency, recorders must make reasonable efforts to contact voters and advise them of the

² See Arizona Secretary of State Ballot Progress, <https://apps.arizona.vote/electioninfo/BPS/47/0>, checked on 11/8/2024 at 4:39 pm.

³ See <https://apps.arizona.vote/electioninfo/BPS/47/0>, checked on 11/10/2024 as of 11:30 am.

inconsistent signature A.R.S. §16-550(A). Reasonable efforts include contacting the voter by mail, phone, text message, and/or e-mail, depending on the contact information available for the voter. 2023 Election Procedures Manual, p. 83.

According to the Deputy County Recorder for Apache County, Craig Tsosie, the Deputy County Recorder's Office was instructed by the Apache County Election Office to not process any early ballots until Friday, November 8, 2024. *See* Declaration of Jaynie Parrish, Appendix 1. On Friday, November 8, the number of early ballots that had to be cured due to mismatched signatures was 2. *Id.* On Saturday, November 9, that number grew to 182. *Id.*

ARGUMENT

APACHE COUNTY'S DELAYS IN PROCESSING EARLY BALLOTS WILL DISENFRANCHISE NAVAJO VOTERS UNLESS THE TIME TO CURE IS EXTENDED

Due to the delays in processing early ballots, the Apache County Recorder's office will not have enough time to verify the remaining 900 early ballots and make reasonable efforts to contact every voter with mismatched signatures by 5 p.m. today. Due to this compressed time frame, voters on the Navajo Nation are at risk of either not receiving any notice at all that their ballot must be cured due to a mismatched signature or receiving notice of their mismatched signature without sufficient time to cure their ballots, either by phone or in-person.

This compressed time frame is further constrained by the fact that many voters on the Navajo Nation live in rural areas with inconsistent cell phone service that are also a significant distance from the Apache County Recorder's Office. Moreover, there have been challenges to reaching the Apache County Recorder's Office. In one instance, a voter had to call the Apache County Recorder's Office four times to verify that her ballot was received and would be counted. *See Declaration of Ethel B. Branch, Appendix 2.*

CONCLUSION

Apache County's deliberate delay in processing ballots, their obligations to verify signatures on 900 early ballots and make reasonable efforts to notify voters of mismatched signatures, the deadline of 5 p.m. today to cure ballots, and the challenges that Navajo Nation voters will face in receiving notice of their mismatched signatures, and either driving to the Apache County Recorder's Office or calling the Apache County Recorder's Office all but guarantee that Navajo Nation voters will not have any opportunity at all to cure their mismatched ballot signatures. This will result in the disenfranchisement of hundreds of Navajo Nation voters. This disenfranchisement can only be avoided if this Court enters an order extending the deadline to cure ballots.

RESPECTFULLY SUBMITTED this 10th day of November, 2024.

By: _____



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